

Domestic violence: Looking to the future Dame Elizabeth Butler-Sloss DBE, President of the Family Division: Part of the Millennium Lecture Series

Introduction

It is becoming increasingly accepted that violence within the family is no longer a purely 'domestic' issue. It is a problem which belongs to society as a whole, and which should properly be the subject of debate and co-operation between health, policy and legal professionals, and I am therefore pleased to see such a breadth of representation in the audience this evening.

[Top](#)

Domestic Violence: What is it?

It is actually quite difficult to draw neat lines around a definition of domestic violence. Violence in the home may, for example, include violence perpetrated by teenage children against their parents or even grandparents, or indeed in any other form of relationship within family. For the purposes of this evening I will concentrate on the most usual form, being violence inflicted by one partner or former partner against the other. The vast majority of victims are women, although it must be said that there is significant violence committed by a minority of women against men. One in four women will be a victim of domestic violence at some time in their lives; for men, the figure is one in six.

The term 'domestic violence' covers a wide range of unacceptable behaviour within the family and may take many forms. Violence can take the form of emotional or psychological abuse as well as physical assault. Indirect violence (threats, verbal abuse and denigration) may, in certain cases, be as detrimental as actual violence.

Those who commit violence on a partner or other member of the family may come from any stratum of society. They may be your next-door neighbours. We cannot sweep this sort of violence away by conveniently labelling it as belonging only to socially deprived sectors of society. Perpetrators of this kind of violence may be from such sectors, but often are not.

[Top](#)

Prevalence

We do know that family violence is all too common. The reported figures reflect but a fraction of the real picture. Many victims do not go to the police and do not disclose the violence to their general practitioners. Their reluctance to do so may be due to fear of repercussions, or stigmatisation, or feelings of shame. It is also true that a significant number of women, having made a complaint to the police then withdraw their complaint, often on the day of the hearing. The withdrawal of the proceedings is not a fair indication of the seriousness of the assaults but may be the result of other factors, including pressure from the other partner, or recognition of the difficulties for the complainant and her children flowing from the outcome of the hearing.

Even so, an incident of domestic violence is reported to the police every minute. Domestic violence accounts for nearly one quarter of all recorded crime. On average, 120 women and 30 men are killed every year by a current or former partner. Clearly, whilst social awareness of this issue may have been on the rise, offending rates are still far too high.

[Top](#)

The effects of violence on the family

(i) The Family

Violence within the family may have varying consequences. It does not always prompt a breakdown of the family. Whilst the Family Court sees only those families who have separated, it would be wrong to ignore the fact that many victims and their children may continue to live with violent partners for a significant period of time, sometimes with tragic consequences. They may do so for any number of very complex reasons, including lack of economic freedom or fear of physical retribution. Sadly, the worst violence often occurs when victims, usually women, attempt finally to leave the relationship.

(ii) The Victim

The devastating effects of family violence on adult victims are well recognised. Those effects include physical damage, psychological damage, an impaired ability to function normally (which can include an inability to work), and damage to parenting abilities. These adverse effects can in some cases be short-lived; in many other cases they cause long-term serious harm to a person's ability to function; and in the most serious of cases, they can be life threatening.

(iii) The Children

The effect of family violence on children has traditionally not been as widely recognised. In extreme cases, such as the murder of the mother by the father, the effect upon the children is obvious. Yet until comparatively recently it was widely assumed that unless directly involved in it (for instance, by being injured), children were not seriously affected by violence, or threats of violence, between parents. However, in numerous papers in the last few years, child psychiatrists have recorded the adverse effects upon the children of witnessing assaults and threats.

Even where it occurs in non-violent circumstances, the breakdown of the relationship between parents and the resultant tension within the family is well known to affect children adversely. To witness or to be aware of abuse, threats and actual violence toward the other parent is obviously highly detrimental to children of any age, including the very young.

