Introduction

The criminal and civil law provide a range of protective measures in situations of domestic violence. Civil remedies can provide protection through:

- the non-molestation injunction granted under the Family Law Act 1996 (FLA);
- an occupation order under the FLA which can include a provision to exclude a violent party; and
- an exclusion order where child protection is concerned under the recently amended Children Act 1989 (CA). Civil remedies can also provide protection through the use of the occupation order.

An overview of existing law


Both Acts provided for an injunction prohibiting molestation and for an order which excluded the violent aggressor from the home. However, the exclusion order was rarely used as judges were reluctant to grant such orders unless the violence was severe and ‘plain as a pikestaff’. Non-molestation and exclusion orders could be supported by a power of arrest, which allowed police to arrest and remove a suspect who was in breach of a court order. However, the courts regarded the power of arrest as draconian, as it involved police in what they regarded a civil and family matter, with the result that a power of arrest was rarely attached. It was widely conceded by police and those working with abused women that injunctions that were not supported by a power of arrest were useless. In response to the shortcomings of the earlier legislation, the Family Law Act 1996 introduced some significant changes regarding injunctions for domestic violence and their enforcement. The Children Act 1989 was also amended to allow for the exclusion of suspected abusers where children were in need of protection. The introduction of the Protection from Harassment Act 1997 also created a civil remedy that provides damages for harassment.

Aims of the research

This research was commissioned to examine the civil remedies currently available to protect women and children from domestic violence in order to evaluate the ‘take up’ and effectiveness of those remedies, and to assess ‘what works’ in reducing domestic violence. This was done by carrying out:

- an overview of the existing civil legislation providing protection for women and children;
- an overview and evaluation of case law decision making;
- an examination of the available literature; and
- an analysis of statistical data provided by the Lord Chancellor’s Department in respect of the remedies and their use.

Key findings

The Family Law Act 1996

- Figure 1 indicates that there was no change in the number of non-molestation orders granted under the FLA than under previous legislation.

- More occupation orders were granted under the FLA than under previous legislation (although orders are not directly comparable).
Figure 2 shows that there has been a considerable increase in the attachment of a power of arrest. These are now attached in 75% of occupation orders and 80% of non-molestation orders, compared to earlier legislation where a power of arrest was attached in only one-third of all orders.

Statistics on enforcement show that there has also been an increase in the number of committal proceedings for the breach of an order. This suggests that under the FLA the courts take a more robust view of enforcing orders.

The statutory provision of undertakings not to molest the applicant is now widely used. However, there is a variation between circuits and courts in granting non-molestation, occupation orders and power of arrest and undertakings. This suggests that women in different parts of the country may receive different degrees of protection.

The Protection from Harassment Act 1997

- The PFHA and harassment relief under section 3 has been used in many more cases than was originally anticipated although it is not possible to identify from the statistical data the domestic/intimate-related cases. This would require new empirical research on a court basis.

- Figure 3 shows that the use of the harassment injunction varies between regions. In a fifteen month period, 468 civil injunctions have been granted, the largest use of this remedy being made in the south-west, London, and Yorkshire and Humberside. The variations between regions may be due to variation in solicitors’ advice to clients seeking redress for harassment. This suggests the need for more training for solicitors on the Act, its purpose, its application and its usefulness.

- The PFHA provides an additional remedy for women from domestic violence. However, the civil provisions have been little used compared with the criminal remedy, suggesting perhaps a limited application.

The Children Act – exclusion order

- In 1998, 2,232 emergency protection orders and 58,907 interim care orders were granted.

- It is argued that in many of these cases a child may need further protection by removing the abuser from the home. This removal is provided for in law by an exclusion order or by an undertaking made by the suspected abuser to the court.

- The use of an exclusion order attached to an Emergency Protection Order or Interim Care Order under the Children Act 1989 is an extremely
important protection provision. However, in the absence of any reported case law or statistics it is impossible to determine the use and effectiveness of this provision.

The Children Act 1989 section 8 (Child Contact Orders)

- Analysis of case law and available literature regarding the judicial approach to contact shows that the granting of section 8 contact orders in public and private law proceedings continues to uphold the presumption that contact is best. The figures obtained reveal that contact orders are refused in less than 4% of applications. Circumstances in which refusal would normally occur would be in cases of the sexual abuse of the child and, very occasionally, domestic violence.

- Whilst data is available on the extent of section 8 contact orders, the data cannot show in what proportion of cases the violence of the father is in issue.

- Regional variations in contact orders are interesting but again are unable to shed light on the issue of violence and contact.

- There is a growing body of evidence from women’s and children’s experience which controverts the ‘contact is best’ presumption. Contact may be being granted in cases where it is dangerous for women and children. It is recommended that the welfare checklist under section 1 of the Children Act should be applied in all applications for contact regardless of whether the application is being contested or opposed. Legislators should consider whether amendment is needed to further protect women and children.

- The recognition that contact is a dangerous time for women and children has resulted in the provision of a number of supervised contact centres. The National Association of Child Contact Centres supports over 250 such centres in Great Britain. The costs of these centres should be weighed against the benefits of safety for women and children.

Conclusions and recommendations

- The strength of civil remedies has been greatly improved through the introduction of a presumption that a power of arrest should be attached to an injunction granted under the FLA.

- There is an urgent need to implement section 60 of the FLA. This allows third parties i.e. the police, to make applications on behalf of abused women. Third-party applications have been used very successfully in Australia and in the US (with the woman’s consent), and carry a number of advantages, for example, their speed and the removal of problems associated with legal aid and a reduction in the number of cases withdrawn.

- The police and courts are making good use of the FLA. The intervention of the civil law in providing injunctive protection and exclusion order protection for both women and children could provide an important deterrent to abusers, providing early intervention in domestic violence and reinforcing the message that domestic violence will not be tolerated.

- One of the weaknesses of the FLA is that it does not extend to those who have never lived with their abusers, except where there has been a formal promise of future marriage.

- With regard to children, the few case law references to the exclusion order suggests that it is not being widely used. There may be a need to consider whether an exclusion order should be used more widely in cases where there is an interim care order or an emergency protection order.

- There is concern that the reluctance on the part of the courts to refuse contact should be addressed.

- Judicial and legal training may be needed to facilitate a better understanding of domestic violence and ways in which the court can improve protection for women by effective use of available remedies.

- Further research should examine the use of the PFHA in domestic violence cases.

Further reading
