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FAMILY COURT JOURNAL

Vol 9 No 2 Winter 2023

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The Family Court Journal aims to provide a forum for sharing good practice and fostering debate about working with children and young people involved in family proceedings and related matters. Submissions are welcome from anyone with an interest in the family justice system. The views expressed by contributing authors are not necessarily those of the Editor or the Editorial Board.

Notes for Contributors
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We are looking for articles on research findings, analysis of policy or law, case studies or reports of innovative practice. Letters and suggestions for book reviews and films, etc are also welcome.

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Editorial – John Mallinson

It has been an eventful year since the last publication of the Family Court Journal earlier this year. News stories depicting devastating world events and catastrophic weather conditions seem to outweigh the more heart-warming moments that try to restore our faith in human nature and compassion. Observing the range of events, both good and bad can cause us to think about the impact it has upon children and their lived experiences of the world around them on a day-to-day basis.

It is worrying to think about the long-term impact and how such difficult events might affect children's formative years and their subsequent adult lives. But it can be incidences that are happening just around the corner in our own communities that are also contributing to that missed opportunity for parents and carers to get it right in the nurturing and upbringing of their children. Sometimes, a sequence of events can happen that are out of the grown-ups' control although with a little foresight, imagination and planning, everyday magical moments can still be conjured up for the children, creating positive memories that will stay with them forever.

In this edition of the Journal there is an article that explores some research regarding the voice of the child and how it needs to grow louder and stronger. Even though their voices can sometimes be quiet and uncertain, hearing what they have to say and understanding what they mean is the crucial part. Another related article focusses on the children's expressed wishes and feelings in court proceedings.

There is a substantive article reflecting on how the Family Courts are reportedly failing some mothers and children who have then responded to the impact of judges' decisions by fleeing from the jurisdiction of the Family Court of England and Wales to a country that is not signed-up to the Hague Convention [1980].

Other articles include a review of the drama-documentary broadcast earlier this year by the BBC about the abuses perpetrated by Jimmy Savile.

And a brief history of the divorce court and the long journey that has been made to reach a point where the whole process is more streamlined, less litigious, and not so adversarial.

There are précises of research papers regarding the outcomes of Black children in care, and another regarding the safeguarding of disabled children and young people which will hopefully be of interest.

Also, there is a brief but interesting film review that reflects on an insight into the way an established UK mining community confronts the challenges of change when different cultures collide only to find they have certain life-experiences in common as readjustments are made.

Children's Agency & Voice: A developmental process over time

Dr Ruth Felstead

At the present time, in the early-to-mid twenty-first century, children's voices are frequently sought by care and educational professionals reflecting the current assumption that as stakeholders in the institutions that govern their lives, children's opinions and feelings are valuable. The point of having a voice is not just to be heard but also to be able to use that voice to bring about changes. This is known as having 'agency'.

Definition

Human agency, according to Houston [2010] is the ability of individuals acting alone or with others to achieve a purposive action, change the environment or create a new one. In other words, to make a difference to their circumstances. As Albert Bandura [2000 p.75] said '*People are partly the products of their environments but by selecting, creating and transforming their environmental circumstances, they are producers of environments as well'*. The agency of children was, until the mid-twentieth century regarded as unlikely. Their voices were rarely heard. But they did exist and as the twentieth century proceeded, their voices grew in strength.

Background

During the late Victorian period [1880 – 1901], the child's voice was hard to locate. Harry Hendrick [1997] stated that it was missing largely due to a lack of documentation emanating from children themselves. Whilst there was a considerable amount of material relating *to* children, it was generated mainly by adults for example, parents, doctors, teachers, civil servants, and other officials who were talking about the children, or on their behalf. Even so, there is evidence from school logbooks [entries written daily by head teachers in late nineteenth and early twentieth century] that children, even when in an apparently weak position, were still sometimes able to indirectly make their voices heard through oppositional behaviour [Humphries, 1981].

The greater perception of the child's voice was due partly to changes in how children were perceived generally by society. Children in Britain during the early twentieth century were perceived, as identified by Alison James, to mainly be in the process of *'becoming adults'* rather than as individuals with the capacity for independent thought [James, 2009 pp 34-35]. As such, they would appear to have little personal agency. For example, structuralist /functionalist sociologists such as Talcott Parsons writing in 1954 saw children not as independently motivated but instead automatically and without question becoming socialised into the societal structures such as school and family which made up their lives. Developmental psychologists like Jean Piaget, writing between the 1930's and 1950's, conceptualised children as being strictly bound by a series of age-related fixed developmental stages leading to adulthood, preventing the development of independent abstract thought which Piaget saw as developing only in children from around the age of twelve years who had reached what was termed the *formal operational stage* [Piaget, 1936].

Both Piaget and Parsons saw children as having relatively little opportunity for making a difference to either their own or other people's social circumstances.

This perceived inability of children to act independently was challenged by Phillipe Ariès [1962] who argued that the concept of *childhood* was a social construct that was not fixed by biology or psychology but was instead based upon social norms and values about what a child should be. From the mid-1970's, Lev Vygotsky's social constructivist and Bandura's social learning theories [Vygotsky, 1978; Bandura 1977] led to a greater understanding that children could learn and think independently of adults and a growing perception of children being capable of agentic thought and action.

At the same time, there was a difference in how the *child's voice* was characterised. Previously, it was mainly of interest through what it revealed about their development on the way to adulthood. Now, it became understood that children had an ability to construct their own meanings of situations. Children could be seen as having the capacity to accept, resist or alter the social structures that made up their lives. In other words, they were able to express themselves through their actions both individually and collectively to bring about change [Giddens, 1986; De Certeau, 1984]. Even in a relatively weak position as children in a world largely dominated by adults, it has been found that children were able to make valuable contributions to decision-making. For example, studies by Roger Hart [1997] who explored child participation in campaigns for community and environmental development, and Sarah White and Shyamol Chaudry [2007] who examined participation of children in developmental programmes in Bangladesh, both found that this was most effective when children participated within adult initiated discussions.

Conclusion

This brief discussion of the development of the child's voice shows that changes in the social construction of childhood in terms of biological, psychological and sociological understandings of the nature of what constituted *a child,* played a significant part in the way that children were 'heard' and the degree of agency that they had. It therefore provides a starting point for more detailed consideration around the value of child participation in decision-making processes within major sectors of today's society such as care and education.

Ruth Felstead

References:

Ariès, P [1962] *Centuries of Childhood: A social history of family life*. New York: Random House.
Bandura, A [1977] *Social Learning Theory*. New Jersey: Prentice Hall.
Bandura, A [2000] *Exercise of Human Agency Through Collective Efficacy: Current Directions in Psychology Science.* [9] 3.
De Certeau, M [1984] *The Practice of Everyday Life*. University of California Press.
Giddens, A. *The Constitution of Society: Outline of the Theory of Structuration* [Cambridge: Polity Press 1986].
Hart, R [1997] *Children's Participation: The Theory & Practice of Involving Young Citizens in Community Development & Environmental Care* [New York; Routledge].
Hendrick, H. Children [1997] *Childhood & English Society 1880 – 1990.* Cambridge – University Press.

Houston, S [2010] *Further Reflections on Habermas's contribution to discourse in child protection: An examination of power on social life*. British Journal of Social Work, 406, pp 1736 – 53.

