Domestic violence:

The case for reform

A report by
the Law Society's Law Reform Committee

May 1999

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EXECUTIVE SUMMARY

The Law Reform Committee of the Law Society of Ireland was established in November 1997 in order to identify and focus upon specific areas of the law in need of updating and reform. It aims to contribute towards improving the quality, fairness and effectiveness of Irish legislation in a number of selected areas. It also seeks to represent the views of the Society's members in relation to a number of legislative initiatives and to enhance the Society's contribution to the development of Irish law. More generally, it aims to build relationships between the Law Society and others involved in the review of law and policy, including senior policy-makers and the voluntary sector.

After having surveyed all members of the Society and a wide selection of groups in the voluntary sector, the Committee has identified a number of priority areas for law reform, including that of domestic violence. Representatives of the Committee have already established contacts with officials within the Department of Justice, Equality and Law Reform involved in framing policy in this area.

It is in this context that the Committee has undertaken an examination of Irish legislation on domestic violence and of its operation in practice. As part of its ongoing work in this area, the Committee conducted a survey of Society members with practical experience of the legislation in order to elicit their views on the operation of the legislation and to identify anomalies with the potential to cause injustice. The results of the survey have been incorporated in this report which aims to focus attention upon shortcomings in the legislation, to explain the practical implications of these shortcomings and to make recommendations for legislative amendments which would function to prevent injustice.

This report has been submitted to the Department of Justice, Equality and Law Reform and will be circulated to members of the Oireachtas, the judiciary and voluntary bodies with an involvement in the area of domestic violence. It is hoped that its findings and recommendations will lead to concrete improvements in the law relating to domestic violence and will help to ensure fair and balanced treatment for those who have recourse to the protection of the law.

The members of the Law Reform Committee are:

James MacGuill, Chairman

John Costello, Vice-Chairman

Anne Colley

Rosemary Horgan

Brian Gallagher

Anne Leech

Eamonn O'Connor

Moya Quinlan

Mark Ryan

Owen McIntyre, Secretary (Parliamentary and Law Reform Executive, Law Society of Ireland)

SUMMARY OF RECOMMENDATIONS

1

That the District Court Rules be amended to provide an automatic early return date for interim barring orders.

2

That the District Court Rules be amended to require that ex parte applications for a protection order or an interim barring order be made on affidavit and that the respondent automatically be provided with a note of all the evidence given at the hearing. Also, that personal service of the barring summons be required in all cases or, at least, where the respondent is barred ex parte.

3

That the residence requirement be removed for cohabitees seeking a safety order and for cohabitees with sole ownership or tenancy rights in the home seeking a barring order. Also, that provisions be introduced permitting parents or elderly relations to apply for protective orders against abusive relations or persons other than an adult child. These should include safety or barring orders against such relations or persons residing in the home and safety orders against those residing elsewhere.

4

The introduction into the domestic violence legislation of a category of 'associated persons' who are entitled to apply for a safety order and the provision of a non-exhaustive list of such persons, to include those affected by or pending a decree of nullity and non-cohabitees with a child in common. Also, that 'associated persons' with sole ownership or tenancy rights in the home be entitled to apply for a barring order.

5

The introduction of either detailed statutory guidance or a list of criteria to be considered by the courts in determining whether to grant protective orders.

6

The provision of guidance as to the relevance and effect of the O'B v O'B judgment, in the context of the new definition of 'welfare' contained in the 1996 Act. Generally, statutory guidance with regard to 'welfare' based applications should be extended and clarified.

7

That further statutory guidance be provided regarding the standard of proof necessary to establish abuse.

8

That the Probation and Welfare Service be given a clear statutory role in relation to domestic violence cases and adequate resources to allow it to discharge its statutory functions.

9

That the Probation and Welfare Service be given an increased role in supervised access arrangements and that it be allocated adequate resources to fulfil this role.

10

That measures be introduced to encourage judges to use the procedure contained in section 9 of the Domestic Violence Act, 1996, permitting the courts to deal contemporaneously with issues of access, maintenance and other related issues, subject to adequate reasonable notice having been given to the respondent.

11

That a system of Regional Family Courts be established.

12

The introduction of systematic judicial training in Family Law matters and on the topic of domestic violence in particular.

