

**Fatally flawed and gender-
biased...?**

A succinct critical analysis of:

1. **“Domestic Abuse and Private Law Children’s Cases: a literature review, Ministry of Justices Analytical Series” (2020), Adrienne Barnett**

2. **“A genealogy of hostility: parental alienation in England and Wales” (2020), Adrienne Barnett**

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On Behalf of ‘The Change for Children’

1. A fatally flawed and gender-biased review?

“Domestic Abuse and Private Law Children’s Cases: a literature review, Ministry of Justices Analytical Series” (2020), Adrienne Barnett

Abstract:

Domestic abuse in all its manifestations has evolved in many ways. First, it encompasses coercive and controlling behaviour that produces an unequal power dynamic in a relationship. Second, both male victims and female victims are increasingly concerned. To understand in a thorough way what constitutes domestic abuse and its consequences for children's cases under private law, it is important to recognise all types of victims. The literature review under scrutiny in this analysis may appeal to the bandwagon fallacy that men are systematically perpetrators of domestic abuse. On one hand, it provides an inaccurate depiction of the reality of domestic abuse of male victims. On the other hand, it may stigmatise men who have carried forth the consequences of what is perceived as parental alienation. The method by which the ex-partner indoctrinates the child to alienate the other parent, to exert coercive control of the child, and to control the alienated parent's behaviour. It is hoped this analysis will inform practitioners about the risks of the propaganda on gender-biased assumptions when it comes to parental alienation and domestic abuse.

Introduction:

This critique concerns the Ministry of Justice’s literature review on “Domestic abuse and private law children cases.” authored by Adrienne Barnett¹.

The report was commissioned by the MoJ’s panel of family experts. It is intended to include a comprehensive review of the relevant literature on threats to children and parents implicated in private law children cases, involving claims of domestic abuse and other serious offences. While this literature review produced significant findings about the harmful effects of domestic abuse on both ‘victim parents’ and ‘children’, it appears to review only a fragment of the phenomenon.

¹ Dr Adrienne Barnett is a Senior Lecturer in Law at Brunel University London. She is a door tenant at One Pump Court Chambers, where she formerly practised as a family law barrister.

It has identified child contact as “the key site for post separation abuse”² yet it appears to be gendered-biased and ill-informed as little to no evidence is engaged with, that identifies mothers as perpetrators of such abuse.

We argue that there are limitations related to: *the availability of case evidence/review* and of *independent and impartial research* that would reflect the reality of domestic abuse in all its forms. Such research must include and consider all victims of abuse and investigate what can constitute abuse in a comprehensive manner. Especially in cases where ‘*parental alienation*’ or ‘*implacable hostility*’ inflicted by one parent to the other through the medium of the child could be identified and recognised as domestic abuse.

Summary:

The author recognises “the principal limitation of a rapid evidence assessment review, that it cannot guarantee a complete and comprehensive set of the literature on each topic.”³ Barnett also mentions the lack of empirical research studies undertaken in England and Wales focusing on parental alienation and domestic abuse. Nonetheless, the author identifies that “studies of the experiences of abused *women* in family courts frequently mentioned this issue.”⁴ In turn, the author refers to her own work as a “comprehensive review and analysis of reported judgment on this topic”⁵ before acknowledging that the number of recorded cases available to date has not permitted the kind of large-scale studies that have been performed in other jurisdictions. It is also notable to point out that the review comprises 6 references to the author’s own work.

² Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020) p.122.

³ Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020) p.14

⁴ Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), S.5.1, p.15

This is further elaborated by the author in Section 7.2 of her work.

⁵ Adrienne Barnett A genealogy of hostility: parental alienation in England and Wales, (2020) Journal of Social Welfare and Family Law, 42:1, 18-29, DOI: 10.1080/09649069.2019.1701921

In Section 1.1, the author does not report of any studies investigating the parenting patterns of domestically abusive women. On the other hand, the small number of studies that specifically investigated the parenting practices of domestically abusive fathers found that their parenting practices can be directly harmful to children. This includes physical and emotional abuse and neglect, as it is developed in Section 5.1 of the review.⁶ The author finds that continuing abuse can contribute to physical and mental health problems for women.⁷ The literature reviewed by the author highlights the effects of ongoing abuse after parental separation. It can leave the victim, also referred to as survivor, in a continued state of fear. It is further said that it can substantially impede women's recovery and ability to regain their confidence and parenting capacities as well as supporting their children's recovery.⁸ It is sustained by the author that "contact could be used by perpetrators as a site to undermine mothers."⁹

Response:

As regards the logic and organisation undertaken by the author around the methodology of the research, it must be noted that this literature review was carried out between the 22nd of July and the 31st of August 2019. Owing to the short timeline of the research, a rapid evidence assessment approach has been implemented. This suggests, in our view that a limited approach has been taken.