Humphries, S [1981] *Hooligans or Rebels? An oral history of working-class childhood & youth 1889 – 1939.* Oxford: Basil Blackwood.
James, A. 'Agency' in J. Qvortrup, W. Corsaro, M. Honig [Eds], [2009] *The Palgrave Handbook of Childhood Studies.* London. Palgrave.
Parsons. T [1954] *Essays in Social Structure*. Glencoe, USA. The Free Press.
Piaget, J [1936] *Origins of Intelligence in the Child.* London: Routledge & Kegan Paul.
Vygotsky, L S [1978] *Mind in Society: The Development of Higher Psychological Processes.* London: Harvard University Press.
White, S. & Chaudhry, S. [2007] *The Politics of Child Participation in International Development: The Dilemma of Agency* – The European Journal of Development & Research, 19, 4 [December 2007].

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The Child's Voice – Weight to be attached to the ascertainable wishes & feelings of the child.

Paul Walker

The Children Act [1989] expanded the child's right to instruct a solicitor on their behalf. The Guardian's role is to advise the Court about what is in the child's best interests. However, the question arises as to whether there is now more expectation of Guardian's speaking up for children since the Act was originally passed.

The Children Act [1989] acknowledged that children were entitled to challenge any disparity between what they felt to be in their own best interests, and what adults were saying was good for them. The solicitor must take instructions from the child if that child is considered capable of doing so in view of their age and level of understanding *[Rule 12, Family Proceedings Court (Children Act 1989) Rules, 1991]*. There is sometimes a conflict of interest between the Guardian and solicitor if the Guardian thinks the child's wishes and feelings are not in that child's best interest and the solicitor decides the child can make their own informed instruction. The Guardian can then choose to represent themselves or appoint another solicitor on their behalf.

There is no solicitor involved in most private law matters dealt with by Family Court Advisors, that is until certain thresholds are met which includes the child's voice being lost in the noise between warring parents. This is a world away from times when the child was supposed to be seen and not heard, a phrase first recorded in the 15th Century *[Mirk's Festial circa 1450]*.

The law has come a long way since then to recognise that a child's self-expression should be allowed to inform the decisions made on their behalf. However, this right to self-determination often poses a challenge to beliefs about acceptable standards for attitudes and behaviour that affects us all. The personal and professional values of Family Court Advisors are not immune from bias when dealing with children subjected to risky adult behaviour that are brought to our attention. Most parents like to think they act in the best interests of their children and are reluctant to admit they can allow other things to cloud their judgement on issues of security and control.

The bottom line is that no one is perfect and we all lose patience and tolerance at times under duress. Children are all too often caught in the crossfire between warring parents, seeing and hearing age-inappropriate things as part of the most nurturing family settings. Professionals also have their own family issues and challenges to address. It's through the acknowledgment that we make mistakes that we must recognise there should be limits on parental authority over young people to enable better childhoods.

However, positions of relative power are not willingly or easily relinquished. The question sometimes arises as to whether children should have unrestricted permission to do what they like or, in view of their vulnerability to

adult power and lack of experience, be legally recognised as individuals. I think most social workers would agree that if the latter is not recognised then we act to collude in their ongoing mistreatment and abuse.

We all work with children for whom moral values of security and control have been severely compromised as part of family life. This inevitably raises difficulties about whether, when and how they become active agents in their lives, who could and maybe should be blameworthy and accountable for their actions. Those children drawn into criminality are caught between the safety, security and value placed on them by state intervention, and the package of protection and reward offered by gang membership.

In recent years, Cafcass has seen itself at the forefront of championing the voice of the child. The Family Justice Young People's Board [FJYPB] is a cornerstone of the *Working Together* policy. This 75-member pressure group is made up of children and young people who have been the subject of private and public law proceedings. However, the question as to whether this experience qualifies such an influence on practice is rarely raised. We are told that letters should be sent at the start and end of our input as professional befrienders. There was a recent directive that contact logs and case plans should be recorded as if addressing the child in age-appropriate language. Court reports were expected to follow suit.

There can be no doubt that children and young people should expect to have their views respected and taken seriously. Social work is based on the right of children to be clearly seen and heard. We practice with their right to information and explanation in mind, often acting against their wishes and feelings if we consider they have become a risk to themselves and others.

We have all tried to work with children for whom there seems to have been few, if any, sanctions imposed for malicious action. How far can we follow what they want if they don't accept that every decision made has a consequence? It is often our responsibility as the [professional] adult involved to make that analysis between risk and benefit on their behalf. These recommendations don't always go down well with those we are trying to assist. In many cases, the freedom to make a truly voluntary decision by the child is restricted by the pressure of being the focus of unwanted attention from outside and within the family, and unbearable feelings of divided loyalty.

There are legal age-restraints such as consent to medical treatment and sexual activity that apply to all children regardless of individual differences. However, the Gillick Ruling *[Gillick -v- West Norfolk & Wisbech Area Health Authority (1986)],* covering provision of advice on contraception for children under 16 years without the knowledge or consent of their parents has been applied to many other situations before the Family Court. As social workers, we contribute to decisions such as the age a child can understand and agree to intimate examinations for child protection investigations, or how a

young child traumatised by the exposure to violence in childhood will cope with lengthy periods of isolation in secure accommodation.

As individual practitioners, we must recognise that as 'significant adults' in a child's life, albeit for relatively short periods at times of crisis, we are never sure of always getting it right. We can, however, strive to maintain an open mind to counter prejudice and bias in our attitude towards them. Adversity is a feature of every child's life from which they derive resilience. But what weight do we attach to the wishes and feelings of a child with a learning difficulty or who is emotionally disturbed and vulnerable? Any child may have the cognitive ability but lack the emotional capacity to decide.

Children deserve to be treated as able to achieve an understanding of the circumstances that have led to their place in the world. They will not invest in trust or confidence if we are perceived as dismissive of their concerns, hopes and aspirations. They are more likely to forgive any failures if we keep them fully informed rather that restricting their role in the decision-making process.

A child's competence or lack of it is not determined by decisions that they make. The right to make mistakes is inherent to the right of choice and applies equally to the child and adult involved at any given time. There is no complete set of laws and procedures to manage the tension between autonomy and welfare for children within or outside of Family Court procedures.

Of part of an organisation that emphasises agency of the child, we should expect to be consulted on directives that are said to facilitate a more child-focussed approach, not have directives passed down as the 'Voice of the Child' without discussion of feedback. Just as we should not assume the worst of the children we represent, Cafcass should avoid perceiving Family Court Advisors as passive and without capacity for autonomy and self-regulation. Those misjudgements made must be accepted as part of the collective responsibility of the organisation and not the individual fault of the Family Court Advisors.

Paul Walker
Bank Family Court Advisor

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Failed by the Family Court

Dr Elizabeth Dalgarno, Dr Rima Hussein, & Ruth Dineen

Overview

A recent BBC documentary by Ed Thomas – 'Mums' on the run: failed by the Family Court' revealed the desperation of mothers who flee to Northern Cyprus in an attempt to safeguard themselves and their children. In doing so, they leave their family and friends, their homes and their jobs. Many end up in poverty, trapped in the country they have fled to. They are criminalised, labelled as abductors.

This article looks at what has gone so wrong in our courts that exile is seen as a solution. We consider both the court process and the wider context that impacts on mothers and undermines their safety and their access to justice. We then consider what a safe and just Family Court might look like, drawing on existing [but under-utilised] recommendations and guidance, on examples of good practice, and on the experiences of domestic abuse victims themselves.

Failed by the Family Court?

