

Parent Abuse: Can Law Be the Answer?

Caroline Hunter* and Christine Piper**

*York Law School, University of York

E-mail: caroline.hunter@york.ac.uk

**Brunel Law School, Brunel University

E-mail: christine.piper@brunel.ac.uk

This article reviews the different forms of legal interventions which may be available to address parent abuse. It seeks to examine the evidence as to which are actually used currently and the problems which are inherent in them. We do this both by examining the statutory basis of the existing potential legal remedies and reported cases relating to those provisions, and by drawing on evidence from a small-scale study of relevant professional workers in one city. We conclude that while recourse to the police, and hence potentially the criminal justice system, is most frequent in practice, the criminal justice system is not suited to tackling the issue. Other interventions, such as anti-social behaviour orders and injunctions, also reveal problems. Law struggles to find an effective response to such a complex problem. Notwithstanding the acknowledged limits of law in changing behaviour, we argue that law could be used more effectively to reduce the incidence and impact of parent abuse.

Keywords: Children, parent abuse, law, youth justice, injunctions.

Introduction

Law has been used over the last twenty years to add new constraints on, and responses to, the behaviour of children and young people outside the home. It has also been used as a tool in a ‘remoralisation’ project to encourage parents to take more responsibility for the behaviour and well-being of their children (see, for example, Day Sclater and Piper, 2000; Hollingsworth, 2007; Koffman, 2008). This trend can be seen, for example, in developments as diverse as the expansion of law to tackle anti-social behaviour and the use of procedural and substantive family law to give increasingly clear and urgent messages about ‘good’ and ‘bad’ parenting (see, for example, Eekelaar, 1999; Reece, 2005). Yet parent abuse is a construct which, we contend, is almost entirely absent in various legal realms: in public law relating to child protection and children’s services, in private law relating to inter-parental disputes, in criminal law relating to children who offend and in civil law relating to those who behave anti-socially. ‘Adolescent-to-parent violence does not fall within official definitions of domestic violence and the problem has remained largely unarticulated within the fields of youth justice, domestic violence, policing and criminology, particularly in the UK’ (Condry, 2010).

It has been suggested that the law itself was ‘part of the failure to construct mother abuse as a problem which needs to be addressed’ (Hunter *et al.*, 2010: 283). Our objectives in this article are more limited. We return to the different forms of legal interventions which may be available and seek to examine the evidence as to which are actually used currently

and the problems which are inherent in them. We do this both by examining the existing legal remedies and reported cases, and by drawing on evidence from relevant professional workers in one city, referred to below as City X (see Nixon, this volume, for details of the research).

We are aware that there are limits to what law can achieve in any sphere of national and international life¹ and this is particularly so with regard to the family, where notions of the 'private realm' are still widely held.² However, while legal remedies will not always be the way to address parent abuse, it is unlikely that relevant statutory agencies will develop clear policies and procedures without a legal framework. We contend that existing criminal justice responses are neither adequate nor desirable, we argue that law is a pre-requisite for resources to be made available and used. Without a legal framework, abused parents – and their abusing children – will find it difficult, if not impossible, to access support or protection.

The nature of child to parent violence and the existing research is dealt with elsewhere in articles in this themed section (see Nixon and Hunter, this volume). This article focuses on the responses to the typical situation when the parent – usually, but not always, the mother – is (repeatedly) abused by their adolescent child; the abuse may be physical and/or emotional and/or financial, and it usually entails an adolescent child who not only wishes to control the parent/child relationship – as do of course many non-abusing adolescents – but also does harmful acts to achieve control (see further the discussion in Hunter and Nixon, this volume). The very fact that parents are expected, in law and by society, to be in control as the dominant partner in an unequal parent–child relationship makes it more difficult for parents to admit to a lack of control. This also makes it more difficult to apply to parent abuse those provisions in law which is premised on equal partnerships.³ This normative confusion may, in conjunction with the nature of the child's actions towards a parent, account for the current focus on youth justice 'remedies'.

The criminal justice system

By far the most common response by workers in City X to questions about how young people who were abusing their parents came to the attention of services was to refer to parents calling the police. This was also sometimes suggested as the advice that parents would be given if they sought help from other services.

