



**The Cardiff Women's Safety Unit
and the Civil/Criminal Interface**

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The Cardiff Women's Safety Unit and the Civil/Criminal Interface

Executive Summary

This exploratory study investigated the 'interface' between the civil and criminal courts in Cardiff by reviewing the literature and then obtaining information from victims of domestic violence, advocates working in the Women's Safety Unit (WSU), and solicitors.

The WSU rota scheme – free initial consultations provided by specialist trained solicitors – was identified as good practice in terms of increasing the access to civil justice for victims of domestic violence. Victims were more satisfied with their solicitors when they were referred by the WSU.

Victims' experiences of going to court were generally negative, as they felt nervous, intimidated, and unsafe. Victims involved in child contact disputes also had concerns about their children's safety during contact. Victims were unsatisfied with CAFCASS and perceived family proceedings to have a bias towards 'contact at any cost' rather than their safety or that of their children.

Victims felt that civil remedies, such as occupation orders or non-molestation orders, did help them to feel safer and prevent further abuse, but only when they had a power of arrest (POA) attached by the court. The feasibility of having the victim and perpetrator continue to live under the same roof (albeit in different rooms as stated in a court order) was questioned by all three types of respondents (victims, advocates and solicitors).

Access to civil justice was constrained by financial considerations and issues such as Legal Aid not being available whilst a criminal case is ongoing. Victims of domestic violence should have access to civil remedies regardless of their financial situations.

The 'interface' between civil and criminal courts – in terms of relaying information about criminal matters to civil judges, or information about civil proceedings to magistrates or judges in criminal courts – is completely dependent upon the WSU advocates that support victims through the legal process. Without advocacy arrangements in place, there would be no interface and decision-making by either court would be made based on partial information. Whilst in Cardiff these arrangements appear to be effective, developing the interface between civil and criminal courts needs to be a national endeavour to provide a consistent and streamlined response to victims of domestic violence.

This study reasserts the importance of having a holistic, multi-agency response to domestic violence. Victims who are reluctant to participate in a criminal case need to have access to other types of remedies, such as those provided by the civil courts. The coordination of civil with criminal justice represents the best hope of keeping victims of domestic violence and their children safe.

The Cardiff Women's Safety Unit and the Civil/Criminal Interface

Introduction

Victims of domestic violence may seek protection from both the criminal and civil law. Criminal offences such as assaults, wounding, sexual abuse, harassment, or threats may be charged by prosecutors and offenders convicted in Magistrates' or Crown Courts. There is no specific offence of domestic violence *per se*, but a range of abusive behaviours that occur within intimate relationships can be charged as criminal offences. Punishments following from a criminal conviction could include fines, community punishment orders, community rehabilitation orders, and/or custodial sentences. In recent years substantial attention has been paid to improving the criminal justice response to domestic violence.¹

The civil justice system is another avenue by which victims of domestic violence might seek redress, yet on its own has received relatively little attention in terms of its response to domestic violence. Remedies provided in the civil law include occupation orders², non-molestation orders³ and exclusion orders⁴. Their aim is to protect the applicant from further violence, threats, and/or harassment by the abuser. At their discretion, courts can attach a power of arrest (POA) to these orders, allowing the police to arrest and remove a suspect found in breach of a court order. Historically police and the courts have been reluctant to do this, however, rendering many civil injunctions useless.⁵

Thus victims of domestic violence might be involved in criminal cases (as witnesses) or civil cases (as applicants), in an attempt to seek protection from

¹ For example, the CPS updated its prosecution policy for domestic violence in 2001, ACPO issued new guidance on investigating domestic violence in 2004, the *Domestic Violence Crime and Victims Bill* received royal assent in 2004, and the Home Office is rolling out 25 Specialist Domestic Violence Courts in 2005-6.

² *Part IV of the Family Law Act 1996* – Regulates the occupation of the home shared by the couple and their children to protect any party or children from domestic violence. The order can exclude the abuser from the property altogether, or divide the property to exclude him from part of the accommodation. If he has already left the property, an occupation order may be used to prevent him from re-entering or coming within a certain area of the property. Therefore these types of orders are limited to those couples that previously or currently live together.

³ *Part IV of the Family Law Act 1996* – Used to restrain someone from causing or threatening violence to the applicant or to any children, or from molesting them. The Act does not define molestation, but it can include intimidation, pestering, threats and harassment. The wording of the order forbids the abuser from using or threatening violence against the applicant and their children.

⁴ *Section 38A Children Act 1989* – Excludes the offender from a named dwelling so that so that the child may continue to live there. A power of arrest may be attached. Previously it was the child who was removed from the home and not the suspected abuser.

⁵ The *Family Law Act 1996* increased the proportion of orders where a power of arrest was attached from one-third to 75%, but this masks wide variation across England and Wales (Edwards, 2000). The level of protection provided by a civil court may therefore depend in part on where the applicant lives.

either or both jurisdictions. Indeed, many would require both to keep themselves and their children safe. As Jordan (2004) rightly noted:

- *“Although most aspects of the criminal justice system are distinct from civil law, domestic violence is unique in that the response crafted by advocates and legal professionals to this area of the law includes a combination of civil and criminal remedies” (p. 1423).*

Needing or desiring a ‘combination of civil and criminal remedies’ does not mean that such a combination is easy to obtain. The ‘interface’ between the criminal and civil courts recently has become the focus of attention from those concerned with improving services to victims of domestic violence. To make applications arising from allegations of domestic violence in two different courts in two separate jurisdictions, to present the same or similar facts, is widely seen as unsatisfactory. This situation is perceived to cost more and to waste court time, to say nothing of the inconvenience posed to victims. The lack of coordination between these two jurisdictions can have considerable impacts on the lives of victims and their children. As the Rt. Hon. Dame Elizabeth Butler-Sloss (former President of Her Majesty’s Court Service) said in 2003:⁶

- *“In dealing with the effects of domestic violence, it would not be unusual for a woman to make multiple visits to a range of courts, at increasing emotional and financial cost. The demarcation between criminal and civil is undoubtedly of frustration to these parties, who in some cases might, in leaving the criminal court after a defendant has been acquitted, require police protection to walk across the road to the civil court to undergo new proceedings in the civil court to gain a civil injunction for her protection.”*

This lack of coordination between the civil and criminal justice system has prompted some recent efforts at reform which are briefly described below.

New Initiatives in Civil Justice

The interface between the criminal and family/civil courts was a main feature of the Government’s consultation process for its *Safety and Justice* report (2003). Underway are initiatives designed to improve the civil/criminal interface so that victims who have cases going through one or both courts can have more streamlined, efficient and equitable outcomes. For example, the first *Integrated Domestic Violence Court* (IDVC) is being developed in Croydon.⁷ This court would hear both the criminal and civil aspects of the same case, thereby promoting the ideal of ‘one family, one judge’.⁸ Others are

⁶ For a transcript of her full speech about domestic violence, see <http://www.number-10.gov.uk/output/page4436.asp>

⁷ This has been ongoing for the last few years, however now the development of the first British IDVC at Croydon is being taken forward by a national steering group, with plans for implementation in 2006.

⁸ Of course it should be noted that the benefit of having one judge hear cases from both jurisdictions depends greatly on the specialist training and understanding that judge has about domestic violence.

looking into establishing a combined criminal/family court. These initiatives will require much consideration into technical issues such as rules of evidence. However the rationale for coordinating criminal with civil or family proceedings is to provide an improved service to families in crisis, where the underlying issue is domestic violence.