The BBC documentary *'Mums' on the run: Failed by the Family Court'* has once again brought private law proceedings of the Family Courts in England & Wales into the spotlight. The documentary and subsequent news reports drew on the experiences of a number of mothers and children with commentary from the President of the Family Court Division and the Domestic Abuse Commissioner [DAC] alongside research at University of Manchester led by one of the authors of this article in partnership with The Survivor Family Network and members of SHERA Research Group.

The experiences related by the mothers and children were stark. Their fear was palpable. For all of them, their attempts to navigate the Family Courts in England & Wales to escape from perpetrator fathers and safeguard themselves and their children became so traumatising that the only solution they saw as available was fleeing to Northern Cyprus in search of sanctuary.

Globally, mothers who attempt to escape abuse by taking their child or children across international borders without permission from the father, will fall foul of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. This international treaty ensures the swift return of the child to the country of *habitual residence;* a return that frequently results in custody being given to the perpetrator and in some cases, to the mother facing criminal charges. The Convention has been signed by over 100 countries. But Northern Cyprus however, is not a signatory and as such, there is no international mechanism which enforces the child's return.

Exile is not an easy option. Mothers gave harrowing accounts of family separation and isolation, the loss of support networks, of living in poverty without access to UK bank accounts or work. They are often placed on an Interpol *no-fly* list, reduced to living as virtual prisoners in Northern Cyprus and in fear of their lives. And yet, mothers considered exile in Norther Cyprus as preferable to remaining in the UK.

The programme revealed very similar patterns in the mothers' experiences of the Family Courts. They reported some form of abuse enacted by the father; they felt disbelieved and unprotected by the Family Courts; they were then accused of so-called *parental alienation* [PA] or 'alienating behaviours' and found themselves positioned as the abusers rather than victims of the alleged perpetrator father. This accusation led to the threat of mother and child separation, a threat that is carried out with disturbing frequency.

The trauma caused by this sequence of events and in particular, the mothers' realisation that the Family Courts will not protect their child from harm, cannot be overstated. Its impact is profound. Tragically, we heard of several mothers who had died by suicide after being accused of parental alienation including one mother whose young child had been sent to live with the child's father, a convicted rapist. It is this combination of perpetrator abuse and *court sanctioned* legal abuse that led these mothers to choose exile in Northern Cyprus. They saw it as the only way they could continue to protect their child and themselves.

It might be assumed that the BBC documentary and the anecdotal *evidence* offered by the mothers who took part is partial; that victims of domestic abuse are protected and children safeguarded by the Family Courts. Disturbingly however, a growing number of research studies and related reports demonstrate that the experiences documented in the programme are not exceptional. In the words of UN Special Rapporteur on Violence Against Women and Girls: *Within the context of child custody cases, there exists multi-layered violence that has yet to enter the collective conscience of the international community as a human rights issue.*

Multi-layered violence

A research study led by Dr Dalgarno [University of Manchester] has revealed patterns of trauma-inducing actions and behaviours by judges, lawyers, court officers and abusive partners in the Family Courts: *Court and Perpetrator Induced Trauma.*

The study reviewed 45 Family Court cases. All involved an initial report by the mother of some form of abuse by the father. The mothers had all either been accused of or warned about *parental alienation* or alienating behaviours. The courts subsequently ordered some form of contact between the child and their father in 43 out of the 45 cases including fathers with child sexual abuse convictions.

'She [Cafcass officer] told me actually, in the garden that if I didn't agree to contact, the judge would make a decision that I wouldn't like, and that was her threat to me on a change of residency…I was constantly accused of parental alienation…you become clinical…I wasn't sleeping'.

Mothers self-reported numerous mental health and physiological conditions which they say were exacerbated by or directly associated with the court proceedings. These included memory loss, depression and flashbacks, Crohn's disease, cancer, psoriasis,

heart palpitations and miscarriage. Those responding reported suicidal ideations; some said that mothers known to them had died by suicide following parental alienation allegations.

There have been four times I've seriously considered killing myself.

The extent of the problem is tacitly acknowledged by the recent signposting guidance '*At Risk of Suicide*: Information for professionals working within the court system' published by the working group of the Family Justice Council. It highlights the absence of, and urgent need for a comprehensive framework to prevent suicide and suicidal ideation related to court proceedings, one which tracks the impact through every stage of the process on domestic abuse survivors and understands exactly how they are re-traumatised through the proceedings.

Even more concerning, a Women's Aid *Child First Campaign* and subsequent 2016 report, highlighted several court-related decisions on child arrangements which have resulted in the homicide of nineteen children. All the perpetrators were fathers of the children who were killed. All had access to their children through child contact arrangements. Tragically, two mothers were also killed and two children seriously harmed through attempted murder.

The situation has not improved. In response to continuing concerns regarding unsafe child contact, *Right to Equality* have launched a campaign to end the presumption of child contact with abusive parents. Speaking at the launch, the CEO of *Rape Crisis England & Wales* pointed to the systemic failings of the Court: *When I managed a team of Family Court assessors, I found that in all child contact disputes involving domestic abuse, some form of contact [usually direct] had been ordered before a risk assessment had been completed. And in 75% of case where direct contact was taking place, the perpetrator had been accused, had admitted to, or the court had made findings about the use of life-threatening violence.*

Research by Hague Mother's campaign reveals that a significant majority of mothers enter the justice system as victim-survivors of domestic abuse – physical, sexual, psychological, or economic. '*He was controlling. He didn't hit me but he would get up really close to me and scream in my face. Or if I did something wrong, he wouldn't speak to me for weeks. But I never knew what I did wrong so I'd be walking on eggshells. So yes, it was total control*'. Another victim said '*I was getting abuse – not only physically but mentally too. I never told anyone. I was embarrassed this was happening to me. I'd make up excuses for my black eyes, lie to doctors about broken bones*'.

In respect of mother's facing a Hague Petition, they are additionally traumatised by their escape across international borders: '*I had to leave everything behind, just take a suitcase for my son, a suitcase for me, and go. And I was panicking, just get me on a plane, get me on a plane, get me on a plane. It was very emotional. I cried the entire flight. I remember my mum*

saying …you were like a shell, like this shell of a human'.
Women tend to assume that the courts will protect them and their children, that they will receive justice. The reality is clearly very different.

In a presentation to the Child-Friendly Family Courts Conference [November 2023], Natalie Page of *Survivor Family Network* spoke about the concept of 'lawfare', a term coined by the military. 'Lawfare' refers to the use of the law as a substitute for military means to achieve an operational objective. Applying the term to the Family Courts, she argued that: *A perpetrator accessing the family justice system has usually set their objectives long before they walk into the court room. Broadly speaking, the objective of a perpetrator is usually to punish a victim. […] He intends to extract the worst possible punishment on the mother – to remove her children from her*'.

Survivors' stories reveal that this threat tends to be made explicit long before any court hearing, most often at the point when the mother has decided that she is going to leave the relationship. Mothers attend court knowing that '*the worst possible punishment'* is a likely outcome. For the perpetrator, the children are collateral damage in this unequal battle. '*I will never be able to express the fear and indescribable stress of going through the court process with someone I was terrified of*'.[1]

The Nuffield Family Justice Observatory Spotlight Report [September 2023] found that victims of domestic abuse considered their court experiences overwhelmingly negative and that regardless of the case outcome, the experience was re-traumatising. They feared for their own safety – physical and emotional, and for the safety of their children. Evidence suggests they are right to do so.