In respect of the accuracy of information, the author has indeed applied factual evidence to the arguments developed and theory. While it cannot categorically be stated that there are ambiguities in the author's manner to reference to others work as well as her own, we must make the following remarks.

⁶ Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), S.5.1, p.27.

⁷ Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), S.5.1, p.27.

⁸ Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), S.5.2.2, p.35.

⁹ Adrienne Barnett, Domestic abuse and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), p.122

The study demonstrates a lack of research into male victims of domestic abuse. It only refers to female as victims, and male as perpetrators. A more comprehensive study would examine cases and situations where *parents* appear as victims or perpetrators regardless of their gender.

The aim of the literature review was to “gather evidence on how the family courts protect children and parents in private law children cases concerning domestic abuse and other serious offences.”¹⁰ To be more specific, it addressed:

- children’s and parents’ experiences of domestic abuse before and after parental separation
- children’s and parents’ experiences of family court proceedings and decision-making in the context of domestic abuse
- how the family courts respond to and manage domestic abuse in private law children cases, including how the courts apply PD12J, enforce contact orders and manage abusive litigation.¹¹

The above states specifically "parents" and not "women" or "mothers." It indicates that the data has not been researched or prepared in a realistic, fair, and transparent manner, again favouring the narrative of the female victims of domestic abuse. Furthermore, the crossover of child violence by fathers solidifies the weight of this narrative in the study.

In addition, it can be noted that in certain instances, mothers’ claims of domestic abuse may be unfounded. Surprisingly, the author relies on her own work in where it is stated that “the issue of domestic abuse was transformed into one of false allegations’ being made by mothers to frustrate contact and exclude fathers.”¹²

¹⁰ Adrienne Barnett, Domestic abuse, and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), p.11.

¹¹ Adrienne Barnett, Domestic abuse, and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), p.122.

¹² Adrienne Barnett A genealogy of hostility: parental alienation in England and Wales, (2020) Journal of Social Welfare and Family Law, 42:1, 18-29, p.20.

However, we find that in *CDM v CM & Ors*, the mother had put forward claims of alleged sexual and physical abuse of the children by the father. She had also previously claimed that he had domestically abused her. It was found by the judge that:

“Since the Circuit judge who dealt with the matter more recently has effectively discounted any such proposition, it does not seem to me that I should give any weight to the initial allegations of domestic violence and I do not do so.”¹³

The judge then stated with confidence that the only harm the children had suffered or were likely to suffer in the context of contact with their father “is the abusive attitude which their mother had taken to the subject and the views which she had inculcated in them.”¹⁴ He therefore recognises the alienation from the mother to the father but qualifies it as an ‘abusive attitude’.

The literature review can be observed as support for a call for further analysis of the lack of data on domestic abuse, parental alienation, and private law. Especially regarding the various types of abuse committed by mothers against fathers. There is not enough evidence to conclude that there is no such abuse. In fact, the review does not address the subject at all. Instead, by doing so, it points to the fact that there has been failure to include and acknowledge male victims.

Sections 6.1, 6.2, 6.3

The sections previously mentioned focus solely on stories of mothers abused by controlling fathers. The author ignores and does not include cases involving mothers who may abuse fathers. The causal link of this section may be that the reader is informed that only mothers are victims of domestic abuse, not fathers. This then may establish a misleading impression for the reader, as they are not aware of the existence of such cases of abuse against fathers.

It ostracizes the reality of male victims of abuse. In fact, 33% of domestic abuse victims in the year ending March 2020 were male victims.¹⁵

¹³ *CDM v CM & Ors* | [2003] 2 FLR 636, para 48.

¹⁴ *CDM v CM & Ors* | [2003] 2 FLR 636 para 49.

¹⁵ Office for National Statistics showed between April 2019 and March 2020 that 33% of victims of domestic abuse are male. 1.561m women and 757k men,
See: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2020>

It seems that the author assumes that male victims of abuse are not victimised to the extent of justifying their inclusion in the literature review. This in essence makes the author's analysis one sided and puts it at risk of being classified as misrepresentative and inaccurate.

To go further, such reports may have the effect of influencing gender biased conduct during judicial proceedings. It may make fathers more vulnerable to the 'implacable hostility' of their ex-partners.

The existence of such hostility towards a parent and alienation of a child from a parent has been recognized in judgments made prior to the literature review. The perpetrators of such alienation have proved to be sometimes mother and sometimes fathers. Practice Directive 12J recognises domestic abuse which includes any incident or pattern or incidents of controlling, coercive or threatening behaviour.¹⁶ It goes on to define coercive behaviour and controlling behaviour respectively as follows:

“coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

“controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;’

In situations of PA, the coercive behaviour of one parent towards the child leads to the controlling behaviour patterns inflicted upon the alienated parent. We identify PA as the controlling component that makes a person subordinate/and or dependent by isolating them from sources of support, which results from the coercive abuse inflicted upon the child.