Another area for progress is increasing access to civil justice for victims of domestic violence. The cost of hiring a solicitor – for representation in a civil proceeding such as a divorce, child custody hearing, or civil injunction – is sometimes prohibitive for victims who may be financially dependent on their abuser or who have sole responsibility for looking after the children (i.e., are not in paid work outside the home). Local solicitors may lack knowledge in the unique challenges faced by victims, thereby contributing to their distress as they seek civil remedies. For this very reason, the Legal Services Commission (LSC) is currently researching how to implement a National Accreditation Scheme so that solicitors can receive specialist training and qualifications in domestic violence.

An additional LSC initiative to improve access to civil justice is known as FAInS (Family Advice and Information Network Service). The aims of this project are to: (1) facilitate the dissolution of broken relationships in ways which minimise distress to parents and children, and which promote ongoing family relationships and co-operative parenting, and (2) provide tailored information and access to services that may assist in resolving disputes, or may assist those who are trying to save their relationships. Fifteen cities in England and Wales operate FAInS, which is undertaken by specialist family solicitors who have completed a programme of professional development, including how to collect risk information about domestic violence from clients.

Meanwhile in Cardiff, a pilot site of the FAInS scheme since 2002, there has been a further development. The group of FAInS solicitors that are experienced and specially trained⁹ in domestic violence (and thus able to provide clients with referrals to relevant organizations such as Women's Aid and the Women's Safety Unit¹⁰) now also participate in the WSU rota scheme. This new arrangement allows victims of domestic violence to receive a free consultation with a solicitor at the WSU. The rota has been in operation since September 2005 and runs every fortnight. Nine firms participate and early indications are that it is a much appreciated service (amongst the many other services provided to victims at the WSU). To date, 22 victims (21 women and 1 man) have received free consultations from solicitors participating in the WSU rota.

It can be seen that much work is currently being undertaken to rectify the challenges posed by having different jurisdictions handle cases that are occurring within the same family or relationship. In the forward to the 2004

⁹ They attended a joint LSC-WSU training on risk and domestic violence that was provided to 200 solicitors working in South Wales.

¹⁰ The WSU is a one-stop-shop for victims of domestic violence that provides advocacy, counselling, legal advice and referrals. For more information, see evaluation reports at <http://www.cardiff.ac.uk/schoolsanddivisions/academicschools/socsi/staff/acad/robinson.html>

report *Domestic Violence: A Guide to Civil Remedies and Criminal Sanctions*, Rosie Winterton, MP promised that:

- *“Although there are some examples of good practice, we must improve the interface between the civil and criminal courts. My department¹¹ plans to learn from and build on identified examples of good practice to ensure closer working between the criminal, civil and family courts, the better to put first the needs of all victims of domestic violence.”*

Aims of the Study

Although many progressive reforms are starting to be underway, there is little first-hand evidence from victims specifically about their experiences with civil justice and the ‘interface’ (or lack of it) with criminal justice.

The purpose of this exploratory study is to investigate the extent to which victims of domestic violence:

- Require assistance with pursuing civil proceedings;
- Have experiences of cases going through the criminal and/or civil courts;
- Recognize the extent of information-sharing, or lack of it, between the courts;
- Are satisfied with the services provided by their solicitors; and
- Recommend changes to improve the ‘civil/criminal interface’.

Methodology

In order to provide some information about the issues raised above, the following types of data were collected during 2005:

- Case files from victims attending the Women’s Safety Unit (WSU) over a 6-month period (March-August);
- Interviews with victims of domestic violence;
- Interviews with WSU staff supporting victims; and
- Surveys from local solicitors participating in the WSU rota.

These data sources are analysed to address the lack of information we currently have in Britain about victims of domestic violence and the civil/criminal interface. But first the current research is put into context by reviewing the relevant literature.

¹¹ The Department for Constitutional Affairs, which was set up in 2003, is the government department with responsibility for the courts.

Literature Review

Combined or Integrated Civil/Criminal Courts

As part of their evaluation of five Specialist Domestic Violence Courts (SDVCs) in England and Wales, Cook et al. (2004a) identified several domestic violence courts in the US that operated on a combined civil/criminal model. In particular, one such court in the state of Washington provided some insights into the challenges of setting up a combined court. For example, while the judges with jurisdiction over protective orders were happy to confer their jurisdiction to the criminal judges, there were some 'growing pains' in terms of having the court schedule accommodate domestic violence cases and also reconciling the goals of the court (therapeutic approach) with prosecutorial policies (diversion). However there were very clear benefits as Fritzler and Simon (2000) described:

- The court provides a single point of entry for civil and criminal remedies.
- Victims may obtain all forms of relief from a single judge who is knowledgeable about domestic violence.
- The court allows for the coordination of community services and improved communication between agencies.

The evaluators for a different combined court in the US noted that:

- *"The ability to access a range of services in one building greatly reduces the administrative logistics for the victim and, in turn, improves the likelihood that the victim will stay engaged with the justice process"* (Steketee et al., 2000).

They also reported that waiting times were reduced and there was more consistency of orders due to judges having a more complete picture of the abuse. The merit of these initiatives is further evidenced by the fact that by the end of 2005 more than three-quarters of the residents of New York State will be served by integrated domestic violence courts.

Whilst there are demonstrable benefits to combined or integrated courts, there are some areas for caution. One issue to guard against when integrating civil with criminal matters is the potential for plea-bargaining across the two types of cases. For example, having criminal-case bargaining in a divorce case, or having child contact disputes used as leverage in a criminal case. One method of preventing this is to have the same judge hear both cases, but on separate days (Sacks, 2002).

Another concern arising from an efficient interface between the civil/criminal courts is that some women might be deterred from participating. They might have concerns such as feeling pushed into pursuing criminal proceedings when

they only want help with civil justice options, or being fearful of losing their children (Epstein, 1999). However these concerns can be managed by having courts be responsive to the individual victim's needs and wishes (i.e., by having independent advocates provide support to victims).

Cook et al. (2004b) noted that there was very little evidence of links between criminal and civil courts (even in specialist domestic violence courts) in Britain. As one criminal justice informant in their study noted:

- *“Information-sharing could be improved. The clerks are advised to ask in every case if there are children involved or if there is a civil order in place but they sometimes forget. It does come out obliquely in some cases but people may just not know”* (p. 12).

As they concluded,

- *“Information from the civil courts is necessary for informed decision-making in the criminal courts, and vice versa”* and there is merit for a *“one-stop-shop philosophy of making the courts accessible to victims when they are dealing with both civil and criminal matters (e.g., integration or at least physical proximity of courts)”* (Cook et al., 2004a, p. 152).

In terms of improving the interface, there is more substantial development of combined courts in the US (where they are starting to be the norm in some states). In Britain the first integrated domestic violence court is being developed in Croydon. The evidence suggests considerable improvement in the efficiency of case processing as well as in the experiences of victims.

Use of Civil Remedies

As outlined in the recently published government report entitled *Domestic Violence: A National Report* (2005), many more perpetrators come into contact with the British courts system as a whole than come into contact with the Criminal Justice System:

- In 2003 over 30,000 non-molestation and occupation orders were granted to protect victims of domestic violence and a further 4,500 undertakings¹² were given to the courts.
- Around 25% of court applications for contact with a child following divorce or separation involve allegations of domestic violence between the parents.