Inequality of Arms
In 2020, the Ministry of Justice *Harm Report* asserted that within private law proceedings, '*abuse is systematically minimised, ranging from children's voices not being heard, allegations being ignored, dismissed or disbelieved'*. The finding is reinforced in mothers' testimonies, particularly in relation to allegations of domestic or sexual abuse. In fact, while spurious allegations of domestic abuse are occasionally made, this is rare. Between 2018 – 2021, the Metropolitan Police recorded 365,363 domestic abuse offences of which only 50 [0.01% of the total] were deemed to be false. Further, within child proceedings, it is more common for non-resident parents [usually fathers] to make false allegations of abuse than for mothers to do so.

Even when mothers' allegations are accepted, the impact of domestic abuse and its effects on children are frequently underestimated by judges who tend to prioritise contact with fathers in the majority of cases. The gender-bias is pervasive and pernicious. A recent report by the UN Special Rapporteur on violence against women and girls found extensive evidence of '*the depiction of mothers as vengeful and delusional by their partners, courts, and expert witnesses. Mothers who oppose or seek to restrict contact or raise concerns are widely regarded […] as obstructive or*

malicious, reflecting the pervasive pattern of blaming the mother'.
The bias continues despite Practice Direction 12J which sets out how evidence of abuse should be taken into account when there is '*an allegation or admission of harm…. to the child or parent'*.

'In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. The court must in every case, consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent, or any evidence indicating such harm or risk of harm'. It is apparent this directive is frequently not being followed.

In fact, academic studies such as that undertaken by Kaganas [2018] [2] reveal a worrying tendency by judges and court officers to placate Fathers' Rights Groups; others have raised concerns regarding what appears to be an alignment with Fathers' Rights Groups by both the judiciary and Cafcass. The President of the Family Courts and senior members of Cafcass, for example are regular keynote speakers at *Families Need Fathers* conferences including 2020, 2022 and 2023. And yet, the Family Court President declined an invitation to attend the upcoming SHERA Research Group conference in 2024 *[SHERA focuses on the health and rights of women and children]*.
However, it is heartening that Cafcass [England] have a Learning and Improvement Board [2021] which includes members of multiple groups representing the experiences of women. We remain hopeful that SHERA and FiLiA Hague Mothers will be invited to attend this or similar endeavours.

This seemingly embedded bias goes directly to the heart of the issues raised by the *Mums on the Run* documentary, i.e., the lack of access to justice for victims of domestic abuse. The 2023 Domestic Abuse Commissioner's report highlighted the paramountcy of judicial neutrality in these cases; fairness and justice require a consideration of '*whether there are opportunities to participate [voice]; whether the authorities are neutral; the degree to which people trust the motives of the authorities; and whether people are treated with dignity and respect during the process'*.

These essentials are frequently absent from family court cases, and mothers and children bear the brunt of the impact with often catastrophic results. The lack of neutrality is most clearly demonstrated in the prevalence of so called *'parental alienation'* allegations – one of the most pernicious methods used to undermine a mother's testimony, particularly in cases involving domestic and sexual abuse.

Parental Alienation
The 2020 Harm Report warned that so called *parental alienation* was consistently reported as being utilised to diminish the voices of victim-survivors and to reframe them as the alleged abuser, switching the focus away from the perpetrator. One mother reported: *'I am the one who faces false allegations of parental alienation and brainwashing …the professionals don't know how to identify a real victim and*

are easily manipulated by the perpetrator'.

Despite the prevalence of its use in family courts, neither parental alienation or alienating behaviours are recognised in law. In fact, both terms have been rejected by government and do not feature in either the Domestic Abuse Act [2021] Statutory Guidance, or the Controlling and Coercive Behaviours Statutory Guidance [2023]. Furthermore, on the 9th November 2023, in their formal response to the Domestic Abuse Commissioner's report on the Family Court, the government emphasised that they do not recognise parental alienation, urging professionals to instead utilise the language of coercive control to explore child manipulation: '*The government does not recognise so called parental alienation as a concept and did not include parental alienation in the Controlling and Coercive Behaviour [CCB] Statutory Guidance that accompanied the Domestic Abuse Act [2021] […] the CCB Statutory Guidance does make clear that making false allegations to statutory services and utilising children to control the victim is part of a pattern of behaviour that amounts to CCB'*.[3] The President of the Family Court considers the term 'unhelpful' and has urged caution against the use of 'pseudoscience' in courts.

It is therefore particularly concerning that Cafcass continue to use an *alienating behaviours* framework which they have developed from references on parental alienation, and that the Family Justice Council have recently released draft guidance on *Responding to allegations of alienating behaviours,* intended to provide direction for legal professionals when such allegations are made. Whilst the guidance has received some positive reviews, it fails to engage with international challenges to the concept and use of parental alienation. Indeed, the authors explicitly state that the guidance '*does not aim to explore the research literature into the concept of parental alienation, the socio-political context in which such allegations arise, or to give an historical account'*.

The continued use of parental alienation in our courts is profoundly worrying since these allegations have a detrimental effect on the outcome of child arrangement cases and thus on the safety and wellbeing of the child. Challenges to the concept include its deeply concerning foundations and highly gendered application, inconsistency of definitions and dubious evidence base, and the lack of any systematic consideration of alternative reasons why a child might reject a parent.

The 2023 report by the Domestic Abuse Commissioner amplified these concerns. The report quoted the findings from a Cafcass Cymru project which acknowledged that: '*there is no commonly accepted definition of parental alienation and insufficient scientific substantiation regarding the identification, treatment, and long-term effects […] Without such evidence, the label parental alienation syndrome has been likened to a 'nuclear weapon' that can be exploited within the adversarial legal system in the battle for child residence'*.

It's use, particularly in cases of domestic or sexual abuse, places protective mothers in an impossible position. If they insist on presenting evidence of abuse, this will be interpreted as an attempt to alienate the child from the father. The mother then becomes the problem and the father becomes the victim. *By reframing a mother as a liar who emotionally abuses her children, the parental alienation label diverts the attention of courts away from the question as to whether a father is abusive and replaces it with a focus on a supposedly lying or deluded mother or child* [UNSRVAW 2023].

As such, many have called for the rejection and in some cases, the prohibition of these frameworks in child-arrangement proceedings, and yet, they persist.

Experts

What has become known as the *parental alienation industry* has been reified in the legal system through formal training and promulgated in academic journals. At the front end of this highly profitable industry are the 'experts' utilised by the courts to establish the veracity of parental alienation allegations and by implication, the best interests of the child. The power of these unregulated individuals is extensive. Their reports tend to be accepted wholesale even when there is evidence of abuse, and custody decisions are made on the basis of their recommendations. A recent high-profile case [Re C] [4] led to parental alienation 'experts' qualifications and expertise being called into question. In response, the President of the Family Courts has insisted that it is for Parliament to legislate on the types of experts and expertise that can be drawn upon to provide input into such cases. Parliament have yet to address this matter. Meanwhile, unqualified experts continue to operate in the family courts and to cause serious harm.

Towards a safe & just Family Court

The Domestic Abuse Commissioner's report [2023] envisions a family court system that fosters a culture of safety and protection from harm, where children's needs are prioritised, the impact of domestic abuse is fully understood, and victims and survivors feel heard and valued. In her recent response to the government's Domestic Abuse Plan, the Commissioner again emphasised the need for survivor engagement and for their experiences to be at the heart of future policy making. Domestic Abuse survivors themselves are calling for their experiences to be used to support others: *It may be an idea to provide a survivor's experience of family court and to warn future survivors that family courts can dismiss evidence of abuse and be seen to be siding with the perpetrator – this is a common experience of survivors and they need to be reassured that they are not alone*.

