

PARENTAL ALIENATION and DOMESTIC ABUSE

Three Recommendations to prevent the application of parental alienation in the Family Court encroaching on the rights of women and children



Prioritised

Launch a review of assumed parental involvement



Protected

Establish a standard DA Practice Guidance for all PA cases in Family Court



Supported

Expand support services for children in DA alleged cases.

BAD SCIENCE CREATING CHILDRENS' SILENCE

In England and Wales, mothers seeking to protect their children from domestic abuse are being penalised in the name of 'parental alienation' (PA). The increasingly popular term counts many contentious definitions; the most widely accepted being a child unwarranted rejection of one parent caused primarily by the actions of the other. However, research shows the application of PA in the family court is often used to offset allegations of domestic abuse. Parental Alienation can therefore be considered a pendulum of culpability. If mothers cannot support their allegations, the pendulum swings in favour of the 'alienated', abusive parent, to whom custody is transferred. This has silenced women, children and young people; they are advised not to report abuse so as to avoid the swing of culpability in their direction. This UCL Brief outlines 3 recommendations to prevent the application of PA in the family court encroaching on women and childrens **human rights**.

BACKGROUND

The concept of PA was popularised in the 1980s after psychologist R Gardener claimed that children alleging abuse during high-conflict divorces were suffering from a psychological disorder. 'Parental Alienation Syndrome (PAS)' was said to be caused by the vendetta of a mother, who would lead a campaign of slander against their ex-spouse. Allegedly, affected children would be 'brainwashed' into believing in and contributing to allegations of abuse against their father. This allowed the mother to both inflict punishment on their ex-husband, and ensure custody for themselves. The more the child rejected the relationship, the more 'evidence' of the alienating syndrome was observed.

89% of DA victims do not receive any support from the family courts [1]

Discredited by a lack of empirical evidence

Condemned by the UN as pseudo-science used to attack Womens Rights

Removed from the WHO index due its Human Rights implications

CONTEMPORARY APPROACHES

The scientific theory of PAS has proved to be invalid. Criticism from numerous humanitarian organisations has created a shift in the framework used to approach a child rejecting a parent during a high-conflict separation. Unlike PAS, which blames mothers for alienating behaviours, the contemporary theory of Parental Alienation (PA) considers a range of factors that may cause a child to reject their non-resident parent. These can include (but are not limited to) deliberate and unintentional actions of the resident parent. Despite the distinct differences between PA and PAS, research from the Women's Aid Federation shows that the terms are used interchangeably in court. Gardener's theory, therefore, has serious implications for women, children and young people who disclose their experiences of domestic abuse during custody litigation. Application of PA/PAS is used as a method of **behaviour modification**.

When making a child arrangement order, the family court presumes it is in the child's best interest to maintain a relationship with both of their parents. In the case that an abusive father claims they are being alienated, the child is considered to be suffering emotional and psychological harm - at the hands of their mother. The pendulum of culpability swings.

Women's Rights Organisations referred to Gardener's concept as a trap - the birth of the abuser's defence tactic.



NATIONAL POLICY

From a child rights perspective, the continued application of PA in the family courts undermines the voice and desires of young people suffering domestic abuse. Their allegations are considered evidence of one parent's alienating behaviours against the other.

This fails to recognise the agency of children in contact cases, and their ability to form wishes and feelings independently from their resident parent.

GLOBAL POLICY

England and Wales committed to **protecting** child's rights under the UN Convention on the Rights of the Child, and women's rights under the European Convention on Human Rights. This page highlights the strengths and weaknesses of 2 key policies in England and Wales that pertain to realising rights in the context of child arrangements and domestic abuse.

THE CHILDREN'S ACT 1989, 2004

focuses on the basic rights of the child, including welfare, parental responsibility, and guardianship support services.

S1- The Paramountcy Principle

- ✓ When a court determines any question with respect to the upbringing of a child, the child's welfare shall be the courts paramount consideration
- ✓ Can be used to adjudicate between the rights of children and their alienated, abusive parents

S1(3) The Court must consider the wishes and feelings of the child and any harm they are at risk of

- ✓ Increased focus on children's autonomy makes the court reluctant to enforce orders on resistant children
- ✗ Presumption of parental involvement means that if a mother trying to protect her children from domestic abuse is accused of PA, the court considers her to be subjecting her child to emotional harm
- ✗ Courts consider short term harm from the transfer of custody preferable to continued alienation

Part 16, Family Procedure Rules

- ✗ Courts can forgo the requirement to understand the desires of the child, because in cases of PAS their views will be that of their resident parent

THE DOMESTIC ABUSE ACT 2021

focuses on the prevention of domestic abuse and the protection of all victims.

