

Domestic Violence: Making it through the Criminal Justice System

The research was commissioned by the Northern Rock Foundation to examine attrition (or 'drop out') in domestic violence cases entering the Criminal Justice System across the Northumbria Police Force area. The research, carried out by Prof. Marianne Hester, Prof. Jalna Hanmer, Susan Coulson, Maria Morahan & Amina Razak, sought to identify points of attrition, how these relate to the experiences of victims, and the perspectives and practice of the police, prosecutors, the courts and non-criminal justice agencies. *The research found that:*

Three-quarters of incidents with a power of arrest attached led to arrest
Less than a third of arrests led to criminal charges.

Positive policing was more likely to result in higher levels of arrests and a greater proportion of criminal charges.

Attrition through the courts was especially marked in the district that emphasised positive policing.

Contact between children and alleged offenders was likely to lead to more lenient outcomes, whether bail conditions or sentences.

Domestic violence situations varied greatly, and the police and courts were more competent in dealing with the less entrenched situations.

Court outcomes did not stop chronic offenders from continuing their violence and harassment.

Background

In recent years a number of changes aimed at reducing attrition and improving the protection of victims of domestic violence have been made in relation to the Criminal Justice System. The Women's Unit of the Cabinet Office has cited as a key goal '... reducing attrition in the prosecution process' (Cabinet Office, 1999:11). The revised Home Office *Circular 19/2000*, aimed at the police, emphasises positive policing, including focus on arrest and enhanced evidence gathering. The Crown Prosecution Service has received new *Guidance on Prosecuting Cases of Domestic Violence* (CPS, 2001) emphasising the construction of cases, where possible, on evidence other than that of the victim, and use of section 23(3)b of the Criminal

Justice Act 1988 which enables cases to be presented in court when the victim is unwilling or unable to appear to provide oral evidence. The *Protection from Harassment Act 1997* has criminalised the more psychological aspects of domestic violence and also links criminal and civil remedies. Criminal justice and other agencies have also been encouraged to increase partnership working, to support and provide safety for victims (Home Office, 2000). Despite these changes, victims of domestic violence and agencies concerned with their support have continued to report and express concern regarding attrition in domestic violence cases entering the criminal justice system in the Northumbria Police Force area.

The research

The research was carried out across the North East, focusing on an inner city area (Newcastle West), a coastal town area (South Tyneside) and a rural area (North Northumberland). Both South Tyneside and Newcastle West have a range of services available to victims of domestic violence including access to refuge provision. For women experiencing domestic violence in North Northumberland services are fewer and less accessible due to the distances involved, and there is no refuge.

In April 2001, Northumbria Police introduced a computer-based system for recording and linking domestic violence incidents across all police districts, as well as a routine approach to risk assessment. The existence of this force-wide approach created a unique opportunity to carry out direct comparisons across police districts. A detailed database of police practice was established, consisting of 291 intimate partner domestic violence incidents reported to the police in the 3 areas during 3 separate months and involving a power of arrest (PoA). This was complemented by interviews with 26 police officers and civilian staff. The perspectives and experiences of victims were obtained via interviews with 74 victims – 51 (50 women and 1 man) contacted via the police, and a further 23 female victims accessed via non-criminal justice agencies. To investigate attrition in relation to the prosecution process, detailed analysis of CPS case files was carried out for 12 cases from the 73-victim sample. Court observations took place in both Magistrates and Crown Court with the research team being given access to the case files and CPS barristers. Interviews were carried out with the CPS domestic violence co-ordinators for the three areas and with defence solicitors. The views of non-criminal justice agencies with regard to attrition were ascertained via interviews with staff from 30 agencies across the three areas.

Policing

Across the sample period a total of 869 domestic violence incidents were recorded by the police, of which a third were deemed to have a power of arrest (33.5%). The number of incidents varied considerably across the three areas. North Northumberland had the smallest proportion of incidents recorded per head of population although a relatively higher number with power of arrest. South Tyneside had the smallest number of incidents recorded as crimes.

