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WEST LONDON MAGISTRATES' COURT

**SPECIALIST
DOMESTIC VIOLENCE
COURT**

**BENCH BOOK
AND
GOOD PRACTICE
GUIDE**

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against domestic violence



**WEST LONDON MAGISTRATES' COURT
DOMESTIC VIOLENCE
BENCH BOOK AND GOOD PRACTICE GUIDE**

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What is a Bench Book?

A Bench Book is designed for the magistrates' courts by the Judicial Studies Board to provide the information and practical tools which a magistrate sitting in court needs. Copies of Bench Books are made available to all magistrates and legal advisers, and are available to district judges as well.

The book comprises, amongst other things, checklists to assist step-by-step decision-making guides for the topics of adjournment/remand/bail/sentence which regularly arise in the summary courts, as well as providing helpful wording on some of the pronouncements made in court.

Adopting the aims of the JSB in producing Bench Books to assist magistrates, at West London Magistrates' Court we have produced this Bench Book with a particular emphasis on domestic violence issues in relation to these topics as they arise in the SDVC. It is based upon the good practice which has evolved at WLMC. It is, so far as we are aware, unique.

The Specialist Domestic Violence Court at West London Magistrates' Court

- The court was launched in October 2002, and has operated continuously since then
- The court hears cases from both Hammersmith and Fulham and Kensington and Chelsea
- The court sits in the same court room, for a full day, once a week on a Thursday
- The operation of the court, and the roles of the partner agencies within it, are guided by a detailed multi-agency protocol
- All key personnel and the judiciary have received specialist training in domestic abuse
- The judiciary in the SDVC can be either one District Judge, or a bench of three magistrates
- The SDVC deals with all matters, hearings and trials relating to criminal cases over which the magistrates' court has jurisdiction, and involving intimate partner abuse, and, in the first instance, with the full range of alleged offences within a domestic violence context. Certain alleged offences are sent on to Blackfriars Crown Court.

- The partnership work in support of the court is coordinated by Standing Together Against Domestic Violence, and overseen by the multi-agency Court Management Group, convened by Standing Together.
- The court's operation is reviewed annually by the partner agencies, and the results of monitoring and the review are published.

GLOSSARY

Glossary of Terms for readers unfamiliar with summary court procedure

MOT = mode of trial: the decision by the magistrates or district judge as to whether an allegation can be dealt with in the summary courts in the light of their sentencing powers. Where it is felt that the sentence for an allegation will exceed those powers, then Jurisdiction to hear the case will be declined and the defendant will be committed for trial to the Crown Court.

ETMP = Effective Trial Management Programme: an agreement by all parties to every case (police/CPS/Defence) to adopt an approach to case progression which reflects the Criminal Procedure Rule's Overriding Objective of dealing with all cases justly.

Narey cases: a scheme to ensure that:

1. cases in which the defendant has already indicated a guilty plea, or is likely to do so, are identified at the earliest opportunity following charge so that the defendant can be brought before an **Early First Hearing** court as speedily as possible – usually 3 – 5 days following charge, according to local justice area arrangements;
2. where the defendant indicates a likely not guilty plea to a case capable of being dealt with summarily, the defendant is bailed or remanded from the police station to an **Early Administrative Hearing** at court for Case Management to commence.

ABBREVIATIONS

CMH	Case Management Hearing
CJA	Criminal Justice Act
CPS	Crown Prosecution Service
CPRO	Community Punishment and Rehabilitation Order
CRO	Community Rehabilitation Order
IDAP	Integrated Domestic Abuse Programme (Probation Service's programme for domestic violence offenders)
PBV	Plea before venue
PTR	Pre-Trial Review
SDVC	Specialist Domestic Violence Court
SMD	Special Measures Directions
VPS	Victim Personal Statement
WLMC	West London Magistrates' Court

INTRODUCTION

This guidance document builds upon the original West London Magistrates' Court Domestic Violence Bench Book created in November 2003 when WLMC's Specialist Domestic Violence Court was coming to the end of its first full year of operation. Much has happened since then in terms of the increasing awareness of domestic violence as an issue for magistrates across the country, and indeed there is now a national SDVC scheme in 25 magistrates' courts across England and Wales. Each of those new courts may well be approaching the issue from a different point of view according to the size of the local justice area; the number of magistrates; whether there are district judges at the courthouse and generally the resources available. It is the bringing together of resources from different agencies which will inform how a domestic violence court or an awareness of domestic violence issues can be demonstrated in the courtrooms of any given local justice area.

Before going further, it is important that I give some background as to how the WLMC Specialist Domestic Violence Court (SDVC) came into being. Standing Together Against Domestic Violence is a charity operating in the London Borough of Hammersmith and Fulham. Some 4 years ago, its Director Beryl Foster approached WLMC to discuss whether there could be a court dedicated to dealing with allegations of domestic violence in a focused and discrete way. Standing Together works closely on an inter-agency basis with an advocacy service for victims of alleged domestic violence called ADVANCE (which bases its methods very closely upon a system pioneered in Duluth, Minnesota in the USA), as well as the Metropolitan Police; the local authority; the Crown Prosecution Service and London Probation.

The partnership between WLMC and Standing Together began by identifying the partners with whom we would have to work and then considered what aims we would seek to incorporate into our Protocol and what definition of

domestic violence we would adopt. Clearly the various agencies in the criminal justice system had to 'buy in' to our vision of a discrete domestic violence court and had to be prepared to allocate resources and a commitment on an on-going basis to our aims. The court itself had to set aside time for the SDVC to operate on a given day of the week, and to identify a process whereby cases would be flagged up and allocated to that court.

There are many definitions of domestic violence - from ACPO for the police service; from the CPS and from the Home Office. It was the consensus view locally in October 2002 that the following best defined both the objectives and what was achievable at WLMC:

“DOMESTIC VIOLENCE INCLUDES ANY FORM OF PHYSICAL, SEXUAL OR EMOTIONAL ABUSE WITHIN OR AFTER AN INTIMATE RELATIONSHIP”

The aims of the Specialist Domestic Violence Court:

In the third year of the SDVC's operation, the Court Management Group agreed to revise the aims of the SDVC. These aims accurately reflect the current work and future direction of the SDVC:

1. To increase the effectiveness of each partner agency's specific role in dealing with domestic violence-related matters at the Specialist Domestic Violence Court at West London Magistrates' Court
2. To bring offenders to justice
3. To consider the needs and safety of victims and witnesses
4. To enable a coordinated response from both the agencies involved in supporting victims and witnesses at the Specialist Domestic Violence Court and from the agencies dealing with individuals accused of domestic violence-related matters
5. To share the experience and good practice of the Specialist Domestic Violence Court Partnership with other agencies and projects nationally.

Definitions and Scope

“Domestic Violence” is the term which has most common currency and has become shorthand for all sorts of abusive behaviour. This behaviour can manifest itself in court in allegations such as criminal damage and harassment and not only physical assault.

In this Bench Book, the male gender will be applied to the definition of a perpetrator of domestic violence. There are of course, women who are charged with, and convicted of, offences falling within our definition; but the overwhelming statistic is that it is men who perpetrate domestic violence upon women.

So far as the WLMC SDVC is concerned, the definition embraces current or former partners – whether in or out of marriage, and whether heterosexual or same gender.

The WLMC SDVC does not deal with allegations of violence in other relationships within families. Thus relationships between siblings or inter-generational relationships, for example grandparent and grandchild, are not covered.

The Specialist Domestic Violence Court applies only in the adult jurisdiction, although it is perfectly possible for victims and witnesses to be under the age of 18.

WHY A DOMESTIC VIOLENCE BENCH BOOK?

After nearly 4 years operating our SDVC and with 25 new domestic violence courts commissioned in 2006, it was felt that it might be useful to re-visit the West London Bench Book published in 2003; encapsulate our approach and share our experiences with others in the criminal justice system.

West London does not profess to have got it all right all of the time, and at our regular Court Management Group meetings with partners we all certainly highlight problems and seek to find effective ways to iron out those problems with a view to making things tighter in our inter-agency working and for the benefit of our users.

This new Bench Book is designed to create a route map of domestic violence awareness through all the court processes. It is designed to work in tandem with the Home Office SDVC Resource Manual (2006), as well as with the Safety Audits for Victims and Witnesses compiled by Standing Together at West London Magistrates' Court.

