

**What are the Experiences of Female Survivors of Domestic Abuse
When an Expert has been Instructed in England and Wales Private
Law Child Arrangements Proceedings?**

A thesis submitted for the degree of Doctor of Philosophy

By

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Statement of Originality

I, Rachael Grey, confirm that the research included within this thesis is my own work. The research was conducted in accordance with Brunel University Code of Research Ethics. All compulsory training required for completion of the programme of study has been completed.

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Rachael Grey
2022

Abstract

This thesis explores the experiences of female survivors of domestic abuse when an expert was instructed as part of their private law child arrangements proceedings in England and Wales. In 2020, 25 grand tour telephone interviews were conducted with survivors that provided an opportunity for them to describe their lived experiences of the expert process within the context of their own family court journey. The interviews were examined using discourse analysis and interpretations drew upon a feminist post-structuralist approach. Survivors' lived experiences indicated that there are inconsistencies in when an expert is instructed, who is subject to an assessment as well as the types of assessments chosen by the expert. However, a consensus of survivors described the process as uninformed, frightening, and coercive. Predominately, experts focused on changing survivors' normal responses to trauma rather than on the perpetrator's abusive behaviour. Consequently, survivors explained how, very often, the expert report made recommendations which were harmful to mothers and children that included, inappropriate psychological therapy, unsafe contact arrangements and the transfer of residence of children from a mother to a perpetrator.

Survivors' lived experiences uniquely support the current belief that domestic abuse is usually not a barrier to contact and a contact at all costs ethos continues to prevail within the family court, which can be strengthened by expert instruction. This study concludes that there needs to be a better understanding of the role and impact of an expert within private law child arrangements proceedings, as well as a move toward domestic abuse experts rather than psychologists and psychiatrists.

Key words

Expert, domestic abuse, survivor, consent, coercion, psychologist, systems of power

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Dedication

Bo,

I am inspired by you every day. Thank you for being the best daughter a Mama could wish for. Thank you for your continual support and belief in me. I believe in you and I am so proud of you. This thesis is for you. I lava you xx xx

List of Abbreviations

ADR	Alternative Dispute Resolution
BACP	British Association of Counselling and Psychotherapy
BAILII	British And Irish Legal Information Index
BPS	British Psychotherapy Council
CAFCASS	Children and Family Court Advisory and Support Service
CAT	Cognitive Analytical Therapy
CBT	Cognitive Behavioural Therapy
CPD	Continuing Professional Development
CPS	Crown Prosecution Service
DAE	Domestic Abuse Expert
DVPP	Domestic Violence Perpetrator Programme
FCER	Family Court Expert Register
FFH	Fact-Finding Hearing
FHDRA	First Hearing Dispute Resolution Appointment
FJC	Family Justice Council
GDPR	General Data Protection Regulation
GMC	General Medical Council
IDAC	Integrated Domestic Abuse Court
IPV	Intimate Partner Violence
ISW	Independent Social Worker
ITC	International Testing Committee
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LIP	Litigant in Person
LGBTQI+	Lesbian, Gay, Bi-sexual, Trans, Queer, Intersex
HCPC	Health and Care Professionals Council
HMCTS	Her Majesty's Courts and Tribunal Service
MIAM	Mediation Information and Assessment Meeting
NHS	National Health Service
NICE	National Institute of Clinical Excellence
PD3AA	Practice Direction 3AA
PD12J	Practice Direction 12J
PD25	Practice Direction 25

PIA	Personality Inventory Assessment
PTSD	Post-Traumatic Stress Disorder
RCP	Royal College of Psychiatrists
SAR	Subject Access Request
SCONUL	Society of College, National and University Libraries

I felt like I was performing a live autopsy on my own body and removing my organs

(Phoebe)

Survivor women feminist pseudonyms

Alexandria (Alexandria Ocasio-Cortez - USA - 1989)
Alice (Alice Walker - USA - 1944 -)
Angela (Angela Davis - USA - 1944 -)
Amal (Amal Clooney - Lebanon/UK - 1978-)
Barbara (Barbara Walters - USA 1929 -)
Bell (Bell Hooks aka Gloria Jean Watkins - USA - 1952)
Betty (Betty Friedan - USA - 1921 - 2006)
Charlotte (Charlotte Proudman - UK - 1988)
Coretta (Coretta Scott King - USA 1927 - 2006)
Doris (Doris Lessing - UK/Zimbabwe 1919 - 2013)
Michelle (Michelle Obama - USA - 1964-)
Emerald (Emerald Fennell - UK - 1985)
Emma (Emma Watson - UK - 1990)
Emmeline (Emmeline Pankhurst - UK - 1858 - 1928)
Germaine (Germaine Greer - Australia - 1939 -)
Gloria (Gloria Steinem - USA - 1934)
Isabella (Isabella Ford - UK - 1855 - 1924)
Jacqueline (Jacqueline Rose - UK - 1949 -)
Jess (Jess Phillips - UK - 1981 -)
Julie (Julie Bindel - UK - 1962)
Kathleen (Kathleen Neal Cleaver - USA 1945 -)
Kimberlé (Kimberlé Williams Crenshaw - USA - 1959-)
Mary (Mary Wollstonecraft - UK - 1759 - 1797)
Maya (Maya Angelou - USA -1928 - 2014)
Nellie (Nellie Bly aka Elizabeth Cochrane Seaman - USA 1864 - 1922)
Phoebe (Phoebe Waller Bridge - UK - 1985)
Ruth (Joan 'Ruth' Bader Ginsburg - USA - 1933 -2020)
Savitribai (Savitribai Phule - India – 1831 - 1897)
Simone (Simone De Beauvoir - France - 1908 - 1986)
Tarana (Tarana Burke - USA - 1973)

Introduction

This thesis explores the experiences of female survivors of domestic abuse who have instructed an expert in England and Wales private law child arrangements proceedings in England and Wales.

The instruction of experts in private law child arrangements proceedings in the England and Wales family court when allegations of domestic abuse have been alleged has been increasingly highlighted as an area of concern. These concerns have been documented in various reports over the past decade¹ including, in 2020, the Harm Panel Report which was the first enquiry into the harm being caused to parents by the family court, particularly when domestic abuse has been alleged. Private law proceedings have seen a gradual increase in the instruction of experts, who are deemed necessary, to help the judge determine living arrangements that will be in the best interest of the child. An expert, usually a psychiatrist or psychologist, is guided by Practice Direction 25 to carry out an assessment of the family and has an overall duty to the court.