INTRODUCTION

Early in 1998, the newly founded Law Reform Committee of the Law Society of Ireland, having surveyed the Society's members and a wide range of community and voluntary groups, identified the area of domestic violence as one deserving further examination. Meeting with officials at the Department of Justice, Equality and Law Reform in August 1998, representatives of the Committee were encouraged to learn that research, commissioned by Women's Aid and part-funded by the Department, was ongoing into the operation and effectiveness of the provisions of the *Domestic Violence Act, 1996*. They were concerned however that the research was not to involve a systematic survey of the views of solicitors practising in the area of Family Law. The Committee takes the view that these practitioners possess a unique and invaluable insight into the operation of the Act. Therefore, it was decided to undertake such a survey with a view to making an informed contribution to the debate which the aforementioned research project will inevitably precipitate.

The survey took the form of a simple questionnaire published in the Law Society *Gazette* and further distributed by the Society's network of local Bar Associations. The questionnaire and explanatory piece published in the *Gazette* explicitly sought responses from those solicitors with experience of the operation in practice of the 1996 Act. Also, copies of the questionnaire were sent to the Secretaries of the Bar Associations who were requested to forward it to those Association members known to work predominantly in the area of Family Law. A total of 83 replies were received representing approximately 100 practitioners.[1] The success with which the Committee targeted those solicitors with the appropriate experience is illustrated by the actual survey results. 46 per cent of respondents reported that they act in between five and ten barring or safety applications each year, 28 per cent act in between ten and twenty such applications and 25 per cent act in more than twenty.

Prior to issuing the questionnaire, the Law Reform Committee had identified, through purely academic research, a number of provisions in the 1996 Act, amendment of which would prevent injustice and improve achievement of the Act's objectives. The survey was merely intended to test the extent to which the potential anomalies created by those provisions arose in practice. Therefore, this paper sets out the Committee's views on the need for reform of the 1996 Act generally and, where appropriate, alludes to the findings of the survey where these can inform particular suggestions for reform.

Footnotes:

1 A number of replies contained the views of two or more solicitors working within a single law firm or community law centre.

INTERIM BARRING ORDERS AND EARLY RETURN DATES

The Law Reform Committee proposes that the District Court Rules be amended to provide an automatic early return date for interim barring orders

Under the *Domestic Violence Act, 1996*, the District Court may grant interlocutory relief, pending the determination of barring proceedings, in the form of an interim barring order. Interim orders will only be granted where the court is of the opinion that there are reasonable grounds for believing that the applicant or a dependant person is in immediate risk of significant harm and a protection order would not be sufficient for their protection.[2] Therefore, the power to grant such orders must be considered a vital device for the effective protection of victims of domestic violence.[3] However, as an interim order, which may exclude a respondent from his place of residence, can be granted on what amounts to a *prima facie* review of the evidence, and can even be granted *ex parte*, it is essential in order to prevent injustice that an early return date is set for the hearing to determine the barring application.[4] The form of the interim barring order was amended in 1998 to include provision of a return date within the body of the order but no maximum period of delay was set down.[5]

Quite apart from the inherent injustice caused to the respondent, unreasonably long delays could conceivably result in serious legal consequences for the applicant. An analogous situation arose under the *Children Act, 1908*, where a substantial delay could occur between the *ex parte* proceedings taken by the health boards to take a child to a place of safety and the full hearing at which the parents could challenge the order. In *State (DC) v Midland Health Board*, Keane J. noted that the delay could constitute an impermissible violation of parental rights.[6]

The Law Reform Committee's survey found that, according to 43 per cent of survey respondents, there was an average delay of 21 days to the return date. A further 4 per cent experienced an average delay of 42 days, while 11 per cent found it to be even longer. A mere 37 per cent replied that they had an average wait of **7** days for a return date. Though the survey was not designed to take account

of regional variations, it is apparent that in some District Court areas respondents are experiencing unacceptably long delays.

In order to secure an early substantive hearing, respondents on occasion resort to making an application to have the interim barring order discharged under section 13 of the 1996 Act.[7] Also, where the District Court clerk is prepared to certify that the case is an urgent one, the barring summons may be abridged down to two days notice.[8] However, neither solution is satisfactory.[9]

Footnotes:

2 Section 4(1) (a) and (b).

3 See the Report of the Task Force on Violence against Women (April, 1997) which recommends that 'in situations of high risk, provision must always be made for immediate remedies to guarantee the safety of the victim', at 61.

4 See R. Horgan, 'Domestic Violence – A Case For Reform' [1998] 2 *I.J.F.L.* 9 at 11 and R. O'Riordan, 'New Domestic Violence Law Enacted' *The Bar Review,* June 1996, 28 at 29.