Three-quarters of incidents with power of arrest led to arrest, the highest rate being in Newcastle West and the lowest in South Tyneside. This reflects different district policing policies. Newcastle West has placed the greatest emphasis on 'positive policing' with arrest, especially for assault or criminal damage, regarded as positive action. Police charges showed a similar, if more depressing, picture with a high rate of attrition. Newcastle West had the highest proportion of criminal charges resulting from arrest, with over a third charged. In South Tyneside just over a fifth of those arrested were charged with a criminal offence, and in North Northumberland the level was only marginally higher. The rate of attrition in Newcastle West thus stands out as being much lower, even if nearly two-thirds of those arrested did not result in police charges. The figures across the areas are nonetheless similar to those found in the Thames Valley, before the implementation of *Circular 19/2000* (Hoyle, 1998).

Alleged offenders not charged with a criminal offence were much more likely to be common law released in North Northumberland (48.6% of incidents with PoA) and South Tyneside (41.1%) than in Newcastle West (31.3%). Taking 'no further action' was also used to the greatest extent in North Northumberland, although the number of cases was small overall.

As has been found elsewhere, in the North East the police saw arrest for Breach of the Peace as a positive action in situations where the victim did not want the offender to be charged or where a criminal offence could not be pursued. In almost a third of these the victim refused to give a statement. In South Tyneside nearly a quarter of arrests were

for Breach of the Peace (22.5%), in Newcastle West one in ten (10.7%), with only one instance in North Northumberland. What stands out is that all but one of these arrests in South Tyneside also resulted in a police charge (and eventual prosecution) related to Breach of the Peace. In North Northumberland there was no such charge, and only half of such arrests resulted in charges in Newcastle West. Thus South Tyneside police, while not pursuing criminal offences, were using Breach of the Peace as an alternative means of initiating prosecution of domestic violence offenders.

Overall a picture emerges of domestic violence cases as more likely to be 'managed' through different strategies: In North Northumberland through a combination of arrest and release, rather than cases being taken forward through the criminal justice system. In South Tyneside domestic violence cases were more likely to be pursued via Breach of the Peace than in the other areas. Police practice in Newcastle West followed most closely the 'positive policing' approach, by pursuing criminal charges and avoiding common law release.

Those who were victimised were considered by the police as key to attrition. Without the woman's support or co-operation by providing a statement, there was little chance of a prosecution being secured under the present system. Women who refused to give statements were most likely to have children. Nonetheless, charges were still pursued in 14 instances where statements were refused, and only one of these cases was discontinued. The extent to which officers would follow up a statement varied, however, both between areas and between individuals. In interviews women said that they would have pursued charges if contacted again by the police a few weeks later - as did happen in some instances.

Discussions with prosecutors and analysis of court data revealed that photographic evidence in particular made it more likely that a guilty plea and/or successful conviction would result. According to the police's own data, enhanced evidence was only rarely collected. There were only 3 instances recorded of photographs being taken, all in Newcastle West, although interviews with victims suggested that photographs were taken in a few more instances. The extent to which other evidence, such as interviews with neighbours or use of CCTV footage, was followed up appeared to depend to some extent on what was requested by the CPS.

Many officers felt that the civil courts had more powers, particularly in relation to injunctions with a power of arrest attached, although in the sample period there were no arrests or charges related to breach of injunctions.

Prosecution and conviction

Of the 869 domestic violence incidents recorded by the police during the sample period, only 3.6% (n=31) resulted in conviction for criminal offences, mostly fines. There were only 4 custodial sentences, 2 in South Tyneside (s.39 & harassment) and 2 in Newcastle West (criminal damage combined with assaulting a police officer & affray). There were a further 24 bind-overs (of 23 men and one woman) resulting from charges of Breach of the Peace - largely in South Tyneside - as well as 5 male offenders fined and one conditionally discharged for being drunk and disorderly. At least 70% of those charged were repeat offenders.