Criminal Procedure Rules

Since the promulgation of the Criminal Procedure Rules under the Criminal Justice Act 2003, everyone involved in the criminal justice system is required to comply with the Overriding Objective that all cases are to be dealt with justly. Spelling out what this means is a timely reminder to all of us of just how pertinent these objectives are in domestic violence cases if one looks at the criminal justice process from the point of view of the victim and witnesses.

Dealing with a case justly includes –

1. Acquitting the innocent and convicting the guilty
2. Dealing with the prosecution and the defence fairly
3. Recognizing the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights
4. Respecting the interests of witnesses, victims and keeping them informed of the progress of the case
5. Dealing with the case efficiently and expeditiously
6. Ensuring that the appropriate information is available to the court when bail and sentence are considered
7. Dealing with the case in ways that take into account:
 - the gravity of the offence alleged
 - the complexity of what is in issue
 - the severity of the consequences for the defendant and others affected, and
 - the needs of other cases.

It soon becomes apparent that each of these points, when seen from the point of view of a victim or witness to an allegation of domestic violence, has a very particular resonance because of the intimacy of the 'domestic' relationship; and equally that all of the points are similarly committed to the rights of the defendant. A fair trial applies as much to defendants as it does to victims and witnesses.

Judicial Goals

In addition to the Criminal Procedure Rules and the Overriding Objective, the senior judiciary has approved a set of seven **Judicial Goals*** for decision making in domestic violence cases. These goals clearly co-exist with the Overriding Objective. Some of the goals may not be wholly within the ambit of a single agency and may need a multi-agency approach.

* See "Domestic Violence: An Ordinary Crime?" Judicial Studies Board, 2003

However goals number 1 – 5 will surely be at the forefront of the magistrates' and district judges' minds when considering any decisions during the life of a domestic violence case from first appearance to sentence:

1. To convey to the public that domestic violence and abuse will not be tolerated
2. To stop the abusive and violent behaviour
3. To protect the complainant
4. To protect the children and other family members
5. To hold the perpetrator accountable for the abusive behaviours, and for stopping these behaviours
6. To rehabilitate the perpetrator and provide the opportunity for re-education and changing behaviour
7. To provide for reparation for the abused party, when it is appropriate to do so.

Therefore it is hoped that this Bench Book, which illustrates how West London Magistrates' Court addresses each of these points from a good practice point of view, will be useful to magistrates and legal advisers and lawyers alike.

PARTNERSHIP WORKING

Before we look at the actual processes as a case goes through the court, a fundamental principle needs to be considered:

In partnership working, each agency must share a common base of awareness of WHAT it needs to know about the issues involved so that it can identify HOW it needs to work.

Training

The first point is that any specialist domestic violence court will operate better if everyone involved has been trained in domestic violence awareness.

Ideally this training will cover:

- Police officers who attend scenes of incidents, custody suite officers & CSU officers
- Doctors and nurses at A & E
- Administrative staff at Witness Care Units
- Prosecutors at CPS
- Victim Support & Witness Service volunteers
- Legal advisers at magistrates' courts
- Administrative staff and list callers at magistrates' courts
- **And most importantly**, from the decision-making point of view, the magistrates' and district judges.

The Judicial Studies Board has produced a training pack called "**Domestic Violence: An Ordinary Crime?**" and many of you may already have encountered this in training sessions. This is a valuable learning tool to raise awareness of the issues in domestic violence and to dispel many of the myths surrounding it. Awareness training can enable magistrates and district judges to see how a shift in your angle of approach can reveal the broader perspective to the issues surrounding domestic violence and show a fuller picture of how the interaction by the partner agencies can enable you to reach the best decisions.

It will always be best if it is possible to train all the partner agencies' staff in domestic violence awareness as well as in the new systems and procedures they will need to follow in order to contribute to the progress of the proceedings. However, given the large numbers involved in such a training exercise, and if all agencies' staff are to be trained, then joint training sessions where one or more representatives from the agencies will go back and cascade to staff will be the next best thing.

Lead-in Times

It was our experience at WLMC that setting up an SDVC could not be rushed. The lead-in time needed to be long enough for each agency to enable the processes to be devised. A lot hinged on having the processes in place if we were to fulfill our principle aim – that of the safety and support of victims and witnesses. Lack of preparedness or lack of thought about the impacts of the processes could jeopardize a significant issue – that of the willingness or otherwise of victims and witnesses to engage in the first place, and to continue to engage, in the process of a prosecution given the particular emotional impacts of domestic violence. Equally important was the need to set up an SDVC Court Management Group to meet quarterly to monitor systems and procedures and see how they could be refined. This group has been a major contributor to the refinement of issues relating to the processes. We have also had 'walk through' sessions which identify the inter-relationships of the agencies with the courtroom processes.

So far as training of magistrates, district judges and legal advisers is concerned, it is likely by now that all at the new SDVC sites will have already had the JSB training. But the interrelationship between that training and the court processes is the next vital step in rounding the picture and enabling an SDVC to operate.

Any SDVC will be the sum of its parts, and information flows are vital to enabling a targeted approach to these cases. It's like a spider web where each strand supports the others, and the integrity of the specialist court is

made up of all of these strands. This inter-relationship of partner agencies, which arises from a shared understanding and commitment, together with the information flows can help to ensure that :-

The best information will be available to the district judges and magistrates to enable you to make better, more informed decisions

Who is in the Courtroom?

Sitting in the courtroom on an SDVC day is a representative from Standing Together, an independent domestic violence advocate from ADVANCE advocacy service (for Hammersmith & Fulham cases) and on a rotational basis an outreach worker from either Eaves Women's Aid or Kensington & Chelsea Victim Support (for Kensington & Chelsea cases). As agreed in the SDVC protocol, police officers from both H&F and K&C Metropolitan Police Community Safety Unit are usually present to assist with any enquiries particularly in relation to bail conditions and applications and case management issues.

A court attendance list is produced each week, identifying to the bench the representatives in the courtroom from the partner agencies, as agreed in the multi agency protocols.

The Standing Together representative records the case results on the case progression forms, detailing bail conditions and dates of future hearings. Standing Together also observes the operations of the specialist court in relation to the protocol, identifying issues - gaps as well as good practice. This information is fed back to SDVC management partners on a weekly and quarterly basis through the over-arching accountability framework of the Court Management Group. The aim of practice observations is to further refine and develop processes as well as documenting good practice.

Standing Together also monitors victim/witness services, providing support to workers when needed and ensuring that support mechanisms are correctly followed.

The SDVC has attracted much attention from other areas interested in the work of the court and representatives often visit the SDVC to observe its operation. Standing Together staff organise and facilitate observers' attendance at the court. Two observers are able to sit in designated agreed places within the court. Larger groups are agreed in advance and are accommodated in the public gallery.

With this level of partnership working and awareness by the bench of the partnerships, a court can work towards increased information flows from the moment of arrest through to conclusion of a case. This philosophy of working together is pivotal to the success of any court taking a specialist approach to domestic abuse.

The remaining chapters of this Bench Book will concentrate on the specific procedural and practical issues which WLMC has identified as being good practice in the SDVC, and major contributors to an effective SDVC, commanding respect from its partners and its users.

PHYSICAL ENVIRONMENT

Specialist Domestic Violence Courts, whether utilising the West London model of a discrete courtroom or not, will want to consider the needs of witnesses in these cases as they do in other cases. It is worth noting that there may be more involvement by the victim through attendance at remand hearings in domestic violence cases than in other cases, given the emotional links in a domestic violence case between the parties. Some victims may be accompanied by their supporting 'advocate'; but many may not. So benches need to be alert to the fact that your Directions and the approach you demonstrate in the remand court could have a significant impact upon a victim and her willingness to continue with the process if she sees and hears pronouncements which take account of her safety during remand periods. In remand hearings (whether on the WLMC SDVC day, or in any other remand hearing), the bench should always be alert to preserving the confidential relationship between a victim and her 'advocate'. To protect confidentiality and ensure safety for the victim the bench should not direct questions to the advocate. Police officers in the court should be utilized or the case should be put back briefly so to enable the advocate to give information to the CPS. So far as the trial is concerned, consider which courtroom you will use. Is any one courtroom better designed than others to reduce the closeness of witness box to dock? At WLMC in a trial, we make sure that the witness is brought to the witness box via a route which does not involve passing right in front of the dock. Also as soon as the victim or witness gets into the witness box, she is asked to turn to face the bench. In this way her back is turned to the defendant. It may not seem much, but it demonstrates that the bench is alert to the potential feelings of the victim or witness and is trying to reduce any uncomfortable feelings.