The Domestic Abuse Act 2021 defines domestic abuse:

Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if—

- (a) A and B are each aged 16 or over and are personally connected to each other, and
- (b) the behaviour is abusive.
- (3) Behaviour is “abusive” if it consists of any of the following—
 - (a) physical or sexual abuse;
 - (b) violent or threatening behaviour;
 - (c) controlling or coercive behaviour;
 - (d) economic abuse (see subsection (4));

¹ Jenny Birchall and Shazia Choudhry, *“What about my right not to be abused?”: Domestic abuse, human rights and the family courts* (Women’s Aid 2018)

(e) psychological, emotional or other abuse;

and it does not matter whether the behaviour consists of a single incident or a course of conduct.

(4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—

(a) acquire, use or maintain money or other property, or

(b) obtain goods or services.

(5) For the purposes of this Act A’s behaviour may be behaviour “towards” B despite the fact that it consists of conduct directed at another person (for example, B’s child).²

Survivors who participated in the research described the abuse that had been perpetrated on them which included: physical violence such as punching, hitting, slapping, rape, sleep rape, being denied access to the toilet causing incontinence, stalking, verbal abuse, coercive control, monitoring through social media, litigation abuse, coercive control of children, economic abuse, reproductive control, being denied heating, not being allowed to carry out basic caring duties for children and childhood sexual abuse. Survivors’ accounts revealed how, despite allegations of domestic abuse, fact-finding hearings were held inconsistently and appeared to correlate with the most recent estimate of less than 10% of all private law cases when domestic abuse has been alleged.³ However, all survivors had an expert involved in their case and more often than not, were the sole focus of the assessment rather than the expert meeting with all members of the separated family. As a result, the majority of survivors explained that domestic abuse was dismissed, ignored or minimised and the court’s focus shifted from the allegations of abuse to trying to find other reasons for a mother’s behaviour. Consequently, normal responses to trauma caused by domestic abuse were reframed as survivors exhibiting hostile or alienating behaviour, as well as at times, mothers being misdiagnosed with mental health disorders. Crucially, while the court often did not view allegations and/or findings of domestic

² Domestic Abuse Act 2021

³ Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020) 139; Adrienne Barnett, *Domestic abuse and private law cases. A literature review* (Ministry of Justice 2020)

abuse as a barrier to contact, the court did consider a survivor's behaviour problematic, which needed to be effectively treated in order to maintain contact with her child/ren.

This study is the first piece of research to explore the experiences of survivors who have instructed an expert in their private law family court case. However, more broadly it is the first study to reveal what happens to survivors as soon as an expert instruction is initially suggested within family court proceedings. Fundamentally, the research provides unique insight into the way in which the family court currently understands the process of expert instruction alongside survivors' experiences of the process and the significantly life-changing impact it can have on mothers and their child/ren. The study offered a safe space for survivors to be able to speak, sometimes for the first time, about their experiences of engaging with an expert.

Crucially, the study provided an opportunity for women to share their lived experiences without the risk of them being reframed to fit a discourse where domestic abuse is not the central factor. This element was a key tenet for this piece of feminist research and supported the use of a grand tour interview method. As a less directive approach, the interviews were predominately led by what a survivor deemed to be important within their lived experience. This style of interviewing produced rich and nuanced data that was analysed within a theoretical framework informed by a post-structural feminist approach. Consequently, the perspectives offered by the theoretical frameworks assisted in exploring survivors lived experiences within the context of what had happened to them but also how the family court process had reconstructed their narratives.

Overview of Chapters

This thesis is presented in nine chapters. Chapter 1, 'Literature Review', provides an in-depth overview of the available literature underpinning this study, as well as outlining the gaps in the knowledge and supports the importance of this research.

The literature review offers a background to the England and Wales Family Court's understanding of domestic abuse from 2000 to the current day. The chapter sets out to highlight landmark cases, such as *Re L (Contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)*; *Re: M (Contact: Domestic Violence)*; *Re: H (Contact:*

Domestic Violence)⁴, the implementation of and amendments to Practice Direction 12J, as well as the formation of a single family court in 2014 in England and Wales and the major overhaul of legal aid with the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act, 2012, which became effective in 2013. Within this timeframe, the chapter also covers significant changes in the criminal and family law's response to domestic abuse including coercive and controlling behaviour, domestic abuse and the introduction of the Domestic Abuse Act 2021.

The literature review sets out the relevant available literature which aimed to be representative of a survivor's journey through private law child arrangements proceedings and the instruction of an expert. With that in mind, the chapter explains how the court expects cases, where allegations of domestic abuse are a factor, to be managed. This includes outlining the family court and legal professionals' expectations of Alternative Dispute Resolution, such as mediation, even when allegations of domestic abuse have been made, as well as the underpinning Practice direction 12J which sets out what the Family Court or the Family Division of the High Court is required to do in cases where domestic abuse is alleged or admitted.

The chapter continues by reviewing the literature related to the instruction of experts, their role, and their impact on survivors in the family court.

Lastly, chapter 1 provides an overview of the literature outlining the introduction and international proliferation of parental alienation theory in family law, which began primarily because of a US-based psychiatrist, Dr Richard Gardner, in the late 1970s but regained popularity, after his death in the 1990s by well-known clinicians such as Amy Baker and Richard Warshak. The chapter concludes by outlining the available literature which explains the impact of parental alienation theory in the England and Wales Family Court and the concerns being raised by survivors, professionals and domestic abuse organisations including Women's Aid.⁵

Chapter 2, 'Methodology', outlines the methodology that underpins the research which sets out to answer 'what are the experiences of female survivors of domestic abuse

⁴ *Re L (Contact: Domestic Violence); Re V (Contact: Domestic Violence); Re M (Contact: Domestic Violence); Re H (Contact Violence)* [2000] 2 FLR 334

⁵ Jenny Birchall and Shazia Choudhry, "What about my right not to be abused?" *Domestic abuse, human rights and the family courts* (Women's Aid 2018)

when an expert has been instructed in England and Wales private law child arrangements proceedings?’

The chapter explains that a feminist post-structural approach was chosen as the theoretical framework which would be used to interpret survivors' lived experiences because of its ability to recognise the way in which dominant discourses are reinforced by systems intent on continuing to silence and oppress others, particularly women. The study is a qualitative piece of research which chose to use a grand tour interview to explore the lived experiences of 25 female survivors. This style of interviewing enabled survivors to be able to reflect on the most important aspects of their family court journey which provided a broad and rich spectrum of data. The chapter explains that the data was interpreted using a discourse analytic approach which helped to explore how meaning within child arrangements proceedings is produced rather than revealed and investigated how dominant discourses were resisted.