Given the particular emphasis on positive policing and a higher level of charges for criminal offences in Newcastle West, it might be expected that there would also be a higher level of sentencing in this area. However, this was not the case. In both North Northumberland and Newcastle West about a fifth of those arrested were eventually sentenced. In South Tyneside the proportion was nearer a tenth, again reflecting the greater use of Breach of the Peace rather than criminal charges in this area. Attrition was therefore especially marked with respect to cases dealt with by the courts in Newcastle. Newcastle West was the only area to prosecute for affray, threats to kill and grievous

bodily harm, and had a higher number of charges with regard to criminal damage and harassment. Across all these charges in Newcastle, less than half resulted in sentences, and of the remainder, most resulted in dismissal.

Prosecutors cited retraction of statements, as well as parties being back together or wanting to make arrangements for the children, as the main grounds for attrition. In a few instances those being victimised were summonsed in Crown Court trials when there were no alternative witnesses, although none in our sample were compelled to attend. Of the 3 instances where women withdrew their statements, one case was discontinued by the CPS and in the remaining cases the prosecution went ahead, and obtained convictions, on reduced charges. Two of these retractions resulted from pressure on or intimidation of victims by offenders.

Victim impact statements were used in a few instances, and to good effect. However, few police officers had knowledge of victim impact statements, it was not known how consistently these statements were used across the force, and only a couple of the officers knew of any occasions when they had been used by themselves or others.

Court observation and case analysis revealed that reference to contact between children and alleged offenders was likely to lead to more lenient outcomes, whether bail conditions or sentences. The research indicated that there needed to be a closer relationship between civil and criminal procedures in this respect.

The victim perspective

The women interviewed highlighted the positive shift in policing that had taken place in recent years, from officers seeing incidents as merely 'domestics' to taking incidents seriously and regarding them as crimes. However, the women felt particularly let down by the court process and the frequently inadequate outcomes. They were generally bewildered and shocked by the plea bargaining and lowering of sentences that tended to take place in court. None the less, many of the women felt stronger because of having taken the cases through the courts and thus having 'stood up to' their (ex) partners. In some instances this meant the men were less likely to be violent again.

Support for the women was crucial to enable them to go through with the court process. The Victim Support schemes in some of the courts were seen as providing this function, but a much wider range of individuals and agencies also provided this support including the police, solicitors, other agencies and relatives. The police were especially singled out as providing essential support leading up to and during court cases. The research indicated that further development of multi-agency partnerships between a wide range of agencies, including the CJS and health, was needed in the 3 localities to support women through the criminal justice system and to deal with chronic offenders. Less than a fifth of the victims had agreed to be referred to Victim Support, and less than a tenth to women's agencies.

Two main categories of need emerged:

For the immediate violence to be stopped and the situation to be calmed down:

The women in this category tended to be satisfied with the police intervention because the police had arrived quickly, because they had been effective in calming the man down, and/or had separated the two of them. Where charges were pursued these tended to have a positive impact on the offenders.

Longer term protection and measures put in place to ensure the violence does not continue:

The women in this category were more likely to be dissatisfied, especially with the court process. The fines and bind-overs, or short custodial sentences, did not stop the men continuing their violence and harassment in the longer term. Feeling safe as a result of the court outcome was very important if women were to contemplate pursuing a case again.

Some would also have welcomed a prosecution brought entirely by the police.

Interim Recommendations

Enhanced evidence, especially photographs, needs to be collected more routinely

A more systematic approach to repeat offenders is needed throughout the CJS.

A specific offence of domestic violence would overcome the anomaly of common assault not having a power of arrest attached.

Further development of partnerships between the CJS, health and other agencies is needed to deal with chronic offenders and vulnerable witnesses.

There needs to be a closer relationship between civil and criminal procedures with regard to arrangements for children.

The researchers want to thank the many people who made this research possible.

For further details of the research contact marianne.hester@sunderland.ac.uk