Part 1 (5) Definition of Domestic Abuse

- ✓ A's behaviour may be behaviour "towards" B despite the fact that it is conduct directed at another person
- ✓ Children who reject their parent due to abuse they have been exposed to are considered victims by the Court.
- ✓ Being considered victims in their own right can help to establish their independence from their resident parent

Part 1 (3c) Definition of Domestic Abuse

- ✗ Behaviour is abusive if it is controlling or coercive
- ✗ Can label children who have PAS as victims of their mothers 'coercive' abusive and distract from children's allegations against their non-resident parent

The key issues preventing national policy in England and Wales from aligning with human rights obligations are:

Contact with both parents is assumed to be in child's best interest

This assumption means that children continue to be forced into contact with their 'alienated' abusive parent, despite being clear that they don't want to. This undermines Article 19 of the UNCRC; protection from violence, abuse and neglect

Voices of children and young people facing DA are neglected

Children's voices are not given due weight during court proceedings because their accounts and feelings are assumed to be those of the resident parent. This undermines Article 12 of the UNCRC; respect for views of the child.

NATIONAL FINDINGS

The 2020 Harm Panel Report conducted by the Ministry of Justice revealed a series of failures in the Family Courts, Women's Aid published a report mapping the Government's response, and found:

1. Contributors felt their children's thoughts, wishes or feelings were neglected.
2. An underlying culture of misogyny/mother-blaming/victim-blaming prevails in the Courts
3. Family Court proceedings are trauma-inducing, as opposed to trauma-informed
4. Children are repeatedly forced into unsafe contact arrangements with abusive parents

KEY RECOMMENDATIONS

to prevent the application of PA in the Family Court from encroaching on the rights of the child

The policy recommendations devised by our IRDR policy group are designed to supplement practices in the family court that Women's Aid identified as failing to fulfil the 2020 implementation plan commitments. Each recommendation was also informed by our analysis of how successfully national policy aligned with Human Rights obligations - particularly the UNCRC.

#1 REVIEW OF ASSUMED PARENTAL INVOLVEMENT

- Create a statement of practice for the application of Sections 1(2A) (2B) and (6) of the Children Act 1989 during PA / DA custody cases. In the instance that a child has alienated a non-resident parent, it should not be assumed it is in their best interest to maintain a relationship with them (**Harm Panel Finding 4, UNCRC Article 3, 9 and 19**)

#2 ESTABLISH A STANDARD DA PRACTICE GUIDANCE FOR ALL PA CASES IN FAMILY COURT

- Practice Direction 12J must be monitored in court proceedings to guarantee the promised protections of a child in DA alleged cases. This addresses, **Harm Panel Finding 4**
- The use of 'Special Measures' should be accessible to those facing family court proceedings in addition to those facing the criminal court to reduce the physical and mental stress such cases can cause to a victim (**Finding 4, UNCRC Article 19**)
- In the instance that a child rejects a non-resident parent during family cases, they must be subject to a DA assessment (even if no explicit allegations have been made) **This upholds Domestic Abuse Act 2021 'spreading awareness' and Harm Panel Finding 1**

#3 EXPAND SUPPORT SERVICES FOR CHILDREN IN CASES INVOLVING DA ALLEGATIONS

- The Victims Bill must be extended to the family court for children in DA /PA custody cases. They should be involved in a similar consultation to that of the Victims Bill regarding their experience of the justice system. This addresses **Harm Panel Finding 1 and UNCRC Article 13**
- An extension of the 'Victims Code', 'Victim support services' and 'Independent Advisors' should be adjusted to fit children in DA and PA alleged court cases. **Finding 1**
- All children in DA or PA alleged cases should be entitled to support services throughout and after a court case so that they can express their concerns and have access to aid for active abuse or for coping from trauma. **Finding 2,3**

CONCLUSION

Despite its lack of basis in both the global policy framework and national practice, the use of PA in family courts persists. This is harmful for victims of domestic abuse, as claims of parental alienation can distract from the severity of the danger the perpetrator poses to the child. To ensure the protection and prevent the retraumatization of children in DA-alleged cases, it is vital that children are prioritised, protected and supported.

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