As outlined above, there is a growing awareness, backed up by research about what can and is going wrong. In particular, the 2020 Harm Report gathered extensive evidence from individuals and organisations across England and Wales, alongside roundtables and focus groups with professionals, parents, and children with experience of the family courts.

The Report highlighted multiple issues in the family law court system with agencies working in silos, an adversarial culture and pro-contact approach [regardless of abuse] with much harm being inflicted on families and children by these systemic problems.

Everyone tells you to notice red flags and to get out – nobody tells you how to protect your children afterwards, when you are both subjected to continued contact.

There is also a growing consensus about how we might begin to solve these widespread problems. For example, at a systems level, the Harm Panel recommended that training in the family justice system should cover overarching reform, a cultural change programme to introduce and embed reforms to private law children's proceedings and help to ensure their consistent implementation. Some of the Harm Report's recommendations have been implemented albeit inconsistently. These include the prohibition of cross-examination provisions, the use of separate entrances for domestic abuse victims, and the option of remote hearings. Crucially, Independent Domestic Violence Advocates [IDVA's] and Independent Sexual Violence Advocates are now permitted access to family court to provide crucial support for victims and survivors of domestic abuse during proceedings. However, advocate availability is very limited – a 2021 *SavesLives* Report suggests that 40% of domestic abuse victims go through court without any formal support.

Similarly, the Domestic Abuse Commissioner's 2023 report outlined numerous improvements which have been implemented by the courts. The Commissioner also presented a new model – *reluctance, resistance, refusal* with a view to bringing a holistic and child-centred approach to the court proceedings. Above all, her report called for a nuanced and victim-centric approach, echoing the concerns of others who believe that by placing the focus on parental alienation moves the attention away from the safety and well-being of children and leads to unsafe contact.

In terms of culture, the Domestic Abuse Commissioner's report was clear: improvements in the courts can only be achieved by improving the judges, lawyers and court officers understanding of domestic abuse, including the particular issues and barriers faced by victims and survivors in the court context. The Commissioner reiterated that in line with Article 12 of the UN Convention on the Rights of the Child and s1[3] The Children Act 1989, the voice of the child must be central in these proceedings, and their safety and wellbeing paramount.

The priority is made explicit in the excellent but inconsistently applied Practice Direction 12J which acknowledges that *children may suffer direct physical, psychological and /or emotional harm from living with violence and abuse and may also suffer harm indirectly where the violence or abuse impairs the parenting capacity of either or both of their parents.*

Any child arrangement order must *protect the safety and wellbeing of the child and the parent with whom the child is living and not expose them to the risk of further harm.*

And at a procedural level, the Pathfinder approach is explicitly non-adversarial and supportive, built around multi-agency working. There is a presumption that children will be listened to, given the opportunity to participate in ways that work for them as individuals. According to two of the judges involved in the pilot, the Pathfinder model *has the potential to completely transform the way the family court deals with domestic abuse, creating a much less adversarial experience for adults and child survivors.*

So, what do the survivors themselves think?

Victims of domestic abuse continue to find the experience of being in a family court a traumatic one. They feel anxious, out of their depth and fearful – with good reason: *'because this is about my child … it's intimidating and it's worrying as well that you are going to get something wrong because you haven't got someone else there to help you out.*[5]

A Northumbria University research study led by co-author Dr Hussein worked with domestic abuse survivors who had experience of the family courts. Their [often] harrowing experiences provide further evidence of the problems and highlighted their priorities for change. These were [1] *practical:* special measures; [2] *procedural*: rights, complaints and appeals; and [3] *cultural*: transparency and trust in professionals.

As victims of domestic abuse, mothers are frightened of the abuser, and about the opportunities for further abuse offered by the court process. In this context, the availability of special measures such as screens and separate waiting rooms were welcomed as providing a modicum of protection. Advocate support [IDVA, etc] in particular, was viewed as essential by survivors. *Support after court /during court proceedings would be so helpful. The emotional toll is horrendous and it felt like the system is trying to break you down bit by bit.*

In relation to transparency and trust, the Domestic Abuse Commissioner's report recommended the appointment of domestic abuse best-practice leads in every family court area with the aim of *driving best practice to ensure a trauma-informed family-justice system with a national and consistent approach.* The report also called for greater transparency and consistency across the system, backed by a comprehensive domestic-abuse training programme.

The current reality is that the culture of the family court remains adversarial and poorly informed about the reality of domestic abuse three years after the Harm Report identified this culture as detrimental to families. Lessons could perhaps be learnt from criminal courts where domestic abuse victims felt supported and believed. The contrast with family courts was stark for those who had experienced both. In the family court, evidence becomes an

allegation and victims become alienators – perpetrators of abuse.

Most of the time, the court considers evidence as 'hostility' towards the other parent, and not a way to defend ourselves and our children against the perpetrator. Similarly, smear tactics are used to undermine the victim and support counter allegations; *they vilify you, discredit you, and the court doesn't care.*

In this regard, many victims were disturbed to discover that their GP records were being disclosed to the perpetrator in the family court, and problems of mental health or addiction [invariably caused by the abuse] were used against them, particularly in custody battles. Once again, the mother becomes the problem, the inadequate parent.

The lack of trust in solicitors and court officers was striking. Victims felt misrepresented at best, unsupported and abandoned at worst. *Sometimes barristers will tell you to just agree to contact because the abuse 'wasn't that bad' and it makes no actual difference to any orders. The Court will ignore disabilities, as will the Children's Guardian if it makes their job too difficult.*

The adversarial culture exacerbated the problem of trust. Mothers felt that they were being lied to and lied about. *The other side will not always use appropriate language, even if they are meant to represent only the children. Sometimes documents will mysteriously vanish…and facts change…or terms will change. For example – 'father being investigated for sexual abuse and domestic violence …can become … father being investigated for historical risk-taking behaviours.*

Nor were judges trusted. *I think judges have too much power and not enough accountability. We are naturally not wanting to go against the law and the consequences are horrendous. It's a culture of fear in court.*

Concerns about judicial bias and lack of accountability are exacerbated by the judge's ability to edit the court transcript before it is made public. This potentially enables changes to be made which could influence, whether positively or negatively, the outcome of any appeal.

The 'culture of fear' experienced by many mothers also impacts on a victim's willingness to make a complaint, however justified. *Complaining about a judge or asking to change the judge always goes against [you]… it is very difficult that the request is accepted and you risk end[ing] up having the same judge [behaving] even worse.*

It is vitally important that victims can hold judges accountable, particularly given the principle of judicial continuity which can mean that victims are trapped in a dynamic that will not achieve a safe or just outcome, for them or their child. Should they wish to appeal against a judge, they must first ask permission from that specific judge. The appeal is often refused and the mother finds herself in a significantly worse situation.

Conclusion

Currently, domestic abuse survivors are woefully under-represented in discussions that underpin policy making in this regard whilst being on the receiving end of a system that causes demonstrable harm to them and their families.

As a community of practice – legal, academic, professional, experiential, we have collectively identified a range of potential solutions, actions that will bring us closer to the goal of a safe and just family court system. Some have been implemented with positive results. Others require a cultural shift, training, and awareness-raising, or simply a consistent approach. None of this is rocket-science. But there are two essential requirements for success.

First, the lived experience of domestic abuse victims needs to be at the heart of any change, and at the heart of our evaluation of that change. We, and others working in this field, can help with that and would be pleased to do so. Secondly, there needs to be an acknowledgement that family courts are currently failing victims and a genuine commitment to addressing that reality. That's down to judges, legal professionals, and court officers.