Of course, in an ideal world all magistrates' courts would have special and separate entrances for witnesses from those used by the defendant or the general public. But in the absence of this being available, the Witness Service

volunteers or 'advocate' can be a great help in enabling the victim and witness to take advantage of the best physical atmosphere you can offer. The Witness Service can also provide a pre-trial familiarisation visit.

These efforts by the courthouse vis-à-vis the victim and witnesses in the courtroom do not, of course, override the use of Special Measures where the victim or witness may not even be in the courtroom – see page 36.

SCHEDULING AND LISTING

Rather than deal with the generality of domestic violence work in all the courtrooms at West London, we decided to have one courtroom dedicated to domestic violence cases sitting on the same day each week with district judge/magistrates and legal advisers who have all been trained in domestic violence awareness. The court sits on Thursday every week at 10am in Court Number 3. All offences of domestic violence will be listed in this courtroom when the offence arose in one of the two boroughs in our local justice area and involves intimate partner violence.

Where a court in a local justice area decides to absorb its domestic violence business into every courtroom and not to adopt a dedicated SDVC courtroom, then it will of course need to ensure that all those sitting or advising have had the domestic violence awareness training. It will be important to ensure that new magistrates are also trained on a rolling programme if all domestic violence work is to be available to all.

The SDVC will deal with all cases where the defendant is on bail, including Narey cases of domestic violence where the police should bail the defendant directly to the SDVC. Also the court will deal with all first time overnight custody cases of domestic violence which come before it on a Thursday, as well as any custody domestic violence cases which are remanded to it from courts sitting on other days of the week. Thus if any domestic violence case comes before WLMC on any day other than a Thursday, it will be automatically remanded to the SDVC on the following Thursday.

Any court, WLMC included, will aim to list trials within a time frame of 6-8 weeks from not guilty plea, and Effective Trial Management Programme (ETMP) programs will ensure that Case Management Hearings are conducted.

Whilst at WLMC we have a dedicated courtroom one day a week, other SDVC courts may adopt a different approach, but the flagging up of cases to identify domestic violence allegations will be a common approach.

In order to target the domestic violence cases into the specialist courtroom, cases needed to be flagged up as falling within our SDVC definition. So at first hearing, the CPS will identify a domestic violence allegation.

Two things must immediately flow from this:

1. Representation Orders

The first relates to Representation Orders. At first appearance the question of representation should be addressed and any application filed in the courtroom should immediately be considered and granted. It is suggested that Representation Order applications are likely always to fall within the criteria for grant in view of the suggested sentencing entry point being custody, given the abuse of trust element involved in the allegation.

In addition where a plea of not guilty is entered, it is important to note that Chapter 2 of the Youth Justice and Criminal Evidence Act 1999 sections 34 – 40 prohibits the cross-examination by the defendant in person of:

- the complainant to a sexual offence; or
- a “protected witness” (under 17 year olds) in sexual cases; and
- In the case of an under 17 year old where the offence involves an assault on, or injury to, any person.

The Act also gives the court discretion to prevent the defendant cross-examining a witness if the court is of the opinion:-

That the quality of the evidence on cross-examination is likely to be diminished if the defendant cross-examines or continues to cross-examine the witness, taking into account the views of the witness; the nature of the questions; the behaviour of the defendant during the proceedings generally and towards the witness, and the nature of any relationship between the witness and the defendant.

It is clear from this that the prosecutor, or the court of its own motion, should be considering at the earliest opportunity exercising these powers in any summary domestic violence trial.

So this means that because the defendant is prohibited by law from cross-examining in these cases, he should always be represented (using public funds if necessary) in domestic violence cases.

If a defendant declines the offer of representation by the court, he must be informed that he will not himself be able to ask any questions or challenge any of the evidence by questioning any of the relevant witnesses, and the court may then appoint a solicitor purely for the purpose of cross-examining prosecution witnesses, so as to comply with Article 6 and the right to a fair trial.

2. Flagging Cases

The second thing which flows from identification of a case being a domestic violence allegation, is that the case file will immediately be flagged with a coloured sticker which will identify it for future purposes and ensure that it completes its journey through the court in to a specialist court where all the Justices or the district judge and the legal advisers have had domestic violence awareness training.

Ideally flagging-up of domestic violence cases (according to the definition adopted in any given Local Justice Area) should commence at the police station on charging, with the CPS under statutory charging identifying the case as one of domestic violence and instigating any necessary steps further to that classification.

It would, of course, be expected that the prosecutor in the domestic violence case will have received domestic violence awareness training, or even be the specialist prosecutor for those types of allegation. It should be noted that the CPS now has its own Domestic Violence Prosecution Guidelines.

The types of allegations which might find themselves listed in the SDVC cover every category of violent offences, as well as criminal damage; arson/arson with intent to endanger life; harassment; kidnapping; burglary with intent; firearms offences arising in a domestic violence scenario.

Whilst most of these are Indictable Only offences which would be Sent for trial under s 51 on their first date of hearing, some are Indictable Offences Triable Either Way and the question of jurisdiction will arise. It is suggested that save in all but the lowest level allegations, you are likely to decline jurisdiction and commit for trial under s 6(1) or (2).

JURISDICTION

As previously indicated SDVCs will encounter all different type of allegations. Indictable Only offences will be likely to be Sent for trial on the first appearance. There may be a bail application – see later chapter for bail issues in domestic violence cases. Remember that the Sending provisions enable associated Either Way offences to be sent alongside the Indictable Only allegations – whether an allegation is associated or could form part of the same Indictment may be the subject of representations from both parties, so consult your legal adviser in case of doubt.

Plea Before Venue

In Indictable Offences Triable Either Way, the Plea Before Venue [PBV] will take place with your legal adviser asking the defendant whether there is an indicated plea of guilty. If there is no such indication, or a not guilty plea is entered, then the Mode of Trial scenario will arise when you must decide whether you will retain or decline jurisdiction.

Your legal adviser is required to give you information about sentencing guidelines and any Court of Appeal decisions on sentencing.

Aggravating Features

In considering whether to retain or decline jurisdiction:

Consider the **aggravating** features (listed below) of the alleged offending behaviour which would make the offence a more serious example of its kind and therefore less likely to fall with in your sentencing powers (as at February 2006, six months in custody for one Either Way offence or 12 months for 2 or more Either Way offences):

- Use of a weapon which includes head and feet
- Group attack
- Vulnerable victim (in all domestic violence cases, the victim would be considered vulnerable)
- Planned attack – pre-meditation

- Sustained attack
- Kicking / beating a victim who is on the ground
- Attack witnessed by children.

Additionally, domestic violence allegations – whether or not of violence – are aggravated by the *abuse of the trust* which is deemed to exist between intimate partners, current or former.

Non-custodial sentences, including Community Orders for domestic violence offenders, are covered on page 44.

ADJOURNMENTS

By way of a reminder, cases are adjourned and defendants are remanded. There is never an automatic right to an adjournment. The Criminal Procedure Rules' Overriding Objective (see page 2) together with Judicial Goals Numbers 1 – 4 will require benches to adopt a fully inquisitorial role in determining whether an adjournment should be granted, and for how long.

So at the first hearing:

- ✓ Ask why the case cannot proceed today
- ✓ Ask what progress can be made by standing the case down (any progress is better than no progress, and moves the case forward)
- ✓ If no progress can be made by a stand down, or it is not in the interests of a fair trial to demand progress on the first day....
- ✓ ..THEN grant an adjournment for the shortest period of time.

Given that the aim is to make unnecessary adjournments **rare**, when adjourning it is good practice to ensure that everyone knows - and that the legal adviser records on the case file:

- ✓ The Reason for the adjournment
- ✓ The Actions that are to be accomplished between the two hearings
- ✓ Who has Responsibility to take those actions
- ✓ What are the Expectations of the bench for the next hearing.