5 S.I. No. 201 of 1998.

6 [1990] 7 *Fam. L. J.* (H.C.). See R. Horgan, *supra*, n. 4.

7 Under section 13(1)(c)(ii), the respondent may apply to have any order under the Act discharged where the safety and welfare of the victim does not require that the order should continue in force.

8 S.I. No. 93 of 1997, O. 59, r. 12.

9 The Task Force Report recommends generally that 'delays in dealing with family law cases should be eliminated as far as possible', at 60.

EX PARTE INTERIM BARRING ORDERS

The Law Reform Committee proposes that the District Court Rules be amended to require that ex parte applications for a protection order or an interim barring order be made on affidavit and that the respondent automatically be provided with a note of all the evidence given at the hearing. Also, personal service of the barring summons should be required in all cases or, at least, where the respondent is barred ex parte

The 1996 Act provides that where 'the court in exceptional circumstances considers it necessary or expedient in the interests of justice' an interim barring order may be made *ex parte*.[10] Once again, this device is vital for the protection of victims in exceptional circumstances. However, while current District Court Rules provide for 'information' to be sworn by the applicant on oath and in writing prior to the granting of *ex parte* relief,[11] the 'information' subsequently received by the respondent may not contain all the evidence tendered in court during the interim *ex parte* hearing.[12]

Under the Circuit Court Rules, any *ex parte* application should be on affidavit and, if for some reason it is not, the respondent should be provided with a note of the evidence given at the hearing.[13] 'Information' upon which a protection order or a barring order is given in an *ex parte* situation should automatically be made available to the respondent.

At present, one has to make an *ex parte* application (by preparing an *ex parte* docket) to obtain sight of the information which led to the granting of the order. Also, a note of any evidence given which strayed outside the factual details set out in the information should automatically be made available to the respondent. Frequently, respondents find themselves coming into court to defend proceedings though they are not aware of the statements made by the applicant which led to the granting of the order.

Under the District Court Rules, service of the barring summons is by ordinary prepaid post. Personal service is clearly more appropriate where the respondent is barred *ex parte* and though, in practice, personal service is usually ordered by the court in such an event, there is no requirement do so. Also, where a case is certified as urgent and a summons served with very short notice, personal service should be a requirement.[14]

Footnotes:

10 Section 4(3).
11 S.I. No. 93 of 1997, O. 59, r. 6.
12 See R. Horgan, 'Domestic Violence – A Case for Reform?' [1998] 2 *I.J.F.L.*, *supra*, n. 4, at 11.
13 S.I. No. 84 of 1997, r. 26.
14 *Supra*, n. 8.

ENTITLEMENT TO RELIEF – INCOMPLETE COVERAGE

The Law Reform Committee recommends that the residence requirement be removed for cohabitees seeking a safety order and for cohabitees with sole ownership or tenancy rights in the home seeking a barring order. It also proposes the introduction of provisions permitting parents or elderly relations to apply for protective orders against abusive relations or persons other than an adult child. These should include safety or barring orders against such relations or persons residing in the home and safety orders against those residing elsewhere

Though the 1996 Act has extended protection to a broad category of persons in domestic relationships, it is apparent that it does not cover every victim of domestic violence. Though there are constitutional arguments for some restrictions as to who may seek relief, a number of exclusions cannot be justified.

First of all, though the residence and ownership requirements[15] relating to a cohabitee applying for a barring order may be justified,[16] the residence requirement relating to a cohabitee seeking a safety order[17] cannot. A safety order does not exclude the respondent from residing in his own home or deprive a respondent of any property entitlement. This requirement creates the anomaly that applicants in a homosexual or lesbian relationship, who could seek protection under section 2(1)(a)(iv), would enjoy a greater level of protection than non-married applicants in a heterosexual relationship.