Well what I found was that young people perhaps had come to the attention of the police, the parents had perhaps phoned the police as perhaps a cry for help, even their last resort, felt they could no longer manage the situation, and young people were often arrested and charged for common assault or for criminal damage and that's what it showed on their charge sheet if it came to court. (Senior parenting practitioner)

This is perhaps not surprising. Evidence suggests that criminal and youth justice responses seem to be the dominant response in England at the moment, largely for pragmatic reasons (see, for example, Holt, 2009; Robinson, 2011). Further, the Youth Justice System (YJS) is often mandated to investigate family circumstances which might reveal such abuse. For example 'Before making a youth rehabilitation order, the court must obtain and consider information about the offender's family circumstances and the

likely effect of such an order on those circumstances' (Criminal Justice and Immigration (CJI) Act 2008, Sch. 1, para. 28).

If young people are channelled into the criminal justice system, the response will be based on the aim of the YJS of reducing the offending of the young person (Crime and Disorder Act (CDA) 1998, s.37(1)) whether through 'help' (rehabilitation) or punishment (just deserts, containment, deterrence). Certainly, there are many voluntary and mandated opportunities for the young person to be offered help via the work of the Youth Inclusion and Support Panel (YISP) and Youth Inclusion Programme (YIP) for the young person deemed to be 'at risk', as well as on referral from a police warning to the youth offending team (YOT) (see CDA 1998, ss.65–66). Also being phased in are youth conditional cautions (CDA 1998, s.66A), extending the use of this pre-court option to those under eighteen. The conditions can include attendance at specified times and places and can be for the purpose of rehabilitation (s.66A(4)(b) and (5)). However, warnings and conditional cautions can be used only if, *inter alia*, the authorised officer has evidence that the child or young person has committed an offence, that the child or young person has admitted the current offence (CDA 1998, ss.65(1) and 66B) and that he or she has not previously been convicted of an offence.

If these options are unavailable, or if the offence is deemed too serious for diversion to a pre-court disposal, then the young person could be prosecuted, say, for one of the offences under the Offences Against the Person Act 1861. On a first (non-serious) conviction at the youth court, the outcome will normally be a referral order, meaning that the young person is referred to the youth offending panel (YOP) to agree a programme of preventative (rehabilitative) interventions.

However, these options introduced in and since 1998 restrict the 'chances' given to a child: police reprimands (given before warnings) and warnings are normally limited in their application to one 'go' at each, whilst a referral order potentially entails a return to the court for failure to agree preventative interventions or failure to complete what has been agreed.⁴ If the young person has exhausted these chances then, if being dealt with primarily as an offender, he or she will be prosecuted and, on further appearances at the youth court, could receive a community sentence (now the new youth rehabilitation order – YRO) or, ultimately, a detention and training order. The court can attach to the YRO (Criminal Justice Act 2003, s.177, as amended) one or more of the fifteen requirements specified, and so, for example, the young person could be subject to a supervision or programme requirement to address the abusing behaviour or to an exclusion or prohibited activity requirement to protect the abused parent.

Further, the court can specify the child lives elsewhere, including in local authority accommodation (CJI Act 2008, s1 (i) and (j) and Schedule 1 para 17), so providing a respite for the abused parent for the maximum six months allowed by the Act. However, there is a rub here in that the court cannot include a local authority residence requirement unless it is satisfied that 'the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living' (para 17(3)(a)). Whilst that would apply where there was inter-generational abuse, the implication is that the parents are at fault in allowing such circumstances, and so any respite for the abused parent comes at the cost of stigmatisation.

The complexity of the relationships in child to parent violence also means that parents are often reluctant to allow interventions which remove the child from the home. One social worker based in the youth offending team recounted:

she'd actually brought police in because he'd smashed house up and gone for her ... but ... they bailed him not to return to house, but he then became sixteen and where can he go? And we had to get him bailed back to house. I had to mediate with her cos she were terrified of what would happen to him; we placed him in bed and breakfast and she said, 'he's not used to that, he's streetwise but he's not used to not living with us'.

