

# Written evidence submitted by Families Need Fathers (DAB74)

## Families Need Fathers – Written Evidence to Public Bill Committees – Scrutiny Unit - [Domestic Abuse Bill 2019-2021](#)<sup>1</sup>

### 1. Families Need Fathers - *because both parents matter* (FNF)

FNF is a registered UK charity, founded in 1974, providing information and support on shared parenting following family breakdown. FNF is NOT a fathers' rights group, but supports the best interests of children through encouraging constructive, mature and collaborative parenting.

FNF receive approximately 35,000 consultations a year to our Helpline, branches and website, which has over six hundred thousand page views per year.

### 2. Background Overview and Introductory Comments

2.1. Domestic abuse is not FNF's primary focus. Our overriding concern is the welfare of children and the promotion of all the advantages of children having healthy relationships with both of their parents after family separation.

However, almost all service users report unjustified denial of a relationship with their children, more than half report their experience of domestic abuse as defined in the new definition that includes coercive control and financial/economic abuse, and very large proportion have been accused of multiple forms of abuse which, upon in-depth investigation by family courts, are determined to be unfounded or irrelevant to safe and beneficial parenting/contact arrangements.

2.2. Approximately two-thirds of service users report behaviours by ex-partners that undermine their children's relationship with them and subject children to fear of upsetting their ex-partner (usually the main carer) should they continue to see or express their love for their other parent. We support the amendments proposed by Mr Philip Davies MP for the inclusion of parental alienation and false allegations within the definition of domestic abuse.

2.3. We recognise that women, men and children are often inadequately protected from abuse and support measures to manage such risks. However, we also seek to reduce the risk of collateral damage to children and abuse of parties through the misuse of new powers created by the Bill.

2.3.1. Our experience is that the adversarial nature of the family system is often an unsuitable environment for putting the needs of children first – it promotes and escalates conflict in often emotionally charged situations.

Indeed, the research by Professor Liz Trinder et al,<sup>2</sup> behind the so called 'No

---

<sup>1</sup> [Domestic Abuse Bill HC Bill 96](#) – 03.03.2020

<sup>2</sup> [Finding Fault? Divorce Law and Practice in England and Wales](#) - Liz Trinder, Debbie Braybrook, Caroline Bryson, Lester Coleman, Catherine Houlston, and Mark Sefton published by Nuffield Foundation 2017

Fault Divorce Bill' (Divorce, Dissolution and Separation Bill)<sup>3</sup> identifies exaggerations and false allegations to be motivated by a system that speeds-up divorce. In our experience the motivations at play when the stakes include contact or the prevention of contact with children are far higher.

2.3.2. One impact of withdrawal of legal aid from the majority of family cases, other than those where domestic abuse is alleged, has been the growth in use of Non-Molestation Orders (NMOs), escalation of conflict and a collapse of over 50% in mediation<sup>4</sup> with 95% of parents heading straight to court<sup>5</sup>.

2.3.3. NMOs have increased by over 50% (to 31,183 a year) since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)<sup>6</sup> due to a lack of balance measures. Our evidence<sup>7</sup> is that LASPO made NMOs a key route to complainants obtaining of legal aid in private family law cases that do not require the use of such injunctive powers (see also Annex A). There is evidence that the increase has been driven by specific courts and DV agencies. Sir James Munby, when President of the Family Division said:

*"we know that people game the system, and the classic example of that is one of the bits of is you do get legal aid if there's an allegation of domestic violence"<sup>8</sup>.*

2.3.4. Just as with NMOs, we anticipate that without balancing measures DAPOs will, as well as protecting genuine victims, be used in the same way to victimise good parents with a new, additional and more accessible route – namely complaint to the police.

2.3.5. We are not aware of any research into the extent of protection and reduction of abuse as a result of the growth of NMOs. We recommend independent research into the impact of NMOs and DAPOs, once launched.

~

### **3. The Importance of Use of Language and Use of DAPNs/DAPOs as Tools of Risk Management**

3.1. We assume that the letter 'P' used in the Bill is to designate a 'perpetrator'. Almost certainly the person in whose protection the notice or order is made will interpret it that way and discuss it in that way. The threshold of proof of 'the balance of probability' means that it will be sufficient for a judge to determine by a margin of just 1% that one party's account is true or that, a party deserves to be protected by a DAPO. It must be made clear to both the public and professionals that this has not got equivalence of status of criminal offences.