¹² An undertaking is an option that allows the parties to settle their dispute without a full hearing. Although it is *not* an admission of guilt, it is a promise made to the court to do, or not to do, certain things. Therefore an undertaking cannot be used as evidence or proof that any violence or abuse has occurred, but because an undertaking is an order of the court, breaking it can be viewed by the judge as contempt of court (and dealt with accordingly).

Limited research exists on the proportion of victims who uptake civil remedies. In the US, research found that only 16.4% of rape victims, 17.1% of physical assault victims, and 36.6% of stalking victims obtained protective orders (Tjaden & Thoennes, 2000). If proportions are similar in Britain, then only a fraction of domestic violence victims utilise civil justice for protection. Increasing the access to civil and criminal justice for victims of domestic violence is considered to be a top priority amongst both government agencies and the voluntary sector.

Effectiveness of Civil Remedies

In a review of (criminal and civil) justice systems' response to domestic violence, Jordan (2004) noted that different measures of effectiveness may be evaluated: victim satisfaction, offender recidivism and the use of arrest by police for violations of civil orders. Other research from the US noted that police only made arrests for violations of protective orders in 44% of cases they deemed to be low risk, and 75% of cases they deemed to be high risk (Kane, 2000). In other words, in more than half of low risk cases and in a quarter of high risk cases, police do not make arrest for violations of protective orders.

The impact of civil protection orders on victims' satisfaction has been inconsistent. Some research found that victims felt safer after receiving such an order (Keilitz, Hannaford, & Efkenan, 1997), whereas other research found that victims were discouraged by the lengthy court process they had to endure to obtain such an order (Ptacek, 1999).

However more clear-cut evidence of the effectiveness of civil protection orders is found from their deterrent effect. Several US studies showed that re-offending was reduced after the protective order was issued, usually for a majority of victims (66% to 92%) (Carlson et al, 1999; Holt et al, 2002; Kaci, 1994; McFarlane et al, 2004). Furthermore, Dugan (2003) found that states that pursued more aggressive legislation with respect to civil protection orders tended to have a lower level of violence perpetrated in the home.

There is also the symbolic message from having a civil protection order, as one respondent in another study explained:

- *"I think civil restraining orders are helpful. They put everyone on notice that violence is not OK. The way it's set up encourages the victim to tell the story to someone official and validates the story, which is important"* (Herman, 2005, p. 596).

But we must remember that civil protection orders do not provide universal protection for victims, as there remain a small but substantial percentage of women who are re-victimized following the order. Furthermore, for the 'success stories' we are assuming that the abuse stopped because of the civil order rather than for some other reason (e.g., the offender died or the victim moved to a different city).

In conclusion, extant research suggests that civil remedies can provide protection to victims of domestic violence, especially when their violations or breaches are enforced with arrest by police.

Children at the Interface

A recent thematic review¹³ of the Children and Family Court Advisory and Support Service (CAFCASS) and the administration of family courts in Her Majesty's Court Service (HMCS) found ample room for improvement in the way that the system looks after children who are living in homes where there is domestic violence. CAFCASS was established in 2001 and its main functions are to:

- Safeguard and promote the welfare of children;
- Give advice to any court about any application made to it in family proceedings;
- Make provision for the children to be represented in family proceedings; and
- Provide information, advice and other support for the children and their families.

Therefore CAFCASS officers have an extremely complex and sensitive role to play, regardless of whether there is an underlying issue of domestic violence in the family.¹⁴ While domestic violence is not an issue in all cases with which CAFCASS are involved, it is considered to be present in a significant number of cases.

In a strongly worded report that has received considerable attention,¹⁵ Inspectors found that the nature of domestic violence was not sufficiently understood by CAFCASS officers, that there was wide variation in the quality and consistency of CAFCASS reports, and that victims of domestic violence felt that there was a presumption of contact which they felt put them and their children at risk. The Inspectors concluded that

- *“In order for the welfare of children to remain paramount, the current emphasis on agreement-seeking in the family justice system needs to*

¹³ See *Domestic Violence, Safety and Family Proceedings* (2005) at

<http://www.cafcass.gov.uk/English/Publications/reports/05Sept15DomesticViolenceReport.pdf>

¹⁴ Research not specifically looking at cases involving domestic violence has found substantial dissatisfaction with CAFCASS and the court process over child contact arrangements: *“Regardless of the outcome, some parents were unhappy with the process they experienced. They felt they had too little time in court, that CAFCASS spent too little time with them or their children, that no one was interested in the things that mattered to them, that the court order was based on a formula rather than an individualised programme designed to fit their family’s needs.”* (Smart et al., 2005, p. ii). Therefore this is a generic problem that is exacerbated in families where there is domestic violence.

¹⁵ For example, see “Risk of domestic violence often ignored by family courts” in *The Big Issue* (no. 484), 7-13 November 2005; and “Women's Aid calls for immediate action to safeguard children in response to CAFCASS inspection report” at http://www.womensaid.org.uk/press_releases/Safeguard_children_CAFcass_report.htm

be recognised as a valuable secondary achievement [to the safety of mothers and children], rather than the primary goal” (p. 9).

Other research has noted the vulnerability of children living in families where there are civil or family cases proceeding through the courts. For example, Carlson et al. (1999) found that the odds of re-victimization following the issuance of a civil protection order for women with biological children with the offender was nearly 4 times higher than for couples without children. Additionally, a recent British study also found that reference to contact with children was likely to lead to more lenient outcomes in bail decision-making and sentencing (Hester et al., 2003). This led the researchers to conclude that there must be a closer interface between the civil and criminal justice systems otherwise the presence of children in an abusive relationship would continue to be linked to poor decision-making, in some cases leading to dangerous outcomes.

In conclusion, children appear to be very vulnerable when one of their parents is seeking civil justice when there has been domestic violence. In fact, it appears that their victimisation (by living with or witnessing domestic violence or by experiencing the abuse themselves) is actually compounded by the lack of integration between the civil and criminal courts.

Experiences and Perceptions of Victims of Domestic Violence

During 2005, the views and experiences of 9 victims (all women) were accessed through surveys, face-to-face interviews, or telephone interviews.¹⁶ Three of the victims were from ethnic minority communities (2 Arab and 1 Asian) and six were British White. The purpose of gathering information from victims was to ascertain their experiences undertaking civil proceedings, and in particular to learn whether their experiences as victims of domestic violence presented any unique challenges to their seeking criminal or civil remedies. Although the interview format was structured (see Appendix A), the women were encouraged to provide a narrative of their experiences going through the criminal and/or civil courts. Information gleaned from the victims is analyzed thematically in the following sections.

Experience with the Legal Process

Asking victims of domestic violence to explain their experience with the court system easily reveals some of the difficulties that domestic violence adds to already emotionally-wrought situations – where people are dissolving their marriage, deciding about how their children will be raised, and who lives where and with what means. Not surprisingly perhaps, most of the victims

¹⁶ Four responded to a questionnaire and five were interviewed by the author (one in person and four by telephone).

who had completed or were undertaking a case in the civil courts had negative experiences of the case, as the following examples illustrate.

