

Appendix 30: Post separation abuse (See Article 16)

It has been recognised for many years that abusive men play on the prevailing myths concerning abuse. They can be typically self-assured, manipulative and lie convincingly, appearing nothing like the stereotype of an abuser. It has been found that there is a lack of understanding amongst court personnel concerning domestic abuse. If an abuser appears likeable they assume the abuse allegations are exaggerated and fail to give credence to the woman's concerns or investigate the evidence.

Mothers are generally criticised for remaining in abusive relationships and child protection officials can apply to the court to have children removed from the care of their mother for a 'failure to protect'. However, after leaving the relationship mothers are conversely criticised by court personnel for being reluctant to expose their children to the same man. It is current belief amongst court personnel that an abused woman cannot be a good mother. Conversely, even if her ex-partner is a proved abuser, the courts often take the view that this does not impact on his ability to be a good father. Unfortunately the current case law states that a history of domestic violence does not preclude contact with the child, it is the child's right to have contact with their father which prevails. However, the manipulation and emotional damage children may suffer from an abusive father often increases post separation as this is the only avenue available to continue to abuse their mother. Children may also find themselves in increased danger as their mothers are no longer able to intervene. It is in this regard that the family courts prevent mothers from protecting their children from abuse.¹

Case Study:²

"The mother left an abusive relationship whilst pregnant. For five years, from the birth of her child, the father continued taking the mother back to court for increased contact at a cost of over £40,000 to the tax payer as they were both entitled to legal aid. He requested more contact but failed to adhere to the contact he had been given, instead blaming the mother for not facilitating. He would not appear for months then the mother would receive a solicitor's letter detailing a new court application for increased contact. The child was physically assaulted by the father's new partner on one occasion, but the court insisted contact should continue as long as the partner was not present. After six months the court agreed to unsupervised contact with the partner again, even though the child was showing severe anxiety regarding the prospect of this contact. The mother had negative reports written about her regarding her resistance to contact after the assault. However, shortly after contact with the partner recommenced, the father announced he no longer wanted contact with his child.

¹ Hester, M. (2011) 'The Three Planet Model: Towards an understanding of contradictions in approaches to women and children's safety in contexts of domestic violence', *British Journal of Social Work* 41(5) <http://bjsw.oxfordjournals.org/content/41/5/837.short>; Kaganas, F. (2011) 'Regulating Emotion: Judging Contact Disputes', *Child and Family Law Quarterly* 23(1) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1939106

² From verbal reports from women in Devon experiencing the family courts 2010 – 2012 collected by SEEDS Devon http://www.devon.gov.uk/index/childrenfamilies/domestic_violence/adva-professionals/seeds-devon.htm

The trauma and rejection the child went through during these early formative years would have been avoidable had the court understood the father was not remotely interested in spending time with his child, but was using the child for post separation abuse."

Abusive fathers often display hostility and contempt towards the mother of their children. Family courts fail to recognise the damage this has on the children. A growing number of abusive men use the allegation of 'parental alienation' to gain residence or unsupervised contact, even when the children have been abused as well. A mother who has concerns about her children's access with her abuser is surely acting as an appropriately protective parent.³

Case Study:⁴

"The mother left an abusive relationship with her four year old child. Contact with the father was progressing well but the child's behaviour dramatically changed. The mother was concerned her child was witnessing domestic abuse between the father and his new girlfriend so she reduced the overnight contact. The father took her to court. The court did not acknowledge domestic violence occurred when the parents were together because it was deemed the mother hadn't sufficient evidence. It was stated if she had been assaulted then she should have taken photographs of her bruises. Therefore as it was believed the father was not an abuser the mother was accused of being hostile to contact and the court suggested the father should have residency of the child."