Similarly at the next hearing, the legal adviser should clearly read out what was previously noted so that the bench has the best information in order to check that progress has been made and hold the party to account if it has not fulfilled its obligations (under the bench's Directions and the Criminal Procedure Rules).

In this way at second and subsequent hearings, if faced with the position that a party states the case cannot proceed and there is a request for an adjournment for the same reason as before, the bench will be able to

challenge why the action was not accomplished. Equally, at a second or subsequent hearing if an adjournment is sought for a different reason than previously, the bench should enquire why that reason could not reasonably have been anticipated, and dealt with during the adjournment. This inquisitorial approach reinforces to everyone in the courtroom the need for a pro-active approach to these cases and can in time produce a change in culture.

The final step in considering an application for an adjournment is to consider whether further delay is reasonable **and** whether it is fair to both sides to grant the application on the information before the court.

Bear in mind that the backdrop to the case remains the protection and support of the alleged victim and any children of the family.

Any adjournment should, of course, be for the shortest time consistent with any Directions given or actions to be accomplished, and a fair trial.

BAIL

Bail is probably one of the most difficult procedural areas of domestic violence cases, and there are common recurring themes which benches will encounter.

By way of reminder, the general rule is that a defendant is entitled to unconditional bail - **unless** the court is satisfied that there is a real risk that one or more of the scheduled exceptions apply in his case whereby conditions should be imposed upon the bail, **or** unless the court is satisfied that there are substantial grounds to believe that one or more of the scheduled exceptions apply in his case whereby no conditions can be imposed and remand in custody is appropriate.

Remember also that it is open to the bench to consider bail at each interim hearing if issues arise which overtake the position as it was when bail was first considered.

As with most cases, the most frequent objections to unconditional bail raised by the CPS are that the defendant:

2(a) will fail to surrender to bail;

2(b) will commit offences whilst on bail;

2(c) will interfere with witnesses or obstruct the course of justice,

AND /OR

Paragraph 3 - for his own protection.

It is not necessary here to rehearse all the exceptions and all the grounds as laid down by the Bail Act; these are available in *aide-memoire* format from a blank bail form which you may keep in your Adult Court Bench Book.

Balancing Act

Again, and as with all bail applications, the prosecution's version of events is the basis of your decision-making process. The bail application is not the time to test the defence version of events against the prosecution's. Because of the emotional nature of most domestic violence allegations you will regularly be faced with balancing the following issues:

- ✓ Protection of the victim and any children
- ✓ Emotional and family ties
- ✓ If the defendant moves out of their shared accommodation, will he be homeless?
- ✓ Collection of belongings
- ✓ Issues relating to the defendant getting to work
- ✓ Collection of benefits if paid at local post office
- ✓ Contact with the children during the remand period
- ✓ Delivery of, and collection of children from school.

Your options where unconditional bail is **refused** are to:

Remand on conditional bail – any condition must be proportionate to the exceptions, and must be clear and enforceable. If conditional bail is to command respect and compliance, then it is vital that both the defendant and the police know what the defendant is permitted to do and is prohibited from doing under his conditions of bail.

Remand in custody – you should only remand in custody where your enquiries indicate that there are no conditions which could adequately assuage your fears under paragraphs 2 (a) (b) (c) or Paragraph 3 of the Schedule to the Bail Act 1976 (or any other Bail Act exception).

The Bail Hearing Procedure

The CPS addresses the bench on:

- ✓ The facts of the case
- ✓ The defendant's previous convictions, including any cautions
- ✓ The fears under the Bail Act.

This is the opportunity for the CPS to identify whether any previous convictions were in relation to the alleged victim in the case, or were of a domestic violence nature. It is also the opportunity for the CPS, before court starts, to talk to anyone who is supporting the alleged victim to find out whether she has any specific information which the court should be made aware of before it makes its bail decision. Bearing in mind the judicial goal of support and protection of the victim, such information can be valuable. But it is not appropriate for the bench to ask questions directly of the 'advocate' as this can compromise the confidentiality of the relationship between the victim and her 'advocate'.

The defence addresses the bench on:

- ✓ The defendant's personal details
- ✓ The strength of the CPS fears
- ✓ The fears under the Bail Act.

The legal adviser should advise the bench on the suggested entry point for sentence for the alleged offending behaviour, based on taking the prosecution case at its highest.

The bench's role is to be inquisitorial. Don't take information at face value! Do not be afraid to ask questions to clarify and to unpick the information provided by the parties, or to ask questions about information which may have been glossed over by either party.

Yours is an information gathering role. Remember - better decisions are made with the best information.

In domestic violence allegations, where so much rests upon the alleged victim being willing to engage with the prosecution process and so much rests upon the messages going out from the bench to reinforce how seriously these allegations are taken, the manner in which you demonstrate your decision-making processes is very important.

Special Concerns about Bail in Domestic Violence Cases

- ✓ Are the victim and any children of the family adequately protected?
- ✓ Are there any Civil Court Orders which already protect the victim and/or any children e.g. non-molestation orders or occupation orders, or any other County Court injunctions?
- ✓ Is there a power of arrest attached to any of these?

Almost invariably, a no contact condition with the victim will be imposed.

So far as the children are concerned a magistrates' court imposing bail conditions will take as its starting point in the criminal proceedings no contact, **unless** it is:

- ✓ Contact arranged through solicitors and under supervision, or
- ✓ Contact via agreed family members where the Family Proceedings Court has agreed who that should be, or
- ✓ At an approved supervised contact centre.

Checklist for Considering Bail in Domestic Violence Cases

Remember that the period of remand awaiting trial can be a vulnerable time for the victim and children of the family. The opportunities for intimidation and to persuade a victim to withdraw can be very high.

1) Hear the CPS objections to bail:

- ✓ Take the CPS case at its highest
- ✓ Consider whether the information you have been given is sufficient to satisfy you that substantial grounds have been made out
- ✓ Determining a defendant's right to bail is an inquisitorial process
- ✓ If you have not been given sufficiently detailed information, ask questions to unpick and reveal further information behind what you have been told – it can be illuminating
- ✓ Enquire whether it is alleged that the children were witnesses to the alleged incident

- ✓ Enquire about previous history of complaints if domestic violence or other offending behaviour within a domestic scenario e.g. criminal damage/theft (whether convicted or not)
- ✓ Read any MG16 form of previous convictions and enquire whether any were committed within the domestic environment.
- ✓ Ask the CPS what, if any, civil orders have been made between the parents, or are in existence relating to the children
- ✓ If the CPS is unaware of any civil orders, ask your legal adviser to check whether the Family Proceedings Court has notified the adult court, under a Protocol, of applications for, and orders relating to, contact with children and non-molestation orders
- ✓ If such orders are in existence, then the bench does not have to consider further any defence arguments about interference with privacy and family life and Article 8 – your judicial goal in criminal proceedings relating to domestic violence is protection of the victim and any children of the family. It is for the Family Proceedings Court to consider the issues relating to the family unit.

2) Hear the defence application for bail

- ✓ Determining the defendant's right to bail is an inquisitorial process
- ✓ You are entitled to ask questions to clarify and probe to enable you to make a decision about the victim's safety and that of the children
- ✓ If an alternative address is offered to you, give time for the CPS (via the Police Liaison Officer, or via any CSU officer in the courtroom under a multi-agency protocol) to verify the information
- ✓ In considering conditions of bail relating to geographical restrictions on the defendant's movements, ensure that they reflect not only where the victim and children live but also where they work or study and where the children go to school, where they regularly go for leisure activities – all so that the potential for contact is eliminated.

3) Your structured decision

- ✓ It is unlikely that unconditional bail will be appropriate in an allegation of domestic violence (or offending within a domestic environment)
- ✓ Are there clear, relevant, enforceable conditions which can be imposed and which will assuage your fears – based on the CPS case at its highest?