However, it should be noted that in practice some District Judges allow couples who do not satisfy the co-habitation criteria to apply under section 2(1)(a)(iv) while, on the other hand, some Judges feel that they cannot. Similarly, there can be no constitutional justification for any residence requirement for a cohabitee seeking a barring order where the sole ownership or tenancy rights in the home are vested in the applicant or a relative of the applicant. It is disappointing to note that:

> 'Based on advice received from the Attorney General there are no proposals to amend the requirement that cohabitants who apply for a barring order or a safety order must be living together for a specified period prior to their application to court.'[18]

Also, while parents can apply for a safety order against an abusive adult child without preconditions,[19] explicit protection for the elderly should be extended against other abusive relations or persons other than the victim's adult child, such as a son-in-law. At present, such a relationship may be covered under section 2(1)(a)(iv) whereby an application can be made for a safety order by a person of 18 years and over who 'resides with the respondent in a relationship the basis of which is not primarily contractual'. However, the Act provides no protection where a respondent, other than an adult child, resides elsewhere. Such explicit protection would be particularly welcome in light of the rise in reported incidents of abuse of elderly people.[20]

Another category of persons overlooked by the 1996 Act is that of persons subject to a decree of nullity who fail to qualify as cohabitees. To apply as a 'spouse'[21] under the legislation, the applicant must be or have been validly married to the respondent. Therefore, a person whose marriage has been annulled will not be eligible to apply.[22] Further, there would seem to be considerable uncertainty surrounding the eligibility of an applicant pending nullity proceedings.[23] Also, there is no protection under the 1996 Act for victims of violence where a couple has a child in common but does not cohabit.

The Law Reform Committee proposes the introduction of a category of 'associated persons' who are entitled to apply for a safety order and the provision of a non-exhaustive list of such persons, to include those affected by or pending a decree of nullity and non-cohabitees with a child in common. Also, 'associated persons' with sole ownership or tenancy rights in the home should be entitled to apply for a barring order

There is no reason why an unmarried parent who threatens or uses violence against the other should not be restrained using a safety or barring order. This lacuna in the legislation has been widely identified as one which urgently needs to be addressed.[24] Such persons would not be protected as

cohabitees nor under the 'catch-all' or 'other relationship' provision in section 2(1)(a)(iv) because, in order to qualify as an applicant under this provision, the victim must reside with the respondent. Also, though this provision covers a myriad of other relationships, such as that of adult siblings residing together, it only provides for the grant of a safety order, but not of a barring order, regardless of in whom the ownership or tenancy rights in the home are vested.

Footnotes:

15 Under section 3(4), a cohabitee applying for a barring order must have lived with the respondent for a period of at least six months in aggregate during the period of nine months immediately prior to the application and must have a legal or beneficial interest not less than that of the respondent.

16 These requirements are justified on the grounds that a less restrictive regime might amount to an infringement of the respondent's constitutional property rights. See the statement of Mervyn Taylor TD, then Minister for Equality and Law Reform, Dail Eireann, Parliamentary Debates, *Select Committee on Legislation and Security Official Report*, 7 November 1995, Col 454, cited in A. Shatter, Family Law, (4th ed.), Butterworths, 1997, at 848.

17 Under section 2(1)(a)(ii), a cohabitee applying for a safety order must have lived with the respondent for a period of at least six months in aggregate during the period of twelve months immediately prior to the application.

18 First Report of the National Steering Committee on Violence Against Women, March 1999, at 19.

19 However, under section 3(4)(a), similar ownership requirements apply where parents seek a barring order as apply in the case of a cohabitee.

20 For example, the National Council on Ageing and Older People report that up to 12,000 older Irish people are subjected to serious abuse and Parentline, the organisation for parents under stress, reported that the number of parents who sought help over physically abusive children had doubled during 1998. See W. Dillon, 'More parents facing attacks by children', *Irish Independent*, 30 March 1999.

21 Under sections 2(1)(a)(i) and 3(1)(a).

22 See Shatter, *supra* n. 16 at 847.

23 *Ibid*, at 851.

24 National Steering Committee Report, at 19, Task Force Report, at 51.

STATUTORY GUIDANCE

The Law Reform Committee recommends the introduction of either detailed statutory guidance or a list of criteria to be considered by the courts in determining whether to grant protective orders

The 1996 Act contains no detailed guidance nor does it set down statutory criteria to be considered by the court in determining whether there are sufficient grounds for the grant of any protective order. The court is simply instructed to satisfy itself that it is 'of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person so requires'.[25] Neither does it provide any clarification as to the circumstances in which it would be more appropriate to grant a barring order rather than a safety order and *vice versa* where either option is available to the court. Unfortunately, the opportunity has not yet arisen for the superior courts to give a definitive ruling in this area. According to Shatter

> 'In the absence of a detailed judicial exposition of the principles applicable, it is inevitable that there will be a lack of judicial uniformity in the application of the Act to the specific circumstances of individual applicants and their dependants.'[26]

The Law Reform Committee's survey would appear to support this view with evidence of practice differing as between District Court areas. When asked whether 'physical' grounds are necessary to secure relief in the respondent's Court area, 12 per cent of respondents replied that they are always necessary, 51 per cent replied that they are generally necessary, but 36 per cent answered that physical grounds are only sometimes necessary.