The chapter concludes by outlining the research ethics that underpinned the study, risks to participants, the author as a peer researcher, limitations and a discussion regarding chosen terminology.

Chapter 3, ‘Family law and expert evidence’, explains the history of the family law that underpins this study including the formation of the Children Act 1989, before setting out the current law relating to private law child arrangements proceedings. The chapter continues by providing an overview of Practice Directions 12J, 3AA and 25 which are crucial in survivors’ lived experiences.

Experts who are instructed in the family court are expected to follow various pieces of guidance produced by their own professional body, as well as by the Family Justice Council in conjunction with the British Psychological Society. The guidance is outlined. Finally, the chapter concludes by setting out two pieces of case law from the UK and US which inform the court on what family law considers to be admissible evidence, before discussing the President of the Family Division’s most recent memorandum on the use of experts in the family court.

Chapter 4, ‘Women’s lives. In and beyond the family court’, introduces the women who participated in this study. This is an important chapter as it provided the opportunity for women to share their lived experiences without the risk of them being reconstructed

by a professional to fit a particular narrative. The chapter aims to present women in their entirety, rather than how they felt the family court perceived them to be, which almost left them stripped of their identities and defined by domestic abuse.

Chapter 5, 'The initial stages', is the first of three findings chapters which chronicle 'The survivor's journey through the expert process' in a chronological format. All three chapters are structured in the same way by initially outlining the survivor's experiences of certain aspects of the expert process before discussing key issues with the assistance of relevant literature. Chapter 5 outlines survivors' experiences of choosing an expert and their appropriateness for their case, expert fees and the documentation involved in an expert instruction. Key issues that emerged and are discussed include, Cafcass involvement in the instruction, the formulation of the letter of instruction and concludes by considering whether there is an agenda behind the expert instruction.

Chapter 6 'Assessment preparation', details survivors' accounts of the time immediately before the assessment was conducted and outlines the impact of some of the professional choices made for survivors and their children. This is followed by a discussion of what is expected of experts by the court and professional bodies and is compared to the lived experiences of survivors. The chapter concludes by suggesting that there needs to be a re-examination of how consent is understood and obtained within the process of instructing an expert in the family court.

Chapter 7, 'Assessment day', outlines survivors' accounts of what happened during the assessment, their interactions with the expert/s and what types of assessments they were expected to participate in, including psychometric testing.

Survivors' descriptions of the expert assessment exposed concerns about an expert's professional conduct that included inappropriately focusing on past sexual history, poorly conducted assessments, and the misuse of psychometric tests. Finally, the chapter explores the issues relating to the assessment of children and the impact that these had on mothers and their children.

Chapter 8, 'The expert report and impact', explores survivor experiences related to how the expert reported their findings to the family court, the recommendations included in the report, the cross examination of experts in the court and the impact of the report on survivors and their children.

Survivors' lived experiences highlighted that there was an inconsistency in the quality of expert reports and a low prevalence of experts being challenged by legal professionals. This chapter continues by exploring one of the most crucial themes to have emerged from the research which related to the independence of the expert and how 'independence' was understood to have different meanings by each person, or party, involved in the proceedings.

Survivors described the impact of the report and the various outcomes which included recommended therapy and the transfer of residence. The chapter concludes by exploring issues that arose because of the report and its impact, such as consent, confidentiality, and the complaint process.

Chapter 9, 'Conclusions and recommendations', provides an overview of the thesis and the central issues to have emerged from survivors' experiences of the expert process. Crucially, survivors' accounts have emphasised how domestic abuse continues to be minimised, dismissed or erased, and even when abuse has been found, the court does not consider this to be a barrier to contact. Survivors' (and their child/ren's) evidence is often discredited through the expert process by a myriad of professionals, and this is strengthened by the involvement of the expert.

Overall, survivors' accounts have emphasised how harmful the involvement of an expert can be, particularly when the expert does not recognise domestic abuse, is not trauma-informed and makes recommendations which erase abuse and its impact on mothers and children.

The thesis concludes by providing recommendations that would rely on changing the current expert process completely, as well as recommendations that work alongside the current process.

Chapter 1

Literature Review

1.1 Introduction

This piece of doctoral research began by undertaking a review of the literature on domestic abuse and the family courts, and more specifically the English and Wales Family Court. The terms within the research question were interrogated and subsequently broken down into sections, each of which would need reviewing. Crucially, because women's experiences of experts instructed in private law proceedings has never been researched or written about, it was also important to identify any literature that specifically focused on survivor experiences of experts in the family court.

Topics covered within the literature review were chosen by considering a survivor's journey through the family court and what is expected when a family court judge follows the Child Arrangements Programme Flowchart.¹ This is not to say that survivors' experiences correlated with what is outlined by the flowchart however, the flowchart offers a rough guide as to what an experience may resemble and so is a useful reference point. Topics covered were domestic abuse, private law proceedings, Practice Direction 12J ("PD12J"), mediation, family group conferences, fact-finding hearings, experts in the family court and parental alienation theory.

The research question that formed the basis of the literature review was:

What are the experiences of female survivors of domestic abuse when an expert has been instructed in England and Wales private law child arrangement proceedings?

As will be discussed further in Chapter 3, private law child arrangements proceedings are applications made to the family court under the Children Act 1989 (CA 1989) and are usually made because of disputes between two parents but can also include, grandparents, or parental figures. A child arrangements order, which is produced at

¹ Child Arrangements Programme: Flowchart, see appendix G

the end of a final hearing, sets out who a child shall live with and how much time a child should spend with each parent.²

The searches yielded 97 publications plus other material which included: book chapters, empirical studies, large scale quantitative studies including reviewing court records (USA), literature reviews longitudinal research (Spain), guidance produced by charities, qualitative research using focus groups, questionnaires, semi-structured interviews, auto-ethnography and thematic analysis, survey and family court working party reports.

1.2 Methodology

The literature review was carried out between January 2020 and June 2020 at the University of Worcester and updated at Brunel University until the chapter was completed. The main information resources were: Academic Search Complete, British And Irish Legal Information Institute (Bailli), Editions Digital (for E-books due to the limited availability of text at the University of Worcester library), Google, Google scholar, Scopus, Westlaw, and published literature reviews/references lists.

