

Legal Aid and Domestic Violence (Allegations of)

There is a pressing need, when parents are at odds about their children, for services to help them co-operate.

Legal aid in family proceedings has the opposite effect. It's not the children who are helped, but a parent attempting to 'win' in adversarial proceedings. True, Judges find their task eased by cases being better presented. However, at the price of delay, increasing hostility, and often staggering financial costs sometimes to the taxpayer, sometimes to a self-financing individual. The secrecy of family proceedings means that the ploys and ruses used by experienced professionals to 'win' on grounds other than benefits to children are largely hidden. 'Wins' arising from exhausting the emotional and economic resources of one side – or their deterrent effect – are completely so.

Legal aid has been withdrawn, except where domestic violence or abuse is an issue. Some of the routes to getting this require only the making of allegations with the help of people and agencies with a vested interest. The making of such allegations has, unsurprisingly, soared*. Usually just one party is helped. The other has to defend themselves (and their children's relationship with them) as best they can. Few are able – lack of confidence, personal ability, knowledge and relevant experience, money – to do this adequately. Some are simply helpless. *Trials are not fair, and the losers are the children.*

FNF is a child welfare charity. Our niche is enabling children of parents who live apart to have the relationship with both of them that they could benefit from, unless there is a reason otherwise. Domestic violence and abuse can be one. The question is getting the balance right.

Our demands are these;

- 1) If one party is legally aided, the other, unless they are well resourced, should be too. This is an elementary requirement of Justice.
- 2) Vulnerability – the inability of one party to challenge the assertions of the other – should be a ground for eligibility for legal aid.
- 3) Legal aid accessed because of allegations of domestic abuse should only be for all the proceedings but only those leading to 'Findings of Fact' about whether abuse had occurred.
- 4) If such proceedings find that the allegations were malicious or without basis, the legal firm used should not be paid.
- 5) Legal aid should not be given on the basis of the award of a 'Non-molestation Order' *if this is granted 'without notice'*, that is without the other party being heard or even told about the hearing or allegations. Such orders may be needed in emergencies. The slowness of other family court proceedings allows plenty of time for a fair hearing on the 'Non Mol' issue first.
- 6) Some agencies whose support is all that is required, currently, to trigger legal aid seem to support every allegation. Such agencies should lose this power, but be asked to refer people affected to accountable organisations, such as the police or NHS or other agencies, which decide on their merit.
- 7) There are moves to disallow people accused of domestic abuse, who have to represent themselves, from questioning the alleged victim about their assertions. This would further compromise the fairness of the trial and thereby, in some cases, the welfare of the children. If this move is proposed, the accused should be given legal aid, so that questioning is done by a professional not directly involved.
- 8) There should be investigation into whether there are corrupt and collusive arrangements between agencies with vested interests, eg legal firms and support agencies providing each other with clients.

*Domestic Violence and Child Welfare, Getting the Balance Right' *Families Need Fathers* 2018