

Violence in the Home



By Pearl Willis

“These cases are prosecuted not just in the interest of the particular person concerned who has been visited with violence, but in the interests of all of us. In that sense to describe it as ‘domestic violence’ is an unfortunate term—it is violence, just as any other violence and that is the concern of all of us” R v C [2007] EWCA Cri 3463 per Moses LJ

There are a number of Chief Constables of Police Forces who insist on the term ‘Violence in the Home’ to be used rather than ‘Domestic Violence’. As lawyers who have to deal with the victims of these assaults understand only too well, this violence is equal to or worse than any other type of violence.

On 1st July 2007, Sections 1 and 4 of the Domestic Violence Crime and Victims Act 2004 came into force.

Under Section 1 a breach of a non-molestation order became a criminal offence, which is dealt with by the criminal courts.

This means that enforcement of breach of injunctions moved away from the County Court, which has proved itself speedy and firm in dealing with breaches as a contempt of court, to the criminal court. Criminal proceedings are in open court, can be reported by the press and proceedings can be more formal than the County Court.

The hurdles and safeguards of the criminal law will now apply to breaches of injunctions. Many complainants will not wish to bring criminal charges against former partners, some of whom will be the parent of their child and the child may still be having contact with them. There may be family pressures placed upon the complainant not to continue with the prosecution. Moreover, many complainants may consider criminal proceedings and any conviction as a stigma on them and their former partner. It may effect the former partner’s employment or future employment, as convictions have to be disclosed. This could effect CSA payments. It

may effect the former partner’s ability to travel abroad (particularly America) taking the child on a holiday. On the other side of the coin the accused will be placed on bail and some bail will have strict conditions. The breach of bail conditions could end up with a remand in custody. There are now over a 100 specialist criminal courts dealing with violence in the home charges. As a result there is a greater likelihood that the complainant will give evidence against the defendant and a greater percentage of cases resulting in conviction.

However, judges at all levels have expressed disquiet at the change in the law that moves enforcement and punishment from the County Court to the criminal court. In particular it appears that there maybe a reduction in the region of 25% of applications seeking non molestation injunctions from July 2007 to March 2008. Therefore it has been said that the change in the law has led to a reduction in the protection given to victims.

What is clear is that enforcement of breaches of injunctions in the criminal courts is here to stay.

A little over a year ago, the Government stood accused of failing in its pledge to tackle domestic abuse after it emerged that fewer than half of all men ordered to attend specialist programmes aimed at curbing their violent behaviour completed them. In March 2009, the Government responded to such criticisms by launching the largest ever cross-government public consultation on violence against women and girls. The aim is to start a national debate on what more can be done to prevent violence against women, and to challenge the attitudes that condone it.

(continued on page 4)

Inside this issue:

Ancillary relief and financial provision for children	2
Local Authority housing	2
Children—public and private law	3
Practice and In Force Now	3
People in chambers—Araba Taylor	3

Ancillary relief & financial provision for children

The fairness of respecting the terms of a proper pre-nuptial agreement which had been understood and agreed by the parties is the cornerstone of the important Court of Appeal decision in **Radmacher v Granatino** [2009] EWCA Civ 649, Court of Appeal.

At first instance Baron J ordered, amongst other things, a lump sum of £5.5M to the French husband from the wealthy German wife as both a housing and Duxbury fund and periodical payments for the benefit of the children of £35,000pa for each of two children until the youngest completed an undergraduate degree or reached the age of 22.

On appeal the capital provision was overturned on the basis that it did not sufficiently take into account the parties' pre-nuptial agreement which would have been binding in either France or Germany. Thorpe LJ said that the major funds should be provided to him as a father rather than as a former husband, so that the housing fund would only be held for his benefit during the remaining parenting years.

Thorpe LJ observed that, pending the forthcoming Law Commission report, in broadly similar cases, the judge should give due weight to the marital property regime into which the parties had freely entered. This is not to apply foreign law he said, nor is it to

give effect to a contract foreign to English tradition. It is, in his judgment, a legitimate exercise of the very wide discretion that is conferred on the judges to achieve fairness between the parties to the ancillary relief proceedings.

The effect of the current economic climate is not a *Barder* event, according to the Court of Appeal in **Myerson v Myerson** [2009] EWCA Civ 282, CA 1.4.09. The appellant husband sought to appeal an order on the basis that the fall in the value of his shares caused by the present financial crisis constituted a *Barder* event that undermined the basis of the final consent order in which the wife had received a substantial lump sum by installments. The appeal was dismissed by Thorpe LJ on the basis that a natural change in the price of shares did not meet the general principles required. The judge added four other reasons: (1) that the order was the product of the will of the parties leaving the husband capital to keep for himself whatever profits or gains his enterprise would achieve in the years ahead; (2) when a businessman takes a speculative position in compromising his wife's claims, why should the court subsequently relieve him of the consequences of his speculation by re-writing the bargain at his behest? (3) that he continues to enjoy control of the unusual opportunities that

exist for the most astute in a bear market and (4) that, on the facts, the husband's prospects of success were most uncertain.