Where necessary the review used individual journal websites, as well as secondary reference lists. The review included grey literature such as guidance notes written by organisations or charities and blog posts written by domestic abuse organisations as these are important sources of information for survivors of domestic abuse, and potentially have an impact on their experiences of experts.

The review initially concentrated on literature from England and Wales but because of the lack of literature on various issues in England and Wales has included work from Canada, New Zealand, Spain, and the USA.

It was decided that the timeframe for the search should begin in 2000 and end in June 2020, with various crucial literature added up until the point of thesis submission.

This timeframe correlates with the landmark *Re L (Contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)*; *Re: M (Contact: Domestic Violence)*; *Re: H (Contact: Domestic Violence)*³ and includes the implementation of PD12J in 2008. The

² See Chapter 3, Family law and expert evidence

³ *Re L (Contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)*; *Re M (Contact: Domestic Violence)*; *Re H (Contact Violence)* [2000] 2 FLR 334

timeframe also incorporated changes to PD12J over the twenty years as well as the growing use of parental alienation theory in the family court. The period covers the formation of a single-family court in 2014 in England and Wales, the major overhaul of legal aid with the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act, 2012 (“LASPO”), which became effective in 2013. The Act reduced the availability of financial assistance for everyone when bringing private law cases to court, created a merit-based system for survivors of domestic abuse, and consequently made it very difficult for many survivors of domestic abuse to make an application to the family court, unless they were able to privately fund it.

The literature review, and following research, was carried out while the Domestic Abuse Bill 2020 was still taking shape. Many of the survivors involved in this study were aware of the proposed Bill but knew that for the most part, the Bill would be too late to have an impact on their own lives when it finally became law.⁴ Fortunately, the review period was able to capture the publication of ‘Assessing Risk of Harm to Children and Parents in Private Law Children Cases’⁵, now referred to as the Harm Panel Report.

1.2.1 Quality Assurance

Not all literature included was from peer-reviewed publications, but they are still relevant to the experience of experts instructed in the family court. Experts such as a psychologist write for trade publications which have the potential to inform and impact a survivor’s experience. Similarly, survivors will try to obtain information from many sources and, for the most part, academic paywalls often prevent survivors from obtaining peer-reviewed publications.

1.2.2 Limitations

Limitations to the review were due to the availability of resources available to me at the time. Although the University of Worcester had a law school it did not have a family law module and therefore no access to family law material. Despite having a Society of College of National and University Libraries (SCONUL) membership and access to King’s College London law library, therefore resources were still limited. Since

⁴ The Domestic Abuse Act 2020 was given Royal Assent on 30th April 2021

⁵ Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020)

transferring to Brunel University in November 2020, access to family law resources has increased and have been added literature to this review.

1.3 Domestic Abuse

As a researcher about to embark on a study involving survivors of domestic abuse, it was important to begin by exploring the literature which would provide an overview of current cultural and political thinking, as well placing it within an historical context. The following section provides an overview of the literature explaining how societal understanding of domestic abuse, and coercive and controlling behaviour, has evolved, often at frustratingly slow pace. Despite evidence that there is a high prevalence of domestic abuse in England and Wales, it is clear from the literature that the law has been slow to recognise this. For example, coercive and controlling behaviour was only relatively recently made a criminal offence in 2015 and survivors continue to be challenged by agency responses to their allegations.

The literature clearly shows that cultural and political shifts in the response to domestic abuse have predominately been rooted in survivors' lived experiences of abuse and propelled by grassroots women's organisations. Even Stark's crucial work,⁶ central to our current understanding of coercive and controlling behaviour, originated from the lived experiences of survivors staying at the refuge that he and his wife, Anne, built together. Despite the positive changes that have been made, the literature reveals the multiple challenges that survivors continue to encounter. Particularly, the urgent need for professionals to recognise patterns of abusive behaviour rather than concentrate on incident based models which are harmful to women and girls.

Until relatively recently, the term 'domestic violence' was used to describe what is now referred to as 'domestic abuse' and was generally considered to encompass acts of physical violence perpetrated by adults in intimate adult relationships.⁷ As the literature revealed, academics continue to use the terms abuse, violence, and Intimate Personal Violence (IPV) interchangeably.

⁶ See 1.3.2

⁷ Adrienne Barnett, *Domestic abuse and private law children cases. A literature review* (Ministry of Justice 2020)

When considering how the societal understanding of domestic abuse has evolved it is important to recognise how literature from the 1960s and 1970s has continued to inform, and impact, current practice. Most notable are sociologists Dobash and Dobash, who are considered to be eminent in their field. Essentially their initial work focused on abuse perpetrated by husbands against wives, an issue that was also being addressed in the USA and was defined as wife battering.⁸ Along with Erin Pizzey,⁹ the founder of the first women's refuge and Chiswick Women's Aid, they recognised that abuse was happening within married relationships, that it was hidden behind closed doors, therefore not believed and they felt it was gendered i.e., violence perpetrated against women.¹⁰ Their work has continued through the decades, citing social changes such as second and third feminism as drivers in shifting our understanding of abuse, which began to gradually move abuse from inside of the home out into the public sphere. This resulted in pressure from the government to address the issue of domestic abuse, particularly as it coincided with the National Women's Liberation Conferences in the late 1970s that began to call for 'equal pay for women, education and job opportunities, reproductive freedom, childcare, financial and legal independence, sexual preference'.¹¹

In 1984 the Duluth power and control wheels were designed in the US to visually demonstrate how domestic abuse is perpetrated.¹² Duluth continues to describe the wheels as a 'representation of the lived experience of women who live with a man who beats them'.¹³ Duluth argues that domestic abuse continues to be a gendered crime but explain that while abuse does occur in same-sex relationships that this is carried out 'within the context of a larger societal oppression'.¹⁴ The wheels have been updated to recognise changes in terminology, intersectionality as well as post-separation abuse.¹⁵ The Duluth wheels of power and control are important as they

⁸ R Emerson Dobash and Russell Dobash *Violence Against Wives* (First Press 1979); R Emerson Dobash and Russell Dobash, 'The nature and antecedents of violent events' (1984) *British Journal of Criminology*, 24 269-288; Leonore E. Walker, *The Battered Woman* (Springer Publishing Co Inc 2009)

⁹ An example of Erin Pizzey's work see: Erin Pizzey, *Scream quietly or the neighbours will hear* (Penguin 1979)

¹⁰ R Emerson Dobash and Russell Dobash, *Violence Against Women* (First Press 1979) 2

¹¹ R. Emerson Dobash and Russell Dobash, *Women, Violence & Social Change* (Routledge 1992) 25

¹² Duluth wheel of power and control wheel, see appendix J

¹³ Duluth wheel of power and control, see appendix J

¹⁴ Duluth wheel of power and control, see appendix J

¹⁵ Duluth Wheel of Post separation control, see appendix K

impact women's experiences of domestic abuse in the family courts. Domestic abuse organisations use Duluth to help to explain how abuse is perpetrated and, in turn, survivors use this information in the family court.