The above options all focus on the offender, although a minority have a direct and immediate effect for the abused parent. There are, however, options which focus on the parent, notably attendance at a parenting programme. This could be offered as a voluntary place on a course run by a youth offending team (YOT) or the parent could be subject to a voluntarily entered parenting contract. However, the 'voluntary' nature of these options should be interpreted in the light of consequences for non-cooperation. For example, the parenting contract was put on a statutory footing in 2003 and non-compliance has implications.⁵ Alternatively, a parenting order could be imposed (see Condry and Miles, this volume, Holt, 2009).⁶

The criminal justice system usually provides a stark divide between the perpetrator and the victim. For most interviewees in City X, there was resistance to seeing matters in these terms. However, for the senior parenting practitioner, who had also worked in the youth offending service, the particularly difficult position of parents was clearly recognised:

When parents are hospitalised because of the way in which their children behave towards them, it shows you that sort of level [of violence] but I think it's also that awful guilt you carry as a parent, I'm the parent, I should be in control here and I'm also responsible for this child so I'll phone the police because I feel that I can no longer manage this situation, they get arrested so I feel guilty about it, I feel guilty ... because I couldn't manage the situation, I then go to court and support them at court, if it's criminal damage and my landlord decides to take any action, I end up with a bill, if it's felt that a parenting order may be appropriate, I then get served with a parenting order and it escalates and escalates. I then support my child through the intervention perhaps with the youth offending service so it's lots of commitment from the parent who in turn is being the victim in all this.

The parent's feelings of guilt also vividly illustrate the success of the 'remoralisation' and 'responsibilisation' policy agenda to which we referred at the beginning of this article. The parent feels it 'must' be their fault.

The possible youth justice responses reviewed above raise the question as to whether it is appropriate to allow the further development of responses to child to parent abuse to take place within the criminal justice system. The advantage is that the YJS is involved in developing expertise and programmes in relation to parenting (but see Condry and Miles, this volume) and the 'investing in children' agenda under the Labour government encouraged early intervention projects and funnelled resources to preventative schemes (see Piper, 2008: chapter 7). It is clear that some families were being referred to these in City X.

There are, however, clear disadvantages, notably the criminalisation of the young person. Whilst there is some merit in attaching to parent abuse the symbolic – and possibly deterrent – value of being treated as an offence, criminalisation is not in the best long-term interests of children and is also likely to lead to unhelpful feelings of guilt in the parent. The addition of parenting orders also stigmatises the parent. These issues again

pinpoint the question of the aim of intervention: to 'reform' or punish the child, remove the child to protect the parent, remove the parent or 'educate' the parent? Further, those developments which focus on both child and parent often bring together family and youth justice policies in a way which may extend the ambit of criminalisation (Koffman, 2008: 120–1; Vaughan, 2000).

Civil injunctive remedy?

It may, therefore, be better to assess whether a civil order could be used to restrain a child and protect a parent.

Anti-social behaviour orders (ASBOs) are currently available to the courts in relation to anyone aged ten or over in England and Wales via the civil jurisdiction of a magistrate or in the criminal court following conviction ('CRASBO'). Police, housing associations, local authorities can apply for an order. The definition of anti-social behaviour in the CDA 1998 is relevant to the parent abuse issue: it is behaviour 'in a manner that caused or was likely to cause harassment, alarm or distress' (s1(1)(a)); the order must last at least two years, and the presumption is now that parenting orders and individual support orders (ISOs) will be added to ASBOs so that 'help' might also be available to parent and child. However, they would currently probably not be available for parent abuse situations because the behaviour must be 'to one or more persons not of the same household as himself' (CDA 1998, s1), although *R (Rabess) v. Commissioner of the Police for the Metropolis* [2007] EWHC 208 (Admin) suggests a way this can be applied. In that case where there was domestic violence between partners, the imposition of an ASBO was upheld on appeal because of the effect on neighbours of their behaviour (see Burton, 2008).