It is worrying that, in order to grant relief, many judges still require physical grounds or, at least, feel uncomfortable in the absence of such grounds, when these are no longer required under the Act.[27] Equally worrying is the fact that 11 per cent of respondents answered that, in their experience, the factors needed to establish the grounds for obtaining protective orders are different for spouses than for non-spouses. These findings suggest that there is considerable divergence among District Court judges in the exercise of their discretion under sections 2 and 3 and that judicial training might prove beneficial.

The provision of detailed statutory criteria to guide judicial discretion is an approach adopted elsewhere in Family Law. *The Judicial Separation and Family Law Reform Act, 1989*, the *Family Law Act, 1995* and the *Family Law (Divorce) Act, 1996* each set down clear and detailed criteria for consideration by the courts in the exercise of discretion under the legislation. This makes it 'far easier for the practitioner to advise the client on the issues to be considered by the court when deciding whether or not to grant a particular relief.'[28]

Also, the introduction of detailed criteria would permit the use, where appropriate, of differential tests as to misconduct requiring the grant of protective orders. For example, Shatter suggests that it might be appropriate that the standard of misconduct giving rise to a barring order against an adult child who is an 'invitee' in the home may be of a less serious nature than that of a spouse with a 'right' to reside there.[29]

Footnotes:

25 Sections 2(2) and 3(2)(a).

26 *Supra*, n. 16 at 880. He further points out that '[S]uch a difficulty has previously been experienced in barring proceedings instituted under the 1976 and 1981 Acts in cases in which spousal misconduct falling short of violence was relied upon by applicants seeking barring orders.'

27 See definition of 'welfare', *infra.*

28 R. Horgan, *supra*, n. 4 at 14.

29 *Supra*, n. 16 at 866.

DEFINITION OF 'WELFARE'

The Law Reform Committee recommends the provision of guidance as to the relevance and effect of the O'B v O'B judgment, in the context of the new definition of 'welfare' contained in the 1996 Act. Generally, statutory guidance with regard to 'welfare' based applications should be extended and clarified

Under the 1996 Act, the definition of 'welfare' has been broadened for all applicants to include 'the physical and psychological welfare of the person in question'.[30] However, there is uncertainty as to whether this new definition merely gives legislative effect to the Supreme Court decision in *O'B v O'B*[31] or whether it changes the considerations to be taken account of in welfare-based applications. It is quite clear from the statutory definition that physical violence is not required before a protective order is granted. The Supreme Court accepted this in *O'B v O'B* but was divided over whether the respondent's conduct, which included 'rudeness by the husband in front of the children, a lack of sensitivity in his manner to her and efforts by him at dominance in running the home' and which resulted in ' tensions, strains and difficulties',[32] amounted to

> 'serious misconduct on the part of the offending spouse – something wilful and avoidable which causes, or is likely to cause, hurt or harm not as a single occurrence but as something which is continuing or repetitive in its nature. Violence or threats of violence may clearly invoke the jurisdiction.'[33]

While the majority found that the respondent's conduct fell within the 'ordinary wear and tear of married life' and so failed to amount to serious misconduct, Griffin J, dissenting, concluded that he had 'constantly indulged in … conduct which no woman should be required to put up with' and which 'was bound to have an adverse effect on the physical and emotional health of the wife and children'.[34] Shatter submits that the approach of Griffin J is more in accord with the concept of welfare as now expressly defined in the 1996 Act[35] though he concedes that, in the absence of statutory guidance, a decision of the Supreme Court under the 1996 Act would be necessary to clarify the position fully.[36]

Footnotes:

30 Section 1(1).
31 [1984] IR 182; [1984] ILRM 1.
32 [1984] IR 190, *per* O'Higging CJ. See Shatter, *supra*, n. 16 at 861.
33 [1984] IR 189, *per* O'Higgins CJ. See Shatter, *supra*, n. 16 at 860.
34 [1984] IR 195.
35 *Supra*, n. 16 at 860.
36 *Supra*, n. 16 at 866.

