

UNLOCKING THE ENGLISH LEGAL SYSTEM

Rebecca Huxley-Binns
Reader in Legal education
Nottingham Law School, UK

CASES FOR SESSION 3
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There are extracts from three cases below. Please read the extracts and consider:

- *what are the cases about (in fact and in law)?*
- *do you agree with the decisions?*
- *can you see a development in the law from the first to the second and then to the third case?*

CASE EXTRACT 1.

R. v Gaetano Constanza

Court of Appeal

6 March 1997

[1997] 2 Cr. App. R. 492

(Lord Justice Schiemann, Mr Justice Curtis and Judge Neil Denison Q.C. (Common Serjeant of London):

March 4, 6, 1997

...

The appellant wished to form a relationship with the complainant who did not reciprocate. *Inter alia*, the appellant followed the complainant, sent her more than 800 letters, telephoned her on numerous occasions, only speaking sometimes, watched her house from his car and wrote on her door. There was medical evidence that the appellant's actions caused the complainant to suffer from a clinical state of depression and anxiety. The appellant was convicted of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861. On appeal it was conceded that the appellant's behaviour occasioned the complainant actual bodily harm but it was argued on his behalf that in the present situation the fear of violence was insufficiently immediate and the case should therefore have been withdrawn from the jury.

Held, dismissing the appeal, that it was sufficient for the prosecution to prove a fear of violence at some time not excluding the immediate future; that it was not essential that the victim was able to see the potential perpetrator of the violence; that conduct accompanying words was capable of making the words an assault, and that, accordingly, the judge was entitled to leave to the jury the question whether the fear was of violence sufficiently immediate to be described as the fear of immediate violence.

Appeal against conviction.

On March 25, 1996 at the Crown Court at Luton (Judge Moss) the appellant was convicted of assault occasioning actual bodily harm and a probation order for three years was imposed by way of sentence.

The facts appear in the judgment of the Court.

The appeal was argued on March 4, 1997.

Cur. adv. vult.

March 6. SCHIEMANN L.J.

gave the judgment of the Court. This is an appeal by a 32-year-old man who was convicted of assault occasioning actual bodily harm and sentenced to a probation order for three years. The appeal is against the conviction. The conviction was at the Crown Court at Luton before His Honour Judge Moss.

The complainant was a Miss Wilson who used to work for Vauxhall. So did the appellant. The appellant wished to form a relationship with Miss Wilson. Between October 1993 and June 1995 the appellant indulged in the following unusual behaviour:

- “ Following her home from work,
- “ Making numerous silent telephone calls to her at work and at home as well as some telephone calls in which he spoke,
- “ Sending and delivering over 800 letters to her home over a period of four months,
- “ Sitting in his car outside her home in the early hours of the day,
- “ Driving past her home and circling on occasion,
- “ Visiting her home in April 1995 and talking to her and her mother for long periods on the doorstep when asked not to do so,
- “ Daubing the words “no guts, coward” on her door in marker pen on three occasions.

By June 1995 Miss Wilson felt all the actions of Constanza were such that he posed a threat to her personal safety. She had told him that his behaviour was making her ill and he had told her that if he could not have her nobody else could. On June 4, 1995 a letter was delivered by hand to her home. She read within it a clear threat that she should not say no to Constanza. Eight days later on June 12, 1995 she received a further hand-delivered letter upon which much turns. This letter said:

“Why wait two months, what for. Call sooner, call before. I want a quiet life, a life with you a future only with you, I can't give you up when I don't want any other but only you. Hate me, go on, Hate me, Hate me for daring to say I love you. Hate me for it go on, do that, go on, keep being bitter. Hate me for it, of all you can do you got the (word unclear) O.K. after that no more excuses, no more being the child. Or we play games my way. Especially with those who want to take things into their own hands. So can I do that. For I owe them for personal matters should stay personal”

and it goes on further with words which are not presently material. Miss Wilson read this letter, which she said, she knew had been put by him through her door and said that she was extremely scared. She believed Constanza had “flipped” and was going to do something to her. She felt it could happen at “any time”.