The Court of Appeal looked at this issue in early 2000, in a case called *Re L*, which related to the issue of contact and domestic violence. That case came shortly after the Children Act Sub-Committee of the Advisory Board on Family Law, chaired by Mr Justice Wall, sent its final Report to the Lord Chancellor on the effect of domestic violence on applications for contact by the non-resident parent. In hearing the appeal in *Re L* we looked at a joint report from two distinguished child psychiatrists, Dr Sturge and Dr Glaser, later published in *Family Law*. We endorsed their report and made it the basis of guidance set out in our judgments.

Doctors Sturge and Glaser's report emphasised that whether as witnesses or as victims, children are affected as much by exposure to violence as by being involved in it. Indeed, there are research findings showing that in very young children, threats to the carer on whom the child is dependent have more serious psychological consequences for the child than attacks on the child themselves.

Violence, whether experienced by the child as an observer or a direct victim, causes immense long-term harm, though of course the extent and duration of that harm depends on the extent of the violence. The harm will often continue to be experienced even when the child is removed from the violent situation. Doctors Sturge and Glaser's report identified a number of ways in which that harm can manifest itself:

- the violence will be accompanied by a general destruction of the family relationships and communication, and the child's mental health and stability is harmed
- the child may experience an ongoing fear and dread of recurrence of the violence
- the child is likely to be aware of the continuing fear aroused in the primary carer by the violent

partner even after the separation, and in observing the fear of their carer may well struggle with issues of loyalty

- the child may continue to be personally afraid of the parent who was violent
- the child may suffer post-traumatic anxieties or symptoms, including persistent memories of the violence, and those symptoms may be perpetuated or exacerbated by the continuing proximity of the violent parent
- the violence may be compounded by the existence of a psychiatric disorder in the violent parent, which in itself will increase the instability of the parent-child relationship
- there will be adverse effects upon the child's own attitudes to violence, to forming parenting relationships and, where it is the father who has been found to be violent, to the role of the father. Research has shown that attitudes in boys have been particularly affected; sadly, the research also suggests that boys who grow up in a home with domestic violence are drastically more likely themselves to become abusers as adults.

(iv) The Aftermath

In most cases, the breakdown of a family does not mean the severing of all relationships between family members. There is usually an ongoing relationship between parents and their children, and there will always be difficult questions as to the best way to facilitate the maintenance and development of those continuing relationships after separation. Where violence has been a factor in the breakdown of the family, those questions become even more difficult.

The Court of Appeal in *Re L*, looking closely at the issue of contact between children and violent non-resident parents, considered that in most cases contact between the child and the non-resident parent is desirable both for the child and for the parent. Even where a separated parent had been violent, it was often not possible to say that the child's best interests would be served by the total and permanent severance of a relationship with that parent. But having said that, cases involving physical or psychological violence to the other parent would be treated as an extremely important factor by the courts when evaluating the child's best interests. We said that there were four main factors requiring specific analysis in every case: first, the extent of the violence; second, the effect upon the primary carer; third, the effect upon the child; and fourth, the ability of the offender to recognise his/her behaviour and attempt to change it.

[Top](#)

The effects of violence on the community

I have concentrated thus far on the effects of family violence on the family itself. I do however want to touch briefly on the wider effects for the broader community. Domestic violence is a social evil with implications for society as a whole. We must acknowledge that serious domestic violence may and usually does cause harm to:

- the wider family such as grandparents
- neighbours, if only for the nuisance element, and
- the community at large

The community, as exemplified by the Government of the day and by local government, provides our legal, health and housing systems. It provides the police who are called on to intervene in these cases; it provides the medical treatment for those injured; it provides us with the publicly funded lawyers who represent the prosecution and often represent the parties in these cases; and it provides the court space, magistrates and judges who hear both criminal and family proceedings including the Family Law Act 1996 non-molestation proceedings, and the magistrates who hear the Protection from Harassment Act proceedings. All of these proceedings are costly to the community in a range of ways, not least financial.

[Top](#)

Causes?