It should be noted, however, that in *Rabess*, the appellant was an adult and the allegations were both ways. Thus, ASBOs were issued against both the appellant and his partner, and as the partner did not live in the same home, she was banned under the terms of her ASBO from coming to his home. The ASBO against the appellant prevented him from 'using abusive, insulting, threatening or intimidating language or behaviour towards [his partner], and secondly using or threatening violence against her'. On appeal, the terms were varied to add the phrase 'within sight or hearing of a person not of the same household as the appellant'. As the judge made clear, if the threats were whispered to his partner, there would not be a breach of the ASBO; ASBOs are not intended to protect victims within the same household. It seems unlikely that the current Government's proposals to replace the ASBO and the Anti-social Behaviour Injunction (ASBI – see below) with a Crime Prevention Injunction and a Criminal Behaviour Order (see Home Office, 2011) would make any difference to this as it is intended to retain the reference to 'persons not of the same household'.

It may be noted that none of the practitioners in the study referred to ASBOs as a potential way of dealing with the issue. Nor did they refer to any other form of injunctive remedy that applicants could take. There is evidence of local authorities, as in *Rabess*, using anti-social behaviour and other tools to deal with issues of domestic violence. The ASBI is another measure open to local authorities and other social landlords in cases of nuisance and annoyance related to the landlords' role as a housing provider (see Housing Act 1996, ss.153A – 155). In *Accent Foundation Ltd v. Lee* [2007] EWCA Civ 665 an injunction was obtained against the adult respondent because of his violent behaviour towards his mother and sister. The injunction banned him from entering the locality in

which his mother and sister lived or from threatening violence or harassing people living in the area.

A different legal approach was taken in *A Local Authority v. DL* [2010] EWHC 2675 (Fam). An elderly disabled couple were being abused by their adult son. The allegations included verbal threats, physical violence and extremely controlling behaviour such as preventing them leaving the house. The authority applied for an injunction under both the inherent jurisdiction of the high court and Local Government Act 1972, s.222⁷ effectively to prevent him molesting his parents. The argument of the authority that other potential remedies (an application to the Court of Protection under the Mental Capacity Act 2005, an application for an ASBO, an application for an ASBI) were not applicable was accepted by the court. The court granted the injunction under its inherent jurisdiction, but also found that arguably it could have been granted under s.222.

Some of the conflicts which interviewees perceived as felt by parents in City X were also apparent in this case:

[The mother], it appears, is worried that if steps are taken to remove DL from the property he might at worst commit suicide or that, at best, she might lose contact with him. Furthermore, the local authority acknowledges that whilst Mr L is more critical of DL's behaviour, he, Mr L, would be unlikely to want to take steps in opposition to his wife's wishes.

Despite the fact that the parents did not wish to take any action against their son, the key issue for the local authority was that it owed a duty to the couple as 'vulnerable adults'. In the examples recounted by respondents to the research, there were also clear instances where the parent being abused was vulnerable (e.g. because of mental health problems). The legal duties towards vulnerable adults are much less clearly defined than those towards children (Law Commission, 2010). It is perhaps not surprising that social workers employed to deal with child protection did not see cases through the murkier prism of adult protection, although one articulated it this way as an issue: 'If it's so serious a risk obviously I see it, it's an adult safeguarding issue' (Social worker: youth offending team).

What is noticeable about both these cases is that the perpetrators, although acting in a child to parent relationship, are adults. It is much easier to take injunctive action against adults than those under eighteen. The courts should not grant an injunction against an under eighteen unless there is a clear means of enforcement, which in the majority of cases there will not be (see *C v. Harrow L.B.C.* [2004] EWHC 17 and the discussion in Hunter, Nixon and Parr, 2010). While the ASBO permits legal action against children, it is not designed to deal with domestic situations. While other injunctive relief may technically provide a way forward, it is not designed to be used against children. However, in either case it is not clear that the complexity of the relationship between parent and child can be unravelled through such simple black and white legal forms.

Domestic violence legislation

It may be that family law would be a better option therefore, using occupation and non-molestation orders provided by the Family Law Act 1996. But, again, these are injunctive orders which are generally not used or usable in relation to those under eighteen years. It is, therefore, unlikely that a parent could apply for an occupation order excluding

the child (see ss.33 and 62(3)(d)). Even if the court could entertain such an application, s.33(7)(a) and (b) would preclude an order if the court believes the child would suffer significant harm through exclusion from the family home and that harm was greater than the harm being suffered by the applicant parent.⁸ The non-molestation order under s.42 of the Act theoretically might be available given that the parent is an 'associated person' who can apply for the order. Again, however, the court must have concern for the 'need to secure the health, safety and well-being' of any relevant child.