In 2012, a cross-government definition was adopted and used in various spheres including the Crown Prosecution Service ("CPS") and PD12J, although this was not a statutory definition. This definition was the foundation for the definition adopted by the Domestic Abuse Bill (2019)¹⁶ :

'Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexual orientation. The abuse can encompass, but is not limited to: psychological, physical, sexual, economic and emotional forms of abuse'.¹⁷

The statutory definition of domestic abuse is now set out in Section 1 of the Domestic Abuse Act 2021¹⁸ as follows:

- (1) This section defines "domestic abuse" for the purposes of this Act.
- (2) Behaviour of a person ("A") towards another person ("B") is "domestic abuse" if-
 - (a) A and B are each aged 16 or over and are personally connected to each other, and
 - (b) the behaviour is abusive
- (3) Behaviour is "abusive" if it consists of any of the following-
 - (a) physical or sexual abuse;
 - (b) violent or threatening behaviour;
 - (c) controlling or coercive behaviour;
 - (d) economic abuse (see subsection (4));
 - (e) psychological, emotional or other abuse;

¹⁶ The Domestic Abuse Bill (2020) received Royal Assent on 30th April 2021

¹⁷ Barnett (n 6) 18; since the time of writing the Domestic Abuse Bill (2020) has been given Royal Assent. The statutory definition has changed slightly and recognises that domestic abuse can occur between 'personally connected' individuals.

¹⁸ Domestic Abuse Act 2021

- (f) and it does not matter whether the behaviour consists of a single incident or a course of conduct.
- (4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to –
 - (a) acquire, use or maintain money or other property, or
 - (b) obtain goods or services.
- (5) For the purposes of this Act A’s behaviour may be behaviour “towards’ B despite the fact that it consists of conduct directed at another person (for example, B’s child).

The statutory definition of domestic abuse is based upon decades of research which has identified the mechanisms used by one person to abuse another. Over this time there has been a change in understanding who experiences domestic abuse and the ways that the abuse is perpetrated. Crucially, the definition recognises that abuse can take many forms including psychological, economic, and most importantly coercive and controlling behaviour.¹⁹

Although it is recognised that men and women can perpetrate domestic abuse, and also be survivors, it is widely acknowledged that it is a gendered phenomenon. Almost 1 in 3 women in the UK aged between 16-59 experience domestic abuse in their lifetime.²⁰ It is important to acknowledge that while men can also be survivors of domestic abuse, it is understood that women often sustain more severe and repeated domestic abuse.²¹

1.3.1 The Prevalence of Domestic Abuse in England and Wales

While this thesis recognises that coercive control is a pattern of behaviour that sits within the wider context of domestic abuse, the following sections outline domestic abuse and coercive control separately. Primarily, this is because coercive control is a relatively new legal concept and is still not fully recognised, or understood, by professionals or the public. As will be explained, coercive control is also a separate

¹⁹ The Domestic Abuse Act 2021 also recognises post separation abuse.

²⁰ Office for National Statistics, *Domestic abuse prevalence and trends, England and Wales: year ending March 2019* (UK Government 2019); Office for National Statistics, *Domestic abuse prevalence and trends, England and Wales: year ending March 2019* (UK Government 2019)

²¹ Barnett (n 6) 18

criminal offence in England and Wales under Section 76 of the Serious Crime Act (2015).

For the 12-month period to year ending March 2020, the Crime Survey for England, and Wales, based upon population surveys, showed that an estimated 2.3 million adults aged 16 to 74 years experienced domestic abuse in the last year.²² This equates to 5 in 100 adults. The police recorded a total of 1,288,018 domestic abuse-related incidents and crimes in England and Wales (excluding Greater Manchester Police) in the year ending March 2020. The latest prevalence figures estimate that for all types of domestic abuse experienced in the last year there has been no statistically significant change when compared with 2019.²³ Notably, the data is only representative of 27 police forces in England and Wales.

In 2014 a survey of 44,000 women across 28 EU member states found that the UK had the fifth highest incidence of physical and sexual violence.²⁴

The impact of Covid 19 on women and girls continued to be published because the pandemic persisted throughout the later stages of this study. However, organisations have reported an increase in domestic abuse²⁵ and implemented various schemes to support women during lock down, such as the Safelives 'Ask Ani' scheme, that enabled women in need of help to attend a pharmacy and provide the codeword 'ANI' for assistance,²⁶ as well as the silent solution scheme which allowed women and girls to make a call to the police but only alert help by pressing 35.²⁷

²² Office for National Statistics, *Domestic abuse prevalence and trends, England and Wales: year ending March 2020* (Office for National Statistics 2020); the data does not cover the Covid-19 pandemic

²³ Office for National Statistics (n 21)

²⁴ European Agency for Fundamental Rights, *Violence Against Women – an EU wide survey*, (2014) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf [Last accessed 02/03/2020]

²⁵ Women's Aid, *A perfect storm. The impact of the Covid-19 pandemic on domestic abuse survivors and the services supporting them* (Women's Aid 2020) <https://www.womensaid.org.uk/wp-content/uploads/2020/08/A-Perfect-Storm-August-2020-1.pdf> [Last accessed 01/06/2022]; also see Office for National Statistics, *Domestic abuse during the coronavirus (Covid-19) pandemic, England and Wales: November 2020* <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseduringthecoronaviruscovid19pandemicenglandandwales/november2020>

²⁶ Safelives, <https://safelives.org.uk/news-views/domestic-abuse-and-covid-19>

²⁷ Safelives (n 24)

1.3.2 Coercive Control

Coercive and controlling behaviour was made a criminal offence in England and Wales in 2015 under Section 76 of the Serious Crime Act (2015). The definition moves away from the incident-based model of understanding abuse and recognises that it is a purposeful pattern of behaviour which takes place over time to exert power, control, or coercion over another.