Whilst the reality and effects of family violence are relatively easy to identify, the same cannot be said of its causes. Psychiatric research will tell us that often some form of psychiatric dysfunction in the violent partner is a factor. Depression and delusional disorders may play a role; more serious personality disorders may also be a factor. Professionals from other disciplines may wish to point to other social causative factors, of which there may be many. Difficult as they may be to identify, it is of course vital that we should try to reach a proper understanding of the causes of family violence if we are to have any hope of preventing it.

[Top](#)

Solutions?

The first battle is to increase public awareness. Over the years there have been increasingly successful attempts to raise the profile of violence in the home. Erin Pizzey opened the first women's refuge in Chiswick, West London in 1973. She wrote of her experiences in a book entitled "Shout Quietly or the Neighbours Will Hear". Women's refuges have now opened all over the country, including the national organisation Refuge, which was founded to assist women and children who are victims of violence. I think that the public now have a better general awareness of the issues, helped by initiatives such as Domestic Violence Week, although I do not think we can yet be complacent. Even now, I think society tends to focus on the 'domestic' rather than on the 'violence'. The fact that these crimes occur in the home does not make them any less serious; if anything, it makes them *more* serious by virtue of the abuse of trust involved. We must be absolutely clear in the message the public hears: we cannot shut the door on the home and say it is not 'our business'; violence is violence wherever it takes place.

The Crown Prosecution Service (CPS) has recently adopted a new protocol which provides for a more rigorous practice of proceeding with domestic violence-related prosecutions even where a complainant has withdrawn her statement. I am delighted that the CPS has taken this step. To do so is not without its own difficulties, at least from an evidentiary perspective. It does however go some way to recognising the real difficulties which victims, and particularly female victims, have in dealing with the criminal justice system. Most importantly, it sends a clear signal that we are not prepared to treat these crimes as private concerns: they are offences according to the laws of the state, and the state is entitled to enforce those laws.

I also note the change made to the definition of 'harm' to a child by last year's [Adoption and Children Act](#), which now includes the "impairment suffered from seeing or hearing the ill-treatment of another". This is an important statutory recognition of the effects of violence on children.

The Home Office has now issued the important consultation paper (See related information bottom of this page - Study 276) on domestic violence and the promotion of "safety and justice". The paper has a three-fold approach:

- prevention
- protection and justice, and
- support

The authors of the consultation paper are to be congratulated for giving these three themes equal treatment.

Prevention, through changing deep-seated social attitudes, is integral to finding a way forward, and I am very pleased to see that the consultation paper makes some good suggestions in this respect, particularly in its attention to youth education. One cannot help but be disturbed by the paper's report that 20% of young men and 10% of young women think it is acceptable to hit their partner in certain circumstances, including where a partner has been unfaithful. Reversing these kind of attitudes in our young people is absolutely crucial in effecting social change, and the legal system on its own is quite clearly incapable of bringing about the changes needed. Education is the key: in schools, in popular media, on the television, amongst peer groups and neighbours: the wider the message is spread, the better.

The second theme of **Protection and justice** is equally important. The legal system could undoubtedly be doing better, particularly in the way it treats victims. I welcome the consultation paper's proposals to increase the protection available to victims of domestic violence both during and after the court process. I am particularly interested in the proposals relating to the interface between the civil and criminal courts. It is in my view essential that criminal and civil courts share the relevant information. In setting bail conditions, for example, criminal courts must be made aware of any existing orders which may have been made by a family court, so that inconsistent bail conditions are not made. These proposals to share information involve complex issues relating to the existing Family Proceedings Rules, as well as contempt rules prohibiting publication under both the Administration of Justice Act and the Children Act. It is an issue which will clearly need careful consideration, but it is an exercise which requires to be carried out. Better communication is crucial for protection and the better administration of justice. My office is in discussion with a representative of the CPS looking at a possible protocol for the exchange of information. There are a vast number of other working parties and groups which are currently looking at the topic of information sharing (not all of them specifically related to domestic violence). I would urge, in this area, some 'joined up thinking' to ensure that these groups are working together and not inconsistently. I know that District Judge Marilyn Mornington, who works on Jim Gamble's domestic violence committee, is also concerned about this issue, and I hope that my office might be able to make some progress on it in the near future. The head of the Child Protection Group of the Metropolitan Police has recently written to me about the importance of child protection and the failures of communication and making the link with domestic violence. He is trying to hold a pan-London conference with the hope of establishing a Pan-London agreement on information sharing for the purpose of safeguarding children.

