



Custody Cases, Violence Against Women and Violence Against Children

Submission to the Office of the United Nations High Commissioner for Human Rights

Right to Equality¹

1. Globally, 1 in 3 women have experienced physical or sexual violence in their lives, the majority of which takes place in the family home. Domestic abuse is not always physical. Emotional abuse and coercive and controlling behaviour are also forms of domestic abuse but are often less understood leaving vulnerable women and children at further risk of abuse.
2. There is a tendency in society and subsequently in the family courts globally to dismiss domestic violence and abuse in child custody cases where mothers or children have brought forward credible allegations of physical or sexual abuse or coercive and controlling behaviour. In our experience, a common scenario arises: mothers allege domestic abuse and fathers respond with allegations of parental alienation as a means to discredit a mother and child's resistance to contact. Anecdotally, while family courts

¹ We are a not for profit organisation in Britain; we campaign to change the law to further the rights of women, children and marginalised people. We raise awareness of existing discrimination and gender inequality under the law and lobby for legal change. We actively support changing the current statutory presumption of contact with both parents in cases of domestic abuse; we believe there should be a presumption of no contact with an abusive parent. See, www.righttoequality.org.

rarely hold fact-finding hearings on allegations of domestic abuse, they often address allegations of parental alienation with fact-finding hearings or by appointing an expert in parental alienation to assess whether the behaviour is present. Parental alienation is not a mental health or other psychological condition yet it is often treated as such.

3. The concept of parental alienation has become a gendered tool to deny domestic and child abuse which only leads to further discrimination and harm to women and children.
4. Many academics have published reports and studies highlighting the undeniable correlation between the concept of parental alienation and the persistence of gender-based violence against women and children². It is crucial that family courts globally acknowledge this link if they are to function properly and protect women and children at risk of abuse.

Domestic abuse and child abuse

5. There is a cultural assumption in the family justice system that contact with both parents is the most beneficial outcome for a child even in cases of proven domestic abuse. However, there is ample evidence to show the long-term harm caused to children who have relationships with an abusive parent³. Contact-at-all-costs can do far more harm than good where a mother's call for domestic abuse has been ignored or dismissed. Despite children now being defined as victims in their own right by virtue of being exposed to an abusive parent or family household, the family courts still fail to have regard to the impact on children⁴.
6. Between January 2005 and August 2015, 19 children in 12 families were killed by their fathers in Britain. All of these men had been granted access to children through formal or informal child contact arrangements granted by the family courts⁵. All 12 fathers

² Barnett, A. (2020). A genealogy of hostility: parental alienation in England and Wales. *Journal of social welfare and family law*, 42(1), 18-29.

Barnett, A., & Riley, A. (2021). Experiences of parental alienation interventions. In *Challenging Parental Alienation*(pp. 63-85). Routledge.

³ *Re L (Contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)*; *Re M (Contact: Domestic Violence)*; *Re H (Contact: Domestic Violence)* [2000] 2 FCR 404; [2000] 2 FLR 334.

⁴ Section 3 Domestic Abuse Act.

⁵ Women's Aid. (2016) *Nineteen Child Homicides*. Bristol: Women's Aid.

were known to statutory agencies as perpetrators of domestic abuse with 11 of the 12 fathers known to the police as perpetrators of domestic abuse. In addition to the 19 children, two women were killed, two children were seriously harmed through attempted murder and seven men died by suicide after committing child homicide, resulting in a total of 28 deaths. These deaths sparked a very serious question; why were all 12 men, who were known to statutory agencies as perpetrators of domestic abuse, granted access to their children?

