Written evidence submitted by Brian Maloney (DAB92)

Submission to the Public Bill Scrutiny Committee on the Domestic Abuse Bill 2020

Author: Brian Maloney

Summary

1. This Bill, while promising much needed protection for victims of domestic abuse, and representation for those accused of domestic abuse in the Family Court, will also pose the significant risk of misuse, will place yet further obstacles in the way of separated parents, mostly fathers, who are trying to maintain a relationship with their children and risk criminalising thousands of parents each year who, during the emotionally charged disintegration of their relationships, have exchanged angry words in the heat of the moment which are uttered out of character.

2. The unintentional consequences of allowing these orders to be made by the Family Court are that each year thousands more children will lose contact with one of their parents, usually their father, and many well-meaning and loving parents will be criminalised with devastating consequences for their jobs and personal lives.

3. Specifically we ask for amendments to secure the following:

    - Requiring the service of notice on persons subject to DAPOs;
    - Provision for accommodation for those who are deprived of their home by an DAPO used as an “ouster order”;
    - Exclusion of the Family Court from courts permitted to make DAPOs;
    - DAPOs must only be issued on the criminal burden of proof, i.e. beyond reasonable doubt;
    - DAPOs are time limited, the suggestion would be a limit of 12 months as is the case in Scotland. There is no evidence to suggest 12 months is too short a time and if required another DAPO can be applied for;
    - DAPOs do not take effect until the person who is subject to the DAPO is aware of the order and its conditions;
    - Persons subject to DAPOs cannot be subject to any intervention which is not available to both men and women;
    - That in the provision for services to victims no discrimination is made on the basis of any protected characteristic, instead provision is made on the basis of the actual needs of victims;
    - There must be protections to ensure those who are permitted by regulations to apply for DAPOs on behalf of alleged victims are not pushing an agenda;
    - Legal Aid should be automatically available for those served with Domestic Abuse Protection Notices so they may be adequately defended;

- The provisions in this Bill and the protections for those who have conditions imposed on them such as having to find alternative accommodation, must be properly funded.

Explanation of the Amendments Requested To The Bill

Ensuring Those Served With Notices Understand Their Meaning And Consequences

4. Section 22 Further requirements in relation to notices requires in section (3) that **"(3) The notice must be served on P personally by a constable."**

5. We would wish to point out that if the person served with the notice does not have English as their first language or speak English the police must ensure the person served with the notice has understood the notice and the consequences of failing to comply with it. An interpreter must be provided if necessary.

6. By example from Family Court a Father from the Middle East with very poor English was called on his mobile phone while on holiday in Scotland by his then wife's solicitor to be informed of the existence of a Non-Molestation Order. He did not understand the caller and hence called his then wife for an explanation, immediately breaching the order. He was subsequently arrested because he had not had the order properly explained nor had an interpreter provided.
7. Another Father who cannot read or write and was assaulted by his ex-partner, resulting in their separation, was then served with a Non-Molestation Order she had obtained by falsely claiming she was assaulted, despite her being arrested for the assault. The order prohibited him from communicating with his ex-partner, the mother of their children, except in writing. He could not read the order he was given, and it effectively prohibited all communication, immediately denying him contact with his children, whom he had not abused.

Requirement For An Alternate Address

8. Section 22(4) states:

> *(4) On serving the notice on P, the constable must ask P for an address at which P may be given the notice of the hearing of the application for the domestic abuse protection order.*

9. These notices can require that the person on whom they are served leaves their home address, indeed this is the intention of this section, that the notice of the hearing of the application will be served at an alternate address. Many of those served with these notices may not have an alternate address other than their home address. How are they to provide an address if they have just been made homeless by the notice? Is legal aid to be provided to the recipient of the notice so that he or she may be served at their solicitor's address?

"Ouster" Orders Are A Serious Imposition On A Person's Human Rights To Occupy Their Home

10. Domestic Abuse Protection Notices may require a person to leave their home, without any determination as to whether they have committed an offence, simply that a senior police officer has reason to believe they may have been abusive to a connected person.

11. Section 22(4) requires the constable giving the notice to request an address at which P may be given notice of the hearing of the application for a domestic abuse protection order when giving P the DAPN. What should happen if the person served with the DAPN does not have an address for service or gives an address without knowing if they will be able to be served at that address?

12. *Section 25* ***Domestic abuse protection orders on application***

(2) An application for an order under this section may be made by—
(c) a person specified in regulations made by the Secretary of State;

13. How will the "person specified in regulations made by the Secretary of State" be regulated? Who will be able to apply for this right? Does this give certain classes of persons a right to conduct litigation in the Family Court? This is prohibited by the (TBD find reference).