STANDARD OF PROOF

The Law Reform Committee recommends that further statutory guidance be provided regarding the standard of proof necessary to establish abuse

Similarly, there is a total absence of guidance as to the standard of proof necessary to establish abuse and, therefore, practice varies as between District Court areas. The 1996 Act merely requires that the court be 'of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person' requires a protective order to be made.[37] In cases concerning physical abuse, 72 per cent of respondents to the Law Reform Committee survey replied that the allegations are generally supported by the evidence of the applicant alone while only 26 per cent reported that both the evidence of the applicant and medical evidence are usually required. Only 2 per cent replied that medical evidence is always required. In non-violent cases concerning emotional abuse, neglect or addiction, 59 per cent replied that the abuse is generally supported by the evidence of the applicant alone while 22 per cent stated that both the evidence of the applicant and medical evidence are required. 18 per cent reported that medical or other evidence is always required in such cases. In relation to applications for interim barring orders, 35 per cent of respondents reported that evidence and corroboration are generally necessary while 59 per cent replied that they are not. 4 per cent reported that evidence and corroboration are sometimes necessary for the grant of an interim barring order.

These findings demonstrate a marked lack of uniformity in court practice which inevitably renders the application of the law uncertain and creates obvious difficulty for lawyers in advising clients. Judicial training in relation to domestic violence might also prove beneficial. Also, in considering and drafting statutory guidance on evidential requirements, the Department of Justice, Equality and Law Reform could contemporaneously explore the possibility of allowing victims to give evidence through a video link[38] or from behind a screen.[39] This might be appropriate where applicants are intimidated by the respondent's presence or are embarrassed to present the full facts of the abuse in court.

Footnotes:

37 Sections 2(2) and 3(2)(a).

38 The Task Force Report recommends that this possibility be explored, at para. 6.30, page 55.

39 *Ibid.*, para. 6.42, page 57.

WELFARE REPORTS

The Law Reform Committee, aware that a Commission is currently reviewing the role of the Probation and Welfare Service, recommends that the Service be given a clear statutory role in relation to domestic violence cases and adequate resources to allow it to discharge its statutory functions

Welfare reports provided by the Court Probation and Welfare Service can bring independent expertise to bear on welfare issues. While the court has the power to order the provision of a report from any source and fix either or both parties with the associated costs, in reality many litigants cannot afford to fund a report. The court is thus often deprived of the benefit of reports in cases involving impecunious litigants. Legally aided litigants may of course have their Legal Aid Certificates amended to allow for the Commissioning of such reports. However, the litigant of modest means who does not qualify for legal aid can rarely afford to bear the costs involved.

The Probation and Welfare Service has provided reports in Family Law cases since 1976, even though they did not have a statutory remit to do so in civil cases. The court or either of the parties to the proceedings could seek a report from the Probation and Welfare Service in order to bring independent evidence before the court. The ever expanding workload of the Service in the absence of increased funding led to tension between Criminal Law work for which the Service had a statutory remit and the expanding non-statutory Civil Law / Family Law work. The service of providing reports was withdrawn in Family Law cases in 1996.[40]

The Service was given a limited statutory role in Family Law cases by virtue of section 40 of the *Judicial Separation and Family Law Reform Act, 1989* . Section 40 amended the *Guardianship of Infants Act, 1964* and provided for welfare reports in guardianship cases. There was however, no statutory remit with regard to domestic violence cases as such. That section was repealed and replaced by section 47 of the *Family Law Act, 1995* which limited the provision of 'Social Reports' to the Circuit Court and High Court levels. The section was not limited to guardianship cases however, and dealt with a much wider variety of proceedings. Section 47 of the *Family Law Act, 1995* entitles the court to give directions

'… for the purpose of procuring a report in writing on any question affecting the welfare of a party to the proceedings or any other person to whom they relate from –

(a) such probation and welfare officer …

(b) such person nominated by a health board …

(c) any other person specified in the order.'

This provision may therefore be utilised to obtain a report on the welfare of a wide range of persons affected by the proceedings. The section further provides that

'The fees and expenses incurred … shall be paid by such parties to the proceedings concerned and in such proportions, or by such party to the proceedings, as the court may determine.'[41]

The Children Act, 1997 amends the *Guardianship of Infants Act, 1964* and provides that such reports can now be ordered at District Court level. In public law cases, section 27 of the *Child Care Act, 1991* gives the District Court and, on appeal, the Circuit Court the power to procure reports on any question affecting the welfare of the child. These reports are provided by and funded by the Health Board.