Reference

1.
Hunter, R. et al, 2020 Assessing Risk of Harm to Children and Parents in Private Law Children cases. pp. 106

2.
https://www.cambridge.org/core/journals/legal-studies/articles/abs/parental-involvement-a-discretionary-presumption/3C15B2B4676AEE11E7185341A7C1AE67

3.
https://assets.publishing.service.gov.uk/media/654b827cb9068c00130e7573/domestic-abuse-commissioners-report-response-pdf

4.
https://www.judiciary.uk/wp-content/uploads/2023/02/Re-C-Parental-Alianation-judgement-220323.pdf

5.
Trinder, L. et al 2014 Litigants in person in private law cases; p 81

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The Reckoning – a review
BBC Drama Documentary
Paul Walker

There is a football chant directed to the fans of Leeds United that goes '*He's one of your own, he's one of your own, Jimmy Savile, he's one of your own'*. This is usually sung by football supporters in appreciation of valued players not yet lured away by the promise of higher rewards at another club. The message has obviously been turned on its head as a wind-up based on Savile's association with Leeds.

It's a chant that would now be more appropriately directed at the BBC in view of the way The Corporation had mis-managed Savile's meteoric rise to fame and credibility. The value placed on his popularity was the force that drove him to the summit of control over anything that contradicted the character and reputation he created and presented to the world.

There is no doubt on the evidence of this drama-documentary that for more than 40 years, the BBC valued Savile's popularity without consideration of the damage being caused by his aggrandizement. Steve Coogan chillingly portrays the manipulation behind the caricature. Savile took meticulous steps to maximise opportunity for self-gratification. The testimony of victims only emerging into the public realm after his death from a backdrop of decades lost in disavowal and disbelief.

This drama documentary has been criticised as focussing too much on the strength of his determination to succeed in avoiding any reckoning while he remained alive. His career path is a chronology of sexual abuse which has left those who were supposed to be in charge, searching for someone to blame for the reason why the whistle was not blown before so many lives were damaged forever.

Savile started as a DJ in Manchester, enjoying his control of the dance floor. Like a typical conman, he wormed his way into Leeds General Infirmary, popular businesses, then the BBC and eventually, the Prime Ministers [Margaret Thatcher] private office and beyond.

Following a documentary on ITV in October 2012 [a year after his death] called *Exposure: the other side of Jimmy Savile,* the first disclosure of allegations of serious sexual assaults on children and adults were brought to light but expensive lawyers and strong connections with the media and police kept everything hidden during Savile's lifetime. The documentary prompted multiple investigations that ultimately revealed hundreds of victims at hospitals and schools where Savile volunteered, and at the BBC.

As Family Court Advisors, we may often have to consider if a child can distinguish between the implications of allegations for themselves and the consequences for significant others. The courage to address that power imbalance can be an impossible task for most. I can recall cases where I have worried about the impact on children of giving evidence against those they believe were figures of security and support.

The lives of those abused by Savile were blighted while he continued to gain prestige and respect in the outside world. There were some for whom the pernicious effect of disbelief was an insufferable cross to bear. One young victim was thought to have committed suicide because of accepting an invitation to be alone with him. It was simply more convenient to dismiss accounts of sexual abuse as the product of disturbed minds which had become infatuated with Savile's persona.

Jimmy Savile was created by the media as a significant adult in our cultural lives. He was courted by the highest religious and political figures of the day. They offered an impenetrable cloak of respectability behind which he was left unaccountable for his actions.

We are pushed to acknowledge the influence upon us as children by the prevalent societal standards for behaviour of the era. Some of us are fortunate enough not to have had our childhood trust betrayed by moral standards that turn out to be a poison chalice of lies and deceit. There will still be some arguing today that the good things he did outweigh the bad acts he committed. *This is exactly the question Savile wanted to leave us with.* This was no more apparent than through the process of canonisation after his death. He succeeded in convincing us that the final judgement would be made by someone above the heads of everyone involved.

I felt most uncomfortable listening to those who were unfortunate enough to cross Savile's path. I felt a share of their helplessness while listening to accounts of the way his abusive acts had dismantled their self-esteem and confidence beyond repair. Savile was one of many media figures from my cultural past who left me having to reassess my childhood values and beliefs.

The BBC was an organisation using the language of absence, blame of others [the young victims] and refusal to accept responsibility. Such thinking set a pattern which effectively complied with Savile's denials, often against the advice of others raising concerns, resulting in compliance with the fact of sexual abuse itself. How could any suspicion fall upon someone so revered by the establishment that Savile was entrusted *with the keys to the Kingdom.*

Paul Walker
Family Court Advisor

A Brief History of Divorce

John Mallinson

Way back in the time of yore, when the church was more powerful than the monarch, marriage was a church institution and so divorce was also a preserve of the church. Marriage was for life and divorce exceedingly rare, although the church would occasionally grant a divorce, '*a mensa et thoro*' which enabled people to live apart if there had been significant cruelty but not to remarry, except for Henry VIII of course, who did whatever he wanted.

In the 18th and 19th century, it was possible to get a divorce granted by an Act of Parliament but such an option was the preserve of the rich and privileged. The Matrimonial Causes Act 1857 was the first divorce law of general application and accessible by ordinary people.

The Matrimonial Causes Act 1857 introduced divorce through the court. Men were able to *petition to the court* for a divorce based on *their wife's* adultery which would have to be proved, as would the absence of any collusion or condonation of that adultery. Women who wanted to divorce their husbands needed to also prove an aggravating factor of the adultery, such as rape or incest. The High Court in London was the only place to get a divorce and proceedings were held in open court, enabling society to be scandalised by the personal details revealed during the process.

Huge social changes occurred in England during and after the First World War, particularly for the role of women in society, which led to divorce law reform, as it did in other aspects of daily life. The Matrimonial Causes Act 1923 put men and women on an equal footing for the first time, enabling *either spouse to petition* the court for a divorce based on their spouse's adultery. The requirement to prove *the deed* and the absence of collusion remained, as did the procedural requirements.

In 1937, amendments to the Matrimonial Causes Act introduced three more options for unhappy spouses to petition the court, and so it became possible to divorce on the grounds of cruelty, desertion, and incurable insanity, as well as adultery. These were termed *matrimonial offences.* As before, each allegation needed to be proved by the petitioner's oral evidence. At this stage, parliament also introduced a bar to divorcing in the first three years of marriage.

The Second World War brought about a further period of significant social change and a start of the modern era of life as we know it now. Marriages broke down under the strain of war and its after-effects in numbers that had never been experienced before across all levels of society. The Church and the government became increasingly concerned that the divorce laws were inadequate, noting that unhappy couples would arrange for one of them to book into a seaside hotel for the weekend to commit adultery necessary for a divorce. A Royal Commission in the 1950's could not decide the best way forward and so, in the 1960's, the Archbishop of

Canterbury took up the initiative. His office prepared a report demanding reform of the law to ensure that people could obtain a divorce if they were able to show the breakdown of their marriage, and the government tasked the Law Commission to research the most appropriate way to modernise the divorce laws. This process formulated the Divorce Reform Act 1969 which although now consolidated into the Matrimonial Causes Act 1973, still contains the divorce laws we are bound by today.