Divorce proceedings were initiated against one woman by her husband who, as step-father to her children from a previous marriage, wanted her to choose between him and the children. Because *“his basic nature was cruel”* and he had been abusive *“throughout my married life”* she chose to fight to allow her young teenage children to remain in the family home. As a result he applied for a divorce. She describes her quality-of-life while the case was ongoing as follows:

- *“We have a 3-bedroom house, so he took one bedroom, I took one bedroom, and the children had one bedroom. We had locks because we didn’t trust each other. We lived like that for a year. He didn’t pay for anything. He did help with the house at all during that time. The solicitor said I should make a claim [for the money owed] but I didn’t want to go through with anything else [another civil matter] at that time. It all takes too much time.”*

When her relationship disintegrated while she was pregnant, another woman still facilitated access so that her daughter *“had a father.”* Only when he became involved with a new partner and then involved with illicit drugs did child contact become an issue. She requested that visits occur in a contact centre, which he resisted. It was his application for child contact but still she felt that:

- *“It was me that had to come up with ways to move the case forward, me to offer access, to set times, etc. I had to do everything, and the court is just for the fathers.”*

In another example of a child contact dispute, one woman noted the impact of the case on other members of the family, including those children not explicitly named in the application. As she stated:

- *“It is stressful for children. Worrying holds the family back from moving on. It doesn’t feel like courts take DV into account in relation to the case.”*

Even when a victim had a relatively positive experience, the dynamics of domestic violence meant that the court experience was anxiety provoking. For example, one woman who was satisfied with her solicitor, the police, the WSU and the outcomes of both criminal and civil cases against her partner explained that the process itself was still very difficult:

- *“The worst thing was that I felt very intimidated. I had to go in a box and give evidence. He was right in front of me. I was trying not to make eye contact. I hated him at the time and it was horrible. You feel that you are the one on trial. I had to wear a mike and it was like being on TV.”*

How victims' perceptions of the legal process are shaped is further illustrated in the sections that follow, which explore the perceived impact of the case on their children; their experiences with CAFCASS, WSU advocates and local solicitors; challenges in pursuing civil and criminal remedies; and their recommendations for improvements in the courts.

Concern for Children

As with nearly all research into the experiences of victims of domestic violence, concern for their children is a priority that features prominently in their decision-making processes about how to get help and from whom.¹⁷ Findings from the present study are not any different. Victims consistently referred to the hardships their children faced as their cases were processed by the court system. They feared for their children's safety, worried about whether they would be abducted during visits with their fathers, felt that their partners were manipulating child contact disputes in order to get back at them, and were concerned that their own relationships with their children suffered as a result of the ongoing situations. The following examples are typical of their concerns:

- *"It is hard on myself and my child. It is very stressful, worrying constantly about my son's safety and health."*
- *"But the divorce is the last thing I am worried about, because I am trying to sort out the money and the children. He is making all of this as difficult as is possible. He is continually abusive to the kids. They go to see him and come back home totally different. It's like their personalities have changed. It makes me wonder what has been said. My 11-year old son can't sleep at night. But I don't want to delve, because then they will think I am picking on their father."*
- *"I am not some hysterical woman. I am not a man-hater. I have good male role models in my life, like my father and my brother. I had never been to court before all of this. What are you supposed to do when you are a mother and you feel like this, having to protect your children?"*

Echoing the sentiments of victims studied for the thematic inspection of CAFCASS published in October 2005, many of the victims interviewed for the present study expressed disbelief and disappointment that the courts seemingly adopted the stance of "any access is better than no access." The sentiment that the courts were biased towards fathers having access, despite a history of domestic violence, was repeatedly revisited. For example:

- *"The court relies solely on the word of CAFCASS, who say the past is not relevant, but his violence is why we are in this position today! CAFCASS are not impartial, they are not after the truth, they are there*

¹⁷ See, for example, Anderson (2003); Davies, et al. (1998); Robinson & Tregidga (2005).

to enforce contact, no matter what, whether it benefits the children or not. My experience has been dreadful. It is horrifying what is happening to us. He is only doing this to get a British visa – the children are the only way he can get this. So now he is playing the ‘devoted father.’”

- *“The courts shouldn't be intimidated by 'fathers for justice'.¹⁸ They should take into account the impact on all children not just those involved in the contact case. Courts should find out if the perp is gone, not lying etc.”*

Feeling that the CAFCASS officer was easily conned by partners experienced in using manipulation and control to get what they wanted was expressed by several women. They thought that CAFCASS officers would challenge their partners' behaviour but this rarely happened.

On the other hand, when women felt that the CAFCASS officer was paying attention to both parents' parenting skills and avoiding putting the child at risk they were grateful. For example:

- *“We had to go to the CAFCASS officer for a meeting. He didn't write a good report [about partner]. Basically my ex didn't interact with [our son] at all. If you hadn't seen your child in a few months, you think you would be excited to see them, hugging and kissing them. But there was no emotion, and the CAFCASS noted that. And then he let [son] run around with plastic scissors and then turn the fan on without warning him to be careful, warning him to watch his fingers. So the CAFCASS man saw that he would put [son] in dangerous situations [and put that in the report].”*

The work and decision-making of CAFCASS officers can have a profound impact not only on the satisfaction and confidence of the parents involved, but also on their safety as well as that of the children. The victims in this study had similar perceptions to those victims consulted in the inspection of CAFCASS. It therefore seems vital that the recommendations put forward in the inspection report are adopted and put into practice.¹⁹

Effectiveness of Occupation Orders

It is important to get a sense of what an occupation order might mean to a victim of domestic violence. She is living with someone that has inflicted financial, psychological, sexual and/or physical abuse upon her, has violated her trust, even made her afraid for her own life and/or those of her children. So the attempt to rectify this type of situation with a 'piece of paper' can be, from a certain perspective, considered a fairly desperate measure. One

¹⁸ See <http://www.fathers-4-justice.org/> for information about this organization.

¹⁹ Five recommendations were made to CAFCASS to help improve the service to children and families living with domestic violence, and six recommendations were made to MHCS to help improve its care of court users, again with particular relevance to domestic violence in family proceedings.

woman who had an occupation order against her husband explained the situation as follows:

- *“In terms of getting protection from your husband, there should be very strict laws when you are living together. If he had left the house it would have been easier to get protection, but because he didn’t leave the house... and it is so horrible to live in the same room with someone you are getting divorced from. Because he is always thinking of ways [to get at you]. So when I was at home it was like I couldn’t get out, because he scared me. At that time I thought, ‘if he touches me, he will kill me.’ So I had a lot of fear about that. So living together after you have decided to leave each other is really hard, because mentally you are preparing to leave.”*

But – for other victims – civil orders did have the desired effect of making them feel safer, and preventing repeat abuse. The victims who obtained occupation orders were very clear that the order had a positive impact on their lives, but that this was entirely dependent on the orders having a Power of Arrest (POA) attached by the court. One woman had the experience of having an occupation order without a POA, and then went back to court to obtain a POA. She said it made all the difference:

- *“[At first] they gave me an injunction but without a POA. This was a big problem, because without it the police’s hands are tied. Since the POA and his arrest [for a violation], he has stayed away from the house and is now renting a bungalow. He gave up his right to return to the property because he couldn’t live with the POA... because of the POA I am protected.”*

Another woman also noted the deterrent effect of having a civil protection order with a POA:

- *“I do feel safer because it means that he couldn’t come within 100 yards of my house for 12 months. He used to bang the door but he can’t do that now. But it did take him a little while to learn that I meant business.”*

These experiences are consistent with the published research reported earlier that civil remedies can provide protection to victims of domestic violence, especially when their violations or breaches are enforced with arrest by police.