The question of whether a court could order financial provision for a child to endure beyond the age of majority was the issue in **Re N (A Child)** [2009] EWHC 11, HC 20.1.09. A District Judge's order was for settlement of a lump sum upon the mother for the purpose of buying a house for herself and the child until the child completed full-time education or attained the age of 21, whichever is the later. The wife argued, before Munby J, that 'dependency' is apt to continue beyond the age of 18, it being a "modern phenomenon that children refuse to fly the parental nest in their twenties". Munby J noted that while there is no absolute rule precluding financial provision for an adult child beyond the age of 18, in an ordinary case where there are no exceptional circumstances, the courts should not disregard the general statutory principle (contained in s.1(1) of the Family Law Reform Act 1969) that a child's minority ends when they attain the age of 18. Dependency in the eyes of the law then ceases, absent special circumstances.

Local Authority—housing

The House of Lords has clarified that family courts should not make orders that need public housing assistance to make them effective. In **Holmes-Moorhouse v London Borough of Richmond Upon Thames** [2009] UKHL 7 the father had been granted, by consent, a shared residence order in respect of his three children but also ordered to leave his family home. He had no accommodation so applied to the Local Authority who decided that he was not in priority need.

On appeal the Court of Appeal found that while the Local Authority was not bound by the shared residence order, they should take into account the children's needs in assessing the reasonableness of an expect-

tation that they would live with their father.

On appeal to the House of Lords Lord Hoffman, in the leading speech, concluded that the local authority is entitled to decide that it was not reasonable to expect children who were not in any sense homeless to be able to live with both mother and father in separate accommodation. He said that it is not the business of a court exercising jurisdiction under the 1989 Act to try to exert pressure upon a housing authority to provide resources for one or other of the parties. Baroness Hale made comments on the original order itself, concluding that it should not have been made because "family court orders are meant to provide practical solutions to the practical

problems faced by separating families... Ideally there may be cases where it would be best for the children to have a home with each of their parents. But this is not always or even usually practicable. Family courts have no power to conjure up resources where none exist".

Children—public & private law

Removal of children from their parents under interim care orders is not limited to occasions only where the local authority can persuade the court that the child is at “risk of really serious and imminent harm”. The Court of Appeal in *Re L-A (Children)*, Court of Appeal 14.7.09, LTL 14.7.09 held that the judge, when leaving the children at home under interim care orders, had misdirected himself and nothing in *Re L (Removal of Child)(interim care order)* [2002] EWCA Civ 1932 altered the established test from previous higher authority, namely whether removal is in the interests of the child’s safety and that a high standard has to be met.

The NSPCC has published a particularly helpful leaflet summarising practical implications and clinical presentation of the most recent research into **head and spinal injuries in children**. The leaflet can be downloaded from www.nspcc.org.uk/Inform/trainingandconsultancy/

learningresources/coreinfo/HeadAndSpinalInjuries_wdf64403.pdf

Orders for electronic tagging were considered in *Re A Minor (Family Proceedings: Electronic Tagging)* [2009] EWHC 710 (Fam).

On two occasions the child been wrongly removed from the jurisdiction by the mother and returned under the Hague Convention. The mother had followed the child back to the UK. The question before the court was whether the mother should spend a substantial period of time with the child under an interim order while the issues were investigated, given the father’s fears that the child would again be removed. In the event the parties agreed that the mother should be under a curfew supported with the aid of electronic tagging. Parker J’s judgment was published in order to assist practitioners who may seek similar orders by confirming that electronic

tagging is available through liaison between the Family Division of the High Court and the National Offender Management Service. A specimen order is included in her judgment.

People in chambers



After 22 years as a tenant in Lincoln’s Inn, **Araba Taylor** has recently joined Fenner’s Chambers’ property group from 9 Stone Buildings. She is a chancery litigator, specialising in property disputes with a family element. In relation to real property, this principally means co-ownership disputes, usually on relationship breakdown, between co-habitants, family members and, in the context of insolvency, between the family and third parties, such as the trustee in bankruptcy or mortgagees. On the wills and trusts side of her practice, this usually means dispute resolution where there are family trusts and trustees, often in the context of mediation. She also handles disputes arising out of family companies and partnerships.

Practice and In Force Now

By virtue of the Access to Justice Act 1999 (Destination of Appeals)(Family Proceedings) Order 2009 SI 2009 No.871 from 6 April 2009 **appeals** against decisions of magistrates’ courts in family proceedings shall lie to a county court instead of to the High Court. The appeal to a county court also replaces the procedure for making an application to have a case stated as it is not appropriate for a county court to hear such an application. The new procedure for appeals from District Judges to Circuit Judges is contained in FPR r.8.1.