4) Reminders about bail conditions

- ✓ Adding unnecessary conditions, which will not add anything to the protection you seek to achieve, undermines your decision
- ✓ Exclusion zones should be expressed by reference to buildings, streets and postal areas and not in terms of yards or metres (who knows the difference between 499 and 501 metres?)
- ✓ Use the A to Z map to check the exclusion zone can be effective
- ✓ Conditions relating to collection of belongings should be specified to be in company of police or solicitor and within 7 days of the bail decision - to eliminate any contact close to the trial date which could be an opportunity for intimidation
- ✓ Just because there is a non-molestation order or a county court injunction in existence does not mean that you cannot or should not impose a no contact condition – your bail condition provides additional and proportionate protection and is more speedily enforceable
- ✓ The wide ranging ambit of a no contact condition needs to be spelled out clearly to the defendant – it means no contact face-to-face, or through family members, or through the intervention of any faith leader, or via text/mobile phone call/fax/letter from the defendant or any of the persons specified above.

Next Steps

If conditional bail is granted, then each condition needs to be spelled out clearly, together of course with the warning that a failure to comply with the conditions can lead to the defendant's arrest and withdrawal of bail.

At the hearing before the trial is due to take place, you must warn the defendant that if he fails to attend on the trial date the case may well go ahead in his absence and a warrant issued for his arrest. The legal adviser needs to mark the case file to this effect for the benefit of the bench next dealing with the case.

If after full consideration the bench feels that there are no conditions which could be imposed which would adequately protect the alleged victim and any children, then the remand will be in custody.

You must spell out by reference to the grounds and exceptions in the Bail Act why, at the end of the day, bail cannot be granted.

Suggested Pronouncements where conditional bail is imposed, or bail is withheld

Conditional Bail

“We are putting the case off until [date and time of next hearing]. You must attend then. If you fail to attend, you will be committing an offence for which you could be sentenced to a fine, a community order or a sentence of imprisonment.

Because we are satisfied that [give the reasons for not granting unconditional bail – drawing from the list of reasons on a bail form] we have decided there is a real risk of [give the exception to the right to unconditional bail – drawing from the list of exceptions on a bail form]. So to prevent this happening, we are imposing conditions on your bail [spell out each condition clearly and in full – & give a full list of prohibited methods of contact]. You must understand that if you break any of these conditions you will be arrested and brought back before the court, and your bail may be withdrawn.”

Where the next date of hearing is the trial date,

“If you fail to attend your trial, then the case will proceed in your absence.”

In every case,

“You must understand that if you commit an offence whilst you are on bail, you will be punished more severely.”

Bail Refused – Remand in Custody

“We are putting the case off until [date and time of next hearing]. Because we are satisfied that [give the reasons for not granting conditional bail – drawing from the list of reasons on a bail form] we have decided there is a substantial risk of [give the exception to the right to unconditional bail – drawing from the list of exceptions on a bail form]. The only way we can stop this happening is to refuse bail and to remand you in custody.”

Rapid Information to the Victim

Whatever the outcome of the bail hearing, a copy of the bail form should be given by the court staff as soon as possible after the bail decision to the in-court Witness Service. This will ensure that dissemination of the bail information will get to the victim and witnesses as quickly as possible – this is another method of ensuring support for the victim and witnesses and also for them to know what the defendant is permitted to do, and prohibited from doing, during the remand period – an important factor in encouraging the victim and witness to stick with the prosecution process.

Breach of Bail Conditions

S 7 of the Bail Act 1976 provides that where a defendant is alleged to have failed to comply with any condition(s) imposed upon his bail, he will be arrested without warrant and brought before the court for the local justice area in which he was arrested. This may not be the court which originally bailed him, and indeed may be a court which has neither a specialist domestic violence court nor has any specific approach to domestic violence allegations. It is important therefore that *any* court before which such defendant appears makes the most thorough investigation of a domestic violence allegation before taking a decision as to whether the defendant, in accordance with s 7, can be re-admitted to bail on the same or different conditions, or whether he should be remanded in custody. It will therefore behove the CPS and the

Officer in the Case to ensure the best information is available to be laid before the bench to assist its enquiries and decision.

Your first step will be to discover which of the conditions imposed is alleged to have been breached and whether the defendant admits or denies this. Once this has been determined, take as your starting point the safety of the alleged victim and any children of the family when considering what your decision should be. Remind yourselves of the stress which the original remanding court placed upon the absolute prohibition on contact etc. The remand period, as previously mentioned, can be a very unsafe time for an alleged victim and an opportunity for a determined defendant to do or say things in relation to her which can result in a risk to her safety or incline her to withdraw from the proceedings.

Bearing in mind that breach of bail conditions is not an offence, the test you must apply in deciding whether to remand in custody or impose the same or different conditions is the 'Balance of Probabilities' test.

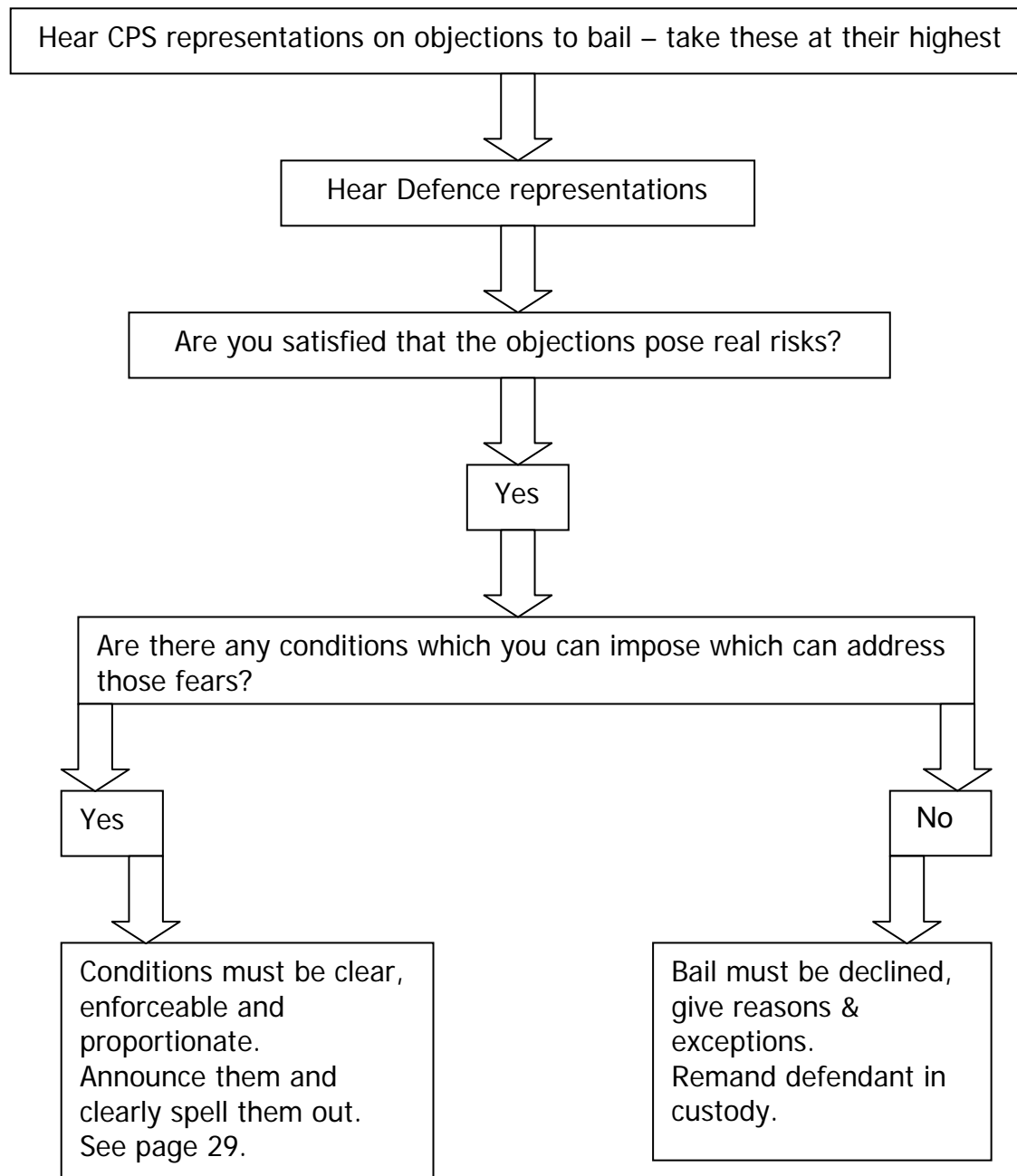
Your only power when faced with this situation is to impose more onerous conditions if that will reinforce the seriousness of the breach and the importance attached to non-interference with the alleged victim etc, and still protect her, **or** to remand to custody.