‘Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving the, of the means needed for independence, resistance and escape and regulating their everyday behaviour. Coercive behaviour is a continuing act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim’.²⁸

Barlow, Johnson, Walklate et al,²⁹ point out that unlike the legislation introduced in Scotland in 2018, the legislation in England and Wales is gender neutral and allows for the possibility of other family relationships to be introduced in its terms, as highlighted by Stark and Hester.³⁰ Gender neutrality is now reflected in the definition within the Domestic Abuse Act (2021) and recognises same-sex relationships and the Lesbian Bi-sexual, Trans, Queer and Inter-sex (LBTQI) communities.

Although coercive control may seem to be a relatively new concept within the public consciousness it has been recognised as a type of abusive behaviour for many decades.³¹ The term ‘Gaslighting’ may also seem a relatively new term however it originated from a 1938 British play,³² and so has been part of our cultural education

²⁸ Home Office, *Controlling or Coercive Behaviour in an Intimate or Family Relationship. Statutory Guidance Framework* (UK Government 2015) 3; The Domestic Abuse Bill 2021 also defines coercive and controlling behaviour.

²⁹ Charlotte Barlow, Kelly Johnson, Sandra Walklate and Les Humphreys, ‘Putting coercive control into practice: Problems and possibilities’ (2020) 60 *British Journal of Criminology* 160-179 9

³⁰ Evan Stark and Marianne Hester, ‘Coercive Control: Update and Review’ (2019) 25(1) *Violence Against Women* 81-104

³¹ Barlow and Johnson et al (n 27)

³² Patrick French, *Gaslight*, (Samuel French Ltd 2015)

³² Evan Stark, *Coercive Control. How Men Entrap Women in Personal Life* (Oxford University Press 2007)

for nearly a century. Although it is often suggested that Dr Evan Stark³³ coined the term coercive control it was actually identified by three feminist pioneers, Del Martin, Susan Schechter, and Ann Jones in the 1970s.³⁴

Coercive control has been described as the golden thread that runs throughout behaviours that historically have been associated with domestic abuse, with control being the core mechanism, and is also represented in the Duluth wheel.³⁵ It is now understood that coercive control goes beyond psychological aggression by the continual regulation of everyday life and often involves physical violence, sexual coercion and potentially leads to severe acts of violence including homicide.³⁶

Examples of coercive control and the micro-regulating of everyday life include: taking control over aspects of their everyday life, such as where they can go, who they are, what to wear and when they can go out, depriving them of access to support services, such as specialist support or medical services, repeatedly putting them down such as telling them they are worthless and victim/survivors having their vaginas check after returning from the shops to 'check' that they haven't had sexual relations with other men or women when they have gone out with a child in a pram.³⁷

Recognising that coercive control is a thread that interweaves all acts of domestic abuse is important because it moves away from the incident-based model of abuse that has blighted women's experiences of trying to describe abuse and the judicial and legal understanding.³⁸

Stark assimilates coercive control with torture perpetrated on Prisoners of War during World War II where the aim of their captors was to gain total compliance and

³³ Stark (n 30)

³⁴ Stark (n 30); Laura Richards, What is coercive control?, <https://www.laurarichards.co.uk/coercive-control/> [Last accessed 04/03/2020]

³⁵ Duluth wheel of power and control see appendix K; Stark (n 30); Andy Myhill and Katrin Hohl, 'The "Golden Thread": Coercive Control and Risk Assessment for Domestic Violence' (2020) 40(20-22) *Journal of Interpersonal Violence* 4477-4479; Amanda L Robinson, Andy Myhill and Julia Wire, 'Practitioner (mis) understandings of coercive control in England and Wales' (2018) 18(1) *Criminology & Criminal Justice* 29-49

³⁶ Stark (n 30); Andy Myhill, 'Measuring Coercive Control: What Can We Learn From National Population Surveys?' (2015) 21(3) *Violence Against Women* 355-375

³⁷ Rachel Horman, *A practical guide to coercive control for legal practitioners and victims* (Law Brief Publishing 2019)

³⁸ Hunter *et al* (n 5)

dependence.³⁹ However, unlike Prisoners of War, Stark points out that for many women, their experiences of coercive control take place within their own home which often gives the false impression of freedom, and leads to the question asked by many professionals, 'why didn't she leave?'⁴⁰ Hayes and Jeffries have continued using Stark's concept of coercive control being a form of warfare in their extensive auto-ethnographic work as they describe coercive control as a form of romantic terrorism.⁴¹ Both authors recount, in often painful detail, their own experiences of coercive control and effectively show how they felt that they had been taken hostage in their own lives by a litany of micro regulations such as restrictions of diet, travel, employment and contraception, financial abuse and physical abuse. They describe how their perpetrators were able to achieve compliance by threatening to cause 'ultimate harm' by asking the authorities to deport them, questioning their mental health, and making it clear that no one would believe them if they reported these acts to the police. Both authors concluded by asking why Governments spend millions, quite rightly, in tackling terrorism but fail to recognise the 'romantic terrorism' that affects millions more lives, an argument supported by a growing number of professionals.⁴²

In 2012, Coy, Perks, Scott and Tweedale conducted 32 interviews of women to understand their experiences of violence, separation, and contact proceedings.⁴³ Their findings revealed that 'women consistently perceived emotional and psychological abuse, the ways in which their ex-partners used 'coercive control 'to entrap them, as the most destructive and debilitating form of violence'.⁴⁴ Examples of lived experiences including threatening to plant drugs on women and report them to the police, refusing to tell women their shift patterns in order to make it difficult to arrange childcare and turning off alarms so that women would be late for work.⁴⁵ These findings mirror the other studies discussed in this section and emphasise how women can be

³⁹ Stark (n 30)

⁴⁰ *ibid*

⁴¹ Samantha Jeffries and Sharon Hayes, *Romantic Terrorism? Survivor Narratives of Psychological and Emotional Tactics of Domestic Violence*, in (Stop Domestic Violence Conference, 7-9 December Canberra A.C.T 2015)

⁴² *ibid*; Myhill and Kohl (n 33)

⁴³ Maddy Coy, Katherine Perks, Emma Scott and Ruth Tweedale, *Picking up the pieces: domestic abuse and child contact* (Rights of Women and CWASU 2012)

⁴⁴ *ibid*

⁴⁵ *ibid*

micromanaged within the private sphere of the home while presenting a different picture to the public.