14. *Section 26 (4) P must be given a notice of the hearing of the application.*

    (5) The notice under subsection (4) is to be treated as having been given if it has been left at the address given by P under section 22(4).

15. Note – This entire process is predicated on the person subject to the notice having an address at which they can be served with notice of the hearing.

16. If P has been evicted from their home and was not able to provide the police with an address, how will notice be served.

17. Up until this point the person issued with the notice has only been told that an application for a DAPO will be heard within 48 hours, they have not been given a time, date or location of the hearing.

18. DAPNs and DAPOs have the same issues as Non-Molestation Orders in that they create a new offence for the person who is subject to the conditions. Without having been found guilty of domestic abuse a new offence is created on the civil burden of proof, which can impose unreasonable restrictions on a persons human rights. The person P may then commit the offence of breach of the DAPN or DAPO which would not be an offence if allegations (potentially false) had not made against P.

19. An exclusion zone may be imposed which is sufficiently extensive it could prohibit P from going to their place of work, visiting friends or going to their child's school to collect them, again without any evidence that person had actually committed domestic abuse, just that there may be a risk.

20. Under section 26(6) the court may hear the application when the person P did not give an address for service (either because they had no alternate address to give or they refused to give one) on the basis the chief officer of police has made reasonable efforts to give P the notice. How can we be assured the chief officer of police has made reasonable efforts when he does not have any means of contacting P?

    26 (6) But if the notice has not been given because P did not give an address under section 22(4), the court may hear the application if satisfied that the chief officer of police has made reasonable efforts to give P the notice.

21. This allows for the case to proceed and an order to be made on the evidence of the chief officer of police that they have tried to serve notice where they have no idea of the whereabouts of the alleged perpetrator. This is an abuse of the Article 6 rights of persons subjected to these orders, they have been made homeless and then are not given notice of a hearing to determine if they should have been made homeless, because they are without fixed address and can't be found. How can a person contest these orders?

22. Section 26(7) and (8) do not provide timescales for determining the application, it may be adjourned indefinitely. Again this is a breach of Article 6 human rights.

Use of the Civil Burden Of Proof

23. Section 29 “Conditions for making an order” provides that the court may make an order on the balance of probabilities. This is a much lower threshold than the criminal burden of proof, which his beyond reasonable doubt.

24. Experience from the Family Court is that judges will make such order, particularly NMOs and Occupation Orders on the mere suspicion. When these orders are made in the family courts, hearings are held in private, that is the public is excluded. This prevents the public being able to see justice being done and undermines confidence in the justice system. We don’t feel it is at all appropriate to allow these orders to be made in private, in light of the seriousness of breaching the orders and the draconian restrictions which can be imposed, such as prohibiting any contact where there are children involved and arrangements need to be made for the children to continue to see both parents.

25. It may be argued that children should not be allowed contact with violent parents, but DAPOs can be made where there is no physical violence, simply the complainant alleges they are afraid of the other person, or have suffered economic abuse. Personal experience shows that a Non Molestation Order can be imposed on the basis of allegations of having rules about how to cut bread and loading the dishwasher. Other examples of alleged domestic abuse are a failure to put up a shelf or decorate.

26. Such allegations can then result in an order which criminalises sending a text message, again I have personal experience of spending a day in police custody because I sent a text message instead of an email, to find out why my child was not provided for court ordered contact.

A person can breach an order before they know it exists

27. Section 35 “Duration and geographical application of orders” states that a DAPO takes effect on the day on which it is made. However DAPOs can be made without a hearing and without giving notice to the person who is subject to the conditions.

28. Non-Molestation Orders don’t take effect until the person who is subject to the order knows of the conditions in the order, either by service or being informed of the order and the conditions. The Family Law Act 1996 was amended by the Domestic Violence, Crime and Victims Act 2004 to make breach of a Non-Molestation Order a criminal offence, but provided this protection to the person subject to those conditions to ensure they couldn’t accidentally breach the conditions.

29. A DAPO could be made excluding a person from their own home or prohibiting them contacting a connected person, without notice and without that person being informed. They could then breach the order by going to their own home or calling, texting or emailing the person the order is intended to protect, without any knowledge of the restriction. How can this be just?