Like a lot of social policy legislation, the Divorce Reform Act 1969 was a compromise. It enabled either spouse to seek a divorce based on irretrievable breakdown of the marriage but required the breakdown to be proved by evidence of one *fact* from a list of five – *adultery, behaviour, desertion, separation for over 2 years and then consent between the parties, or separation for five years.* This Act removed the out-dated concept of a 'matrimonial offence' but retained the grounds of cruelty [now termed 'unreasonable behaviour'] and desertion. However, the big change in the Divorce Reform Act 1969 was the *'no fault'* element based on 2 – 5 years separation.

There were also procedural changes which meant it was possible to seek a divorce through the local County Court rather than having to attend the High Court in London. During the 1970's, courts developed the *special procedure* of divorce-on-paper that continues to be the way things are done today.

Two more interesting facts – firstly, it was not until 1984 that the restriction of waiting until 3 years of marriage had elapsed before being allowed to seek a divorce was reduced to 1 year.

The second was an initiative in the mid-1990's to enact the *no fault divorce* and the Family Law Act 1996 eventually did just that. But there was more to it – the changes to procedures required anyone wanting a divorce to attend an Information Meeting to investigate the possibility of reconciliation or discuss mediation if that was not possible. If the need for a divorce remained evident, a statement of marital breakdown had to be filed at court after at least 3 months had elapsed followed by a period of reflection and consideration which would last about 9 months for a couple with no young children, or 15 months for a couple with a young family. The court could then finalise a divorce after these periods had elapsed.

However, the former Lord Chancellor's Department repealed elements of the Family Law Act 1996 citing the failure of the Information Meetings as the reason although Bills for further reform that were introduced to the House of Commons suffered so many amendments and compromises during its passage through a Conservative Parliament, along the way reviving a concern that it was an attack on the sanctity of marriage and family life, it was eventually deemed as unfit for purpose. These Parliamentary difficulties may be one of the reasons why successive governments have been reluctant to initiate further attempts to reform the divorce laws which are currently a mish-mash of

legislation from 1923, 1937 and 1969 with recent policy primarily made by lawyers and high-ranking churchmen in the 1960's.

Our adversarial court system, into which divorce was placed during the 19th century, still requires one party to obtain a divorce against the other by *petitioning the court* as it did in 1857 even if the divorce is requested on the grounds of living apart from each other for two years with the agreement of both parties.

Matrimonial '*offences*' have been removed in name but the only way of divorcing quickly is still to allege that one spouse has been at fault. This requirement can exacerbate acrimony and distress for the whole family and sets parties up to fight. If a marriage has broken down irretrievably and both parties agree that has happened, requiring them to wait for at least two years to be granted a divorce serves no clear purpose.

As the Archbishop of Canterbury observed in the 1960's, *divorce laws should not be used to keep couples in bad marriages against their will*. It was time that the divorce laws in England treated people who have decided their marriage is over with respect and compassion in the knowledge that it is not a decision they have reached lightly and without consideration especially regarding the effect upon children. There were calls for a streamlined process without the need for allegations or recriminations that would enable people to move on with dignity and focus upon their future pathways without the restrictions imposed by outdated laws.

And so, the latest much anticipated changes to divorce laws were introduced on the 6th April 2022 with *no fault divorce* actually becoming a viable option for couples looking to separate after having been married for at least 12 months. The new law means that instead of having to attribute blame, a couple can mutually cite the *irretrievable breakdown* of their relationship as the grounds for wanting to obtain a divorce.

Either party can file a statement, or it can be a joint statement, to say their marriage has broken without the need for evidence about bad behaviour. Along with making the divorce process less painful for separating couples, the new law will also help to prevent victims of domestic abuse being trapped by perpetrators who contest the divorce thereby exercising further coercive and controlling behaviour through outdated legal means. Under the new *no fault* divorce law, the ability to contest a divorce has been removed.

Streamlining the divorce process might tempt more couples to separate and consequently, confront the courts with an increase in workload which could have an impact on the amount of time needed to complete the process. Crucially, couples seeking a divorce must not overlook the legal ramifications surrounding matters such as child arrangements, financial settlements, housing, and insurances, etc., which are best overseen by an expert.

John Mallinson
Editor /Family Court Advisor

Professional notes: Law & Research

Outcomes for Black Children in Care: A Rapid Evidence Review Synthesis 2022 – Department of Education.

Summary

This report presents the findings of a Rapid Review of the body of work focussing on the outcomes of Black children in care, specifically reunification, placement suitability, mental and physical health, and educational outcomes.

The Rapid Review highlights a lack of evidence on outcomes for Black children in care particularly around reunification, placement suitability, health, and exclusions. Where research was available, the existing research suggests that Black children in care fare similarly or better than White children when looking at health and educational outcomes. However, the individual findings should be carefully considered due to the evidence being rated as 'low strength'.

The report highlights a need for more research to be commissioned using robust methodologies to understand whether these findings persist across different contexts. Further research should also consider the role of differences in pathways into care by ethnic groups in predicting outcomes. The research also recommends that future research adopts a more nuanced approach to assessing differences in outcomes by ethnic groups, especially given that the few studies that differentiate between Black African and Black Caribbean children found different outcomes for each group. Following the completion of the rapid review, we organised a round table discussion with some of the Young Advisors to hear their views on the findings.

Objectives

This review sought to understand whether outcomes for Black children in care in the UK differ for children from other ethnic groups. An examination was conducted of the following outcomes: reunification, placement stability, health [mental and physical], and educational outcomes [attainment and exclusions].

How it was done

A search was made of one academic database [SCOPUS] and several websites including the British Association of Social Workers [BASW], Community Care, Social Care Institute for Excellence [SCIE], and government publications. Empirical research was included in the review if it focussed on the outcomes of Black children in care in the UK. Included outcomes were rates of unification, mental and physical health, and education. Any work that was published before 2000 was excluded and limited the findings to journal articles, working parties and reports commissioned by organisations investigating outcomes for looked after children.

Key Findings –
Outcome 1: Reunification

There is a lack of evidence on differences in reunification outcomes between Black children in care and other ethnic groups in the UK. For example, it was found that no studies considering the reunification outcomes were of Black children in particular.

Outcome 2: Placement stability
Limited evidence finds no differences in absconding behaviour and mixed evidence on placement moves. Only one study focussed on absconding behaviour, finding that Black children were found to be no more likely to go missing from care than White young people: however, this study had a high risk of bias. Two other studies found that Black children in care experience a similar or even lower number of placement-moves than White children in care.

Outcome 3: Health
Limited evidence on physical health finds no differences in long-term health outcomes between Black and Asian care-experienced young people, and mixed evidence for differences between Black and White care-experienced adults. *Sacker et al [2021]* found that having been in care was not associated with poorer health for Black and Asian adults in their 20's to 40's compared to adults from the same ethnic group that had not been in care. On the other hand, White adults in their 40's that were care-experienced had a higher probability of a limiting long-term illness compared to White adults who had not been in care. However, the study does not explore whether this difference is due to variations in health outcomes in the non-care experienced population, or due to differences by ethnic groups among the care-experienced population.

Outcome 4: Education
Studies suggest *higher education attainment* for Black children in care compared to White children in care when looking at A-levels and KS4 [GCSE's] scores. But there is mixed evidence when comparing educational attainment for Black and Asian children in care.

Implications /Next Steps
This review highlights a lack of evidence on outcomes for Black children in care, particularly around reunification, placement stability, health, and exclusions. Where research was available, the existing research suggest that Black children in care fair similarly or better than White children in care when looking at health and educational outcomes.