A Dr Pinto saw Miss Wilson on July 27, 1995 and his evidence, which was undisputed, was that she was suffering from a clinical state of depression and anxiety. He was of the view that Constanza's actions had caused her the harm he had diagnosed.

The case has been well argued both by Mr Hurst for the appellant and by Mr Malek for the Crown. Mr Hurst conceded that the appellant's behaviour towards Miss Wilson occasioned actual bodily harm. His main submission to us was that what the appellant had done could not in law amount to an assault and that therefore the judge was wrong to reject a submission of no case to answer and was wrong to leave the case to the jury at the conclusion of the evidence.

Both parties were content to adopt the classic definition of assault namely "Assault is committed where a person intentionally or recklessly causes another to apprehend the use of immediate and unlawful personal violence—see *D.P.P. v. Parmenter, R. v. Savage* (1992) 94 Cr.App.R. 193, 205, [1992] 1 A.C. 699 at 740. Both parties are agreed that violence should be given its ordinary natural meaning. Both parties are agreed that the fear must be of the use of immediate violence. Both parties are agreed that the time to start measuring is the time when the victim has the fear. In the present case no earlier than the time when she actually read the letter. There was no very clear evidence as to when this was. Both parties are agreed that cases could theoretically arise when the fear is of violence not before a time in the distant future and that in those cases it would not be right to leave the case to the jury. Both parties are agreed that at the other end of the spectrum there can be cases when it should be left to the jury to decide whether or not the fear was of violence sufficiently immediate to be described as the fear of immediate violence. The essential difference between the parties on the facts of the present case is whether these fall into the category which could legitimately be left to the jury or whether the judge should have decided that there was such lack of immediacy that the prosecution had not established enough to allow the case to be left to the jury ... The essential issue to be decided by this Court is whether it is enough if the Crown have proved a fear of violence at some time not excluding the immediate future. In our judgment it is.

An important agreed feature of this case is that the appellant did not live far from Miss Wilson. Her evidence was that on reading the last letter she felt that the appellant had not only totally "flipped" but she was extremely scared. She thought that something could happen at any time. In our judgment the judge was entitled to leave to the jury the question whether or not she had a fear of immediate violence. And the jury were entitled to find that she did. We reject the submission of Mr Hurst that a person cannot have a fear of immediate violence unless that person can see the potential perpetrator of that violence.

Mr Hurst's secondary submission was that an assault could not be committed by words alone but that there had to be a physical action. We reject that submission. What is important for the prosecution to prove is that the fear was there in the complainant's mind. How it got there, whether by seeing an action or hearing a threat and whether that threat was conveyed verbally through words spoken either directly in the presence of the complainant or over the telephone or whether the fear was aroused through something written whether it be a letter or a fax seems to us wholly irrelevant...

CASE EXTRACT 2.

Regina v Ireland

House of Lords

24 July 1997

[1997] 3 W.L.R. 534

[1998] A.C. 147

Lord Goff of Chieveley , Lord Slynn of Hadley , Lord Steyn , Lord Hope of Craighead and Lord Hutton

1997 May 19, 20, 21; July 24

...

Lord Steyn.

My Lords, it is easy to understand the terrifying effect of a campaign of telephone calls at night by a silent caller to a woman living on her own. It would be natural for the victim to regard the calls as menacing. What may heighten her fear is that she will not know what the caller may do next. The spectre of the caller arriving at her doorstep bent on inflicting personal violence on her may come to dominate her thinking. After all, as a matter of common sense, what else would

she be terrified about? The victim may suffer psychiatric illness such as anxiety neurosis or acute depression. Harassment of women by repeated silent telephone calls, accompanied on occasions by heavy breathing, is apparently a significant social problem. That the criminal law should be able to deal with this problem, and so far as is practicable, afford effective protection to victims is self-evident.

From the point of view, however, of the general policy of our law towards the imposition of criminal responsibility, three specific features of the problem must be faced squarely. First, the medium used by the caller is the telephone: arguably it differs qualitatively from a face to face offer of violence to a sufficient extent to make a difference. Secondly, *ex hypothesi* the caller remains silent: arguably a caller may avoid the reach of the criminal law by remaining silent however menacing the context may be. Thirdly, it is arguable that the criminal law does not take into account 'mere' psychiatric illnesses.