Not only would this option be deemed inappropriate by the judiciary, it is also unlikely to be taken up by abused parents. The research respondents were able to draw a clear distinction between taking action for domestic abuse against adult perpetrators and taking it against children. This again relates to the complexity of the relationship between parent and child:

it's unlike a partner relationship where you've got domestic abuse, it's far more complex than that because it's your child, and the guilt you feel that they're attacking you and the amount of physical abuse you'll absorb before you'll go and do something about it because you feel guilty for their behaviour and that's what they're trying to say to me but can't always articulate it. (Social worker: youth offending team)

Child law

Interviewing social workers inevitably meant that where interventions were being used, the underlying legal power of the authority came into play. Many local authorities run parenting programmes and, as the child to parent violence was most frequently seen as a failure of parenting (see Nixon, above), a common response was to refer parents to such programmes. Such interventions are covered by the Children Act 1989, s.17, which imposes a limited 'general duty' to assist children in need. As it was put by Ward L.J. in *R (on the application of G) v. Southwark LBC* [2001] EWCA Civ 540: 'the duty is performed by providing a range and level of services appropriate to those children's needs. Given that there is a wide range of choice, it has to be inferred that there is power to do one or more of many things to meet the general duty.' In order to facilitate this duty, local authorities must comply with those set out in Schedule 2 to the Act. None of these is directly relevant to the case of parent abuse; indeed the duty in para. 10 that:

Every local authority shall take such steps as are reasonably practicable, where any child within their area who is in need and whom they are not looking after is living apart from his family –

- (a) to enable him to live with his family; or
- (b) to promote contact between him and his family,

if, in their opinion, it is necessary to do so in order to safeguard or promote his welfare

would seem to sit behind the reluctance to take steps to separate families.

Paragraph 7(a)(ii) of that schedule is more helpful in that it enjoins the local authority to take reasonable steps in order, *inter alia*, 'to reduce the need to bring ... criminal proceedings against such children'. However, the courts have endorsed the fact that s.17 is a general duty and that the local authority has considerable discretion. These limits to the duty mean that any services which are provided are very susceptible to cuts. Local

authorities must act in cases of significant harm to the child. However, taking the ultimate step of taking children into care under 1989 Act, s.31 was something that social work practitioners were very reluctant to contemplate.

I went to a case management panel where you present your case and you say 'I think this would make the threshold for proceedings' or they make suggestions as to what else you can do and they were reluctant to say 'let's remove these boys' because of their age because you certainly wouldn't be looking at adoption, they're not adoptable, you'd be looking at either a residential unit cos you'd probably struggle with foster care . . . you'd be looking at residential and it would probably make them worse so you have to think about all those things, we would be really really reluctant to move them but obviously if it had to be done. (Front line social worker)

A care or supervision order may only be made in relation to a child under seventeen years of age and if the court is satisfied (Children Act 1989, s.31(2)):

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to –
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child's being beyond parental control.

Section 31(2)(b)(ii) would appear to be applicable, though it is rarely used. If the threshold is reached, the court must decide whether to make an order and whether to make a supervision or care order.⁹ The child could live at home under either order (and thereby s/he and the family could receive help and support) but a care order gives the local authority parental responsibility and the power to place the child elsewhere. The social workers interviewed in X City, occasionally considered that the behaviour was so serious in terms of the violence that was being perpetrated that the only way forward was for the child to be placed into secure care.¹⁰ This, however, had its drawbacks and was only contemplated in cases of severe violence.

Conclusions

The nature and extent of parent abuse is considered in other articles in this themed section. The problem which we have sought to pose here is whether an appropriate intervention can be found using existing English law?

Looking at the existing statutory provisions some are, or could be, used to intervene in child to parent abuse. Only recourse to the criminal law was suggested or apparently routinely used by those interviewed. While this might give access to support for the child to address the behaviour, it is done in a context which constructs the child as a criminal and the parent as responsible for the behaviour. Further, the criminal action towards the parent will often not be the key for criminal justice intervention. Unless there is a proven outcome in terms of a reduction in *other* offending by the child or young person concerned, there is likely to be a lack of resources and the lack of willingness to expend resources.