7. The Ministry of Justice published the Harm Report in June 2021 which consolidated hundreds of submissions from individuals and organisations. A number of concerns were raised about the family court's approach to domestic abuse, which found systemic problems in the family justice system, "*...we are persuaded that the evidence gathered does identify systemic problems with how family courts deal with domestic abuse cases and cases raising other risks of harm in private law children cases*" (page 22)⁶. The problems included: ignoring the voice of the child, pro-contact culture, minimising allegations of domestic abuse and an adversarial approach in family law proceedings.
8. The Ministry of Justice stated that it would consult on whether the current statutory presumption of contact with both parents⁷ should be changed in cases of domestic abuse. We believe that the current approach breaches a child's Article 8 rights to a safe private and family life, as there is a presumption of contact despite domestic abuse. There is too much insistence on upholding the parental rights of an abusive parent and a deafening silence on the rights and safety of children and parent survivors of abuse. The presumption that contact is always beneficial for children unless explicitly proven otherwise, is harmful and has contributed to tragic cases.
9. Women's Aid published 'The Harm Report two years on – too little too late' in June 2022, which concluded, "*Within the family court system there remains inequality, injustice, fear and oppression. Too often, perpetrators are shielded because practice directions and guidance that were created to protect children don't work effectively.*"

⁶ <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/>

⁷ Section 1(2A) Children Act 1989.

There is still too much insistence on parental rights and a deafening silence about the rights of children.”⁸

10. Coercive and controlling behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim⁹. Professor Evan Stark defines coercive control as a strategic course of behaviour designed to secure and expand gender-based privilege by establishing a regime of domination in another person’s private and family life. We believe that the family court still does not fully recognise the insidious and corrosive nature of coercive and controlling behaviour on the lives of adult and child survivors.

Parental Alienation

11. Survivors in the family courts have reported that they continue to be accused of “parental alienation” or “alienating behaviours” when they raise concerns about unsafe contact between a child and an abusive parent¹⁰.
12. “Parental alienation syndrome” was coined in the 1980s by US child psychiatrist Richard Gardner. It has largely been rejected as a “syndrome”, however parental alienation as a form of child abuse has gained traction in England and Wales and across the world. It is leading to devastating outcomes for parents and children. In many residence and contact disputes there might be allegations of domestic abuse – in many cases the courts might refuse a fact-finding hearing concerning domestic abuse and instead, the allegations of parental alienation made by the alleged abuser gain traction and become the central focus of litigation. In some cases, we have seen residence being transferred from the complainant of domestic abuse, often the mother, to the alleged abuser. It is not uncommon for the courts to order a period (sometimes up to 90 days or longer) of no contact with the parent who has lost residence of the children. The impact for children can be devastating and life-long, as highlighted in the Dispatches Channel 4 Documentary, Torn Apart (aired in 2020). The largest survey of family court users, with nearly 5000 parents responding, administered by the programme makers, found

⁸ <https://www.womensaid.org.uk/the-harm-report-two-years-on-too-little-too-late/>

⁹ See Practice Direction 12J of the Family Procedure Rules 2010.

¹⁰ See, *Ibid.*

that claims of parental alienation were five times more likely to be made in cases where the other parent had alleged domestic abuse.¹¹

13. It is surprising that in cases where domestic abuse is proved, perpetrators will still be permitted the right to have contact with their child¹² yet in parental alienation cases, the alienator parent might have their parental responsibility rights curtailed and be prohibited from having meaningful contact¹³. In one such case, the residence of teenage children was transferred from their mother to their father in a ‘parental alienation’ case. They were denied separate representation or a children’s guardian. They made serious allegations of abuse perpetrated by the father. The High Court made an injunction prohibiting the police from interviewing the children. This was successfully appealed by the Metropolitan Police Service supported by the mother and opposed by the father¹⁴.
14. A review of research and case law on parental alienation conducted by Cardiff University, found that there were eight reported cases to the Court of Appeal and High Court where alienation was alleged by a father and one case where the allegation was made by a mother; in all of these cases the allegations were never proved¹⁵. Despite this, the allegation of parental alienation is being used repeatedly by abusers to silence, threaten and blame victims of domestic abuse who are simply trying to protect their children from an unsafe parent.
15. There have been incidences where children have been removed from their homes with their protective parent, the victim of abuse, to the abuser’s home as a result of claimed “parental alienation”. Children in this situation could not be more vulnerable.