The increasing nature of cases involving male victims of domestic abuse does not yet cause evidence of such occurrence to be readily accessible. However, we find that the author's

Data reported by the UK National Centre for Domestic Violence, See: <https://www.ncdv.org.uk/domestic-violence-against-men/>

¹⁶ Chris Bryden, Tori Adams, 4 Kings Bench Walk, Invisible domestic abuse: coercive control in family law – [2021] Fam Law 152, p.152.

conclusions might have been much fairer and more persuasive if Barnett had considered available case studies and researched into the reasons why male victims face significant obstacle to the obtention of assistance.¹⁷ To ensure that the author adapted a fair process by addressing missing information correctly, there are sections in which the author could have been more forthcoming with facts.

We assume, The MoJ, aware that cases involving female victims outweigh male victims, should have ensured that detailed and informative data, case studies and analysis for male victims were readily accessible. The research would have been more relevant if a wider range of data had been explored, to counter the evidence and to form a balanced and informed evaluation that could lead to legitimate, accurate and appropriate research.¹⁸ If this had been the case, the conclusions to be drawn from the information provided, may be much different. One question that needs to be asked, however, is whether this kind of wide and substantial review could have been appropriately addressed by a single practitioner? This causes one to wonder whether it is in the public interest to provide a premature examination of such troubling problems, that could have irreversible psychological effects on parents *and* children?

It may be beneficial that a freedom of information resort be sought out of public interest. The subject relating to domestic abuse concerns every person which may be a victim or perpetrator of such offence at some point of their life. Further, we identify a Family Justice Research Bulletin

¹⁷ Huntley AL, Potter L, Williamson E, et al, 'Help-seeking by male victims of domestic violence and abuse (DVA): a systematic review and qualitative evidence synthesis.' *BMJ Open* (2019) 1-13

Researchers at the University of Bristol's Center for Academic Primary Care and the Center for Gender and Violence Research found that men who experience domestic violence and harassment face major obstacles to seeking treatment and access to advanced support services.

¹⁸ The resources to be considered could have included grey literature, such as materials and studies provided by organisations outside the conventional commercial or academic publishing and distribution networks.

A research library that displays statistics and researches about male victims of domestic abuses is available for example on the Mankind Initiative organization's websites, See: <https://www.mankind.org.uk/statistics/> and <https://www.mankind.org.uk/survivors-stories/>,

produced by the MoJ in May 2018 that profits from independent external peer review.¹⁹ It may be that the same kind of approach should have been adopted for this literature review.

Section 4.2 of the literature review describes the terms in which domestic abuse is categorised:

“Until relatively recently, the term ‘domestic violence’ was used to describe what is now called ‘domestic abuse’ and was generally considered to encompass acts of *physical violence* perpetrated by adults in *intimate relationships*. In recent years domestic abuse has come to be understood as also encompassing *psychological, emotional and economic abuse, and even more recently, coercive and controlling abuse*, although these other forms of abuse had been recognised by those working with victim/survivors in the *US* since the 1970s and 1980s (Stark, 2007).”²⁰

It is confirmed in this section, that coercive and controlling conduct is listed as an offence under the Serious Crimes Act 2015.²¹ The section explicitly describes the past and present features of an abusive relationship. However, the argument does not consider children in the ‘relationship’ aspect of the ‘domestic’ climate. The research appears to be one sided. The review cannot apply to the ‘Children and Parents’ experiences before and after separation’ in its entirety. At least not without a clear and strong understanding of how children feel towards domestically abused fathers. Besides what children feel, the motives and goodwill (or lack of) of any parent who is aggressive/hostile to the other parent in contact arrangements must be carefully considered across disciplines.

Women’s Aid UK claims that:

¹⁹ MoJ, Family Justice Research Bulletin: New and forthcoming research and analysis for the family justice system (May 2018)
See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706672/family-justice-bulletin.pdf

²⁰ Adrienne Barnett, Domestic abuse, and private law children cases: A literature review, Ministry of Justice Analytical Series (2020), p.16

²¹ Serious Crimes Act 2015, Part 5, s.76(1)

“Children can witness domestic abuse in a variety of ways: they may be in the same room and may get caught in the middle of an incident, perhaps in an effort to make the violence stop; *they may be forced to take part in verbally abusing the victim.*”²²

This statement clearly demonstrates that adult perpetrators of domestic abuse may use the child as a ‘tool’ to carry out their intention of verbal assault against the other parent. As a result, the child is subject to emotional manipulation, child neglect and domestic abuse. It must not be ignored in addition, that it is the point at which such conduct by one parent will potentially begin to alienate the abused parent from the child.