At first glance it may seem that the legislature has satisfactorily dealt with such objections by section 43(1) of the Telecommunications Act 1984 which makes it an offence persistently to make use of a public telecommunications system for the purpose of causing annoyance, inconvenience or needless anxiety to another. The maximum custodial penalty is six months imprisonment. This penalty may be inadequate to reflect a culpability of a persistent offender who causes serious psychiatric illness to another. For the future there will be for consideration the provisions of sections 1 and 2 of the Protection from Harassment Act 1997, not yet in force, which creates the offence of pursuing a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of the other. The maximum custodial penalty is six months imprisonment. This penalty may also be inadequate to deal with persistent offenders who cause serious psychiatric injury to victims. Section 4(1) of the Act of 1997 which creates the offence of putting people in fear of violence seems more appropriate. It provides for maximum custodial penalty upon conviction on indictment of five years imprisonment. On the other hand, section 4 only applies when as a result of a course of conduct the victim has cause to fear, on at least two occasions, that violence *will* be used against her. It may be difficult to secure a conviction in respect of a silent caller: the victim in such cases may have cause to fear that violence *may* be used against her but no more. In my view, therefore, the provisions of these two statutes are not ideally suited to deal with the significant problem which I have described. One must therefore look elsewhere.

It is to the provisions of the Offences against the Person Act 1861 that one must turn to examine whether our law provides effective criminal sanctions for this type of case. In descending order of seriousness the familiar trilogy of sections (as amended) provide as follows:

'18. Whosoever shall unlawfully and maliciously by any means whatsoever . . . cause any grievous bodily harm to any person . . . with intent . . . to do some . . . grievous bodily harm to any person . . . shall be guilty of a felony, and being convicted thereof shall be liable . . . to [imprisonment] for life.'

'20. Whosoever shall unlawfully and maliciously . . . inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and being convicted therefore shall be liable [to imprisonment . . . for not more than five years].'

'47. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable . . . [to imprisonment for not more than five years].'

Making due allowance for the incongruities in these provisions, the sections can be described as 'a ladder of offences graded in terms of relative seriousness:' Ashworth, *Principles of Criminal Law*, 2nd ed. (1995), p. 313. An ingredient of each of the offences is 'bodily harm' to a person. In respect of each section the threshold question is therefore whether a psychiatric illness, as testified to by a psychiatrist, can amount to 'bodily harm.' If the answer to this question is no, it will follow that the Act of 1861 cannot be used to prosecute in the class of cases which I have described. On the other hand, if the answer to the question is 'Yes,' it will be necessary to consider whether the persistent silent caller, who terrifies his victim and causes her to suffer a psychiatric illness, can be criminally liable under any of these sections. Given that the caller uses the medium of the telephone and silence to terrify his victim, is he beyond the reach of these sections?

In [this case] the appellant was convicted on his plea of guilty of three offences of assault occasioning actual bodily harm, contrary to section 47 of the Act of 1861. The judgment of the Court of Appeal dismissing his appeal is reported [1997] Q.B. 114 . The case against Ireland was that during a period of three months in 1994 covered by the indictment he harassed three women by making repeated telephone calls to them during which he remained silent. Sometimes, he resorted to heavy breathing. The calls were mostly made at night. The case against him, which was accepted by the judge and the Court of Appeal, was that he caused his victim to suffer psychiatric illness. Ireland had a substantial record of making offensive telephone calls to women. The judge sentenced him to a total of three years' imprisonment. Before the Court of Appeal there were two principal issues. The first was whether psychiatric illness may amount to bodily harm within the meaning of section 47 of the Act of 1861. Relying on a decision of the Court of Appeal in *Reg. v. Chan-Fook* [1994] 1 W.L.R. 689 the Court of Appeal in Ireland's case concluded that psychiatric injury may amount to bodily harm under section 47 of the Act of 1861. The second issue was whether Ireland's conduct was capable of amounting to an assault. In giving the judgment of the court in Ireland's case Swinton Thomas L.J. said, at p. 119:

'It has been recognised for many centuries that putting a person in fear may amount to an assault. The early cases predate the invention of the telephone. We must apply the law to conditions as they are in the 20th century.'