3.2. Liberal use of labels such as 'victim' and 'perpetrator', in the heat of family separation, prior to any allegation being accepted or proved carries its own high

---

<sup>3</sup> [Divorce, Dissolution and Separation Bill 2019-21](#)

<sup>4</sup> Mediation Starts - Legal Aid Agency

<sup>5</sup> National Family Mediation as [reported by SRB Solicitors](#) – May 2016

<sup>6</sup> [Family court statistics quarterly: January to March 2020](#) – published by Ministry of Justice 26<sup>th</sup> March 2020

<sup>7</sup> [FNF Report on Non-Molestation Order Abuse](#) (Oct 2018)

<sup>8</sup> [Families Need Fathers Conference 18 March 2017](#)

risks being inflammatory, unfair, leading to consequent anger and escalation that should be avoided.

It would be better if the word 'alleged' prefaced 'perpetrator' and rather than 'victim', which assumes a particular status at the outset, the better term is 'complainant'. Research shows that many people are in mutually abusive relationships where there is not a single abuser and both may be served with a DAPO.

- 3.3. The founder of the first women's refuge in the world, Erin Pizzey, reported<sup>9</sup> that 62 of 100 women who sought (and needed) refuge were as or more abusive than the men they sought refuge from. However, painting one party as a perpetrator and the other as a victim can often be a dangerously divisive oversimplification that risks putting children at risk of an abusive resident parent.
- 3.4. Our experience is that some parents, having secured injunctive NMOs contact ex partners and even to promote their coming round before alleging a breach of the order. Given this, courts should consider evidenced as to the appropriateness of making mutual DAPOs protecting both from the risk of domestic abuse by each other.
- 3.5. DAPOs will, to some extent further erode the premise under British Law of 'innocent until proven guilty'. Care must be exercised in the use of DAPOs and the language around them, not to further erode confidence in justice.

#### **4. Specific Comments on The Domestic Abuse Bill**

##### **PART 1 – DEFINITION OF “DOMESTIC ABUSE”**

Point (b) violent and threatening behaviour

We suggest the addition of:

- (i) Using the threat of denial of parenting time for children with partners or former partners

Point (c) controlling or coercive behaviour

We suggest the addition of:

- (i) Using involvement of children in family separation disputes, sharing with them allegations against the other parent and other behaviours to undermine their relationships
- (ii) Making of false or unfounded allegations e.g. to confer an advantage in family proceedings, for financial gain through the [Criminal Justice Compensation Authority](#), to gain housing support, additional child benefits/Child Maintenance or for other malicious motives which risk emotional damage to children (or parents/grandparents).

---

<sup>9</sup> Erin Pizzey - This Way to the Revolution: A Memoir –Published by Peter Owen Ltd 2011

## **PART 2 – THE DOMESTIC ABUSE COMMISSIONER**

### **(6) General function of Commissioner**

- (1) The Commissioner must encourage best practice in:
  - (a) the prevention of domestic abuse

We suggest the addition of a sub-bullet point to (a) the prevention of domestic abuse:

- (i) identification of circumstances that lead to domestic abuse
  - (ii) make recommendations on how these might be avoided
  - (iii) make recommendations on how parties in mutually abusive relationships might be supported
- (2) Things the Commissioner may do...
    - (c) undertaking or supporting (financially or otherwise) the carrying out of research; we suggest adding ‘, into areas including the effectiveness of proposed best practice.’
    - (d) providing information, education or training; add ‘based on proven assessments of effectiveness of the methods being taught’

### **(11) Advisory Board**

We suggest the addition of:

- g. At least one person appearing to the Commissioner to represent the interests of persons with functions relating to child psychology
- h. at least one person appearing to the Commissioner to represent the interests of persons with functions relating to representation of children in family justice
- i. at least one person appearing to the Commissioner to represent the interests of persons with functions relating to victims of false or malicious allegations;
- j. at least one person appearing to the Commissioner to represent the interests of persons with functions relating to parental alienation

Note: If the representative of organisations of victims of abuse, treat men and women differently, it is important that separate representatives are available.