As articulated by Sir James Munby (previous President of the Family Division), as a matter of immediate action, there needs to be a specific programme of “rigorous, *independent research* by suitably qualified academics.”²³ He put forward that “a comprehensive international literature review of all the existing non-legal research into the existence, causes, and consequences and means of identifying parental alienation and domestic abuses in all its forms.”²⁴ be conducted. The aim of such an approach would be to ensure a cross-disciplinary consideration of the issue. Further, he identifies the need to undertake “a comprehensive review including all cases on BAILII as well as in law reports, of all the publicly available English case- law, focusing in particular on first) instance decisions at all levels”²⁵ relating to PA and DA in all its forms.

Conclusion:

This critical analysis examined the disproportionate research that forms prejudice against fathers which raises the question of equality in the protection of male and female victims of domestic abuse. The results of the literature review, or at least the manner in which the content is addressed by the author, draw attention to the effect of domestic abuse on women in the legal system. Yet,

²²Women’s AID UK, ‘The survivors handbook, children and domestic abuse.’
See:<https://www.womensaid.org.uk/the-survivors-handbook/children-and-domestic-abuse/>

²³ Sir James Munby, The crisis in private law in the English Family Court, April [2020] Fam Law, p.456

²⁴ Sir James Munby, The crisis in private law in the English Family Court, April [2020] Fam Law, p.456

²⁵ Sir James Munby, The crisis in private law in the English Family Court, April [2020] Fam Law, p.456

the evolution of the recognition of male victims of domestic abuse seems to have been left behind. Barnett's research is flawed because it did not consider domestic abuse against men including where they are fathers. It indicates that ways in which male victims are continuously abused may be ignored. Further, if the children are considered as victims in a study relating to domestic abuse, it seems logical to include views and research about fathers of families too. Instead, the author through the review has highlighted that male victims can be targeted by gender-biased jurisdiction.

The sheer volume of research featured in the literature review on female victims, does not prove only women are victims. The legislation has rightly evolved in the direction of protecting women and therefore mothers. The fact that women are still the primary focus of domestic abuse in a family setting shows how under-represented male victims are. It seems however, that private legislation is flawed, with very little awareness or consideration of male victims of domestic abuse. The sheer volume suggests the lack of willingness, interest and empathy with male victims/fathers within the court systems and researchers/academics compounds the invisibility and lack of recognition of male victims – including within the legal system. The literature review itself is a good example of this.

References:

Serious Crimes Act 2015

CDM v CM & Ors | [2003] 2 FLR 636

Adrienne Barnett, A genealogy of hostility: parental alienation in England and Wales, (2020) *Journal of Social Welfare and Family Law*, 42:1, 18-29

Adrienne Barnett, Domestic abuse, and private law children cases: A literature review, Ministry of Justice Analytical Series (2020)

Chris Bryden, Tori Adams, (4 Kings Bench Walk), Invisible domestic abuse: coercive control in family MoJ, *Family Justice Research Bulletin: New and forthcoming research and analysis for the family justice system* (May 2018) law – [2021] *Fam Law* 152

Sir James Munby, The crisis in private law in the English Family Court, April [2020] *Fam Law*, p.456

Women's AID UK, 'The survivors handbook, children and domestic abuse.'

See:<https://www.womensaid.org.uk/the-survivors-handbook/children-and-domestic-abuse/>

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2020>

<http://bristol.ac.uk/news/2019/june/men-domestic-abuse.html>

<https://metro.co.uk/2019/03/22/i-was-a-completely-broken-man-a-survivor-of-domestic-abuse-shares-his-story-8945563/>

<https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-43799850>

<https://www.mankind.org.uk/survivors-stories/>

2. A fatally flawed and gender-biased analysis of the genealogy of hostility?

“A genealogy of hostility: parental alienation in England and Wales” (2020),
Adrienne Barnett

Introduction:

This critique concerns the journal article authored by Adrienne Barnett entitled: “A genealogy of hostility: parental alienation in England and Wales.”²⁶

The author finds that the idea of ‘parental alienation’ is used by violent fathers as an effective weapon to silence women and children not keen to maintain contact with them. She argues that “PA [parental alienation] is not an equal counterpart to domestic abuse”²⁷, rather, according to her, it is a way of obscuring domestic abuse.

The article presents a flawed genealogy of hostility by excluding some primary factors in the cases relied on and by supporting gender-biased assertions about the subject of parental alienation.

Parental alienation is a description of a range of behaviours, processes, and outcomes as “when a child’s resistance or hostility towards one parent is not justified and is the result of psychological manipulation [through a range of abusive behaviours] by the other parent.”²⁸

It is both child psychological abuse and domestic abuse which is evidently manipulative and coercive. Fathers, mothers, and also other members of the family may be and are perpetrators and victims; the child is always the victim.