The court concluded that repeated telephone calls of a menacing nature may cause victims to apprehend immediate and unlawful violence. Given these conclusions of law, and Ireland's guilty plea, the Court of Appeal dismissed the appeal. The Court of Appeal certified the following question as being of general public importance, namely 'As to whether the making of a series of silent telephone calls can amount in law to an assault.' But it will also be necessary to consider the question whether psychiatric illness may in law amount to bodily harm under section 47 of the Act of 1861.

Can psychiatric illness amount to bodily harm?

It will now be convenient to consider the question which is common to the ... appeals, namely, whether psychiatric illness is capable of amounting to bodily harm in terms of sections 18, 20 and 47 of the Act of 1861. The answer must be the same for the three sections.

The only abiding thing about the processes of the human mind, and the causes of its disorders and disturbances, is that there will never be a complete explanation. Psychiatry is and will always remain an imperfectly understood branch of medical science. This idea is explained by Vallar's psychiatrist in Iris Murdoch's *The Message to the Planet*:

'Our knowledge of the soul, if I may use that unclinical but essential word, encounters certain seemingly impassable limits, set there perhaps by the gods, if I may refer to them, in order to preserve their privacy, and beyond which it maybe not only futile but lethal to attempt to pass and though it is our duty to seek for knowledge, it is also incumbent on us to realise when it is denied us, and not to prefer a fake solution to no solution at all.'

But there has been progress since 1861. And courts of law can only act on the best scientific understanding of the day. Some elementary distinctions can be made. The appeals under consideration do not involve structural injuries to the brain such as might require the intervention of a neurologist. One is also not considering either psychotic illness or personality disorders. The victims in the ... appeals suffered from no such conditions. As a result of the behaviour of the appellant[] they did not develop psychotic or psychoneurotic conditions. The case was that they developed mental disturbances of a lesser order, namely neurotic disorders. For present purposes the relevant forms of neurosis are anxiety disorders and depressive disorders. Neuroses must be distinguished from simple states of fear, or problems in coping with every day life. Where the line is to be drawn must be a matter of psychiatric judgment. But for present purposes it is important to note that modern psychiatry treats neuroses as recognisable psychiatric illnesses: see 'Liability for Psychiatric Injury,' Law Commission Consultation Paper No. 137 (1995) Part III (The Medical Background); *Mullany and Hanford, Tort Liability for Psychiatric Damages* (1993), discussion on 'The Medical Perspective,' at pp. 24-42, and particularly at p. 30,

footnote 88. Moreover, it is essential to bear in mind that neurotic illnesses affect the central nervous system of the body, because emotions such as fear and anxiety are brain functions. The civil law has for a long time taken account of the fact that there is no rigid distinction between body and mind. In *Bourhill v. Young* [1943] A.C. 92 , 103 Lord Macmillan said: 'The crude view that the law should take cognisance only of physical injury resulting from actual impact has been discarded, and it is now well recognised that an action will lie for injury by shock sustained through the medium of the eye or the ear without direct contact. The distinction between mental shock and bodily injury was never a scientific one.'

This idea underlies the subsequent decisions of the House of Lords regarding post-traumatic stress disorder in *McLoughlin v. O'Brian* [1983] 1 A.C. 410 , 418, *per* Lord Wilberforce and *Page v. Smith* [1996] A.C. 155 , 181a-d, *per* Lord Browne-Wilkinson. So far as such cases are concerned with the precise boundaries of tort liability they are not relevant. But so far as those decisions are based on the principle that the claimant must be able to prove that he suffered a recognisable psychiatric illness or condition they are by analogy relevant. The decisions of the House of Lords on post-traumatic stress disorder hold that where the line is to be drawn is a matter for expert psychiatric evidence. By analogy those decisions suggest a possible principled approach to the question whether psychiatric injury may amount to bodily harm in terms of the Act of 1861.