¹¹ <https://candour.tv/films/torn-apart>

¹² See the case of Griffiths in which Kate Griffiths MP was found to be a rape and domestic abuse victim yet the perpetrator father was still permitted indirect video contact with the child, which had to be facilitated by the rape victim: *Griffiths v Griffiths* (Guidance on Contact Costs) [2022] EWHC 113 (Fam)

¹³ See, *A and B (Parental Alienation: No.1, No.2, No.3 and No.4)*,

<https://www.judiciary.uk/judgments/a-and-b-parental-alienation-no-1-no-2-no-3-and-no-4/>

¹⁴ *Re B (Children: Police Investigation)* [2022] EWCA Civ 982 (15 July 2022).

¹⁵ Doughty, J., Maxwell, N., & Slater, T. (2018). Parental alienation: in search of evidence. *Family Law*, 48, 1304-1307.

16. When the Domestic Abuse Bill was before parliament, men's rights groups fought for parental alienation to be defined as domestic abuse. Claire Waxman, the London Victims' Commissioner received severe backlash as a result of her stance that parental alienation campaigners were attempting to prevent her efforts to help victims of abuse¹⁶.
17. Parental alienation is proving to be a concept more powerful than any other despite its significant lack of academic and practitioner backing in silencing the voices of women and children resisting contact with abusive men. Parental alienation is not recognised by the World Health Organization,¹⁷ NICE or in the DSM. It is a dangerous, pseudo-science, which can often be used as a tactic to undermine domestic abuse and discredit victims. Parental alienation is not an 'equal' counterpart to domestic abuse, it is a means of covering up domestic abuse and silencing victims, and should be recognised in law and in the family courts as such.

Unregulated experts in the family courts

18. At present, there are no specified qualifications or experience required for experts in the family courts.
19. Under Section 47 of our Family Law Act of 1995, the court has the discretion to appoint a probation or welfare officer and the person nominated by a health board who in their opinion is "suitably qualified" or "any other person specified in the order" of the court can provide expert reports. However, the section does not specify what qualifications an expert should have nor does it set up a regulatory body to oversee issues relating to such experts specifically providing Section 47 reports.
20. As there is no supervising body regulating the provision of Section 47 reports there is no knowing how many parents have had their children removed from their custody, partially or entirely, on the grounds of a finding of parental alienation by an 'expert'.

¹⁶ See, <https://www.theguardian.com/society/2021/feb/06/misogynists-are-trying-to-silence-me-abuse-bill-commissioner>

¹⁷ <https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation>

21. An expert report can cost as much as £10,000, but the costs of therapeutic interventions can run into tens of thousands of pounds. This is in addition to legal fees, which can prove crippling to parents in drawn-out litigation battles. Several mothers reported losing their homes and life savings during lengthy court battles that ultimately resulted in the removal of their children.
22. Unregulated experts might not be regulated by HCPC and might not be chartered or clinical psychologists yet hold themselves as a ‘psychologists’ which is not a protected title. They might then be appointed in family law cases to psychologically assess parents and children and make diagnoses. We are aware of the proliferation of ‘parental alienation’ experts in family law proceedings.
23. The problematic issue of unregulated experts has resulted in London’s Victims’ Commissioner writing to the President of the Family Division, raising concerns about experts who are not regulated and therefore cannot be held accountable¹⁸. She provided a list of experts used by the courts who had been raised in her casework. Subsequently, the Family Procedure Rules Committee concluded that the current rules which allow unregulated experts to be appointed at the court’s discretion were sufficient, but that there should be more training for judges.
24. A UK government report from 2020 highlighted concerns surrounding the unethical credentials of unregulated “experts” on parental alienation. Despite the controversy and lack of evidence supporting the “syndrome” the weight applied to so-called parental alienation experts by the family courts is often significant. Worryingly Cafcass, the family court support service, has adopted a practice guidance on parental alienation resulting in further weight being given to an unreliable and largely contested concept.
25. In 2019, 77 leading professionals signed a letter calling on the President of the Family Division to tighten the law to prevent unregulated experts from writing reports in family cases. The letter requested an amendment to Practice Direction 25B of the Family Procedure Rules requiring a definition of suitably qualified experts.