An example of a more onerous condition where the defendant was already subject to a no contact condition and a residence condition might be to impose a curfew condition subject to electronic monitoring. However it would be open to the bench to determine that since contact can be made without it being face-to-face, such a condition adds little to ensuring compliance with conditions.

In deciding how to approach the question of a further remand, the bench should consider whether the failure to comply with the original condition indicates that the alleged victim and any other witnesses are at a higher risk than originally was considered to be the case.

Flow Chart For Bail Decision Making

NB The very nature of domestic violence allegations makes unconditional bail a rare occurrence because there will always be some concerns over interference with witnesses.



CASE MANAGEMENT

The advent of the Criminal Procedure Rules and the emphasis on case management so that cases are dealt with in accordance with the Overriding Objective has required that in every listed trial there will be a standard Directions Form. This draws the parties' attention to their obligations in relation to disclosure and other matters and sets out time frames for compliance with any Direction.

Where time frames are not adhered to, it is the Case Progression Officer's role to fix a Case Management hearing - either before a legal adviser with delegated powers or before a court by way of a Pre-Trial Review.

Not Guilty Pleas

However at the moment when the plea of not guilty is entered, it is good practice for the bench, assisted by its legal adviser, to canvass with the parties the issues of:

- ✓ time estimates
- ✓ what, if any, evidence can be admitted under s 9 CJA 1967
- ✓ what, if any, admissions can be made under s 10 MCA 1980
- ✓ whether any corroborating witness can be tendered for cross-examination, and whether the case is one which calls for Special Measures Directions.

When the bench grasps the nettle like this at this stage it demonstrates to the parties as well as to the defendant and the alleged victim (if she is at court) that there is a determination that the trial will proceed without hiccups on its listed date.

We are all aware that this description of what could be achieved when a not guilty plea is entered is the "ideal" – nevertheless it sends out more messages. Domestic violence, because of its very nature and the statistical information which we have, is a classic example of "Justice Delayed is Justice

Denied". Also delay can impact upon the victim's willingness to continue engaging with the prosecution process.

Fixing the Trial Date – Checklist of Enquiries

At most magistrates' courts, advance information will be available on the first appearance, and the defence should make a point of considering it with the client in order to see whether progress towards entry of plea can be made there and then.

The moment of entry of the not guilty plea when both parties are before the court is the best moment to start the impetus towards an effective trial.

Below is a checklist of questions which can be used to focus the minds of the parties on the necessary actions to support the Directions Form which will be given in every case going for trial. Some of these questions can realistically and procedurally only be dealt with at a Case Management Hearing either before a legal adviser with delegated powers or before a bench in court on a date subsequent to the date when the not guilty plea is entered – but an awareness of these issues by the bench at the moment of not guilty plea will enable a domestic violence case to bear a streamlined approach.

Prosecution:

- ✓ Number of witnesses
- ✓ How many are witnesses to the events and who are they?
- ✓ How many of the witnesses are 'procedural' (e.g. interviewing officers)?
- ✓ How many are corroborative?
- ✓ How many can be served by way of s 9 statements or their evidence admitted s 10?
- ✓ Is the victim to be called to give oral evidence?
- ✓ Will she or he attend voluntarily or must a witness summons be issued to secure attendance?
- ✓ Up-to-date list of dates to avoid should be available there and then, or a requirement that within 7 working days the CPS must have established and notified the court and the defence whether any of its witnesses have confirmed booked leave/places on courses for the trial date.

Defence:

- ✓ Number of witnesses
- ✓ How many are witnesses to the events and who are they?
- ✓ How many can be served by way of s 9 statements or their evidence admitted s 10?
- ✓ How many of the defence witnesses have been interviewed by the solicitor or what enquiries made as to whether they will attend to give evidence willingly or whether a witness summons needs to be issued to secure attendance?
- ✓ Is there to be any legal argument, and a requirement for skeleton arguments to be lodged with the court and the CPS within a given timeframe? ¹

Queries affecting the length of the trial:

- ✓ Is an interpreter needed? What language and dialect?
- ✓ Are audio/visual playback facilities required, what format are these in and does the court have necessary equipment, or can they be re-formatted within the time frame in order to be played upon court equipment?
- ✓ What is the parties' estimate as to the time needed for the trial?
- ✓ Are there any prosecution or defence witnesses under the age of 17 years who will give their evidence by live link?
- ✓ What is the position regarding Special Measures Directions – this can be on application of either party or by the court of its own motion. ²

Disclosure issues:

- ✓ Has Initial Disclosure been fully complied with?
- ✓ What outstanding evidence remains to be collated and by what date will this happen?
- ✓ Is there any evidence which the police do not have in their possession (e.g. CCTV/medical evidence³) and what realistic time frame does the court set for this to be achieved?
- ✓ Does the defence need to inspect an exhibit e.g. CCTV, and what realistic time frame does the court set for this to be achieved?

¹ Some of the issues raised in this checklist will in any event be dealt with under the Summary Trial Directions Form or ETMP.

² This may have particular resonance in domestic violence trials and the bench needs to be alert to the need for it to be raised at an early stage.

³ See page 37 regarding medical evidence.

Be clear what is meant by Initial Disclosure – it is anything which might reasonably be considered capable of undermining the prosecution case, or assisting the defence case.

A voluntary Defence Statement will yield Secondary Disclosure of anything which could assist the Defence case.

Ensure that all and any Directions specifically given at the moment of entry of the plea of not guilty are recorded on the court's and the parties' files.

Special Measures Directions [SMD]

Vulnerable or Intimidated witnesses – be they for the prosecution or for the defence – are now entitled under the provisions of the Youth Justice and Criminal Evidence Act 1999 to give their evidence in a magistrates' court behind screens or via a live TV link or in a closed court.

Any magistrates' court setting down a domestic violence allegation for trial should be considering at the earliest opportunity – on application of either party or on its own motion - whether the quality of any witness's ability to give evidence is diminished by fear or distress.

Clearly the court will hear representations on this point, and must take into account the following extract from the Act:

“(a) the nature and alleged circumstances of the offence to which the proceedings relate;

(b) the age of the witness;

(c) such of the following matters as appear to the court to be relevant, namely-

(i) the social and cultural background and ethnic origins of the witness,

(ii) the domestic and employment circumstances of the witness, and

(iii) any religious beliefs or political opinions of the witness;

(d) any behaviour towards the witness on the part of-

(i) the accused,

(ii) members of the family or associates of the accused, or

(iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court must in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence (or to that offence and any other offences), the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness' wish not to be so eligible by virtue of this subsection".

Youth Justice and Criminal Evidence Act 1999

Where the court is satisfied the witness is in fear etc, **then** it must consider whether any Special Measures Directions (SMD) would be likely to improve the quality of evidence. To assess whether this test is satisfied, the court must take into account all the circumstances of the case including, in particular, the views of the witness and whether the use of an SMD would inhibit the testing of the evidence by any party to the proceedings.

Having reached the conclusion, after hearing the views of the witness, that:

- ✓ the witness is in fear or distress
- ✓ that person's evidence would be improved by use of an SMD
- ✓ The use of an SMD would not tend to inhibit the testing of her evidence.

Then the court must determine which of the available SMDs would enable the best quality evidence to be given.

It is a step by step test and each element of the test must be gone through.

Dealing with Medical Evidence

Medical evidence can be a problem – if it is an FME report it can be illegible or incapable of clear photocopying; if it is medical evidence from A & E then it can take a very long time to obtain it in statement form. The bench needs to be aware of the difficulties. Perhaps let the defence read the original FME report at court rather than rely upon a bad copy – it may speed things up?

The problems with getting any medical report from the hospital should be an issue you press for when giving Directions after plea is entered and at any intermediate hearing – so that the trial is not held to ransom by the absence of medical evidence. If the evidence is incontrovertible and no s 9 statement exists, ask if the contents of the medical evidence can be admitted s 10.

BAD CHARACTER EVIDENCE

We considered earlier (and you will have learned on any domestic violence awareness training you have attended) that there is invariably a history of domestic abuse. There may have been previous complaints to the police; successful or unsuccessful prosecutions; or prosecutions initiated but later withdrawn. For these reasons, the issue of bad character – whether of the defendant or the alleged victim – may be raised in a domestic violence trial. The CJA 2003 introduced a statutory scheme relating to the admissibility of evidence of bad character, and all previous common law rules have been abolished.