The individual findings should be carefully considered in light of the rating of the evidence as low strength. The number of studies found for each outcome was small, with two to four studies per finding. In addition, several studies suffered from low sample size and /or were conducted in a small number of local authorities.

More research is needed to see whether these findings persist across different contexts using more robust methodologies and should consider the role of differences in pathways into care by ethnic groups in predicting outcomes. Future research should also adopt a more nuanced approach to assessing differences in outcomes by ethnic groups, especially given that the few studies that differentiate between Black African and Black Caribbean children *found different outcomes for each group.*

Edited by John Mallinson

UK Social Work Practice in Safeguarding Disabled Children & Young People 2021
University of Portsmouth

Summary
Disabled children have an increased risk of experiencing abuse however, this often goes unnoticed. There is also not the support in place to better protect them or help with recovery after experiencing abuse. This systemic review aims to synthesise existing qualitative UK evidence to support *evidence informed* planning and the development of more appropriate, targeted, and cost-effective interventions for disabled children and their families. It also aims to produce a better understanding of the complexity of safeguarding of concerns and improved understanding of how and why key issues disproportionately affect disabled children.

The findings of this review suggest that disabled children and young people are at greater risk of harm because they are often invisible to services and a lack of service provisions, as well as disablist and discriminatory attitudes towards children and young people. Multiple policy and practice recommendations were developed from the evidence review to improve the safeguarding of disabled children and young people.

Objectives
The review looked at existing studies and academic articles and reports to answer key questions: *Why are disabled children and young people at greater risk of harm? What tailored responses and interventions are made available to disabled children and young people?*

The review also wanted to assess the outcomes for disabled children and young people who have experienced abuse and associated trauma from the perspective of the young people, their parents /carers, and practitioners. Finally, it wanted to look at the training and skill-development needs of the workforce to effectively support disabled children.

How it was done
Academic searches across seven databases were made to identify UK studies published from January 2000 onwards. This systemic review included 14 qualitative articles /reports from across 10 unique studies.

Key Findings
197 qualitative findings were found across the studies which in turned formed 12 synthesised findings to answer the four research questions.

Risk of Harm
The findings of this review indicate that disabled children and young people are at greater risk of harm because of the disablist and discriminatory attitudes shown towards them, rendering these young people invisible. Another finding was that a lack of services for disabled children and thresholds for services creates increased risk for this group of young people. Isolation, a lack of voice and agency, and overprotection were seen to create vulnerability in disabled children and young people.

Taylor-made responses & interventions
Sharing information across multi-agencies is important for a holistic and child-centred practice to be taken by practitioners. Multi-agency co-ordination and co-operation at all levels is crucial to improving service responses and the availability of appropriate interventions for disabled children /young people who have been or are at risk of abuse. A lack of services and appropriate accessible provision, as well as resources and time for practitioners, impacts on the quality of responses and interventions to risk and abuse for disabled children.

Outcomes for disabled children who have experienced abuse & associated trauma
Outcomes for disabled children were dependant on having opportunities for telling and /or recognition of abuse by others, and the subsequent responses from services. Disabled children and young people were often perceived as unreliable witnesses therefore access to justice thorough police investigations and criminal proceedings was rarely an outcome.

Specific training & skills-development needs for the workforce
The variation of skills and access to training courses across all agencies contributed to a lack of robust multi-agency and practitioner responses to suspected abuse of disabled children. Findings indicate a need for increased training for practitioners in awareness and confidence in communicating with disabled children as well as increased opportunities for multi-agency working.

Implications
The review exposed the scarcity of research evidence on the abuse and protection of disabled children and young people within UK across all forms of harm. The review reported that there were gaps in understanding on how to prevent abuse, identify harm and reduce risks as well as there being little knowledge on the outcomes of child protection responses. The synthesised evidence highlighted major learning for practitioners and policymakers at local and national levels were recommended which included that attitude towards disabled children and a lack of services and /or high thresholds for services, creates increased risk for this group of young people.

What next?
Multi-policy and practice recommendations were made based on evidence from the review and an urgent need to address significant research gaps to develop a more robust and encompassing evidence base. These recommendations include: *develop updated Multi-agency Safeguarding for Deaf & Disabled Children & Young People Practice Guidance; Local Authorities and Local Safeguarding Partnerships having arrangements in place to address individual and collective responsibilities for ensuring equal safeguarding and protection for young people; Effective data gathering by all organisations and Local Safeguarding Partnerships; Multi-agencies ensuring there is an effective range of provisions in terms of advocacy, speech and language therapy; Recognition at all levels that more time and support for practitioners*

is required for working with disabled children and their families.

Edited by John Mallinson

Film Review

The Old Oak

This may be Ken Loach's last outing as a director and it shows the same social awareness of those films stretching back fifty years [*Cathy Come Home, Kes, and The Wind that Shakes the Barley….to name a few]*.

The Old Oak deals with loss of identity, belonging and purpose in life. It is set in the former mining town of Easington, County Durham in the North-East of England. These mining towns and villages were once thriving communities but were torn apart as reliance on coal for power and industry declined. *The Old Oak* pub stands as the last refuge of community spirit and activity, the church hall and community centres having all closed.

The pub is kept going by a handful of regulars who bemoan the passing of better times and fear the impact of encroaching immigration. The front room of the pub which was last used as a kitchen and dining room for striking miner's families, had been mothballed for decades. Only the framed black and white photographs on the wall stand testament to the political struggle that tore the community apart.

Several Syrian families arrived from the ravages of civil war to take the local houses as refuge. This inevitably sparks a mixed reaction within the community, and the pub becomes the focal point of hope and anger. The landlord can only keep the pub running through the loyalty of his regulars. They are becoming increasingly frustrated at the deprivation of their local community and simmering conflict brought about by the arrival of the Syrian refugees.

The film focusses on the relationship between the landlord and a young female Syrian refugee from a family without their father. He is being held captive by the Assad regime back home. She cherishes the camera given by her father before their separation, towards fulfilling her dream of travelling the world as a photographer.

The film shows what can be achieved when there is some recognition of shared loss and struggle. Resolution is eventually derived from a slogan captured on one of the photographs of the miner's strike on the wall of the disused room in the pub: '*When you eat together, you stick together*'.

Paul Walker

And finally….

A Musing…

The Editorial Board invites anyone reading this Journal to make contact, submit an article, send in details of a case or relevant experience, an interesting or controversial judgement, concerns about practice or commentary relating to codes and conditions of service, positive or negative. Book or film reviews that link in some way to our role are always welcomed, news about meetings, lectures, seminars, or training courses can be of interest. Submissions can name the author, be anonymous or sent as suggestions for the Editorial Board to undertake further research and create an article from the idea sent in. Anything submitted can be very brief or longer, serious, light-hearted, or even a quip. Cartoons are also welcomed.

The Family Court Journal is for all colleagues within Cafcass and further afield working with children and families, on the frontline or behind the scenes. The Journal strives to provide an interesting read that informs, educates, enthuses, entertains and most of all unites colleagues. It is also intended to stimulate new membership within Napo Family Court Section so please feel free to pass on a copy of the Journal in the hope that colleagues who have not yet become members will see that Napo is a credible, worthwhile, and focused union that works hard for the benefit of its membership.

The Family Court Journal needs to have a wide range of articles in each publication which will hopefully be produced at least biannually. However, this will only happen if sufficient material is received. The Editorial Board is doing its best to create articles, but it is hoped everyone will become equally invested. Time, commitment, and confidence are the key elements to creating a flow of ideas.