²⁶ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, Journal of Social Welfare and Family Law, 42:1, 18-29.

²⁷ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, Journal of Social Welfare and Family Law, 42:1, 18-29, p.29.

²⁸ The Children and Family Court Advisory and Support Service (CAFCASS) recognizes parental alienation as such. See: <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/>

Summary:

On one hand, the author attempts to trace the history of PA which she finds “is a concept that is proving more powerful than any other in silencing the voices of women and children resisting contact with abusive men.”²⁹ To support this claim the author has reviewed 40 cases she identified between the period 2000-2019. The author finds that PA’s gendered nature can be seen in the “only case in which a resident father was found to have alienated the child against the mother.”³⁰ (Re L-W (Children) [2010] EWCA Civ 1253.)” It is therefore implied in the article, that the only case in which alienation was recognized was one of a father, inflicting it upon a mother. While she mentions that case, in the next section of the article she states that no reported or published cases referring to PA or PAS were identified between mid-2010 and July 2013. However, she acknowledges that it does not indicate that PA was not brought before the lower courts during that time, only that the absence of reported decisions suggests it was not prolific.³¹ The author goes on to suggest that the disbanding of Fathers4Justice, an association that supports the recognition of PA in court proceedings, may be the reason for this absence of reported decisions. In addition, Barnett suggests that the use of PA in family proceedings reveals a clear pattern of response to concerns and measures to address domestic abuse. More importantly, she recognizes that this strategy used by individual members of father’s rights group, ‘the main instigator of PA/PAS’ was unsuccessful. According to her, the concept has become part of the discursive repertoire of current family law.³²

Citing Birchall and Choudry study of 2018, the author puts forward the statement that allegations of domestic abuse could even be used as evidence of PA. It is described as a reflection of the general hostility that mothers face from the courts and practitioners, giving rise to a strong punitive aspect in the PA discourse. Finally, it is advanced by the author’s claims that the most

²⁹ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, p.27.

³⁰ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, p.22.

³¹ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, p.22.

³² Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, p.26.

worrying effect of PA is the distortion it exerts on children's views, unless they want contact with their fathers.³³

Response:

Barnett describes male perpetrators of domestic abuse as playing the "alienation card" to further abuse female victims. However, our research finds that statement flawed. We find that Barnett describes alienating parents as the dealer in a card game where the abused parent only gets handed the joker.

The emphasis on domestic abuse perpetrated on mothers by fathers who uses PA as a tool to further abuse them seems to fall under the category of bandwagon fallacy. Such technique of persuasion carries the risk of propagating an argument supported by a majority, to which a reader should agree too, as a logical sequence. Not because it is knowledgeable and accurate, but primarily because it is indicated by the majority of available resources cited by Barnett.

The author makes the hasty generalization that when fathers claim to be victims of PA, they do so maliciously, in order to carry out further abuse on the mother.

By doing so, Barnett does not acknowledge, in a first place, the idea that mothers may claim themselves as victims of PA. Where the author mentions in the article, an unreported case (at the time of writing) in which a mother alleged PA, it is stated that "it was clearly not a case of PA on any construction of that concept, and the mother appeared deluded in raising it."³⁴

Yet this occurred in the ECtHR case: *Pisica v The Republic of Moldova*³⁵. Indeed, the Court recognized a failure of the Moldovan authorities to take effective measures so as to ensure an alienated mother's access to her children by their father. It was found that they had breached her

³³ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, p.27.

³⁴ Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, p.23

³⁵ European Court of Human Rights, *Pisica v The Republic of Moldova*, 29th October 2019, See: *PISICA v. THE REPUBLIC OF MOLDOVA* - 23641/17 (Judgment: Article 8 - Right to respect for private and family life : Second Section) [2019] ECHR 779 (29 October 2019). As an outcome of the case the mother was awarded damages of 12 000 euros + 2 000 euros for costs and expenses. [URL:http://www.bailii.org/eu/cases/ECHR/2019/779.html](http://www.bailii.org/eu/cases/ECHR/2019/779.html) Cite as: [2019] ECHR 779

right to protection of her family life, in accordance with Art.8 of the ECHR.³⁶ Without going in too many details about the case, while we acknowledge the persuasive rather than binding nature of the judgment, its consideration may induce the momentum needed for relevant authorities to deal with parental alienation cases diligently.