Assistance from Solicitors

The importance of the role played by solicitors cannot be overstated. They represent the victim’s interests in civil court and thus can have a profound impact on her experience of seeking and/or obtaining civil justice. Other research into effective domestic violence interventions highlighted the

- *“Importance of close links with good family law solicitors in the area who were willing to work rapidly in cases referred to them” (Hester & Westmarland, 2005, p. 58).*

It was apparent from the victims in this study that their experiences with solicitors were very important in terms of their overall experience and perception of the case. Some victims had positive experiences and some had negative experiences and some had both (from changing solicitors). One consistency was that when solicitors were referred by the WSU they were generally much more qualified and victims were much more satisfied with them:

- *“I went to see a solicitor who was very negative. He said it would be very expensive, that I couldn’t get an occupation order, that it wouldn’t work, etc. I came out of that meeting totally deflated. Then the WSU phoned to check what had happened with the appointment, and I told them. They referred me to another solicitor who was wonderful. Straightaway he went to court and put in an application for an occupation order.”*
- *“They were very good. She fought for me well. She presented my case well. She was prepared, and my kids got to stay in the house, because you know my one daughter was coming up on 18 and maybe the judge would have put her out instead of my husband. She [the solicitor] was very professional.”*

Consistent with other research documenting the importance of not only the behaviors but also the demeanor adopted by officials when dealing with victims of domestic violence, one victim explained that what mattered was being listened to by someone who understood her situation:²⁰

- *“The first solicitor didn’t listen to me. She didn’t appreciate DV and went into court unprepared. I put in a letter of complaint to the firm, when I was told that she had left the practice. Then I was assigned a new lawyer, who was brilliant. She understood DV and said that I had been through a tremendous ordeal, and that she would help me.”*

Being able to obtain service from a solicitor that was trained and also a specialist in the features of cases involving domestic violence was also positively viewed by victims:

- *“Yes she was really good. Obviously they are trained, specialists in domestic violence. She said that she had done 100s of court cases over child contact, and could only remember a very few where the father wasn’t granted any access at all. So we were testing his loyalty about the child contact stuff to see if he would go through with it.”*

²⁰ For empirical research documenting the importance of police demeanour to victims of domestic violence, see Robinson & Strohshine (2005).

As with other professionals who have benefited from receiving specialist training in domestic violence, such as police, prosecutors, magistrates, and judges, solicitors also are able to provide more effective and empathetic responses to victims of domestic violence as a result of their training.

The participation of local solicitors in the WSU rota is further evidence of the coordinated community response that must be crafted in order to meet the needs of victims and to protect them and their children from further harm. The WSU rota builds on existing good practice in Cardiff in terms of multi-agency working and providing innovative responses to victims of domestic violence.

Advocacy from the WSU

Consistent with much published research on the benefits of advocacy and the positive outcomes achieved by the WSU in particular,²¹ the following comments further illustrate the importance of not going through a lengthy and potentially terrifying court case alone:

- *“[WSU Advocate] came to court with me. She was absolutely fantastic. I could call her and get advice. She was really supportive.”*
- *“[WSU Advocate] has been with me every step of the way. The support I have received has been absolutely superb. When I first went to the WSU I was very traumatized. They gave me advice (‘yes you can get back in the house!’) and without [Advocate] I wouldn’t be where I am today. I cannot applaud the WSU enough. The worst day of my life ended up being the best day of my life. They have so many different avenues, referrals and ways of helping you.”*
- *“The WSU have been brilliant. They have provided lots of good advice. Even now, 3 years later, [Advocate] still comes to court with me.”*

The lasting impact of domestic violence and the necessity of long-term support and counselling is also exemplified by the following comment from a victim who had suffered years of abuse at the hands of her husband:

- *“The WSU does a really nice job but there needs to be more counseling for the women. I go to the Survivor’s Forum and talking to each other and sharing is helpful but the one-on-one counseling needs to last longer. Because really you need to have everything erased from your mind. With my mental situation I really need more counseling. I am going through everything everyday and every night.”*

²¹ See, Robinson (2003), Cook et al. (2004a) and Vallely et al. (2005) in particular. Also see the Co-ordinated Response and Advocacy Resource Group (CRARG): <http://www.crarg.org.uk/>

Challenges of Pursuing Criminal versus Civil Justice

Victims were asked directly if they felt that it was harder to go through with a criminal or civil case against their (ex)partners. Whilst not all had experience of both jurisdictions, it was still apparent that most felt that criminal justice system represented a 'next level' with which many were not willing to engage:

- *“Because of the children, if I had had my husband put in prison it would have been detrimental to them. [To them] it doesn't matter what he did, they still love their father. Even now, after all that's happened, he broke the injunction to pick up the car while I was out of the house, and when I found out the kids said 'you're going to get my dad arrested aren't you'. And I don't want to get him arrested because I wasn't there anyways, so it doesn't matter, but that's how they view the situation.”*
- *“If the woman is still in love with him, it is harder to do the criminal case. If she can't cope with the situation, she has to go to the civil court to get a divorce. But if she hates him or something, then it's easy to go to the criminal court, because she doesn't have any feelings for him. The criminal court would be faster, but personally I am really soft hearted. If someone tries to do something [to me] its not like I want to do something back to the person. I don't want revenge.”*

For these reasons some did not want (or had never had) the police involved:

- *“I never called the police. He kept promising that it wouldn't happen again.”*
- *“There were other incidents [that were reported to police] but I still went back to him. I never pressed charges. It was all because of the children, but in hindsight it was the worst thing I could have done, to let it continue like that.”*

Another woman, who had cases progress through both the criminal and civil courts, said that the atmosphere was more intimidating in the criminal courts:

- *“It's more daunting with the criminal though because there is like a judge with a wig and a jury. In the other court there was just a little room with people wearing suits, so that was ok.”*

These comments highlight the limits of the criminal justice system – some victims do not want to participate in a case that might put the father of her children in prison. Civil remedies are thus a vital resource for these victims, as well as a key segment of any effective coordinated community response to domestic violence.

Perceived Benefits of a Combined Civil/Criminal Court

Information provided by victims revealed that there was a lot of support for the idea of a combined court, where both civil and criminal matters could be dealt with by the same judge. For example, one woman said that there was no mention of domestic violence in the family court hearings, although she felt that *“He is capable of taking the breath from my body... He is capable of killing members of his own family.”* Indeed there was a criminal harassment case against this person (for harassing his mother and sister) while the family court case was proceeding, showing the difficulty of making informed decisions when cases are heard by different people in different courts. Further examples of victims’ perceptions of the anticipated benefits of having a combined criminal/civil court are as follows:

- *“Yes definitely. My experience of going to different judges is that it’s hard. I would go to court wishing for the same judge. If you go to the same person, then they have a history of everything. They can deal with the case better.”*
- *“Yes because then he [judge] gets to know you and what is going on. [Referring to typical court experience] hopefully they read their notes and know what is going on with you. But with [combined court] they would know your case, see you again and realize there is repetition, that this is on-going. You would get a feeling of what’s happening and you’d get the case in its entirety... you would know who is lying and who is telling the truth. There are many benefits to having the same judge.”*

From the victim’s perspective, the main benefit of a combined court would not be the logistical convenience of such an arrangement (although that would be welcomed), but rather the improved possibility of fully informed decision-making by judges.