Duration of Orders

30. Section 35 does not put any limit on the duration of orders. We believe there should be an upper limit of 12 months with the option to apply to renew. Non-Molestation Orders which have a similar purpose are supposed to be short term orders to allow for circumstances to stabilise. They are not supposed to be indefinite orders. The author has a mutual non-molestation order which was intended to be for a limited time only, but was mis-drafted by legal aid barrister to limit all communication between both parties and without time limit.

31. In 2017 the author was arrested and detained in police custody for 8 hours for sending a text to find out why his child had not been provided for court ordered contact instead of an email. The police subsequently paid £3,000 compensation for unlawful imprisonment. Non-Molestation

Orders and DAPOs will continue to be used to have the police harass and pester well meaning parents, mostly fathers, who simply want to maintain their relationship with their children.

Positive requirements imposed on a person by DAPOs

32. Section 33(2) provides that a person may be required to "do something". This is a positive requirement imposed on the person which is not provided for my Non-Molestation orders. In the explanatory notes to the draft bill both perpetrator programmes and psychological assessments are identified as possible interventions. What we see in the Family Courts is that once a parent, usually a father, who is denied a relationship with his child by the other parent, makes an application for contact with their child the other parent, usually the mother will make claims of domestic abuse an apply for a Non-Molestation Order which furnishes her with legal aid[1].

33. HM Inspectorate of Probation (HMIP) produced a report on the work of Community Rehabilitation Companies in September 2018[2]. One of the issues they focussed on was the effectiveness of the Building Better Relationships Domestic Abuse Perpetrator Programmes. These programmes are based on the discredited Duluth model of male power and control.

34. HMIP highlight a number of issues with these courses:

    - Too few people were starting or completing these courses.
    - Less than half those who started these programmes completed the full programme.
    - The BBR programme only achieved a 12% reduction in reoffending rates.
    - There are no interventions available for women who commit domestic abuse.
    - There was too little focus on women's domestic abuse behaviours and a failure to recognise domestic abuse is a feature of their cases.

35. Our experience in the Family Court is that those who are ordered to complete a BBR course will have to wait up to 6 months for the course to start, it will then take a further 6 months to complete, and if they miss a single session because e.g. they are ill or their car breaks down, they are removed from the course.

36. Breach of a DAPO will be a criminal offence. What we don't want to see is parents being criminalised because circumstances beyond their control prevented them completing a positive requirement, when the majority of people sent on these courses today don't complete them.

37. We are also concerned about the cost of interventions. Currently mental health assessments in the family court have to be funded by the parties. These assessments can run to many thousands of pounds and are completely unaffordable for most people. Unless these interventions are properly funded DAPOs could impose unreasonable financial burdens on those who have never been found guilty of any offence. Failure to pay will result in breach of the order and criminalise a person for not having sufficient financial resource.

38. However the most worrying issue is the requirement in section 33(3) for the court to receive evidence on the suitability and enforceability of the intervention. Cafcass is responsible for

[1] FNF Report on Non-Molestation Order Abuse (Oct 2018)

[2] https://www.justiceinspectorates.gov.uk/hmiprobation/inspections/domestic-abuse-the-work-undertaken-by-community-rehabilitation-companies/

commissioning Domestic Abuse Perpetrator Programmes in England and we know that in 10 years they have never commissioned a single programme for female perpetrators. In that time they have sent over 2,600 fathers on these programmes, without any evidence it will restore the relationship with their child, but not one single violent mother[3]. Furthermore Cafcass collects no information on the success rates of these programmes or the re-offending rates of those who have or have not attended such a programme[4].

39. Currently Cafcass, as a public authority, are in breach of the Equality Act 2010 by commissioning these programmes only for men and thereby discriminating against parents on the basis of sex. The Family Courts and Family Court Judges, who must also comply with the Equality Act, are fully aware of this discrimination, are complicit in this discrimination. They too are breaching the Equality Act 2010.

40. In the 10 years since Cafcass started commissioning these programmes, they have never commissioned an single place for violent mothers. Through Freedom of Information requests I have found Cafcass have sent the following numbers of men and women on these courses:

Year	Men	Women
2010-2011	38	0
2011-2012	172	0
2012-2011	493	0
2013-2012	398	0
2014-2015	321	0
2015-2016	629	0
2016-2017	589	0
2017-2018	795	0
2018-2019	909	0

41. Currently the Children Act 1989 protects parents who apply for a Child Arrangements Order from being required to undergo treatment or psychiatric assessment as a court ordered activity. This protection was introduced in the Children and Adoption Act 2006. Senior Family Judges and Cafcass had asked for the power to make orders for Domestic Abuse Perpetrator Programmes and psychological assessments in their response to the consultation, but Parliament explicitly prohibited these interventions in Children Act Private Law cases.