The criminal law has been slow to follow this path. But in *Reg. v. Chan-Fook* [1994] 1 W.L.R. 689 the Court of Appeal squarely addressed the question whether psychiatric injury may amount to bodily harm under section 47 of the Act of 1861. The issue arose in a case where the defendant had aggressively questioned and locked in a suspected thief. There was a dispute as to whether the defendant had physically assaulted the victim. But the prosecution also alleged that even if the victim had suffered no physical injury, he had been reduced to a mental state which amounted to actual bodily harm under section 47. No psychiatric evidence was given. The judge directed the jury that an assault which caused an hysterical and nervous condition was an assault occasioning actual bodily harm. The defendant was convicted. Upon appeal the conviction was quashed on the ground of misdirections in the summing up and the absence of psychiatric evidence to support the prosecution's alternative case. The interest of the decision lies in the reasoning on psychiatric injury in the context of section 47. In a detailed and careful judgment given on behalf of the court Hobhouse L.J. said, at p. 695:

'The first question on the present appeal is whether the inclusion of the word 'bodily' in the phrase 'actual bodily harm' limits harm to harm to the skin, flesh and bones of the victim. . . . The body of the victim includes all parts of his body, including his organs, his nervous system and his brain. Bodily injury therefore may include injury to any of those parts of his body responsible for his mental and other faculties.'

In concluding that 'actual bodily harm' is capable of including psychiatric injury Hobhouse L.J. emphasised, at p. 696:

'it does not include mere emotions such as fear or distress nor panic nor does it include, as such, states of mind that are not themselves evidence of some identifiable clinical condition.'

He observed that in the absence of psychiatric evidence a question whether or not an assault occasioned psychiatric injury should not be left to the jury.

...

The proposition that the Victorian legislator when enacting sections 18, 20 and 47 of the Act of 1861, would not have had in mind psychiatric illness is no doubt correct. Psychiatry was in its infancy in 1861. But the subjective intention of the draftsman is immaterial. The only relevant inquiry is as to the sense of the words in the context in which they are used. Moreover the Act of 1861 is a statute of the 'always speaking' type: the statute must be interpreted in the light of the best current scientific appreciation of the link between the body and psychiatric injury. For these reasons I would, therefore, reject the challenge to the correctness of *Reg. v. Chan-Fook* [1994] 1 W.L.R. 689 . In my view the ruling in that case was based on principled and cogent reasoning and it marked a sound and essential clarification of the law. I would hold that 'bodily harm' in sections 18, 20 and 47 must be interpreted so as to include recognisable psychiatric illness.

CASE EXTRACT 3.

Yemshaw v Hounslow London Borough Council (Secretary of State for Communities and Local Government and another intervening)

Supreme Court

26 January 2011

[2011] UKSC 3

[2011] 1 W.L.R. 433

Lord Hope of Craighead DPSC, Lord Rodger of Earlsferry , Lord Walker of Gestingthorpe ,
Baroness Hale of Richmond , Lord Brown of Eaton-under-Heywood JJSC
2010 Dec 2; 2011 Jan 26

The claimant, a married woman with two young children, left the home in which she lived with her husband, taking the children with her, and sought the help of the local housing authority. When interviewed by housing officers, she complained about her husband's behaviour, which included shouting at her in front of the children and not giving her any money for housekeeping, and she said that she was scared that if she confronted him he would hit her or take the children away from her. The housing officers decided that she was not homeless as her husband had never actually hit her or threatened to do so. A review panel and the judge upheld that decision. On the claimant's appeal, the Court of Appeal held that, for the purposes of section 177(1) of the Housing Act 1996¹, under which it was not reasonable for a person to continue to occupy accommodation if it was probable that that would lead to "domestic violence or other violence" against her or other members of her household, "violence" was limited to physical contact and, therefore, the appeal was dismissed.

On the claimant's appeal—

Held, allowing the appeal, that "violence" was not a term of art and was capable of bearing several meanings and applying to many different types of behaviour, which could change and develop over time; that the statutory purpose of ensuring that a person was not obliged to remain living in a home where she, her children or other members of her household were at risk of harm would be achieved by interpreting the term "domestic violence" in section 177(1) of the 1996 Act as including physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, might give rise to the risk of harm; that the test to be applied was the view of the objective outsider, applied to the particular facts, circumstances and personalities of the people involved; and that, accordingly, as the housing officers and the review panel had adopted a narrow view of domestic violence, the case had to be remitted to the local housing authority for reconsideration...