### **(12) Strategic Plan**

- (3) A strategic plan must in particular—

- a. state the Commissioner’s objectives and priorities for the period to which the plan relates;

We suggest the addition of:

- (i) covering objectives relating to the protection of children
- (ii) covering objectives relating to the protection of women
- (iii) covering objectives relating to the protection of men

## **Part 3 POWERS FOR DEALING WITH DOMESTIC ABUSE**

As mentioned earlier, use of language is important – ‘alleged’ and ‘complainant’ should be used rather than ‘perpetrator’ and ‘victim’ prior to findings of fact to avoid systemic bias.

Party 'A' and 'B' may better avoid pre-judging the situation.

Taking into account the fact that DAPOs will be made using a test of 'the balance of probabilities' i.e. differentiating the credibility of witness testimony by a factor of, say, just 51% versus 49%, there will exist a significant risk to the true victim being treated as the perpetrator.

Consideration needs to be given to the making of mutual DAPOs where it appears that both parties are in a state of high conflict and there is a risk of one taking advantage of the DAPO only being served on the other.

21 Matters to be considered before giving a notice

As allegations are often made by both parties or in situations of mutual abuse, both may be equally deserving of protection. In family courts it is not unusual for NMOs to be made on a mutual basis or avoided by the making of mutual undertakings to the Court.

Under:

- (1) Before giving a domestic abuse protection notice to a person ("P"), a senior police officer must, among other things, consider the following—

We suggest the adding:

- e. where preliminary investigations imply a situation of mutual abuse, the best interests of parties involved, including minors, might be best served by the giving of a notice or order to both with guidance on use of intermediaries for essential communication in relation to child arrangements.

22 Further requirements in relation to notices

(2) (c) suggests 'that an application for a domestic abuse protection order under section 25 will be heard by a magistrates' court within 48 hours of the time of giving the notice'

Whilst it is desirable to have allegations considered within 48 hours, this often does not give sufficient time for many parties, often distraught, to prepare for hearings, even if supported by a legal representative. 'Without notice' NMOs need to be heard within two weeks. That seems to be a more appropriate timescale for similar injunctive DAPOs.

30 Matters to be considered before making an order

We suggest an additional point at section 29 relating to conditions for making an order, about proportionality, especially in the context of separated parents with children -

A point might be added:

- (4) When addressing a proportionate response, an evaluation should be made of the risk of the request for the order being made in the context of minor incidents or mutual acrimony related to family separation, where the effect of the Order could be to heighten conflict, drive escalation and, perhaps more importantly, jeopardise the ongoing healthier relationship between one or both of the parties and their minor child.

41 Variation and discharge of orders

- (4) ‘Before deciding whether to vary or discharge an order under this section, the court must hear from—’

We suggest, the words ‘must hear’ should be replaced by ‘must give the opportunity to hear’. A person who obtains such an order using malicious, unfounded allegations, who may in fact be the perpetrator of domestic abuse, may avoid responding so as to frustrate a review to vary or discharge an order.

#### 42 Variation and discharge: supplementary

- (1) Any application to vary or discharge a domestic abuse protection order under section 41 must be made to the court that made the order.

We suggest that the application may also be made to any higher court that may already dealing with the parties .e.g. by a District Judge or High Court Judge in family proceedings. Family courts will often have lengthier, ongoing proceedings during which new evidence emerges. It would seem unnecessarily bureaucratic, financially inefficient and cruel to parties to force them to commence parallel proceedings. An option to apply within family proceedings for a variation to DAPOs should exist, supplying all documents from the original DAPO hearing.

#### **Further Suggested Clause**

##### 25 Domestic abuse protection orders on application

(7) Refers to use in family courts – without protection from malicious use family court proceedings are likely become bogged down. Sir James Munby, former President of the Family Division commented on this thus:

*“The vice of the system so often is that an applicant, alleging domestic violence of some sort, goes to court without giving notice, gets an order some would say for the asking... The court doesn't give the respondent a date. If the respondent gets a hearing the thing is just rolled over and is very unsatisfactory to say the least and as we all know, too often the ex-parte injunction grant at the outset sets the entire tone of the whole of the subsequent proceedings”.*<sup>10</sup>

We suggest that it should be made clear on the face of the DAPN and DAPO that, where the effect of the DAPN/DAPO is to prevent the continuation of a child-parent relationship e.g. by not being able to be in contact with an ex-partner, then arrangements for safe contact through Supervised Child Contact Centres and Family Courts may be necessary to protect the best interests of the child(ren). The cost of such supervision might be shared as appropriate between the parents.