In a second place, the probability that the mother's accusations of domestic abuse, or of PA, which may be no less popular than those by fathers, may be untrue, is also excluded. However, in *CDM v CM & Ors*, the mother had put forward claims of alleged sexual and physical abuse of the children by the father. She had also previously claimed that he had domestically abused her. It was found by the judge that:

“Since the Circuit judge who dealt with the matter more recently has effectively discounted any such proposition, it does not seem to me that I should give any weight to the initial allegations of domestic violence and I do not do so.”³⁷

The judge then stated with confidence that the only harm the children had suffered or were likely to suffer in the context of contact, “is the abusive attitude which their mother had taken to the subject and the views which she had inculcated in them.”³⁸ He therefore recognises the alienation from the mother to the father but qualifies it as an ‘abusive attitude’. The lack of consideration of such situations results in an oversimplification of the reality of the issues at stake. The possibility of such lies and deception on the part of a parent cannot easily be ignored. Especially when we consider that the relationship and interactions between the estranged parent and the child is at stake.

The approach taken by the author may contribute to gender bias in judicial proceedings. As a result, the alienated parent's claim may unfairly be excluded and the abuse that PA represents may be perpetuated. In turn, the lack of support or acknowledgement of the alienated parent may underscore a double standard with respect to the relationship it maintains with the child, allowing the alienating parent's actions to exacerbate the alienation.

³⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 8.

³⁷ *CDM v CM & Ors* | [2003] 2 FLR 636, para 48.

³⁸ *CDM v CM & Ors* | [2003] 2 FLR 636 para 49.

As a consequence, these two points can have some implications which contradict the basic principles of legal ethics. First, it violates the dignity and fairness with which the law must be interpreted and implemented in line with widely recognised moral values. Secondly, it goes against the service of the interests of justice and the interests of consumers of legal service, in occurrence the children and the alienated parent.³⁹

There is no evidence that men are more likely than women to exploit the system by making false claims, or vice versa and judicial experiences shows no differences. In making these allegations, the author does not provide such evidence.

The Courts take their decisions on the basis of the totality of evidence, in the best interests of the child. In accordance with the Art. 3 of the UN Convention on the Rights of the Child, and of s.1 of the Children's Act 1989 which supports the observance by the courts of the welfare of the child as paramount.⁴⁰ The findings of the High Court in *Re M (Intractable Contact Dispute: Interim Care Order)* [2003] EWHC 1024 (Fam) in which a mother was instilling false beliefs of prior physical and sexual abuse by their fathers, highlights the Judges careful consideration of the facts with regards to the child's welfare. The trial judge established that the allegations were untrue and described the mother as an 'extremely unsatisfactory witness'.⁴¹ An interim care order removing the children from the mother's care to foster carers to assess them in her absence was made by the Court. As a result of which a residence order was made in favour of the father with a two-year supervision order, leaving contact between the mother and children to the discretion of the local authority. The Court considered the expert opinion of Dr. Weir to assess that it had been in the best interests of the children to make a S.37 order. The author refers to this case but categorizes it as one where the issue of domestic abuse was transformed into one of 'false allegations'.⁴²

³⁹ These principles are recognized by The Law Society of England, See:<https://www.lawsociety.org.uk/topics/regulation/ethics-in-law>

⁴⁰ UN Commission on Human Rights, *Convention on the Rights of the Child.*, 7 March 1990, art.3 ; Children Act 1989 s.1.

⁴¹ *A (Children)* [2019] EWCA Civ 74, para 42.

⁴² Adrienne Barnett (2020) A genealogy of hostility: parental alienation in England and Wales, *Journal of Social Welfare and Family Law*, 42:1, 18-29, 20.

In *Re L and M (Children: Private Law)* [2014] EWHC 939 (Fam), in the words of Macur J cited by Pauffley J, children alleged that they “‘searched their father for recording equipment as a result of something said in their present home shared with mother and grandparents.’”⁴³ It was found that this behaviour suggested PA at the hands of the mother or her parents, although it was noted that she amassed support for her cause from the ranks of close friends and acquaintances. The Court acknowledges the danger this represented to the probable degradation of relations between the father and his children, although it focused on the children welfare.⁴⁴

PA should not be seen as a derogatory concept, rather it should be seen as a reality and a signal to be taken into consideration by the Courts in assessing the welfare of children. This will improve awareness and understanding of coercive control offence.

The research base that concerns the subject still lacks the input of comprehensive and independent research across disciplines that focus on the relation between parental alienation and domestic abuse. As it was mentioned elsewhere: “in determining any high conflict case involving an alienated child, it is essential that the court has the benefit of professional evidence from an expert who has personal experience of working with alienated children.”⁴⁵ However, it should be remembered that the comparatively small number of cases of alienation necessarily means that not every child care provider would have experience dealing with a case involving an alienated child.⁴⁶ In addition, it must be noted that Barnett does not identify any cases referring to PA during the period between 2010-2013, however the case that is quoted previously (*Warwickshire County Council v TE & ORS* [2011] 1 FLR 1789) did recognize the alienation of a child. Further to that, it was recognized in 2019 in the matter of *R (Parental alienation and suspended transfer of residence)* that the findings made in *In Re M (Contact)* [2012] EWHC 1948 (Fam) [2013] 1 FLR 1403 by Jackson J address the fundamentals of what is now being regularly termed parental alienation by the courts.⁴⁷ Namely an unjustified rejection of parent by children,

⁴³ *Re L and M (Children: Private Law)* [2014] EWHC 939 (Fam) para 8.