26 January 2011. BARONESS HALE OF RICHMOND JSC

1 The issue in this case is what is meant by the word "violence" in section 177(1) of the Housing Act 1996 . Is it limited to physical contact or does it include other forms of violent conduct? The Court of Appeal, as it was bound to do by the earlier case of *Danesh v Kensington and Chelsea Royal London Borough Council* [2007] 1 WLR 69 , held that it was limited to physical contact: [2010] HLR 399 . The claimant contends that it is not. As the claimant is a woman, and the majority of victims of all forms of domestic violence are women, I shall refer to the victim as "she" throughout. But of course I realise that men can be victims too.

...

The facts of this case

16 The claimant is a married woman with two young children, a girl who is now aged eight and a boy who is now aged two. They were aged respectively six and eight months in August 2008 when she left the matrimonial home in which she lived with her husband, taking the children with her, and (having nowhere else to go) sought the help of the local housing authority. The matrimonial home was rented in her husband's sole name. In her two interviews with the

housing officers, she complained that "her husband hates her and [she] suspects that he is seeing another woman. [She] is scared that if she confronts him he may hit her. [However her] husband has never actually threatened to hit her." She went on to complain of his shouting in front of the children, so that she retreated to her bedroom with them, not treating her "like a human", not giving her any money for housekeeping, being scared that he would take the children away from her and say that she was not able to cope with them, and that he would hit her if she returned home. The officers decided that she was not homeless as her husband had never actually hit her or threatened to do so.

17 She consulted solicitors who applied for a review which was unsuccessful. The panel noted that

"your root cause of homelessness is not that you fled after a domestic incident, but it was your decision to leave the matrimonial home because you felt that your husband did not love you anymore and was not close to you, in addition to suspecting that he was seeing another woman."

They believed that "the probability of domestic violence is low" and found her fear that her husband would take the children away from her to be contradictory, as she had also said that he took no interest in the children. Hence they concluded that it was reasonable for her to continue to occupy the matrimonial home while taking action to secure a transfer under the Family Law Act 1996 or alternatively seeking accommodation in the private sector.

18 Mr Richard Drabble QC, who appears for the local authority, accepts that the housing officers and review panel applied the *Danesh* meaning when they decided that the claimant was not homeless within the meaning of the Housing Act 1996. If this court decides that there is a wider meaning, the case will have to be considered afresh. There is no need, therefore, to make any further comment on the facts or upon the reasoning in the decision and review letters.

The meaning of "violence"

19 In the *Danesh* case [2007] 1 WLR 69 the first, and principal, reason given was that "physical violence" is the natural meaning of the word "violence": para 15. I can readily accept that this is a natural meaning of the word. It is, for example, the first of the meanings given in the *Shorter Oxford English Dictionary*. But I do not accept that it is *the only* natural meaning of the word. It is common place to speak of the violence of a person's language or of a person's feelings. Thus the revised 3rd edition, published in 1973, also included "vehemence of personal feeling or action; great, excessive, or extreme ardour or fervour ... passion, fury"; and the 4th (1993), 5th (2002) and 6th (2006) editions all include "strength or intensity of emotion; fervour, passion". When used as an adjective it can refer to a range of behaviours falling short of physical contact with the person: see, for example, section 8 of the Public Order Act 1986. The question is what it means in the 1996 Act.

20 The 1996 Act was originally concerned only with "domestic violence", that is violence between people who are or were connected with one another in an intimate or familial way. By that date, it is clear that both international and national governmental understanding of the term had developed beyond physical contact. The court is grateful to the diligence of both interveners, the Secretary of State for Communities and Local Government and the Women's Aid Federation of England, for gathering so many of the references together. Internationally, in 1992 the United Nations Committee, which monitors the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW"), adopted General Recommendation 19, which included in its definition of discrimination in relation to gender based violence "acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty". In 1993, the General Assembly adopted the Declaration on the Elimination of Violence against Women, defined for this purpose as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women" (article 1).