Taking the topic of integration one step further, I would like to say a few words about the duplication of courts with which a victim of domestic violence has to contend in achieving justice and protection. 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. It would certainly make sense for one court to be capable of wearing, so to speak, two hats, thereby avoiding duplication of proceedings. I note the proposal in the consultation paper that the criminal courts should be issuing adequate protection to victims, either by way of adequate bail conditions, or by issuing restraining orders even after an acquittal. I can certainly see the practical advantages to victims in such an arrangement. I do think there are some technical difficulties in the combining of different jurisdictions in this way. One would need to look, for example, at whether the judge would, at the conclusion of the criminal trial, commence the civil case without rerunning the evidence again. The judge would certainly need to be satisfied that there was evidence to justify a conclusion that there was a risk justifying the making of a restraining order. Whether further evidence would be heard after the conclusion of the criminal trial, and whether the defendant would object to the making of an order without it, are issues to be explored further. There is of course an existing parallel in the power of the criminal court to issue a "bind over" [[Endnote 1](#)], but I note that this procedure has itself been under the review of the Law Commission and requires extra procedural safeguards to be implemented before it can be seen as ECHR-compliant.

It is also important to remember that criminal and civil proceedings do not actually involve the same parties. The victim, of course, is not a party in criminal proceedings. If we are to start encouraging victims to rely on the criminal system for protection pre- and post-trial, rather than seeking separate civil orders, we must make sure that the criminal service will provide them with an adequate service. Crucially, how will the criminal court permit them a *voice*? Are they to be given a right of appearance in the criminal proceedings? Are they, at the very least, to have a statutory entitlement to receive notice of hearings, copies of bail conditions, and an opportunity to be represented? Will they be entitled to call evidence? One obvious matter, for example, is the question of evidence of recent conduct which has occurred since the alleged assault. Presently, in committal proceedings for breach of a non-molestation order, this evidence is admissible; presumably in criminal proceedings it would not be. Streamlining the system and avoiding duplication is all very well, but let us make sure that in doing so we do not reduce the quality of service to the very people we are trying to protect.

Another proposed integration of the civil and criminal jurisdictions is seen in the suggestion that the breach

of a civil non-molestation order should become a criminal offence. In principle I see force in this proposal and the important message that it will send. Anything which forces offenders to take more seriously the importance of non-molestation orders and deter their breach is to be supported. I do however have serious reservations about criminalising the breach of orders which are made *ex parte* (without notice), which are made on unchallenged evidence and are rarely challenged even where the respondent is given an opportunity to do so. I therefore see real difficulties in following the Northern Ireland legislation on without notice orders. I also note in passing that the criminal proceedings could presumably be heard by any judge or magistrates with training in criminal law. This would take us away from the requirement in the family courts which is to have all family cases heard by specially trained judges or magistrates.

Whilst on the subject of protection and justice, I must mention the police services around the country. I know that they have in the past few years made a significant effort to throw off the previous public perceptions that they were failing to take domestic violence seriously. The Association of Chief Police Officers, under the guidance of Jim Gamble, has been working hard to ensure that police no longer dismiss crimes as "only a domestic". Domestic violence co-ordinators or specialist units have been set up, and there has been a great deal of police training. I think this is an enormously positive step and I am very impressed by the current police approach to domestic violence.