Improvements Needed in the Courts

The efficiency and timeliness of the legal process was viewed as problematic by many victims. Advocates also noted the need for victims to ‘move on’ following domestic violence, but they are often unable to until the case is concluded. One victim’s comment about improvements needed in the courts is typical:

- *“Cases need to get into court quickly. I have spent so much time waiting. Records get lost, and there are big time lapses between hearings.”*

It is therefore important that efforts are made to streamline civil justice, similar to attempts made to increase the efficiency of criminal courts (e.g., specialist domestic violence courts).

Echoing the courtroom experiences of other victims of domestic violence, one victim commented that the facilities themselves exacerbated the negative experience of going to court:

- *“I was terrified that he was in the same building. I didn’t want to see him. What is needed is separate meeting times, or even independent hearings. A police presence is needed in the court. Females feel intimidated by their male partners and there needs to be police there.”*

Childcare is also an issue. One victim reported that she saw parents arguing in front of their baby, who was in a pram. She said that the lack of crèche and/or baby changing facilities is problematic, especially for people who cannot afford babysitters or have to bring their babies along to court.

For readers familiar with other research investigating the experiences of domestic violence victims at court, the concerns expressed by the victims in this study are not unusual (see Cook et al., 2004a and 2004b, and Valley et al., 2005).

Information from WSU Advocates

Information was obtained from several staff working in the WSU about the issues faced by victims of domestic violence in obtaining civil and/or criminal justice (see Appendix B).

Particular Challenges of Pursuing Civil Justice

Victims of domestic violence might access the civil or family court system for myriad reasons, but the most common types of cases appear to be child contact cases, emergency injunctions/non-molestation orders, and divorce. Since most women coming to the WSU have children, arranging contact issues requires accessing the civil justice system. Therefore although an exact proportion is not known, a fair estimate is that it is a substantial proportion (40-75%) of victims.

The expense of pursuing a civil case was highlighted as a particular concern for victims of domestic violence, especially because they are not eligible for Legal Aid whilst a criminal case is ongoing. As one advocate noted,

- *“This can be stressful and confusing... a lay person is prone to be confused!”*

Furthermore, situations have arisen whereby the abuser receives Legal Aid because he is unemployed, whilst the victim receives no aid because she is working (even though she is also taking care of the children). Even when victims are successful in obtaining Legal Aid, it should be remembered that victims can incur substantial debt because:

- *“It isn’t aid anyways... it’s a loan.”*

Typically, finding a good solicitor has been a major hurdle for victims of domestic violence, who by definition are desperate and also often financially dependent on their abuser. They might not know that an initial consultation might cost them several hundred pounds, or they might not be able to find someone who is knowledgeable or empathetic about their situation. However with the introduction of FAInS and the WSU rota scheme it appears that a core group of trained, experienced, and dedicated solicitors can be called upon to offer their services to victims in the Cardiff area.

Having consistency of judges involved in their cases is another area where victim experience and satisfaction has generally been poor. For example, over time one woman had 8 different judges hearing her case! In Cardiff the policy is to try to have the same judge sit throughout the case, although at present this is an informal policy rather than formal guidance. However it does signal the recognition that consistency of judges is important and improves not only the experiences of the victims but also the effectiveness of the legal system. As one advocate put it,

- *“Having the same judge makes a big difference!”*

Another issue arising from having two separate jurisdictions deal with matters involving domestic violence is that it exposes a knowledge gap in the legal profession. This leads to victims not getting the best advice packages. For example, civil lawyers are not often aware of the criminal nature of harassment, and CPS lawyers often lack knowledge about the civil remedies that are available.

Ironically, another particular challenge for victims of domestic violence is that the success of civil justice is linked to criminal justice. It is ironic because although one can depend upon the other, there is not a formalized method of getting information from one court to the other, resulting in an inconsistent approach and different justice for different victims. For example, a victim might have difficulty in obtaining a non-molestation or injunction if she has not reported incidents to the police. Furthermore, it is at the judge’s discretion as to how much ‘background’ is included in the civil case, and whether this can include information provided by an advocate or is limited to convictions for criminal offences.

Advocacy and Improving the Interface

In Cardiff, like all other areas of Britain, the only way that there would be an ‘interface’ between the criminal and civil courts is by having an advocate from an organization such as the WSU support a victim who has cases going through both jurisdictions. Currently, it does not seem that civil judges are aware of criminal cases and vice versa because:

- *“Information is not brought to light and not requested as routine procedure. There is a lack of information sharing and liaison between the two parties.”*

When the WSU supports a victim through the process the advocate can provide information to the court if or when this is necessary. This can take the form of relaying information about charges, bail conditions, etc. to a judge in a civil case, or letting a magistrate know that there divorce proceedings or child contact orders progressing through the civil court. Typically the advocate always brings the victim’s WSU file along to court, but obtains the victim’s permission before speaking about any of the file contents in court. Although it is up to the judge’s discretion to allow the WSU in civil court, in Cardiff most of the judges are aware of the WSU and therefore allow the advocate in court. In criminal court, the specialized fast-track system²² means that having a WSU advocate present is part of the formalized operating procedures.

Furthermore, it is imperative that a judge or magistrate know about both types of cases in order to make good rulings, because:

- *“Additional information about existing charges etc. may affect the safety of victims – this contextual information [should] affect their decisions”.*

One advocated noted that:

- *“Judges appear more in touch since their training and more open to reviewing contact with the WSU and basing decisions therefore on contextual information involving DV”.*

However she went on to emphasize that it is still up to the victim (or someone acting on her behalf, such as a WSU advocate or her solicitor) to get information about domestic violence into the proceedings. As a matter of course, judges do not ask about domestic violence, even when the case involves child contact. So the responsibility for judges having the “whole story” continues to fall upon the victim. In practice, this means that:

- *“Without the WSU there would be no knowledge of proceedings going through the other court.”*

Similar to accounts given by the victims interviewed for this study, advocates also felt that some judges were “*not in the real world*” and found the family court biased towards a presumption in favour of child contact. Echoing the thematic inspection of CAF/CASS and the family courts, it still appears that:

- *“On the whole, victims do not feel that judges fully understand their concerns, especially regarding the safety of their child(ren).”*

²² See Robinson (2003) and Cook et al. (2004a) for more information about Cardiff’s model of a specialized domestic violence court (SDVC).

For victims from a black or minority ethnic (BME) background, cultural issues and language barriers further exacerbate this situation. The necessity of having specialist advocates within the domestic violence advocacy sector continues to be a pressing issue.

Perceived Benefits of a Combined Civil/Criminal Court

The unique challenges facing victims of domestic violence in their pursuit of civil and/or criminal justice means there is a lot to be gained from having a combined criminal/civil court. Staff at the WSU are very clear that integrating the two jurisdictions or even operating under the 'one family one judge' ideal would mean that:

- *“With sharing of information between civil and criminal there would be more service [for] and protection of victims.”*

For example, it would be helpful to deal with housing, child contact, or any residency issues alongside any criminal case. Because many victims seek civil justice after the criminal case has failed (e.g., by seeking an emergency injunction after a criminal case is dropped), it is apparent that addressing all the issues occurring within the family or relationship simultaneously would give the most informed result to the situation.

Results of the Solicitor Survey

Solicitors participating in the WSU rota (and the FAInS scheme) were surveyed about their experiences and attitudes working with victims of domestic violence (see Appendix C). Five of the 10 solicitors responded to the survey. Their answers to the questions on the survey are summarized in the sections below.