1.3.3 The Prevalence of Coercive Control in England and Wales

As mentioned previously, the literature review was completed at the end of the first wave of Covid-19. Lockdown measures implemented due to Covid-19 are thought to have increased the cases of domestic abuse and coercive control. These concerns have been documented through the media however, official statistics have yet to be released.⁴⁶ Evidence that there had been a surge in domestic abuse and coercive control was highlighted by domestic abuse organisations who were concerned that lockdown had increased controlling behaviour and this behaviour was preventing women from being able to seek help, as well increasing the homicide rate. During the first Covid-19 lockdown, SafeLives conducted a small survey of 107 victim/survivors (88% female, 11 % male and 1% described in another way) aged from 16 upwards. On a scale of 1-10 (0 being not safe and 10 being safe) 25% of respondents did not feel safe at home.⁴⁷

The latest Office for National Statistics report states that there were 17,616 offences of coercive control recorded by the police in the year ending March 2019 compared with 9,053 in the year ending March 2018.⁴⁸ It is important to note that the Office for National Statistics collate data in three different ways; self-reporting via a survey, via a face to face and the reporting of police records. It is suggested that the most accurate measure of reporting domestic abuse is the self-reporting method. The data does not consider the percentage of failed prosecutions and the percentage of unreported cases of abuse. This is problematic when considering the role of the family courts, discussed later in this chapter, and how self-reported domestic abuse and police reported domestic abuse is treated by court professionals.

⁴⁶ Emma Graham-Harrison, Angela Giuffrida, Helena Smith and Liz Ford, 'Lockdowns around the world bring rise in domestic violence' *The Guardian* (London, 28 March 2020); Mark Townsend, 'Revealed: surge in domestic violence during Covid-19 crisis' *The Observer* (London, 12 April 2020)

⁴⁷ Safelives, Safe at Home Survey (Safelives 2020)
<https://safelives.org.uk/sites/default/files/resources/Safe%20at%20Home%20survey%20results.pdf>
[Last accessed 04/08/2020]

⁴⁸ Office for National Statistics (n 19)

Lastly, it is important to recognise that coercive control is one of the strongest indicators of female homicides.⁴⁹ One of the key factors in femicide is when a woman tries to leave, or has left, a relationship.⁵⁰ The Femicide Census was founded by Karen Ingala Smith and Clarissa O'Callaghan and aims to record annual femicide data, which includes women who have been murdered by a partner, or ex-partner.⁵¹ In 2020, the Femicide Census published a report reviewing the years between 2008-2018 and it revealed that 1425 women had been murdered.⁵² Overwhelmingly, they found that 88% of femicides had been carried out by men who were currently or had previously been in a relationship with the victim and serve as an important reminder that understanding coercive control is key in understanding the risk.⁵³ Jane Monckton Smith has developed an eight-stage homicide timeline and her research pinpoints stage 5 as a time when a woman may try to leave, or be successful on leaving, but be at very real risk of being murdered.⁵⁴ professionals, such as the police, were dismissing or minimising the abuse.

1.3.4 Evidencing Coercive Control

One of the main themes to emerge from a review of the literature is the challenges that survivors encounter when trying to evidence their lived experience of domestic abuse, in particular coercive control. As will be discussed, one of the reasons for this is because professionals continue to consider domestic abuse as acts of physical violence rather than patterns of behaviour which can be more difficult for survivors to document, or even explain. Despite coercive and controlling behaviour becoming a Criminal Offence in England and Wales, the effectiveness of the offence has been met

⁴⁹ Barnett (n 6)19; Danielle McLeod, *Coercive Control: Impacts on Children and Young People in the Family Environment* (Research in Practice 2018); Lauren Smith, *Children experiencing inter-parental coercive control* (The Institute for Research and Innovation in Social Services (IRISS) 2011)

⁵⁰ Barnett (n 6); Douglas A.C Brownridge, *Violence Against Women post-separation*, (2006) 11 *Aggression and Violent Behaviour* 514-552; Lynne Harne, *Violent Fathering and the Risks to Children* (The Policy Press 2011); Ravi K. Thiara and Christine Harrison, *Safe not sorry. Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence* (University of Warwick Centre for the Study of Safety and Wellbeing 2016)

⁵¹ Femicide Census, <https://www.femicidecensus.org> [Last accessed 01/06/2022]

⁵² Femicide Census, <https://www.femicidecensus.org/wp-content/uploads/2020/11/Femicide-Census-10-year-report.pdf> [Last accessed 01/06/2022]

⁵³ Femicide Census (n 50)19; Linda Regan, Liz Kelly, Anne Morris and Rebecca Dibb, *If only we'd known': an exploratory study of seven intimate partner homicides in Engleshire* (CWASU 2007); Jane Monckton Smith, 'Partner Femicide: Using Foucauldian Analysis to Track an Eight Stage Progression to Homicide' (2019) 26(11) *Violence Against Women* 1267-1285

⁵⁴ Jane Monckton Smith, *In Control. Dangerous Relationships and How They End in Murder* (Bloomsbury 2021)

with mixed feelings. While the existence of the offence has raised public awareness of the abusive behaviour, it has been criticised for the difficulties in gathering evidence that meets the threshold for a successful prosecution within the Criminal Justice System. While the concept of coercive control has moved our understanding of domestic abuse away from a physical incident-based model the ability, and success, in evidencing patterns of psychological/emotional abusive behaviour has proven to be difficult. Stark and Hester offer an overview of Section 76, the problems associated with making it a gender-neutral offence and the inconsistencies in understanding what behaviours count as coercive and controlling.⁵⁵ The authors highlight the difficulties that justice professionals face when moving away from the identification of physical injuries to less tangible elements such as fear, serious alarm and distress, and subordination.

Robinson, Myhill and Wire had voiced concerns two years earlier, that agency responses to coercive control needed to change from the current practice of looking at single incidents, to exploring whether that incident could be seen in a much wider context of ongoing abuse.⁵⁶ The authors discussed findings of two empirical studies that focused on practitioners understanding of coercive control and the impact on their decision-making process. They concluded that more purposeful support for practitioners, particularly the police force, was required.