42. The Domestic Abuse Bill seeks to undermine these protections and expose parents, usually fathers, who simply wish to restore a relationship with their children after separation and the end of their relationship with the other parent to criminal sanctions imposed by a sitting in private, away from the public eye and using the civil burden of proof, who we already know are breaching the equality act by imposing measures only on men, never on women. How can the public possibly have confidence in such a system?

---

3 https://www.whatdotheyknow.com/request/376968/response/917287/attach/html/4/CAF%2016%20154%20FOI%20Response.pdf.html
https://www.whatdotheyknow.com/request/472297/response/1138255/attach/html/4/CAF%2018%20036%20FOI%20Response.pdf.html

4 https://www.whatdotheyknow.com/request/411560/response/998312/attach/html/4/CAF%2017%2069%20FOI%20Response.pdf.html

43. Statutory Guidance and Gender Bias

44. The "GOVERNMENT RESPONSE TO THE REPORT FROM THE JOINT COMMITTEE ON THE DRAFT DOMESTIC ABUSE BILL SESSION 2017-19 HL PAPER 378 / HC 2075" at paragraph 34 states:

> "Listing specific acts of abuse on the face of the Bill risks limiting the understanding of domestic abuse. Instead we intend to provide further details, including types of abuse experienced by specific groups or communities, in the statutory guidance which will accompany the definition. In the statutory guidance we also intend to recognise the additional complex factors which may occur in domestic abuse situations – for example mental health or substance misuse issues and how they can interplay with abuse. The statutory guidance will be regularly updated to allow for emerging trends and behaviours to be recognised. "[5]

45. We disagree with the approach of profiling or stereotyping, anybody can be a victim of any form of domestic abuse, and there is an historic failure to recognise and provide services for male victims. We think it is wrong to suggest any particular protected characteristic makes a person more or less vulnerable to domestic abuse, instead each case should be judged on its merits and each victim given assistance according to their needs.

46. The statutory guidance "Improving access to social housing for victims of domestic abuse in refuges or other types of temporary accommodation"[6] section 21.8 states:

> "Domestic violence and abuse can affect anyone regardless of their age, gender identity or reassignment, race, religion, class, sexual orientation and marital status. Housing authorities should bear in mind that the provisions of the Equality Act 2010 for public authorities apply to policies, practice and procedures relating to homelessness and domestic violence and abuse."

47. We fully endorse this approach as the proper behaviour in dealing with domestic abuse. We know that Respect, who run the Men's Advice Line for male victims of domestic abuse also screen callers to see if they are perpetrators of abuse. This never happens with women's services and we believe this to be wrong.

48. I would propose the following amendments to the Bill:

    1) In section 25 "Domestic abuse protection orders on application"

       Subsection (1) replace with:

       "A magistrates' court may make a domestic abuse protection order under this section against a person ("P") on an application made to it in accordance with this section."

       Remove Subsection (5)

    2) In section 28 "Domestic abuse protection orders otherwise than on application"

       Remove subsection (2)

    3) In section 29 "Conditions for making an order"

---

5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817556/CCS0619467038-001_Domestic_Abuse_Bill_Print_WEb_Accessible.pdf

6 Statutory Guidance Improving access to social housing for victims of domestic abuse in refuges and other types of temporary accommodation

Subsection (2) replace with:

"Condition A is that the court is satisfied beyond reasonable doubt that P has been abusive towards a person aged 16 or over to whom P is personally connected."

4) Section 37 "Arrest for breach of order"

Subsection (1) replace with:

"This section applies where a county court has made a domestic abuse protection order against a person ("P").

Remove subsection (2).

Subsection (3) replace with:

"A person mentioned in subsection (4) may apply to a judge of the county court for the issue of a warrant for P's arrest if the person considers that P has failed to comply with the order or is otherwise in contempt of court in relation to the order."

Delete subsection (8)

5) Section 43 "Appeals"

Subsection (8) replace with:

"If, in the case of an appeal arising by virtue of subsection (1) or (5) in respect of a decision made by the county court, the person making the appeal was not a party to the proceedings in that court, the person is to be treated for the purposes of that appeal as if the person had been a party to those proceedings."

Subsection (9) remove (a) & (b)

6) Section 49 "Powers to make other orders in proceedings under this Part"

Remove this section.

7) Section 50 "Proceedings not to be subject to conditional fee agreements"

Remove this section.

June 2020