Particular Challenges of Pursuing Civil Justice

Four of the five solicitors responded that victims of domestic violence do have unique difficulties (one responded that they had no real knowledge of this issue). Most listed funding issues. For example:

- *“Public funding will not be granted if police are taking action. LSC insist that all matters are reported to police.”*
- *“Legal Aid is the biggest hurdle. The next problem is if funding is in place an occupation order has to be on notice unless they are seen to have voluntarily vacated. Being removed does not count.”*

The other solicitor remarked that the :

- *“Client is often too frightened to face [her] ex-partner in the court environment.”*

It is apparent that solicitors recognize that victims of domestic violence have unique difficulties when they are involved in civil cases.

Effectiveness of Civil Remedies

Here the responses from the solicitors were more varied. Three of the five were cautiously optimistic, stating that civil remedies could be effective under certain circumstances:

- *“Yes, subject to what is at stake and the consequences of any breach.”*
- *“Yes, if power of arrest is attached.”*
- *“It depends on the opponent. Without a respect of the law it can be extremely limited and relies heavily on police response to enforce a breach until the court can deal with it.”*

The remaining two had generally negative perceptions:

- *“Not really. They are pieces of paper telling someone to do to something but do not give the victim any real protection against their assailants.”*
- *“The court procedure is not always immediate plus courts are very reluctant to grant exclusive occupation when the ex-partner is a joint owner-occupier. Regulating use of the home is not effective... Most of the time an injunction or undertakings in the county court do not have the desired effect on the ex-partner.”*

Furthermore, when solicitors were asked to provide examples where victims did not receive a ‘good result’ to their cases, they tended to focus on the limits of occupation orders:

- *“[A bad result was] where the perpetrator was allowed to remain in the home, albeit in a separate bedroom.”*
- *“The court ordered an occupation order, but the house was to be shared so [each was] ordered to live in part of the house only – in practical terms [these orders] do not work.”*

Solicitors’ perceptions of the effectiveness of civil protection orders highlight the limits of such orders to address complex interpersonal situations.

Challenges of Pursuing Criminal versus Civil Justice

Three of the five solicitors thought that participating in a criminal case would be harder for a victim of domestic violence than pursuing a civil case:

- *“I would say a criminal case is worst as the courts are much less intimidating in civil cases.”*
- *“Criminal – the nature and procedure of the case/hearings... it is more unpleasant for the victim.”*
- *“Criminal case due to higher burden of proof and more likely the respondent will be sent to prison.”*

One solicitor thought that both cases were equally hard on victims of domestic violence:

- *“Equally. They have reached an all time low if they have phoned the police or gone to see a solicitor. That is the tip of the iceberg.”*

Only one solicitor thought that the civil case would be harder:

- *“I do not deal with criminal cases so I can’t make an effective comparison except to say that with civil cases the onus is more on the client to take the case forward.”*

These comments illustrate the difficult legal process faced by victims of domestic violence, whether they seek relief in criminal and/or civil courts. Solicitors recognize the unpleasantness and intimidation that victims undergo as a result of their participation in court.

The Civil/Criminal Interface

Three of the five solicitors stated that would be an unusual situation to have cases proceeding simultaneously in the civil and criminal courts due to issues related to funding:

- *“This is unlikely to happen because of police pursuing the matter; Legal Aid will not be granted to pursue a civil claim because the victim is protected by bail conditions [granted by the criminal court].”*
- *“Unlikely to have public funding granted for civil case to run simultaneously with criminal case, plus the civil judge is more likely to defer to sanction of criminal court.”*
- *“You would not have that position very often as legal funding will not be available if a criminal case is running. The civil case would usually be put on the back burner.”*

The other two had the following comments:

- *“There is usually a delay in concluding the civil case if the criminal case is on-going, as the result of the criminal case can have a direct impact on the civil case.”*
- *“Overlap and sometimes the left hand not knowing what the right hand is doing.”*

In general, it is apparent that there are many hurdles facing a victim of domestic violence who might need both criminal sanctions and civil remedies for her situation.

Perceived Benefits of a Combined Civil/Criminal Court

The majority of the responding solicitors (3 of the 5) did think there would be benefits from a combined court:

- *“Yes – it would mean that victim would only have one set of proceedings which would cut down on the amount of court attendances and having to repeat everything for two judges.”*
- *“Yes – to avoid overlap.”*
- *“Family court is the way forward.”*

The other two solicitors did not think there would be any benefit, one giving a reason as the different burden of proof required in the two courts.

In conclusion, it appears the solicitors participating on the WSU rota scheme (and also FAlnS) recognize the unique difficulties facing victims of domestic violence who are involved in either criminal or civil matters (or both), including: the limits of occupation orders; financial constraints; unpleasant experiences at court; and the lack of coordination between civil and criminal justice.

Conclusions

This research reminds us – in the midst of so many new initiatives and targets to improve the criminal justice system – that the civil law provides a vital element of any holistic approach to tackling domestic violence. Victims who do not have access to civil justice are extremely disadvantaged when it comes to finding remedies and solutions to their situations. Other research has shown that what the majority of victims (80%) want from outside intervention is to be safe, but they have different ideas about how this might be achieved, and only a fraction link criminal justice involvement to enhanced safety

(Robinson, 2005). Thus, civil justice is a key feature of a coordinated response to domestic violence.

There was much evidence of good practice in Cardiff that would benefit victims of domestic violence living elsewhere in Britain. In particular, the WSU rota scheme, offering free legal advice to victims within the safe and supportive environment of the WSU, provides a valuable service. However just as important is having a core group of specialist trained and dedicated solicitors who have established links with the local advocacy organization (in this case, the WSU). As advocacy services continue to expand and develop in Britain, it is important that these relationships are formed. Without good legal representation, domestic violence victims are embarking on a difficult journey made even more difficult.

Civil remedies, such as occupation or non-molestation orders, did help victims to feel safer, and did seem to work in terms of deterring any further abuse. However it was clear that without a power of arrest, such orders were rendered ineffective. In addition, the feasibility of having a victim and perpetrator continue to live under the same roof (albeit in separate rooms as stated in a court order) also was made apparent by respondents in this study (victims, advocates and solicitors). Further research is needed to investigate the uptake and utility of various types of civil remedies (e.g., occupation orders, non-molestation orders, and exclusion orders). Which orders are most effective at deterring future abuse and under what circumstances should the various types be used? Should all civil orders come with a power of arrest?

Another issue raised by this research is the financial implications for victims of domestic violence seeking civil remedies. While the WSU rota scheme goes some way towards improving their access to free legal advice, it is limited to the initial consultation. Furthermore, the issue of Legal Aid not being available whilst a criminal case is underway is a detrimental bureaucratic arrangement that makes economically-challenged victims more vulnerable, and subjected to a lengthier legal ordeal than those victims with means. Thus, as the system currently operates, it disadvantages people based on their financial situation. One partial way around this would be to provide all civil injunctions free of cost when the case involves domestic violence. Access to civil justice needs to be dependent on need and safety issues, not wealth.

This research found that victims typically had negative experiences at court, even if they were satisfied with the outcome of the case. They often felt unsafe and intimidated by the prospect of going to court, and the facilities themselves could exacerbate these feelings. As Herman (2005, p. 574) rightly noted:

- *“If one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law.”*

More needs to be done to help victims feel safer when pursuing a case in the civil courts. For example, one victim recommended that a police officer be

present in all civil matters where there has been domestic violence, as would be the case in criminal court. The feasibility of this initiative should be explored.

