



The Domestic Violence Bill and Family Breakdown

A discussion paper on the unintentional consequences of the
Domestic Violence, Crime and Victims Bill

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Forward

Fathers-4-justice is a civil rights group campaigning for a child's right to be parented by both parents and provides support for men and women who are going through the trauma of separation.

The group was created in 2003 and comprises some 6000 mums, dads, grandparents and extended family members.

Because of the nature of the organisation our primary concern in producing this briefing paper is to consider the impact of the Domestic Violence, Crime and Victims Bill when applied in the context of family breakdown and particularly its impact on children through the application and mis-application of this legislation.

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A family in transition – a scenario

Sue and Dave are becoming a statistic – one of the 160,000 couples each year who suffer a marital breakdown. The couple have tried to keep their break-up amicable for the sake of their children, Sally (6) and Daniel (8), but recently the pressure has started to take its toll.

While both parties acknowledge the marriage is coming to an end, they cannot agree on one crucial point – which of them should move out of the marital home. Sue consults a solicitor who explains that she cannot force Dave to leave his home and children, unless he is emotionally or physically abusive.

That night, Dave and Sue find themselves – not for the first time – arguing about who should move out. With both tired and emotional the argument becomes heated, there is a loud smash and a concerned neighbour calls the police.

When the police arrive Sue answers the door. She is clearly shaken and dishevelled although she doesn't appear to need medical attention. She tells the police that Dave attacked her. Dave is in the living room clearing away the remains of a broken glass coffee table. He is arrested and later charged, despite protesting his innocence.

Let's consider a spectrum of scenarios that may have led the couple to this point:

1. Sue is a women victim of Family Violence. She and her children have suffered at the hands of Dave over the years. When Sue mentions the solicitors Dave reacts violently and hits her with such force that she smashes into the coffee table. The police arrive and Dave is removed.
2. Dave is one of the 1 in 6 men who are victims of Family Violence. Sally and Daniel are also victims of violent attacks that go beyond "reasonable chastisement." Like the majority of children who suffer physical abuse at the hands of a parent, it is their mother who is the perpetrator. Like most male victims, Dave accepts the abuse and will not leave because he is afraid for his children. Dave's reluctance to move out angers Sue and she flies at Dave in a violent rage breaking the table. The police arrive and Dave is removed.

A family in transition – a scenario (cont'd)

3. Sue and Dave are not violent people. They don't believe in smacking their children. In the past they've always managed to talk through their problems but their marriage is breaking down and both are anxious about the uncertainty of what the future holds. In the heat of verbal argument Sue lashes out, Dave grabs her wrist, Sue slips and crashes into the table. Years later she will insist that Dave pushed her, while Dave will maintain that he was trying to protect himself and when Sue pulled away she slipped. One thing is certain; this is an isolated incident and doesn't reflect on the ability of either Sue or Dave to be good parents. Still, the police arrive and Dave is removed.
4. Sue's trip to her solicitor has made her feel powerless and angry. In the midst of an argument with Dave she smashes the coffee table. When the police arrive she sees an opportunity to get Dave out of the house. She tells the police that she has been attacked and Dave is removed.

The aftermath

Whichever of the above scenarios applies to Sue and Dave one victim is Dave's relationship with his children.

Dave's case will take six months to come to trial.

In that time he will be removed from his home, become the subject of a non-molestation order made because of the charge and have been prevented from seeing his children.

In such circumstances, it is common for children to become alienated from their father. After all, they have seen him led away by the police. They may be told that he has hurt mummy and, in the absence of contrary information, they will feel that he has abandoned them for six months.

Of course, if Dave is a perpetrator of domestic violence, it may be that his children are better off without him but if he is an innocent decent parent the children will be at risk of lasting emotional harm through the loss of his fundamental influence on their lives and if mum is the perpetrator, well the children are left without protection.

Risks associated with the Domestic Violence Bill

Fathers-4-justice welcomes the focus on all aspects of Family Violence that this Bill brings and the wider drive to set aside the view that violence in the home can be dismissed as “just a domestic”.

However, there is another side to the ‘DV’ coin that receives almost no attention.

While there has been a step-change in opinion making it socially unacceptable for a man to hit a woman there has been no corresponding effort to make it unacceptable to use a false allegation to subvert a parent/child relationship.

On the contrary, it is socially acceptable to make a false allegation within divorce proceedings. Conduct which in any other circumstances would be considered a serious crime, is routinely passed off as understandable at an emotionally-charged time: *‘it was a difficult time’, ‘no harm done’, ‘it’s natural for a woman to say anything to try to keep the children’.*

Yet, at the same time, 100 children every day are losing the fundamental bond with one of their parents. This severance marks the start of journey for the child that can so easily end in personal and social disaster – low attainment at school - drug abuse – teenage pregnancy – crime.