⁴⁴ *Re L and M (Children: Private Law)* [2014] EWHC 939 (Fam) para 8.

⁴⁵ *Warwickshire County Council v TE & ORS* [2011] 1 FLR 1789, para 59.

⁴⁶ *Warwickshire County Council v TE & ORS* [2011] 1 FLR 1789, para 59.

⁴⁷ *R (Parental alienation and suspended transfer of residence)* [2019] EWFC 61, para 45-46.

enmeshment of the children's views with the resident parent and a finding that the resident parent holds responsibility for the situation.⁴⁸

A list of cases where parental alienation was found by courts in England and Wales is provided at the end of this analysis.⁴⁹ These demonstrate the Court's ability, (when cases are managed by appropriately senior and experienced family law judges and presented by experienced advocates), to investigate complex allegations of both domestic abuse and allegations of parental alienation fully and competently, usually within the same case. These cases indicate that based on a thorough judicial review of the evidence and facts of a case, findings of parental alienation are often made, thereby proving its existence and devastating impact on children and families.

To argue that PA, or that it does, but only in the form of a systematic tool for abusive fathers to mistreat the mothers and to fool the judiciary, is to suggest that these detailed judicial investigations were flawed and that the findings made by senior experienced family law judges (two of whom went on to become respective Presidents of the Family Division and Head of Family Justice – Sir James Munby and Sir Andrew McFarlane) were entirely without merit. In the absence of substantive supporting evidence, this argument is ludicrous, not to mention disrespectful. It simply strengthens the vicious circle in the centre of which the problem is put.

These cases, of course, only represent families where parents have had the resources and money to pursue matters through the court at their highest level (and hence reported cases). They should be considered representative of hundreds of other families whose cases remain hidden, simply because, in the absence of legal assistance (result of LASPO 2013), they are simply not in a position to pursue their case to a level of visibility. The majority of cases in lower-level courts remain unreported, as acknowledged by the author.

⁴⁸ Re M (Contact) [2012] EWHC 1948 (Fam) [2013] 1 FLR 1403, para 61.

⁴⁹ In addition to the case references below, see also 'Review of Research and Case Law on Parental Alienation' Julie Doughty, School of Law and Politics, Cardiff University: <https://gov.wales/sites/default/files/publications/2018-05/review-of-research-and-case-law-on-parental-alienation.pdf>

Conclusion

The lack of data on incidents or circumstances where there is no domestic abuse, but there are indicators of PA should not be a reason to ostracise parents on the basis of their gender. Both mother and father may be the target of PA as a result of coercive and controlling behaviour of one parent to the other. In such circumstances, the child must be regarded as the tool by which such abuses are committed, having regard to all the relevant facts of the case.

The uncertainty that revolves around PA can be an opportunity to pursue better training of public authorities and practitioners across disciplines. In order to make decisions that are in the best interests of children with regard to the current and potential damage that PA can cause in their lives.

It is also important to acknowledge the harm and to bring justice to the parents who are victims of such abuses. The fact that it is recognized in the UNCRC that a child's view must be considered where they are old enough to express opinion, does not refrain a parent from coercively controlling a child. It must therefore be avoided that such research that pictures 'parental alienation' or 'implacable hostility' as a claim that it is only raised as a mean to an end, be regarded as conclusive and accurate.

This is a list of primary cases in which the results of parental alienation in the courts of England and Wales have been identified:

Re J (A Minor) (Contact) (1994) 1FLR 729 (Balcombe LJ)

Para 736 : " judges should be very reluctant to allow the implacable hostility of one parent (usually the parent who has a residence order in his or her favour), to deter them from making a contact order where they believe the child's welfare requires it. The danger of allowing the implacable hostility of the residential parent (usually the mother) to frustrate the court's decision is too obvious to require repetition on my part. "

Re T (A Child) (Contact : Alienation : Permission to Appeal) (2002) EWCA Civ 1736

Re C (Children) (Prohibition on Further Applications) (2002) EWCA Civ 292

Re M (Intractable Contact Dispute: Interim Care Orders) (2003) EWHC 1024 (Fam) (Wall J)

<https://www.casemine.com/judgement/uk/5a8ff7d360d03e7f57eb2577>

Re O (Contact : Withdrawal of Application) (2003) EWHC 3031 (Fam) (Wall J)