This is particularly important. At FNF we are frequently contacted by parents who assume that protective injunctive orders such as NMOs prevent their children from having a relationship with them, often prior to any findings of fact or determination of children’s best interest e.g. a NMO (or DAPO) might be obtained because of one instance of financial abuse, that has no bearing on an otherwise beneficial relationship with a parent. Many other types of alleged abuse which may

---

<sup>10</sup> [Sir James Munby address to the Families Need Fathers Conference](#) – 18 March 2017

have taken place when the parents were still cohabiting may have no bearing on the safety of the child(ren) after separation and should not be inferred as a safeguarding risk to the child.

#### **PART 4 LOCAL AUTHORITY SUPPORT**

53 Support provided by local authorities to victims of domestic abuse

We suggest that this section should be extended to providing support not only to victims or alleged victims, but also to alleged perpetrators. This is because the low threshold of proof making it likely that there will be innocent people who may be the greater victims, but who by a margin of just a few percentage points are made the subjects of DAPOs and to manage the risk of perpetrators repeating offending behaviour. Furthermore, support given to alleged (unproven) perpetrators should not be taken as an indication of guilt (as is often the case now), often jeopardising the effectiveness of the support. In fact, most courses aimed at reducing abusive behaviour, just like drink-driving corrective courses, are useful to most people when considered apart from the stigma of being obliged to attend.

(b) prepare and publish a strategy for the provision of such support in its area, and

We suggest the addition of for following specifics in relation to the strategy:

- (i) covering objectives relating to provision of support for children
- (ii) covering objectives relating to provision of support for women
- (iii) covering objectives relating to provision of support for men

54 Domestic abuse local partnership boards – we suggest the addition of representatives as identified in PART 2 (11) above.

#### **PART 5 PROTECTION FOR VICTIMS AND WITNESSES IN COURT**

31 Prohibition of cross-examination in person: persons protected by injunctions etc

We note that our service users never ask to cross-examine ex-partners. Most recognise that cross-examination is a highly skilled task that needs to be carried out by someone familiar with the case – most cannot afford that. We don't think this can be done with just a few hour units of work and what is required is legal aid in such cases for both parties and not just those with minimal incomes. Where an innocent party is accused, they are the real victim and deserving of support. Anything less would constitute a breach of people's Article 6 rights to a fair trial.

65 Grant of secure tenancies in cases of domestic abuse

(a) (i) Definitions of "abuse" in this section should include the ones we identified in PART 1 above.

(2) Relating to grant of secure tenancy, we suggest requires a clause to deter the abuse of the system e.g. highlighting that housing support for victims obtain by deception can result in the loss of the property, a criminal offence and a fine.

## Families Need Fathers – *because both parents matter*

[www.fnf.org.uk](http://www.fnf.org.uk)

June 2020

### Annex A

Non-Molestation Orders in England and Wales										
Regions	2011	2012	2013	2014	2015	2016	2017	2018	2019	Change %
London	5,333	5,262	5,656	5,490	5,227	4,882	4,691	5,334	5,611	5.2%
Midlands	2,771	2,493	3,578	4,804	5,396	5,558	6,189	6,796	7,383	166.4%
North East	3,535	3,322	3,468	3,316	2,944	3,124	3,729	3,878	4,712	33.3%
North West	1,999	2,153	2,673	2,655	2,509	2,611	3,068	2,942	3,353	67.7%
South East	3,597	3,917	4,476	4,905	4,766	4,700	5,166	5,330	6,765	88.1%
South West	1,985	1,910	2,073	2,382	2,342	2,352	2,400	2,384	2,784	40.3%
Wales	336	348	345	367	287	279	293	362	388	15.5%
<b>England &amp; Wales</b>	<b>19,556</b>	<b>19,403</b>	<b>22,284</b>	<b>23,999</b>	<b>23,630</b>	<b>23,639</b>	<b>25,748</b>	<b>27,151</b>	<b>31,183</b>	<b>59.5%</b>

Source: Ministry of Justice FOI requests by FNF volunteer