So what has this got to do with the Domestic Violence Bill? Well, put in the context of a relationship breakdown, the Bill at its lowest places a weapon in the hands of a partner without surety that it will be used responsibly. And, as our example shows, at its highest the Bill provides a presumptive framework of guilt.

In short, many decent people trying to be decent parents will become criminalised as a result of this Bill. Fathers-4-Justice calls for amendment to the Bill to provide safeguards against the misuse of this law.

The Bill must have an objective of making **both** Domestic Violence **and** falsely alleging Domestic Violence socially unacceptable.

Are false allegations really a problem?

The personal and social value of parent/child relationships will naturally make Parliament alert to the risk of good parent/child relationships being subverted. But is there real cause for concern?

Well, you would be hard pressed to find a more fertile proving ground for false allegations than our Family Justice System which is widely accepted by families, legal practitioners and senior judges to be failing children and families.

The adversarial nature of the Family Court automatically pitches wife against husband, father against mother whilst at the same time expecting everyone to act at their most reasonable at a time when the emotions, fears and uncertainties of the moment make them least able to do so.

With 120,000 divorces involving children each year and 40% resulting in contested proceedings the scale of the problem is easy to see.

Human nature also plays a part. In 1998, the Department of Social Security's Children First report found that approaching half of all resident parents admitted to using their children as weapons against their former partner. The all-party group looking into abuse investigations has also taken a considerable body of evidence regarding the role that false allegations play in relationship breakdown.

Where do problems start? The Family Court

The Bill at s1. amends Part 4 of the Family Law Act 1996 to make the breach of a non-molestation order a criminal offence punishable by up to 5 years in prison.

To understand the implications of this clause one must look at the existing provision of the Family Law Act which at s.42(2)(b) provides the Court the means to make a non-molestation order:

“in any family proceedings if the court considers that it would be for the benefit of any party or relevant child”

Family Law Act 1996 s42(2)(b)

Such orders are typical in family proceedings.

The rationale for making a non-molestation order does not have to be evidentially based. Judicial chivalry as a matter of routine interposes to make such orders simply to give a resident parent 'peace of mind'.

What this means in practice is that it is common for a non-molestation order to be used to stop a decent parent doing something entirely normal such as sending an innocuous birthday card to their child on her birthday.

Questions arising

Section 1.1 of the DVCV Bill raises the following questions:

1. Should the breach of an order made to mollify one party to family proceedings be considered a penal offence?
2. Where would the burden of proof lie in proceedings brought under s1.1?
3. What standard of proof would be applied?
4. Would proceedings leading to conviction for the breach of a non-molestation order be held in open Court?
5. Would evidence of how a non-molestation order came to be made be relevant to proceedings considering any possible breach?

Where do problems start? Protection from Harassment Act

The provisions of the Protection from Harassment Act 1997 have become routine tools to eliminate one parent during divorce proceedings.

In a similar vane to the use of non-molestation orders during relationship breakdown, it is common for a party to be accused of harassment on quite trivial grounds such as telephoning the children or on uncorroborated grounds.

The amendment to s5 of the PHA 1997 at s8(1) of the Bill would create the same set of anomalies as expounded upon earlier, that:

- normal and reasonable behaviour would be criminalised
- one found innocent to a criminal standard of proof could be convicted on the basis of findings made on the balance of probabilities
- the Act could be abused to stop a parent from being a parent to his child

Where do problems start?

Guilty until proven innocent

A risk arises through this legislation of a presumptive framework of guilt being created around Family Violence cases.

Empirical evidence shows that false accusations are routinely used to reduce parenting time and parental influence.

Allegations that are levelled against fathers are routinely believed without cogent supporting evidence and often result in an unwarranted reduction in the father's scope to parent his children. Whilst a malicious allegation arguably amounts to Domestic Violence, courts routinely turn a blind eye. At the same time, the anomalous situation exists that while it is socially unacceptable for a man to hit a woman it remains acceptable for a woman to hit a man.

These are poor auguries for balanced and well executed social legislation.

In short, for the Bill to reach its objectives parity and equality must provide central underpinning both in legislation but also in practice

The evidence of a presumptive framework against male innocence in Family Violence cases has already been touched upon in our Dave & Sue scenario and is demonstrated in practice by the majority of police forces already operating a policy of arresting the man at domestic incidents irrespective of where the blame lay or who reported the incident.

This policy can lead to a chain reaction of unintentional events:

- the man automatically becomes the accused
- is immediately taken away from his children – possessions – home
- arrest provides a cogent reason for a non-molestation order
- any prospect of a Residence Order in favour of the father is lost
- CAFCASS will decline to recommend direct contact until the matter is tried
- the delay in the matter coming to trial will harm the parent/child relationship
- a person found innocent is removed from his children – possessions - home

S7(1) of the Bill making assault an arrestable offence would contribute to make the above scenario worse. Arguably, acrimony within Family Proceedings would worsen with the likelihood of an increase in contested cases. Without due consideration of the child's interests, many children would be adversely affected.