By bad character we mean evidence of, or a disposition towards, misconduct on the part of the defendant or a non-defendant (in other words, the defendant; a victim or a witness) **other** than evidence which has to do with the alleged facts of the offence with which the defendant is charged, or is evidence of misconduct in connection with the investigation or prosecution of that particular offence.

It is easy to see how, in the climate of intimate partnership abuse, claims of misconduct or disposition towards misconduct raise a potent spectre. The prosecution could raise it in relation to previous allegations – whether resulting in a charge/conviction or not; and the defence could theoretically

raise it as evidence that the alleged victim makes repeated unfounded allegations (though this route could rebound upon the defendant).

The new statutory scheme lays down a timeframe within which an application must be made relating to the admissibility of evidence of bad character. This should be before the trial and in a PTR or CMH with sufficient court time allowed for the application to be made. Justices have discretion to consider an application made outside the timeframe and should exercise great care to find out why the Rules were not/could not be complied with. The overriding need is to ensure no unfairness, and compliance with Article 6 of the Human Rights Act.

The first hurdle is the raising of the issue; the harder part comes when it is for the court to determine whether the bad character evidence should be admitted, i.e. whether it passes one of the 7 statutory entry criteria for admissibility of evidence of the defendants bad character, or whether it passes one of the 3 statutory entry criteria for admissibility of evidence of a victim or witness's bad character.

This is a very complex area of law. It is relatively new and case law is just touching upon its application – be guided by your legal adviser.

Benches should recognise that considering whether any applications under these provisions will be made/should be granted is a good practice point for the conduct of Pre-Trial Reviews and Case Management Hearings in domestic violence cases; and that considering what weight, if any, to give to any evidence so adduced is an issue for the trial bench.

GOOD PRACTICE IN RELATION TO VICTIMS AND WITNESSES

At this stage it is worth relating the experience of WLMC's SDVC in relation to the important task of enabling a victim or witness's participation in the proceedings.

Where the victim attends court to give evidence in the trial (whether or not in response to a witness summons¹) and she has availed herself of the services of an 'advocate' or the Witness Service, it is important for the bench to recognize the amount of support which will have been given to her before the trial date to reassure her about the trial process.

Whether she has an 'advocate' or is assisted by the Witness Service she should be offered a pre-trial familiarisation visit to the courtroom as well as the layout of the courthouse. The issue of separate entrances has already been discussed, and clearly separate witness waiting areas can be important.

The issue of using the pink form to ensure rapid dissemination of information about the defendant's remand status has also previously been mentioned as another way in which to engage the victim in the proceedings and reassure her.

Under the WLMC SDVC Protocol, a Domestic Violence Witness Support Group [DVWSG] has been established. It is coordinated and facilitated by Standing Together and its members are:

- ADVANCE Advocacy project
- WLMC Witness Service
- Eaves Women's Aid

¹ Where the CPS informs the court that a victim is reluctant to attend to give evidence and a witness summons is sought, then the bench must be satisfied that the grant of a summons is in the interests of justice, and it should not automatically grant a witness summons or accede to requests for immediate witness warrants of arrest. Remand periods leading up to trials are a very vulnerable time for victims and witnesses in our experience. Recent changes in the statutory framework can enable a witness's evidence to be given without attendance; in domestic violence cases there would need to be other independent evidence.

- Kensington and Chelsea Victim Support
- Metropolitan Police Witness Care Units.

This group provides an invaluable way for the partner agencies to understand the needs and concerns of victims and witnesses attending court and has helped us identify how we can improve the perception of both WLMC and the SDVC by the users who are so pivotal to our aims. The Government produced a paper 'No Witness No Justice' and our DVWSG reflects the ethos of that paper.

Given the potential for the victim to feel intimidated just by the mere presence of the defendant, and in order to underscore the message that intimidation of any witness in the SDVC (as indeed in any criminal trial) is unacceptable, WLMC advises Chairmen of the bench to announce:

“Today is the trial of the allegations against Any witness giving evidence here today is entitled to do so without intimidation or feeling intimidated – whether by words, looks or body language from anyone in the courtroom”.

It is also suggested that the victim and any witness is asked to stand in the witness box so as to face the bench. She would thus be positioned obliquely to the defence lawyer, and therefore with her back to the defendant.

In WLMC's Court 3 – as in many magistrates' courts' courtrooms – the distance between the dock and the witness box is minimal, and anything which can reduce the perception of intimidation should be utilised. Equally it is worth considering if there is a way that the victim and witnesses can be brought into the courtroom to the witness box without having to go too close to the defendant. If the victim has an 'advocate' or is assisted by Witness Service volunteers, that person should be able to sit as close to the witness as possible to continue the support.

SENTENCE FOLLOWING A PLEA OF GUILTY OR CONVICTION FOLLOWING TRIAL

In light of the provisions of the Criminal Justice Act 2003, you will be aware from training and your Adult Bench Book of the 12 possible requirements of a Community Order and the fact that any suspended sentence imposed must have requirements attached to it from that same list of 12:

Step 1.

Identify the seriousness of the OFFENCE

culpability = intentional – reckless – in knowledge of specific risks - negligent
and

harm = physical – sexual violation – financial loss – damage to health –
psychological distress

Consider the **maximum** penalty for the offence

and

Consider the suggested sentence **entry point** by reference to the Court of Appeal decisions; the Sentencing Guidelines Council and any Magistrates' Association Bench Book Guidelines.

Step 2.

What aggravating circumstances exist in relation to the OFFENCE?

- ✓ The existence of previous convictions is an aggravating feature if the court considers that the nature of conviction and time since the defendant was convicted aggravate the offence
- ✓ The offender was on bail when the offence was committed
- ✓ Use of a weapon which includes head and feet
- ✓ Group attack
- ✓ Vulnerable victim (in all domestic violence cases, the victim would be considered vulnerable)
- ✓ Planned attack – pre-meditation
- ✓ Sustained attack
- ✓ Kicking/beating a victim who is on the ground
- ✓ Attack witnessed by children.

Remember - A crime committed in a domestic environment is no less serious than any other crime. That it was committed in a domestic environment is not mitigation.

Step 3.

What mitigating circumstances exist in relation to the OFFENCE?

- ✓ Provocation
- ✓ Lack of pre-meditation.

Step 4.

What aggravating circumstances exist in relation to the OFFENDER?

- ✓ Recent and relevant previous record, including cautions
- ✓ Lack of remorse
- ✓ Failure to respond to previous interventions including previous sentences
- ✓ The defendant was the subject of another sentence when the offence was committed
- ✓ Breach of the trust that is deemed to exist in an intimate relationship.

Step 5.

What mitigating circumstances exist in relation to the OFFENDER?

- ✓ Early guilty plea thereby removing the necessity for the victim to give evidence at court
- ✓ Genuine remorse which can be evidenced
- ✓ Willingness to make reparation
- ✓ Co-operation with police
- ✓ Health – mental and/or physical
- ✓ Youth of the offender
- ✓ Family background – where for example a young person has taken on family responsibilities over and above those expected of someone of their age.

Consider your purposes of sentence - reduction of crime, including by deterrence – reform and rehabilitation – protection of the public – the making of reparation to persons affected by the defendant's offending.

What is your preliminary view of sentence at this stage?

At WLMC SDVC, in almost every case the court will require information to assist its sentence decision. Only standard Probation Pre-Sentence Reports will be prepared, generally requiring 15 working days. Domestic violence cases are not susceptible to fast track delivery or stand down reports. The Sentencing Guidelines Council suggests that, at this stage, the court should give an indication of sentence.

In the domestic violence scenario, good practice would dictate that all sentencing options are left open, as the final decision will be based upon the information in the report. However because there is a bespoke Domestic Violence Programme Requirement available in a Community Order, the bench should ask that the defendant be assessed in terms of suitability for such a requirement in any event.

It is very important that the bench does not hold out to the defendant the possibility of any particular sentence being imposed, and careful wording is required in your pronouncement.