One area where there was disappointment and confusion was in regards to child contact disputes. Echoing the inspection of CAFCASS and the family courts, victims in this study perceived that safety was a secondary consideration to the main priority of granting access to children. Many felt that judges were “pro-father” and wanted to provide “any access rather than no access” despite evidence of domestic violence, poor parenting skills, drug use, etc. The women consulted for this study were worried about their children’s safety but felt that the system was designed to keep fathers involved rather than to keep people safe.

The advocacy provided by the WSU was universally praised by the victims and they attributed the support they received to their being able to endure a lengthy legal process. Furthermore, in terms of any ‘interface’ between the criminal and civil courts it is very apparent that without the WSU there would be no civil/criminal interface in Cardiff. The advocate supporting the victim is the only conduit by which information about civil proceedings travels to judges or magistrates in criminal court, and information about criminal matters is heard by judges in civil court. Without the advocacy provided by the WSU, it would be impossible for decisions to be made based on ‘the whole story’, as one victim put it.

Not surprisingly, the majority of respondents felt that a combined civil/criminal court would have many benefits. For example, such a court would prevent the repetition and overlap from having two jurisdictions hear the same or similar facts. Aside from any logistical convenience, it also seems clear that such a court would provide a locus for multi-agency working and service provision to victims, in the same way as SDVCs. Information-sharing between the criminal and civil courts is vital because the lives of both adults and children potentially hang in the balance. As Jan Pickles, OBE, Director of the WSU explained:

- *“In domestic violence cases there is an artificial divide between criminal and civil courts which is bureaucratically neat but fails victims and their children. Safety can only be achieved when victims have access to both forms of justice.”*

Furthermore, keeping victims engaged by having a streamlined, integrated, and effective legal system will pay dividends both in the short and long-term. As the Government seeks to ‘narrow the justice gap’ and ‘bring more perpetrators to justice’ it must address (and develop) the contribution that can be made by linking civil with criminal justice.

Recommendations

Several recommendations arise from this exploratory study:

- 1) Examine ways to make victims feel safer in civil court.
- 2) Continue expanding the access that victims have to civil justice (e.g., the WSU rota scheme).
- 3) Ensure that victims from black or minority ethnic communities also have the necessary assistance to successfully obtain civil remedies.
- 4) Maintain close links between advocacy organizations and specialist local solicitors.
- 5) Conduct further research into civil protection orders and their effectiveness (with and without POA).
- 6) Shift the top priority in family proceedings away from 'contact at any cost' to the safety of both children and adults.
- 7) Investigate ways to overcome the barriers to civil justice imposed by financial considerations.
- 8) Investigate ways to promote and formalize the interface between civil and criminal courts so that victims of domestic violence are not disadvantaged.

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Appendix A: Victim Interview

1. Are you currently involved in a civil case against your partner?

(please describe)

Date case began (dd/mm/yy): _____/_____/_____

Date case ended (dd/mm/yy): _____/_____/_____

In which court was the case heard?

1a. Have you ever applied for an occupation or non-molestation order against your partner?

If no, why not?

If yes, did it help you feel safer? Why or why not? Was it ever breached?

2. What has your experience been of the case thus far?

(positive or negative, very time consuming, expensive, hard on children, etc.)

2a. How did you come by your solicitor? (e.g., WSU rota?)

2b. Have you been pleased with how they have performed?

3. How many judges have been involved in your case? _____

Describe your feelings on this:

(how does it impact on consistency, ideas about 'one family one judge', etc.)

4. What do you want to result from these civil proceedings?

(divorce, child custody/contact arrangements, etc.)

5. How did having support from WSU help you through civil proceedings? How could it have been improved?

6. Outcome of case:

7. Was this outcome what you expected? Why or why not?

8. Are you satisfied with this outcome? ? yes ? no ? unsure
Why or why not?

9. Did you have both a civil and criminal case proceeding in the courts at the same time? ? yes ? no ? unsure

*If yes, why did you choose to pursue both?
(e.g., what is different about having criminal and civil remedies?)*

**10. Was the civil judge aware of the criminal case?? yes ? no ? unsure
Do you feel this impacted how the civil case went? ? yes ? no ? unsure**

Describe how:

**11. Was the criminal judge aware of the civil case? ? yes ? no ? unsure
Do you feel this impacted how the criminal case went? yes ? no ? nsure**

Describe how:

**12. Was there contact between the CPS and your civil lawyer? ? yes ?
no ? unsure
Do you feel this impacted how either case went? ? yes ? no ? unsure**

Describe how:

**13. Do you think it is easy or feasible for most women to undertake a
civil case against their partner? ? yes ? no ? unsure**

Why or why not?

**14. What are the particular challenges you would face (or did face) in
pursuing a civil case?**

**15. Do you think it is harder for women who have experienced domestic
violence to go through with a civil case or a criminal case?**

? criminal ? civil ? both equally

Please explain:

16. What could be improved about the civil justice system?

17. Are the same improvements needed in the criminal justice system?

? yes ? no *Please explain:*

**17a. Do you think having a combined (civil/criminal) court would help
families who are experiencing domestic violence? *Why or why not?***

18. Any other information or views on civil proceedings:

Appendix B: Advocate Interview

What is the proportion of women coming to the WSU needing civil services?

What type of civil proceedings is most common?

What are the challenges that women who are experiencing domestic violence face by pursuing civil justice? *Are these exacerbated by having children, being poor, being BME?*

Do you think it is easy or feasible for most women to undertake a civil case against their partner? *Why or why not?*

Do you think it is harder for women who have experienced domestic violence to go through with a civil case or a criminal case? *Explain:*

What are the problems about having both a civil and criminal case proceeding in the courts at the same time?

What would be the benefits from integrating civil and criminal justice? *Do you think having a combined (civil/criminal) court would help families who are experiencing domestic violence? In what ways?*

**What is your perception of the judges handling civil cases in Cardiff?
Have you noticed a difference since their training?**

On average, do you think civil judges are aware of criminal cases? *Why or why not?*

On average, do you think criminal judges are aware of civil cases? *Why or why not?*

Do you think a judge or magistrate **MUST know about both types of cases in order to make good rulings? *Why or why not?***

What is the most important way that WSU helps victims who are going through civil proceedings? How could it be improved?

Do you think most victims are satisfied with the outcomes of civil cases? *Why or why not? Can you think of examples of a good versus a bad outcome?*

What could be improved about the civil justice system?

**Are the same improvements needed in the criminal justice system?
*Please explain:***

Any other information or views on civil proceedings:

Appendix C: Solicitor Survey

Do victims of domestic violence have any unique difficulties pursuing civil cases against their partners? *Please explain.*

Do you think civil protection orders (e.g., occupation or non-molestation) are effective ways of protecting victims of domestic violence? *Why or why not?*

Do you think it is harder for women who have experienced domestic violence to go through with a CIVIL case or a CRIMINAL case? *Please explain.*

What are the problems with having both a civil and criminal case proceeding in the courts at the same time? *Please explain.*

Would there be any benefits of hearing both civil and criminal cases in one court, when there is domestic violence? *Please explain.*

From your experience, can you give one example where a victim of domestic violence obtained a 'good result' to her case?

From your experience, can you give one example where a victim of domestic violence obtained a 'bad result' to her case?