¹⁸ <https://www.theguardian.com/global-development/2022/jun/12/parental-alienation-and-the-unregulated-experts-shattering-childrens-lives>

26. In a landmark case, the family court had previously found coercive and controlling behaviour by the father towards the mother. It subsequently appointed an unregulated expert, Ms Melanie Gill who holds herself out as a ‘psychologist’ to undertake a psychological assessment of the parents and the children. Cafcass (representing the children) put Ms Gill forward as a suitable expert. Ms Gill found that the survivor mother had “alienated” the children from the perpetrator father resulting in a transfer of residence from the mother to the father¹⁹. In December 2022, the mother lost her appeal to the High Court in which she argued that unregulated experts should not be appointed in the family courts²⁰. The President of the Family Division said: “The guidance is admirable and is to be followed but someone who does not follow it is not acting unlawfully.” He added: “The fact nobody looked at her CV does not mean that she is not qualified.”

Relevant case law

27. In 2021, the Court of Appeal reviewed the family court’s failure to properly address allegations of rape, domestic abuse, and coercive and controlling behaviour and their effects on the lives of victim parents and children²¹. Over 50% of children cases in family courts involve allegations of domestic abuse. The court held that three of the four appeals should be allowed and the court must focus on whether there is a pattern of coercive and controlling behaviour. In one of the linked appeals, *B-B*, the Judge had threatened to have the child adopted if the mother continued with her rape allegations²². At the re-trial, the mother proved her allegations of rape, domestic abuse and ‘gaslighting’ which was defined as domestic abuse²³. The father was not granted contact.

¹⁹ See *F v M*, <https://caselaw.nationalarchives.gov.uk/ewfc/2022/89>

²⁰ <https://www.theguardian.com/law/2022/dec/07/uk-woman-whose-children-were-removed-against-their-wishes-loses-appeal>

²¹ *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448.

²² <https://www.theguardian.com/global-development/2021/jan/22/judge-richard-scarratt-remarks-made-mother-fearful-for-herself-and-her-child-hearing-told>

²³ *Re B-B (domestic abuse: fact-finding)* [2022] EWHC 108 (Fam).

28. There is a worrying approach of the family courts towards the use of special measures or ‘participatory directions’ as they are referred to²⁴. In one case, a mother who was unrepresented was told she had to cross-examine the father whom she accused of domestic abuse. In another case, the alleged rapist watched the mother give evidence. After her evidence she was struggling to breathe and was admitted into hospital; the trial Judge seriously minimised the father’s allegedly abusive behaviour towards the mother including telling her to “fucking die”, which the Judge regarded as stuff of a “matrimonial row”²⁵. There have now been six reported decisions where appeals were successful²⁶.
29. Rape myths plague society as they do in the family justice system²⁷. Women’s experiences of domestic and sexual abuse are frequently ignored. Myths such as if a woman is overly emotional then is ‘exaggerating for effect’, or in contrast, if she displays little or no emotion, this can also be interpreted as undermining her credibility. In one such appeal, the trial Judge referred to the mother’s intelligence when assessing whether she was raped or non-fatally strangulated²⁸. Despite a recent High Court Judgment on such issues, there remains no radical shift towards guidance in the family courts concerning the use of a complainant’s sexual history, rape myths or even a consistent definition of consent²⁹. This, in our view, breaches a complainant’s Article 6, 8 and 14 rights.

²⁴ Special measures are a requirement under Part 3A and PD3AA FPR 2010 and the Domestic Abuse Act 2021.

²⁵ *GK v PR* [2021] EWFC 106.

²⁶ *CM v IP* [2022] EWHC 2755 (Fam), *B v P* [2022] EWFC B18 (31 March 2022), *GK v PR* [2021] EWFC 106, *K v L and M* [2021] EWHC 3225 (Fam) and *A (Domestic abuse: incorrect principles applied)* [2021] EWFC B30.

²⁷ Russell J overturned the trial Judgment of HHJ Tolson KC who found that a woman was not raped because she took no steps to physically prevent the rape despite the fact that she said, she had said no. See, *JH v MF* [2020] EWHC 86 (Fam).

²⁸ See, *A & Anor v B & Ors* [2022] EWHC 3089 (Fam) (02 December 2022).

²⁹ *Ibid.*

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