Family courts must make an order that is in the 'best interests of the child' but it is often believed that children fare better in shared residency. However, extensive research undertaken in Australia⁵ has shown overwhelmingly that they in fact do worse, except in cases where there is good will between the parents so they can parent cooperatively; impossible for a woman to do with an abusive ex-partner. By their very nature the amicable cases where parents are able to work together in the best interest of their children do not appear in court. The Australian experience shows that shared parenting legislation has shifted the focus from children's needs to parents' rights.

Case Study:⁶

"The mother saved up and managed to leave an abusive relationship with her four year old child. A contact order was agreed. After returning from contact with

³ Harrison, C. (2008) 'Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence' *Violence Against Women* 14(4)
<http://vaw.sagepub.com/content/14/4/381.abstract>

⁴ From verbal reports from women in Devon experiencing the family courts 2010 – 2012 collected by SEEDS Devon http://www.devon.gov.uk/index/childrenfamilies/domestic_violence/adv-professionals/seeds-devon.htm

⁵ Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K. & Qu, L. (2009) *Evaluation of the 2006 Family Law Reforms*. Australian Institute of Family Studies: Melbourne
<http://www.aifs.gov.au/institute/pubs/file/evaluationreport.pdf>; McIntosh, J., Smyth, B., Kelaher, M., Wells, Y. & Long, C. (2011) 'Post separation parenting arrangements: Patterns and Development outcomes for infants and children', *Family Matters* 86; Trinder, L. (2010) 'Shared Residence: A review of Recent Research Evidence', *Family Law* 40(11)
<http://www.familylaw.co.uk/articles/flj110LIZTRINDER>

⁶ From verbal reports from women in Devon experiencing the family courts 2010 – 2012 collected by SEEDS Devon http://www.devon.gov.uk/index/childrenfamilies/domestic_violence/adv-professionals/seeds-devon.htm

bruises the child disclosed the father had hit him. The child has mental health considerations from the abuse witnessed and subject to, so naturally did not want to see the father again. However, the court insisted contact should recommence against the child's wishes and his therapist's recommendation. The mother has had to endure numerous negative reports being written about her, including psychological, which infer she is unreasonably hostile to contact, has mental problems and accuse her of alienating the child against his father. She was told that either she makes her child attend unsupervised contact with the father, or the child will be taken from her and the father will be granted residence."

The Family Justice Review Advisory Board⁷ advised the Government against shared parenting becoming policy, but the Coalition has ignored the advice.⁸ It appears a blanket view has been taken that all fathers are good role models for their children, including the perpetrators of domestic and child abuse, which will inevitably widen the inequality already experienced by thousands of women and children in the family courts.

One powerful driver for the Government's position appears to be an attempt to address public perceptions that fathers are prejudiced against. However, there is no evidence to back claims that fathers are disadvantaged. In 2010 the Courts refused only 300 out of 95,000 contact applications. Research based on analysis of court records finds that the great majority of fathers get the contact they seek and often do better than the mothers. Indeed the contact presumption is so strong that research studies have found concerns raised by mothers – especially about domestic violence – are not being adequately addressed by the courts.⁹

Conversely, abusive men seem to be in a win-win situation. If they are taken back to court for failure to adhere to contact conditions to protect the children, or if the children are displaying disturbing behaviour as a result of abuse, it is the fathers' right to apply at the same time for more contact time, or residency if they haven't yet been granted this. Instead of the father being under scrutiny the tables are turned onto the mother. The current 'trading system' in the family courts where contact is concerned means that the father just has to raise a plethora of demands, and even if he does not gain all of these, the mother is forced to concede to some. Mothers who apply to court to reduce contact due to abuse involving their children, often find themselves agreeing to more because of the fear that the father would get residency of the children if left to a final hearing. This is also the reason why few women challenge their treatment by the courts. It appears that the courts hold an inequality of power; they have the power to remove children from their mother, but lack power to ensure fathers adhere to contact or enforce conditions needed to adequately protect the children.