A suggested pronouncement at the stage of remanding for reports would follow the following lines:

“This court takes convictions for domestic violence very seriously. At this stage, and based on what we have been told, we are asking that a report is prepared by the Probation Service including an assessment of your suitability for a domestic violence programme requirement. You must cooperate with Probation. The sentence the court imposes will depend upon the information contained in that report, so all sentences remain possible including custody and committal to the Crown Court”

At WLMC it is considered worthwhile taking the time to explain all this to the defendant. Again it reinforces the messages from the bench and can reassure the victim if she has attended court.

Applying Credit for Plea

The moment of sentencing, following the receipt of a report from Probation, is the time to apply the credit for guilty plea – from 30% for a plea entered at the earliest opportunity to 10% for a plea entered on the date listed for trial, or no credit following conviction after trial where denial was the order of the day.

Applying discounts for plea is not an easy mathematical calculation where the sentence is a Community Order and includes a programme requirement designed to last a specified number of weeks. One way to approach this is to determine whether, in the totality of the sentence, there would have been a further requirement which is not imposed, as a reflection of the credit given. Alternatively the imposition of a Community Order with a programme requirement is a discount on what would otherwise have been a sentence of imprisonment.

Where the sentence is a suspended sentence of imprisonment with a programme requirement, then the calculation will be easier in that the suspended term of imprisonment is capable of mathematical reduction even though the programme requirement is for a fixed period.

Sentencing

It is unlikely that a bench would be thinking of any sentence less than a Community Order, unless the defendant is of previous good character AND there is some **exceptional** mitigation.

It should be noted that where the defendant is given a short immediate custodial sentence, neither the Prison nor the Probation Services will address in any detail the defendant's offending behaviour. Victims have expressed their feelings of vulnerability to further offences when the defendant is released after serving only half of a short term.

In the circumstances where only a short custodial sentence would be appropriate, it may be better - in the interests of seeking to prevent further offending as the deterrent purpose of your sentence - to consider a Community Order with at least a requirement to attend the Probation Service's specific programme for domestic violence cases.

The IDAP Programme Requirement

Known as the IDAP requirement [Integrated Domestic Abuse Programme], this is a programme run by Probation and designed to assist offenders to recognize their patterns of behaviour and to shift their understanding of the difference between power and control in an intimate relationship to the concept of equality in an intimate relationship.

The aims of the programme are to:

- ✓ Reduce the risk of violent crime and abusive behaviour towards women in relationships, by helping perpetrators to change their attitude and behaviour
- ✓ Reduce the risk of all violent and abusive behaviour in the family
- ✓ Increase offenders' ability to respond non-abusively; to change abusive belief systems, and to empathise with the victim
- ✓ Give offenders a greater sense of personal responsibility for their violence
- ✓ Help offenders to accept that they exercise choice in the way they behave
- ✓ Increase the offender's ability to identify high-risk situations and to manage these effectively in the future.

The programme is available to heterosexual male offenders who have been assessed as a medium to high risk of violence in a relationship. They will have committed at least one act of violence against an intimate partner. All participants must have a basic level of literacy, (English) language competency and comprehension skills. Each offender is required to sign a consent form to permit the sharing of information with their spouse or partner – whether that woman was the subject of the charge or not. A re-education

programme such as IDAP is about reducing violence in intimate relationships whether current, former or - just as importantly – future.

Although a domestic violence court such as WLMC's SDVC will deal with allegations arising out of violence and abuse in same sex relationships, the IDAP programme is not available for offenders in same sex relationships; nor is it available to female offenders. Those with serious mental health problems, or substance misuse of such severity that they would be unable to meet the learning objectives of the programme, will equally be ineligible.

This is a very onerous programme (on a par with a Sex Offender Order) which requires, (as with all Community Order requirements), that the defendant attends as directed - but even more than that, that he engages with its aims. Those in denial regarding their behaviour are unlikely to acknowledge that the programme is a journey requiring their engagement and commitment.

The components of the IDAP programme are as follows:

- Contact is made with the victim as well as any current partner by a women's safety officer
- Risk management through continual assessment and information sharing with other agencies including the police
- Group work and individual sessions with the offender including:
 - ✓ 4 individual pre-programme sessions
 - ✓ A rolling programme of 27 two-hour groupwork sessions PLUS six individual sessions
 - ✓ At least 4 relapse prevention sessions with the case manager.

Not every probation area will have access to IDAP – although it is possible that Probation in new SDVC areas will be able to offer this option, or a similar option.

At WLMC's SDVC, following as it does the US model approach to domestic violence, alternative programmes such as Anger Management, or – where there is a substance misuse issue as well – ASRO (Addressing Substance Related Offending) are **not** considered appropriate sentencing options.

The Victim in the Sentencing Process

Since 2001, it has been open to courts to take into account **Victim Personal Statements (VPS)**, which can be useful in domestic violence cases to assess the impact of the offending behaviour upon the victim.

At WLMC's SDVC, officers in charge of domestic violence cases have been alerted to the fact that they can mention VPS to victims and see whether such a statement will be given.

The, then, Lord Chief Justice's Practice Direction on VPS states:

"1. This Practice Direction draws attention to a scheme which started in 2001 to give victims a more formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection.¹ It will also enable the Court to take the statement into account when determining sentence.

2. When a Police Officer takes an (initial) statement from a victim, the victim will be told about the VPS and given the chance to make one. A VPS may be made or updated at any time prior to the disposal of the case. The decision about whether or not to make a VPS is entirely for the victim.

3. If the Court is presented with a VPS, the following approach should be adopted: -

(a) The VPS and any evidence in support² should be considered and taken into account by the Court prior to sentence

(b) Evidence of the effect of an offence upon a victim contained in a VPS or other statement must be in a s 9 Witness Statement or (in) an expert's report and served upon the defendant's solicitor, or the defendant if he is unrepresented, prior to sentence.

(c) The Court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender taking into account, so far as the Court considers it appropriate, the consequences to the victim. The opinions of the victim or close relatives as to what the sentence should be are therefore not relevant – unlike the consequences of the offence on them. Victims should be advised of this³. If, despite this advice, opinions as to sentence are included in the sentence, the Court should pay no attention to them.

(d) The Court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim."

¹ It will be seen how this builds upon the aims of the SDVC and the 7 Judicial Goals.

² Reports from doctor, other medical practitioners, school etc.

³ NOTE the distinction between opinions as to sentence and consequences and effects of the offending behaviour. The latter can be taken into account; the former must not.

It is therefore suggested that, particularly in domestic violence cases, it will be good practice for the bench, when pronouncing sentence, to make reference to any VPS put before it and to any evidence of the consequences or effects of the offending behaviour upon the victim – BUT to take **very** great care not to give any indication at all that her opinion on sentence has played any part in the bench's decision.

A last point before sentence is pronounced, at WLMC's SDVC a specific preamble to the pronouncement on sentence is adopted. This demonstrates the extent of the shift from the old days when violence or abuse in a domestic environment was considered not to be anything other than what happens between intimate partners, to the current position where domestic violence is considered to be an offence against both the victim and society and where messages of the strong opprobrium in which domestic violence offences are viewed are sent out by the bench on behalf of the local community:

“Because this offence took place in private in your own home, you may have felt it was less serious than a random crime out on the street. BUT from all the information we have, your behaviour was unacceptable and very serious”.

Then announce sentence in the usual way.

“If you fail to keep to the terms of this order/sentence, you can be brought back to court and you should be in no doubt that you could receive a heavier penalty”.

BREACH

At West London Magistrates' Court, the magistrates and district judges and legal advisers have all been trained in domestic violence awareness.

This means that breaches of Community Orders with IDAP requirements (or pre-2005 CROs / CPROs) are dealt with either in the SDVC if a Probation Legal Proceedings Officer is available on Thursdays, or in the general breach court.

Whether or not the Probation Service or the IDAP team continue to work with a male offender following an alleged breach of an order, the early and timely prosecution of allegations (of a 2nd unacceptable breach of the order in a 12 month period) is important and is wholly dependent upon the Probation Service passing their papers etc to the Legal Proceedings Officers (an out-sourced branch of the Service) so that action can be taken.

Finally...

We hope that you have found this Domestic Violence Bench Book useful. If you have any suggestions for additions or amendments to include in future updates, please contact the author and/or Standing Together Against Domestic Violence.

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