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15th December 2022

Input for SR VAWG's report on violence against women and children in custody cases

To whom it may concern,

Introduction and Context

I would like to thank the United Nations Special Rapporteur on violence against women and girls for inviting responses to inform this report on family courts and parental alienation.

Through my work as London's Victims' Commissioner, I have heard directly from many survivors – mainly mothers – and the organisations who support them about their experiences in the family courts. Victims who disclose domestic abuse in the courts, including those where a child has also disclosed abuse, are having their allegations diminished or even dismissed by counter-allegations of parental alienation (PA).

In a meeting with the President of the Family Division, Sir Andrew McFarlane, he confirmed to me that PA is becoming a 'stock response' to allegations of abuse in the family courts, often used by the abusive parent to explain away the child's resistance to contact.

The presence and prevalence of PA accusations in the family court speak to the wider issue of justice agencies and the judiciary struggling to understand and identify the dynamics of domestic abuse, sexual abuse or coercive and controlling behaviour. The rise of so-called 'PA experts' further muddies the water in their advising the court, utilising pseudo-science and lacking in the proper qualifications

Parental Alienation

In the last decade, theories of 'parental alienation' – in essence the idea that children making allegations of abuse against a parent is a result of having been 'brainwashed' by the other parent – have gained increasing prominence in UK family courts. These theories are heavily contested among experts in child psychology and domestic abuse but appear to have been accepted in many court cases.

The concept of PA plays out in a predictable fashion in family courts and is highly gendered (with most cases involving abuse accusations by women, and PA counter-allegations from men). This narrative of competing accusations in family courts often position the accused as the victim and the

alleged victim as a perpetrator of PA; this is leading to further discrimination and harm to women and children.

It is crucial that family courts accept and understand this dynamic to ensure that they can effectively respond to gender-based violence. This is problematic when there is no official or commonly accepted definition of PA when assessing the appropriateness or validity of PA experts and their advice.

We have significant concerns that allegations, or false allegations of PA are forcing abuse survivors and children to suppress testimony about their abuse. The Ministry of Justice's own report - ['Assessing Risk of Harm to Children and Parents in Private Law Children Cases'](#) - found that some domestic abuse victims "had not disclosed abuse because of fears of negative consequences, based on previous experiences, including fears that the abuser would raise false allegations against them, including false allegations of abuse, parental alienation, instability or inadequate parenting."

Dismissing of Abuse

There are credible suggestions PA is being used as a counter-allegation to domestic abuse claims and as a form of coercion to further control a victim - leading to victims' (including children's) voices being silenced- and that fear of being accused of PA is preventing women from reporting domestic abuse in court.

Rape myths sadly still exist and are evident not only in the family courts but in the wider criminal justice system, leading to women's experience of domestic and sexual abuse being frequently ignored or disbelieved.

With domestic abuse and rape prosecution rates at record lows, victims often don't receive a positive justice outcome (i.e., a conviction) in criminal court. The failures of the criminal justice system to prosecute these cases often fuels dismissal of abuse allegations in the family courts and a misconception that the woman has falsely accused the man.

Furthermore, there is an assumption in the family justice system that contact with both parents is the best outcome for everyone involved, even in cases of proven domestic or sexual abuse and when allegations of abuse have been ignored or dismissed. This is problematic given the risk of long-term harm to children who have relationships with an abusive parent.

Dismissing Children's Voices

Despite children now being defined as victims in their own right through being exposed to abuse, the family courts are still failing to protect these children. This approach breaches a child's Article 8 human rights - to a safe private and family life. The frequent absence of the voice of the child in family court proceedings is hugely concerning. Where children do voice concerns or fears about a parent, these are turned back on the child and used as evidence of alienation rather than genuine concerns about abusive behaviour.

In accepting claims of PA while dismissing claims of domestic or sexual abuse, family court cases often result in contact orders where the child is forced into contact (often against their will) with the abusive parent, creating a high risk and harmful situation. In some extreme cases, I have seen

the child removed from their protective parent – losing all contact for 90 days –and forced to live with the alleged abusive parent. Professor Mike Wang, Chair of the Association of Clinical Psychologists UK board of directors has also previously stated ‘the organisation is aware of unregulated experts making findings of so-called parental alienation and doing tremendous harm. I’ve seen children taken away by the force of the state on the basis of PA’.

The Need for Training

Many of the concerns identified in the Harm Panel report have a similar root: judicial understanding and identification of domestic abuse. The challenges faced by Family Court Judges are not surprising, given the complexities and nuances involved with domestic abuse. No two cases or relationship dynamics will be the same and Family Proceedings are, by their very nature, highly emotive.

Societal understanding of domestic abuse and the impact of abuse and trauma has changed and evolved significantly over recent years, especially with important legislative progress in the form of stalking and coercive control legislations. However, the Family Court’s approach to domestic abuse hasn’t been reviewed for 20 years.

There is now an urgent need for training to be developed to ensure Judges and Magistrates have an in-depth understanding of domestic abuse, coercive control, sexual abuse, emotional abuse and economic abuse. It’s also vital that training is widened to understand and recognise the impacts of trauma and domestic abuse on victim and children.

Use of ‘Parental Alienation Experts’

Recent reporting has raised serious concerns about the role of unregulated ‘PA experts’ in the courts, many without relevant qualifications or expertise – some of whom even appear to profit from the advice they give, for example by insisting that children be referred to them for expensive treatment. These concerns have in turn called into question the suitability of relevant guidance and practice directions which govern the use of experts in Family Court cases.

Once instructed by the court, these ‘experts’ seemingly always find PA and then limit or stop child contact with the ‘alienator’. They then mandate expensive therapy with themselves or a business associate as a condition of that parent being allowed to re-establish contact with their child. In cases where parents have refused the therapy or cannot afford it, this is interpreted by the expert as further evidence of alienation. The same interpretation is made when a parent offers to do the therapy with a different therapist which would not financially benefit the court-appointed expert.

The use of such experts in the Family Division threatens the rights to children guaranteed under the UNCRC as it allows any views expressed by the child to be dismissed as coming from an ‘alienating parent’. The use of experts should be regulated to ensure there is a consistent approach to dealing with PA and one that does not cause further damage and harm to victims and children involved in custody cases. Experts should be instructed upon proven registration with a relevant regulatory body and where registration exists, that the route for complainants to receive advice should be clear and regulatory bodies feel equipped to provide advice on matters of PA.

It’s clear that we cannot allow the family courts to become a tool which parents can use to punish one another. Experts must be regulated and accountable.

Conclusion

Accounts of PA are often based on a dubious scientific and evidential basis and guidance and processes around the use of 'experts' in family court cases which do not identify those who lie about their credentials, are affiliated to lobby organisations or have a history of complaints against them. We believe there is clear evidence that children and survivors of domestic abuse are being put at risk by the evidence provided by these unqualified and unregulated experts.

While there have been some steps towards addressing and examining these issues, they have been limited. The Ministry of Justice Harm Report in 2020 raised concerns which have not been fully acted upon. The Judiciary claim to be adapting and improving their training, but there is little transparency or scrutiny to confirm if such training is being implemented.

Alongside certain Member of Parliaments, I recently called on our Justice Secretary to initiate an independent inquiry to examine the available evidence and investigate the use of unregulated experts in the family courts. We strongly believe these experts must be properly regulated to ensure accountability and justice for victims, and the safeguarding and welfare of vulnerable adults and children.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Waxman', with a long horizontal flourish extending to the right.

Claire Waxman OBE

Independent Victims' Commissioner for London