⁷ Department for Education, Family Justice Review, <http://www.education.gov.uk/childrenandyoungpeople/families/familylaw/a00200548/family-justice-review> Accessed 17/05/2013

⁸ See p18 of Ministry of Justice (2012) *Family Justice Review: Government Response* <https://www.gov.uk/government/publications/family-justice-review-government-response> and Rt Hon Sir Alan Beith MP July 2012

⁹ Trinder, L. (2010) 'Shared Residence: A review of Recent Research Evidence', *Family Law* 40(11) <http://www.familylaw.co.uk/articles/flj1110LIZTRINDER>; *Child and Family Law Quarterly*, vol. 22; Trinder, L. (2012) 'The Children Act is an act of kindness' *The Guardian*, 6th February 2012 <http://www.guardian.co.uk/commentisfree/2012/feb/06/no-bias-against-fathers-childrens-act>

Considering only a small percentage of separating parents experience contention and use the family courts to organise contact, the majority of this percentage will involve a degree of domestic abuse. It is therefore inconceivable that family court personnel have so little training regarding domestic abuse issues, some have none at all, when the majority of their cases will be affected by abuse by some degree. Mediation is still often specified as appropriate, even though it has been proven time and again to work in favour of the abuser.¹⁰

There are not the systems currently in place to feed back any outcomes of decisions made by court personnel. They never know how their decisions have impacted on the children and family as a whole; evaluation and accountability are absent. Mothers are often so broken by their treatment in the family courts and by witnessing the detrimental effects on their children that they dare not refer back to court even when severe repercussions are evidenced.

Case Study:¹¹

"The mother left an abusive relationship with her two children. The father initiated court proceedings and was successful in gaining residency for the children. In less than six months of gaining residency the father put one of the children in care and stopped the other child from visiting the mother. The mother said the experience she had at court was so horrific she cannot face applying to the court for contact with her children, as also there is no-one to protect her from the father should she do this. However, after another four months the father moved away and left one of the children on the mother's doorstep. He stated he no longer wanted residence of either child which suggests he was using the family court as a route for abuse rather than a genuine wish to have residence of his children."

The shame of post separation abuse is that the children are the most affected. After witnessing abuse whilst their parents are together, on separation the children then have to bear the brunt of the escalation unprotected. Any court decision is supposed to be made on what is in the 'best interest of the child'. However, in reality this is often clouded by the ignorance and gender bias amongst court personnel regarding women who disclose histories of domestic abuse leading to prejudicial attitudes. Unfortunately family courts have not been seen to have made the same progress in recognising and responding to domestic abuse that the criminal courts have. (See Article 15) Research shows the vast majority of abused women want their children to have contact with their fathers, but with conditions attached ensuring their safety.¹² If family courts committed to tackling the inherent prejudice, introduced evaluation systems, along with enforceable conditions and boundaries in contact orders to protect the children, post separation abuse could not happen.

¹⁰ Coy, M., Perks, K., Scott, E. and Tweedale, R. (2012) *Picking up the Pieces: Domestic violence and child contact*. Rights of Women and CWASU: London
http://www.rightsofwomen.org.uk/pdfs/Policy/Picking_Up_the_Pieces_Report_final.pdf

¹¹ From verbal reports from women in Devon experiencing the family courts 2010 – 2012 collected by SEEDS Devon http://www.devon.gov.uk/index/childrenfamilies/domestic_violence/adva-professionals/seeds-devon.htm

¹² Coy, M., Perks, K., Scott, E. and Tweedale, R. (2012) *Picking up the Pieces: Domestic violence and child contact*. Rights of Women and CWASU: London
http://www.rightsofwomen.org.uk/pdfs/Policy/Picking_Up_the_Pieces_Report_final.pdf

Recommendations:

- **Domestic abuse should be routinely reported by court personnel whenever it is disclosed, and active measures to safeguard should be implemented at the earliest opportunity**
- **Special Measures should be made routinely available as in the Criminal Courts**
- **Accountability should be present at all stages of court proceedings**
- **Protection and confidentiality should be considered regarding the court reports so that children and the non-abusing parent can speak without fear of repercussion**