Under section 7 of the *Domestic Violence Act, 1996*, the court has the power in domestic violence cases to consider the grant of an order under the *Child Care Act, 1991* and to adjourn the proceedings and order an investigation by the Health Board into the circumstances of any dependent person. This provision has been used in some District Court areas as a means of obtaining a welfare report at the expense of the Health Board where the parties are impecunious and there are serious concerns for the welfare of children or other dependant persons.

However, according to the Law Reform Committee's survey, the courts experience considerable difficulty and delay in obtaining such reports. When asked whether Health Board social workers provide reports as ordered by the courts,[42] 12 per cent reported that they usually do so, 45 per cent reported that they sometimes do so and 36 per cent replied that they never do so. When questioned about delays in obtaining such reports, 20 per cent of respondents reported average delays of 6 weeks, a further 20 per cent reported delays of 12 weeks and 25 per cent reported even longer delays. The Task Force on Violence Against Women considers that the District Court should have access to Probation and Welfare Reports in coming to its decisions in Family Law cases and has recommended that the question of staffing resources within the Probation and Welfare Service should be addressed by the Department as a matter of priority.[43]

Footnotes:

40 See R. Horgan, *supra*, n. 4 at 13 and Task Force Report, para. 6.53, at 59.

41 Section 47(4).

42 Under section 27 of the Child Care Act, 1991, section 47 of the Family Law Act, 1995 or section 7 of the Domestic Violence Act, 1996.

43 Task Force Report, para. 6.55 at 59.

SUPERVISED ACCESS

The Law Reform Committee recommends an increased role for the Probation and Welfare Service in supervised access arrangements and, aware that a Commission is currently reviewing the role of the Service, recommends that it be allocated adequate resources to fulfil this role. This should extend to the provision of 'access centres' staffed by trained personnel

The Law Reform Committee's survey supports the important role of court orders providing for supervised access. When asked whether, after the grant of a barring order on grounds of domestic violence, access to children results in further problems, 67 per cent of respondents replied that access often gives rise to problems while 30 per cent reported that access rarely does so. Only 1 per cent of respondents reported that access arrangements never resulted in further problems.

Though the courts frequently make orders for supervised access arrangements, the Task Force on Violence Against Women considers that this supervision should be provided by a trained professional who is aware of the potential dangers in such situations. Therefore, it recommends that this service should be provided by the Probation and Welfare Service who the Task Force reports 'have been found to be supportive, objective and professional in their approach, by women in abusive situations'.[44]

With regard to supervised access, the reality for most people is that access takes place at weekends when neither the Probation and Welfare Service nor the Health Boards operate. In England, this issue is resolved by the provision of 'Access Centres' staffed by trained social workers or childcare workers. This arrangement also provides a safe environment for access to take place in situations where the long term prognosis is for unsupervised access but a period of trust needs to be built up.

Footnotes:
44 Ibid, para. 6.54 at 59.

APPLICATIONS UNDER RELATED ACTS

The Law Reform Committee recommends measures to encourage judges to use the procedure contained in section 9 of the 1996 Act, subject to adequate reasonable notice having been given to the respondent regarding all related issues

With a view to streamlining proceedings, reducing costs and eliminating delays in family law cases, section 9 of the 1996 Act empowers the court, where an application is made to it under that Act, to deal contemporaneously with the issues of access, maintenance, restriction on conduct leading to the loss of the family home, the disposal of household chattels and orders under the *Child Care Act, 1991*. There is no need to institute separate proceedings under the Act concerned. However, in the case of maintenance matters, there is a requirement for the mutual exchange of particulars of property and income and some District Courts will not deal with maintenance on an impromptu basis without statements of means being exchanged in advance.[45]

However, the Law Reform Committee's survey has shown considerable reluctance among judges to deal with these associated matters during domestic violence proceedings. When asked whether the court will deal with these issues contemporaneously, 30 per cent of respondents replied that it will never do so and 35 per cent reported that it will only sometimes do so. Only 33 per cent reported that the court will usually try to deal with these issues together.

This variation in practice creates uncertainty as to the practical outcome of domestic violence proceedings and creates difficulty for lawyers in advising their clients. Not possessing any information on why many judges decline to deal with related issues contemporaneously, the Law Reform Committee would suggest training for judges and any other measures which might encourage this 'fast-track' approach.