<https://www.casemine.com/judgement/uk/5a8ff76a60d03e7f57eac4b2>

A v A (Shared Residence) (2004) EWHC 142 (Fam) (Wall J)

<https://www.casemine.com/judgement/uk/5a8ff7df60d03e7f57eb2940>

Re D (Intractable Contact Dispute: Publicity) (2004) EWHC 727 (Fam) (Munby J)

<https://www.casemine.com/judgement/uk/5a8ff74560d03e7f57eaaac7>

· Munby J (as he then was) commenced his judgment thus:

“ On 11th November 2003 a wholly deserving father left my court in tears having been driven to abandon his battle for contact with his seven year old daughter D. ”

Re A (A Child) (2007) EWCA Civ

Re D (Children) (2009) EWCA Civ 1551

<https://www.casemine.com/judgement/uk/5a8ff7a560d03e7f57eb0b46>

Re D (Children) (2010) EWCA Civ 496

<https://www.casemine.com/judgement/uk/5a8ff70c60d03e7f57ea6ba8>

Re S (Transfer of Residence) (2010) EWHC B192 (Fam) 1 FLR 1785 (HHJ Bellamy)

<https://www.casemine.com/judgement/uk/5a8ff73560d03e7f57ea9a78>

· Father argued that Mother had alienated their 12 year old son.

· HHJ Bellamy para 43:

“ In his first report Dr Weir gave this description of the concept of alienation:

‘ There are children who show an extraordinary degree of animosity towards a parent with whom they once had a loving relationship. Most of these children will show some or all of [a cluster of psychological responses]. Within an individual child (and between children in the same family) the presence of the features can vary rapidly over time and place, but in their full manifestation are so surprising and unique as to be unforgettable. The proposed term ‘Alienation’ applies only to the cluster of psychological responses in the child with no need to presume a deliberate campaign of denigration by one parent. There is now research data supporting a multifactorial aetiology for ‘Alienation’ following parental separation, involving contributions from both parents and vulnerabilities within the child.’

Para 44: In the light of the considerable body of evidence I have heard and read in this case over the last three years, the research literature that has been produced and my experience of dealing with other high conflict cases involving different experts, I am satisfied that Dr Weir’s evidence as to the concept of alienation as a feature of some high conflict parental disputes may today be regarded as being mainstream.”

Re S (A Child) (2010) EWCA Civ 2019

<https://www.casemine.com/judgement/uk/5a8ff71560d03e7f57ea74e4>

Re S (A Child) (2010) EWHC B2 (Fam)

<https://www.casemine.com/judgement/uk/5a8ff7bb60d03e7f57eb19ef>

Re S (A Child) (2010) EWCA Civ 325

<https://www.casemine.com/judgement/uk/5a8ff7a460d03e7f57eb0aa4>

Re L-W (Enforcement and Committal: Contact) (2010) EWCA Civ 1253

<https://www.casemine.com/judgement/uk/5a8ff7a560d03e7f57eb0b8f>

Re S (Transfer of Residence) (2011) 1 FLR 1789

<https://www.casemine.com/judgement/uk/5a8ff7be60d03e7f57eb1b43>

Re C (Direct Contact : Suspension) (2011) EWCA Civ 521 (Munby LJ)

<https://www.casemine.com/judgement/uk/5a8ff71560d03e7f57ea74de>

Para 47 : “ Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.

Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and where there is no alternative. Contact is to be terminated only if it will be detrimental to the child’s welfare.

There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.

The key question, which requires ‘stricter scrutiny’, is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.

All that said, at the end of the day the welfare of the child is paramount: ‘the child’s interest must have precedence over any other consideration.’ ”

Re W (Direct Contact) (2012) EWCA Civ 999 (McFarlane LJ)

<https://www.casemine.com/judgement/uk/5a8ff71360d03e7f57ea72e8>

Re Q (Implacable Contact Dispute) (2015) EWCA Civ 991 (Sir James Munby)

<https://www.casemine.com/judgement/uk/5a8ff71a60d03e7f57ea7925>

Re G (A Child: Intractable Contact) (2013) EWHC B16 (Fam) HHJ Bellamy:

<https://www.casemine.com/judgement/uk/5b46f2172c94e0775e7f2168>

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Re M (Contact) [2012] EWHC 1948 (Fam) [2013] 1 FLR 1403

Re L and M (Children: Private Law) [2014] EWHC 939 (Fam)

European Court of Human Rights, *Pisica v The Republic of Moldova*, 29th October 2019, *PISICA v. THE REPUBLIC OF MOLDOVA* - 23641/17 (Judgment: Article 8 - Right to respect for private and family life : Second Section) [2019] ECHR 779 (29 October 2019).

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