Other provisions were seen as simply unsuited in their current legal form and use. Some will require legislative modification, others might be capable of relevant

interpretation by the courts. However, these legal forms do not seem able to address the complexity of the need for an on-going relationship between the parent and the child. An intervention also needs to balance safeguarding the adult parent with providing an outcome that is in the best interests of the child. Similarly, dealing with the issue through a child social work paradigm, while it may give access to some support services, does so on the basis that the failure is one of parenting. It will rarely address the need to protect the parent. One of the front line social workers interviewed in the study clearly recognised that our current legal framework was inadequate, and did not provide a basis for intervention:

But again to me that raises questions again about legislation and policy that's made, and Acts that's made because it's so wrong, that's almost saying 'well if your husband or partner attacks you or vice versa we'll arrest 'em but it's ok for your child to do that' and again it comes back to what message is it sending to that young person, it's saying 'yeah that's fine' and then that's giving them a feeling of being more in power over that relationship but again it's legislation needs to be changed cos it's not acceptable, that's a hard choice for a parent to make, to have your own child arrested, but it's about skills for later life, that they've got to take responsibility for their actions and that's all we hear, 'you've got to take responsibility for your actions and you need to work and you need to do this and do that' all these messages from government but when it actually comes down to implementing any of it it's 'oh but it's a different rule because that's your son or daughter'.

We are not sure that we have come any closer to finding an answer. The current legal framework does not provide encouragement or compulsion for the release of resources to enable the complex intervention which is required to provide protection and support for the parent and rehabilitation for the child. We are not of the view that criminal law or injunctive solutions provide a way forward. It might be possible to provide an amendment to Sch.2 of the 1989 Act to impose a duty on local authorities to take reasonable steps to support parents who are abused by their children. New guidance on the use of Children Act 1989, s.31 to provide a structured and possibly mandated intervention could be encouraged. This would not, however, define the nature of the intervention. The interviews with practitioners indicated that parents only generally seek help when the problem has become entrenched and reached a point of crisis. This of course may be too late.

Given the current economic situation, it is unlikely that there will be more investment in services to respond to a harmful situation which is not yet seen as a social problem. Historically and now 'Governments have, in practice, been reluctant to promote measures which require new or increased expenditure on children; parliaments have sometimes proved similarly reluctant to pass such measures and the courts have often shown timidity when interpreting legislation about children and families' (Piper 2008: chapter 1). The difficulty stems from our views about parenting and families such that parents are blamed rather than the children and their parents being provided with the necessary support.

Notes

1 See for example, Sarat *et al.* (2005) (in relation to states in transition); Lustgarten (1986); Smart (1989).

2 See, for example, Boyd (1997) and Diduck (2003).

3 We are grateful to an anonymous referee for this insight.

4 The law is now in the Powers of Criminal Courts (Sentencing) Act 2000, ss.25–26.

5 Section 27 of the Anti-Social Behaviour Act 2003 mandates the court, when exercising discretion to impose a parenting order under s.26 of that Act, to take into account ‘any refusal by the parent to enter into a parenting contract under (a) section 25 in respect of the child or young person, or (b) if the parent has entered into such a parenting contract, any failure by the parent to comply with the requirements specified in the contract’.

6 Parenting orders were introduced in England and Wales by CDA 1998, ss.8–11 and the Anti-Social Behaviour Acts of 2001 and 2003 widened their scope.

7 Section 222 provides:

- (1) Where a local authority consider it expedient for the promotion of the interests of the inhabitants of their area –
 - (a) they may prosecute or defend or appear in any legal proceedings and, in the case of any civil proceedings, may institute them in their own name.

8 This section applies where the applicant has a legal interest or matrimonial home rights in the dwelling.

9 The local authority can apply for either order but the court retains its discretion to decide which is in the best interests of the child.

10 The local authority would need to apply under the Children Act 1989, s.25 using the criterion that an order was required because ‘if s/he is kept in any other description of accommodation s/he is likely to injure her/himself or other persons’. The child should normally be over thirteen years of age and in care. Otherwise the authority needs the permission of those with parental responsibility or must apply also for an interim care order.

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