Footnotes:

45 Section 23(4) of the Family Law (Maintenance of Spouses and Children) Act, 1976 as inserted by the Family Law Act, 1995. See R. Horgan, *supra*, n. 4 at 13.

GENERAL RECOMMENDATIONS

The Law Reform Committee recommends the establishment of regional family courts and the organisation of judicial training for judges dealing with domestic violence cases along the lines proposed by the Law Reform Commission

REGIONAL FAMILY COURTS

The Law Society has consistently called for the establishment of regional family courts to which lawyers with considerable experience of family law could be appointed as judges. Similar recommendations have been made by the Law Reform Commission,[46] the Task Force on Violence Against Women,[47] the Working Group on a Courts Commission[48] and are supported by empirical research undertaken by Women's Aid.[49] Indeed, the Minister for Justice, Equality and Law Reform recently told a conference at which Women's Aid presented the same research on domestic violence that he would soon be considering a system of regional family courts.[50]

Such an initiative should go a long way towards ensuring that domestic violence cases would be decided consistently and handled sensitively. A high level of expertise should develop among court officials dealing directly with victims as would a coherent family law jurisprudence. Also, these courts could provide appropriate facilities to ensure the privacy and safety of applicants such as private consulting rooms and video-link facilities. In addition, regional family courts could provide a structure for recording and compiling cases and judgments involving domestic violence which would contribute to the development of consistent practice and jurisprudence in this area.[51]

JUDICIAL TRAINING

In the absence of regional family courts, the need for judicial training in Family Law matters is exacerbated. The findings of the Law Reform Committee's survey, by highlighting judicial inconsistency in applying the substantive provisions of the 1996 Act and in relation to evidential requirements, would appear to support calls for judicial training. Also, the apparent reluctance among judges to deal with associated matters and to make orders under related legislation during domestic violence proceedings might suggest the need for ongoing training in the area of Family Law. Further, respondents to the survey reported that 35 per cent of District Court judges will now

interview children where they believe this to be appropriate. While the Committee supports this practice in principle it believes that it is very important that that judges are provided with guidelines and training on dealing with children and with the evidence of children. Judicial training for those involved in domestic violence cases, including the judiciary, has been recommended by the Task Force on Violence Against Women,[52] and alluded to by Women's Aid.[53] The Law Reform Commission has strongly recommended that judicial studies on domestic violence be organised on a systematic basis [54] and noted that, when made provisionally, this recommendation 'met with widespread approval from judges and other commentators'.[55] The Commission further suggested that such training should have an interdisciplinary element which would help the judiciary:

> '(a) to understand the complex area of family disputes within an holistic framework and
>
> (b) to understand the approach and perspective of various professional groups and in turn to better evaluate their evidence.'[56]

Footnotes:

46 A Law Reform Commission Report on Family Courts, Law Reform Commission (1996). The Report states, as its first recommendation (at 127):
'There should be established a system of Regional Family Courts located in approximately fifteen regional centres. The Regional Family Courts should operate as a division of the Circuit Court and in the context of a full range of family support, information and advice services. The Regional Family Courts should have a unified family law jurisdiction, wider than that of the present Circuit Family Court. The Regional Family Courts should be presided over by judges nominated to serve for a period of at least one year and assigned on the basis of their suitability to deal with family law matters.'

47 Task Force Report, para. 6.40, at 57. See also, First Report of the National Steering Committee on Violence Against Women (March 1999), at 19-20.

48 Sixth Report of the Working Group on a Courts Commission, (April 1999), at 78.

49 See P. Kelleher and M. O'Connor, 'Safety and Sanctions: Domestic Violence and the Enforcement of Law in Ireland' (April 1999) (Commissioned and Published by Women's Aid, Dublin), at 19-20.

50 See 'Minister to consider regional family courts', *Irish Times*, 22nd April, 1999.

51 Systematic recording of domestic violence cases would assist in the monitoring and review of the operation of the Domestic Violence Act, 1996 as recommended by the Task Force on Violence Against Women, see Task Force Report, para. 6.14, at 52. It would also provide a mechanism for tracking domestic violence cases as recommended by Women's Aid, see Kelleher and O'Connor, *supra*, n. 49, at 20-21.

52 Task Force Report, para. 6.36, at 56.

53 Kelleher and O'Connor, *supra*, n. 49, at 18-19.

54 *Supra*, n. 46 at 139.

55 *Ibid*, at 117.

56 At 118.