

DEFINITION OF DOMESTIC ABUSE:

Behaviour is “abusive” if it consists of any of the following:

- Physical or sexual abuse;
- Violent or threatening behaviour;
- Coercive or controlling behaviour;
- Economic abuse* ;
- Psychological, emotional or other abuse. (Section 1(3) Domestic Abuse Act 2012)

*Economic abuse is ‘any behaviour that has a substantial adverse effect on the [victim]’s ability to (a) acquire, use or maintain money or other property, or (b) obtain goods or services’.

It does not matter whether the behaviour consists of a single incident or a course of conduct.

THE LAW

- Section 25(2)(g) of the Matrimonial Causes Act 1973: The court will have regard to the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be **inequitable to disregard** it.
- Conduct can include domestic abuse, including economic abuse. However, for domestic abuse to be considered, the test in OG v AG applies: “**gross and obvious** personal misconduct meted out by one party against the other...”
- Conduct must therefore be of a **highly exceptional nature** to be taken into account.
- Economic abuse must meet the high standard of being ‘**inequitable to disregard**’ in order for it to be reflected in any award.
- There is a need for a **causative link** between the act/omission and identifiable negative financial consequences.

THE FACTS

- A recent 2024 survey found there is overwhelming professional concern that the long-term impact of domestic abuse is not sufficiently considered in financial proceedings between separating couples and parents.
- A failure to provide full and frank disclosure is a consistent theme. It is only now being understood that this is also a form of economic abuse. For example, a party not being transparent when they have all the knowledge and assets leaves the other party powerless and unable to settle. It makes things longer and more expensive.
- Further, issues are present in the enforcement of court orders whereby perpetrators use delaying tactics when it comes to enforcing a final order. For example, failing to complete the necessary steps required to sell the family home.

WHY ARE THERE ISSUES?

- Practitioners are often unclear about at what point domestic abuse is **sufficiently** serious to be considered by the court to be relevant conduct;
- The 'obvious and gross' hurdle is **high** and may not capture those cases in which serious findings of domestic abuse had been made in other proceedings or where the perpetrator has a criminal conviction;
- The requirement to evidence a **causative link** to an adverse financial consequence fails to recognise that there is research showing that a history of domestic abuse in a relationship is correlated with poorer short-term and long-term financial outcomes for women.

WHAT DOES THIS MEAN IN PRACTICE?

- Parties tend to be **dissuaded** from pursuing conduct when it may be perfectly proper for them to do so.
- There is a **difference** between the incidence of domestic abuse and how often it is raised in financial remedy proceedings.
- It acts as a **barrier** for victims to plead facts which might be influential in the assessment of how other Section 25 factors are considered.
- The view of judges hearing financial cases as to what domestic abuse crosses the high threshold does not reflect the general societal view that **all forms** of domestic abuse are repugnant.

RESOLUTION HAS MADE SOME RECOMMENDATIONS TO PROTECT THE NEEDS OF VICTIMS OF DOMESTIC ABUSE:

- Resolution calls for a **culture shift** from all professionals to improve practice in this complex area. The Family Law Team at Pearson Hards LLP are experienced and trained to understand the nuances and impact of domestic abuse upon the family and be able to support our clients in their often difficult and daunting journey.
- When a party fails to provide full and frank disclosure, Resolution invites the court's **case management powers** to be better utilised. For example, through the use of costs orders.
- An amendment to the overriding objective so that dealing with cases 'justly' includes 'ensuring the parties are safeguarded from domestic abuse'.
- It should be made clear as a **matter of law** that the duty of full and frank disclosure starts when parties start to engage in **NCDR or negotiations**.