Child Protection Concerns

All decent parents want their children to grow up safely and happily. This is why fathers-4-justice supports any legislation that advances child protection.

In the same way that Society is facing up to the issue of family violence, we need to face up to the fact that violence and abuse whether physical or emotional is not gender exclusive:

- 30 of the 150 people murdered by a partner are men
- 38 of the 76 children killed 'in the family' in '01-'02 were killed by their mum [†]
- The Family Justice System is widely acknowledged to be grappling with an ever increasing number of cases of emotional abuse caused to children by resident parents who stop contact for no good reason or alienate their children against the non-resident parent

Child protection concerns arise from a lack of acknowledgement of these risks and the lack of safeguard to avoid the unwarranted removal of a decent parent.

Back to our family breakdown example set out on pages 3 and 4, while in each case the father was removed from the family home two of the scenarios left the perpetrator of abuse alone with the children.

In short, the key to achieving effective protection against family violence is for the protection system to be founded on the principles of parity and equity.

[†] a further 19 children were killed by a new partner brought into the children's home by the mother – the remaining 19 children were killed by their father

Specific recommendations (1 of 2)

An effective family violence protection system requires the following components:

- a equitable framework that acknowledges abuse irrespective of gender
- support for all victims irrespective of gender
- a fastrack system for cases where child contact would be affected
- effective deterrent against abuse through false allegation
- a family law system that facilitates accord between separating parents

These elements are expanded upon below.

Safeguarding against false allegations

The victim

A person who is maliciously accused of domestic violence is no less a victim than someone who has been beaten by their partner. A child who has an impaired relationship with a parent as the result of a false allegation is also a victim.

F4J calls for the protection of victims of a false allegation in legislation and practice.

Findings of malicious allegations

In proceedings where the accused is found not guilty of an allegation:

1. court should have a duty to find as to whether the allegation was malicious
2. if a child is impacted, a finding of a malicious allegation should act as a trigger to the child being considered as at risk of emotional abuse
3. in these circumstances, the propriety of the accuser's role as a carer for the child should be examined
4. procedures for the rapid reparation of the child/parent relationship should be established
5. a duty placed on appropriate services to execute these procedures to ensure that the harm of child/parent severance is minimised

Specific recommendations (2 of 2)

Fast Justice

Where allegations are made in the context of relationship breakdown and child contact/residence proceedings and where those allegations would impact on a parent/child relationship an early assessment of the prima facie case should be made within a maximum of 14 days.

Miscarriages of Justice Ombudsman

F4J seeks the creation of an Office for the Protection against False Allegations with a remit to monitor the role of the Police and support services' in handling false allegations and with the power to establish appropriate policies and protocols designed to minimise miscarriages resulting from false allegations.

The adversarial system

Beyond the scope of the Bill, F4J calls for reform of the Family Justice system.

F4J believes that the adversarial nature of Family Justice inherently pitches parent against parent, heightening tensions and leading to increased acrimony.

A reformed system that places parents on an equal footing and acknowledges their joint value in bringing up their children would be one of the most progressive moves that Government could make in its fight against domestic violence.

A non-adversarial system would remove the fight from a 'normal' separation by avoiding children becoming the object of dispute. By consequence, workload burden on the System would be substantially reduced - allowing judges, professionals and experts to see the wood from the trees, freeing them to concentrate on the 'hard' cases.

Taking the heat out of separation would also directly contribute to reducing the occurrences of violence that arise through separation disputes.

Such a system would *really* put children's interests first and contribute to cohesive families following parental separation and substantially contribute to the overall Child Protection System.

Domestic Violence, Crime and Victims Bill

Proposed Amendments

- 1) A person who states to an appropriate person that —
 - (a) a child has been or is being assaulted, ill-treated, neglected or sexually abused, or
 - (b) a child's health, development or welfare has been or is being avoidably impaired or neglected,knowing or believing that statement to be false shall be guilty of an offence.
- 2) A person who states to an appropriate person that he has been assaulted, ill-treated, neglected or sexually abused within a domestic relationship knowing or believing that statement to be false shall be guilty of an offence.
- 3) Sections 4 and 5 shall apply where a person is found guilty of an offence under section (1) or (2) and where that person is a carer of a child and where the false allegation might reasonably have led to a curtailment or restriction of the relationship between a child and the accused person or persons.
- 4) A court shall give consideration as to whether:
 - a. the child's name should be placed on the Child Protection Register, and
 - b. it is in the child's interest for a Residence Order to be made with regard to that child and any other person with parental responsibility for the child
- 5) Where a Residence Order exists stating that a child should reside with that person a court shall give consideration as to whether it is in the child's best interest for that Residence Order to remain in place or a new Residence Order made with regard to that child and any other person with parental responsibility for the child.
- 6) For the purposes of s(4) and s(5), in determining the best interest of a child the Court shall give weight to the harm that may arise or has arisen to the child from the actions of the person guilty of the said offence and give reasons for any decision made.

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