On 27 April 2009 new rules came into force providing for the **attendance of media representatives at family proceedings**. The Family Proceedings (Amendment)(No.2) Rules allow for accredited media representatives to be present during family proceedings. Accreditation is presently carried out under the UK Press Card Scheme. Representatives of the media without a valid Press Card may nevertheless be admitted but at the court’s discretion. The accompanying practice direction states that media representatives should be allowed to attend family proceedings subject to the court’s discretion to

exclude them. This discretion can be exercised on a number of wide grounds, the most likely being the welfare of a child or the ‘orderly conduct of the proceedings’. The press might also be excluded if a witness states for credible reasons that he or she will not give evidence in front of media representatives or where it appears there is a significant risk that a witness will not give full or frank evidence in the presence of a media representative.

The law stemming from section 12 of the Administration of Justice Act 1960 remains current so that it is an offence to publish anything other than the court’s judgment and order. The child’s identity, evidence, other information gleaned from any court documents and courtroom hubris remain excluded. The Ministry of Justice has however indicated that the law is going to be reviewed.

Domestic violence—continued from page 1

A particular part of the consultation that has attracted press attention is a perpetrators' register designed so that the police can keep detailed records of those convicted with a history of abuse; women would then be informed if they begin having a relationship with such a man. Is a perpetrators' register workable? Sex offenders have had to register their addresses with the police. This information is starting to be shared amongst police forces. Thus it could be argued that a workable model could be achieved for Violence in the Home offences if deemed necessary. However although the perpetrators register has attracted great attention, the key themes of the consultation paper look at how to:

- Prevent violence against women from happening in the first place;
- Help friends, family, employers and public services to identify early signs of violence as soon as possible and do something about it;
- Protect and support the children who are growing up in violent households;
- Make sure that men who have attacked or abused already do not

continue to do so and

- Help women feel safer when they travel.

So the enforcement of injunctions has now moved to the criminal courts and will stay in the criminal courts. However clients will still come to lawyers needing injunctions. If the criminal courts can effectively enforce breaches of injunctions then there is good reason to obtain an injunction in the first place. Clients will want to know about how to obtain an injunction and also how it can be enforced if it is breached. No longer will it be one party against another in the County Court but the State against the defendant in the criminal court. This is a change from what family lawyers are used to, but perhaps in the long run it may be best and provide greater protection for our injunction clients.

Pearl Willis is a member of the family and criminal groups

Fenners Chambers Family Group

Lindsay Davies
Susan Espley
Simon Tattersall
Tim Brown
Jane Bennington
Paul Hollow
Liza Gordon-Saker
Debra Gold
Pearl Willis
Clive Sutton
Meryl Hughes
Clive Pithers
Jeffrey Deegan
Caroline Horton
Katharine Ferguson
Daniel Pitt
Roderick Spinks
Beth Fisher
Liam Gribbin
Azreen Mussa
Penelope Grewcock
Nick Davies
Samantha Cooper

And finally...

Hearty congratulations to **Daniel Pitt** and his partner Kate on the birth of their son, Theo, last spring. The doting father has already drawn-up a care plan.

Congratulations also to **Penelope Grewcock** who has married her childhood sweetheart Felix, the couple most patiently waiting for legal qualifications (her) and medical qualifications and a job in East Anglia (him).

Congratulations also to **Simon Tattersall** on thirty sterling years in practice at Fenners Chambers.

We welcome **Araba Taylor** to the property team in chambers. She comes from 9 Stone Buildings, Lincoln's Inn.

We wish our office junior, **Matthew Lane**, well as he leaves for Guildford University. Becky Katsikas is to replace him.

John Woodcock is our new temporary fees clerk replacing Donna Paul who is on maternity leave.

District Judge Willers has retired after many years of committed service at Hitchin County Court.

Dates for your diary

12 August: Cocktails evening at Browns Restaurant, Cambridge at 6pm organised by Cambridge Resolution. Details from www.resolution.org/cambs

10 September: An evening with local lawyers, members of the bar and judiciary, considering how to deal with common problems in family work, organised by Cambridge Resolution

8 October: Instructing Experts. A seminar organised by Cambridge Resolution.

Fenners Chambers family seminars:
7 October at the Haycock, Peterborough,
8 October at Fawsley Hall, Northampton,
13 October at Dunstan Hall, Norwich and
15 October at the Moller Centre, Cambridge. Details from our website.

Fenners Chambers
3 Madingley Road
Cambridge CB3 0EE

Telephone 01223 368761

Fax: 01223 313007

E-mail: clerks@fennerschambers.co.uk

Website: www.fennerschambers.co.uk

Editors: Liam Gribbin & Azreen Mussa



FENNERS CHAMBERS