Whilst on the topic of training, there is a wider issue to be recognised. The legal profession is a specialised and fragmented one. Legal Services Commission franchises are specialised. A criminal practitioner is very unlikely to be well-versed in family law, and vice versa. If we are to see more integration of criminal and civil jurisdictions, we are going to have to make sure that our lawyers are adequately trained. I am not convinced that solicitors need formal accreditation in domestic violence, but I certainly think that lawyers acting in each discipline need cross-disciplinary training.

I also wish to pay tribute to the proposal to provide resources for more supervised contact centres: contact centres provide an invaluable service under extremely difficult circumstances with minimal resources, and I am delighted, as a patron of National Association of Child Contact Centres (NACCC), to acknowledge the Government's welcome initiative in this area.

At the same time as tackling the causes of domestic violence and encouraging its prosecution and deterrence through the legal system, we must also provide adequate **support for victims**. The consultation paper makes a number of proposals in this respect. Those who should be coming forward need to feel safe to make a complaint. I have recently heard of a commendable initiative in several maternity units of hospitals enabling women to seek help without disclosing it to the men who may well have accompanied them to hospital for the birth of the child.

Once the woman has actually told someone what has been happening, then she must be kept safe to carry the case through to court. Building more refuges is an important emergency measure which will no doubt help some victims make the important decision to leave an unsafe environment. Re-housing where possible is another. Many other victims however would prefer to have their life remain intact, with the offender forced to leave the household instead. Whatever arrangements can be made, I worry most about how we can support and protect victims. Above all other considerations, in my experience, victims want to be protected from the consequences of telling what has happened and having the perpetrator in court. Unless he is sent to prison there is a real problem of protection which far outweighs all the other admirable suggestions in the consultation paper.

I am particularly delighted to see in the paper the recognition of the effect on children and the need to support them, particularly in school where they under-achieve and may well truant or offend, and by the support of CAMS. I should mention that there are at the moment serious delays in the ability of CAMS to meet the existing needs of children already referred to them.

I very much welcome the consultation paper and the thoughtful suggestions made in it which acknowledge the importance of close co-operation between the family justice and criminal justice systems.

[Top](#)

Closing comments

Ultimately, domestic violence is a problem with complex causes. Whilst we should continue to punish and deter the crime, we must also be looking to its causes if we are to move forward. This problem belongs to society as a whole: it is not just a legal problem or a health problem or a policing problem, and if we are to move beyond it we must think as broadly as possible, and work together across disciplines, to make it happen.

This lecture series has been about 'looking forward to the new millennium'. Two hundred years ago it was considered entirely lawful for a husband to use force to "chastise" his wife. One hundred and sixty years ago the courts accepted that a husband had the right to "confine or imprison the wife until she rendered conjugal rights".[\[Endnote 2\]](#) In the 1700's and 1800's it was accepted law that a man could not be guilty of raping his wife, since "in marriage [the wife] hath given up her body to her husband".[\[Endnote 3\]](#) It was not in fact until 1992 that the court conclusively abandoned the principle of a husband's immunity from prosecution for rape, having finally recognised that "the common law rule no longer even remotely represents what is the true position of a wife in present day society".[\[Endnote 4\]](#)

Society is in a constant state of reinvention. We have made huge progress in the last couple of centuries, and we must continue to do so. No doubt we will be judged by the generations who follow us. The challenge for us all is to make sure that the legacy we leave them is the best that it can possibly be.

[Top](#)

Endnotes

1. See *Justices of the Peace Act 1968*, s. 1(7): "It is hereby declared that any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring him to enter into his own recognisances or to find sureties or both, and committing him to prison if he does not comply; . . ."
2. *Cochrane's Case* (1840) 8 Dowl. 630.
3. Hale, *History of the Pleas of the Crown* (1736), vol. 1, ch. 58, at p. 629.
4. *R v R* [1992] 1 A.C. 599 at pg 610.

Please note: that speeches published on this website reflect the individual judicial office-holder's personal views, unless otherwise stated.