21 Nationally, in 1993 the House of Commons Home Affairs Committee in its Third Report on Domestic Violence adopted the definition "any form of physical, sexual or emotional abuse which takes place within the context of a close relationship" (Session 1992-93) (HC 245-I, para 5). The Home Affairs Committee report used two reports as the basis for its inquiry: the Report on Domestic Violence of a national inter-agency working party convened by Victim Support (1992) and the Report of the Law Commission on Domestic Violence and Occupation of the Family Home

(1992) (Law Com No 207). The Law Commission gave this explanation of domestic violence, at para 2.3:

"The term 'violence' itself is often used in two senses. In its narrower meaning it describes the use or threat of physical force against a victim in the form of an assault or battery. But in the context of the family, there is also a wider meaning which extends to abuse beyond the more typical instances of physical assaults to include any form of physical, sexual or psychological molestation or harassment which has a serious detrimental effect upon the health and well being of the victim."

The recommendations made in the Law Commission's Report were embodied in the Domestic Violence and Occupation of the Family Home Bill which passed through most of its parliamentary stages in the session 1994–1995 before falling at the last hurdle. The same clauses were reintroduced, with immaterial amendments, in the Family Law Bill 1995–1996 and became Part IV of the Family Law Act 1996 ...

25 However, it is not for government and official bodies to interpret the meaning of the words which Parliament has used. That role lies with the courts. And the courts recognise that, where Parliament uses a word such as "violence", the factual circumstances to which it applies can develop and change over the years. There are, as Lord Steyn pointed out in *R v Ireland* [1998] AC 147, 158, statutes where the correct approach is to construe them "as if one were interpreting it the day after it was passed". The House went on in that case to construe "bodily harm" in the Offences against the Person Act 1861 (24 & 25 Vict c 100) in the light of our current understanding of psychological as well as physical harm. The third reason given by the Court of Appeal in *Danesh* was that it was impermissible to construe the meaning of one phrase by reference to the meaning of another. This I accept.

26 However, as Lord Clyde observed in *Fitzpatrick v Sterling Housing Association Ltd* [2001] 1 AC 27, 49, which was concerned with whether same sex partners could be members of one another's "family" for the purpose of succession to Rent Act tenancies, it is a "relatively rare category of cases where Parliament intended the language to be fixed at the time when the original Act was passed". In other cases, as Lord Slynn of Hadley explained, at p 35:

"It is not an answer to the problem to assume ... that if in 1920 people had been asked whether one person was a member of another same-sex person's family the answer would have been 'No'. That is not the right question. The first question is what were the characteristics of a family in the 1920 Act and the second whether two same-sex partners can satisfy those characteristics so as today to fall within the word 'family'...

27 "Violence" is a word very similar to the word "family". It is not a term of art. It is capable of bearing several meanings and applying to many different types of behaviour. These can change and develop over time. There is no comprehensive definition of the kind of conduct which it involves in the Housing Act 1996 : the definition is directed towards the people involved. The essential question, as it was in the *Fitzpatrick* case, is whether an updated meaning is consistent with the statutory purpose-in that case providing a secure home for those who share their lives together. In this case the purpose is to ensure that a person is not obliged to remain living in a home where she, her children or other members of her household are at risk of harm. A further purpose is that the victim of domestic violence has a real choice between remaining in her home and seeking protection from the criminal or civil law and leaving to begin a new life elsewhere.

28 That being the case, it seems clear to me that, whatever may have been the position in 1977, the general understanding of the harm which intimate partners or other family members may do to one another has moved on. The purpose of the legislation would be achieved if the term "domestic violence" were interpreted in the same sense in which it is used by Sir Mark Potter P, the President of the Family Division, in his Practice Direction (Residence and Contact Orders: Domestic Violence) (No 2) [2009] 1 WLR 251, para 2, suitably adapted to the forward-looking context of sections 177(1) and 198(2) of the Housing Act 1996 : "'Domestic violence' includes physical violence, threatening or intimidating behaviour and any other form of abuse which, directly or indirectly, may give rise to the risk of harm."