The need for coercive control training for legal ‘actors’, justice professionals and domestic abuse organisations, is a common critique and recommendation throughout the majority of literature discussing the impact of making coercive control a criminal offence.⁵⁷ Citing Bishop & Bettinson,⁵⁸ Stark and Hester⁵⁹ pinpoint one of the overriding challenges in evidencing coercive control as professionals and victim/survivors who need to be able to distinguish the ‘coercive’ element from

⁵⁵ Stark and Hester (n 28)

⁵⁶ Robinson and others (n 34); Carolyn Hoyle, *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Oxford University Press 1998) Cited in Robinson and others (n 33)

⁵⁷ Adrienne Barnett, ‘Family law without lawyers - A systems theory perspective’ (2017) 39(2) *Journal of Social Welfare and Family Law* 233-245; Charlotte Bishop and Vanessa Bettinson, ‘Evidencing domestic violence*, including behaviour that falls under the new offence of ‘controlling or coercive behaviour’ (2017) 22(1) *The Interpersonal Journal of Evidence & Proof* 3-29; Julia R Tolmie, ‘Coercive control: To criminalize or not to criminalize?’ (2018)18(1) *Criminology & Criminal Justice* 50-66; Emma Katz, ‘Coercive Control, Domestic Violence, and a Five Factor Framework: Five Factors That Influence’ (2018) 25(5) *Violence Against Women* 1829-1853; Hunter and others (n5)

⁵⁸ Bishop and others (n 55)

⁵⁹ Stark and others (n 28) 9

normative ways in which men micro-manage women's enactment of gender roles such as housework.

The identified literature mainly focuses on coercive and controlling behaviour within the Criminal Justice System and how this is recognised and understood. While that is important for every victim/survivor of abuse, it is widely recognised that there are many barriers to reporting the abuse, that the reported abuse does not always equate to the abuse that is perpetrated and reported abuse does not always result in a prosecution.

Pertinently, there is a lack of literature/research focusing, not only on the Family Justice System, but when the Criminal Justice System intersects with the Family Justice System (often referred to as parallel proceedings) and how both systems function together in these situations.

1.4 Domestic Abuse and Coercive Control in the England and Wales Family Court

This section will concentrate on issues that pertain to women's experiences of how domestic abuse is understood and is recognised by court professionals, as well as how women experience re-abuse through the family court. The literature reveals the challenges that survivors encounter when trying to raise allegations of domestic abuse including the complexity of court documentation, trying to accurately evidence domestic abuse and finding ways to finance, often, highly expensive private law proceedings.

1.4.1 Prevalence of Domestic Abuse in Private Law Proceedings

In 2019, 54,920 private law cases started in the family courts. Estimates indicate that the prevalence of domestic abuse in these cases is considerably higher than in the general population, with allegations or findings of domestic abuse in samples of child arrangement contact cases ranging from 49% to 62%.⁶⁰ It is important to recognise that domestic abuse convictions or allegations that are reported to the police are not automatically known to the family court, but evidence is gathered by applicants

⁶⁰ Barnett (n 6) Table 4.1 20

completing a C100 form,⁶¹ applicants and/or respondents completing a C1A form, and by Cafcass carrying out an initial safeguarding check with the local authority and police. These checks should reveal any convictions but not necessarily any police callouts that have not resulted in any proceedings.

1.4.2 Private Law Child Arrangement Proceedings

The single Family Court was formed in 2014 during a reform of the court system, in an attempt to house all matters relating to the family into two courts: The Family Division of the High Court and the Family Court.⁶² The family court manages all cases relating to families and children and include adoption, marriage, divorce, financial matters, residency of children, domestic abuse and also have specialised drug and alcohol courts. In 2012, just before this change, the government announced a major reform to the accessibility of legal aid, the Legal Aid, Sentencing, Punishment of Offenders Act 2012 (“LASPO”). Consequently, legal aid for private law family proceedings became only available to parents on a means-tested basis only and only if evidence of domestic abuse in proscribed forms could be provided. One of the impacts of this change has been felt by female survivors of domestic abuse, who already are more likely to be primary caretakers of children and therefore earn less.⁶³ Survivors of domestic abuse are eligible for legal aid if they are able to provide evidence of the abuse and if they have less than £3000 in savings. This two-fold criteria was problematic for many women for two reasons. Firstly, domestic abuse can be difficult to document, particularly coercive control. Secondly, the Legal Aid Agency used to take into account any tied up equity within a property which could be jointly owned with an ex-partner.⁶⁴ This has seen a rise in women (and men) becoming Litigant’s in Person (“LiP”) and it

⁶¹ A C100 form is an application under section 8 of the Children Act 1989 for a child arrangements, prohibited steps, specific issue order or to vary or discharge or ask permission to make a section 8 order.

⁶² Prior to 2014, private family court proceedings under High Court level were heard in the magistrates courts and the county courts

⁶³ Felicity Kaganas, ‘Justifying the LASPO Act: authenticity, necessity, suitability, responsibility and autonomy’ (2017) 39(2) *Journal of Social Welfare and Family Law* 168-188 181

⁶⁴ Since the time of writing these criteria has changed following a challenge by the Public Law Project, <https://publiclawproject.org.uk/latest/legal-aid-rule-change-for-home-owners-on-low-incomes-domestic-violence-survivors/> [Accessed 01/05/2021]

is believed has resulted in an increase in women agreeing to unsafe child arrangements.⁶⁵

Before litigants can apply to the family courts it is expected that mediation, a form of Alternative Dispute Resolution (“ADR”), is undertaken between parties, if they are considered to be suitable for mediation. This is a process of collaboration that consists of a problem-solving enterprise based on objective principles, operates through de-personalisation and is facilitated by a trained mediator.⁶⁶ It has been said that mediation promotes an individual’s independence through self-determined settlements, enhanced negotiating skills, and improved communication.⁶⁷ The family court has encouraged mediation and has considered it to be the institutionally preferred disposition, particularly in civil litigation rather than judicial intervention.⁶⁸

In 2011, Mediation, Information, Assessment Meetings (MIAM) became a statutory requirement before any family court application can be processed.⁶⁹ Many people, including feminists, expressed their concerns about the appropriateness of mediation for women that have experienced domestic abuse.⁷⁰ In 2015, it was estimated that only 1 in 10 of child contact cases reach the family courts, with most arrangements agreed informally or through mediation.⁷¹ However, it is not clear how many child arrangement cases continue to have mediation despite allegations of domestic abuse. Concerns have been raised about the barriers survivors face when trying to collate evidence that will provide an exemption to mediation, particularly if the abuse has not been recognised or disclosed.⁷² Morris conducted research in 2013 relating to MIAM screening/mediation and raised concerns about the minimal requirements needed to

⁶⁵ Adrienne Barnett, *Advice or coercion? Agreements for child arrangements in the post-LASPO landscape. Paper presented at the workshop, The post-LASPO landscape: Challenges for family law* (Law & Social Justice Programme, Leeds University 2015)

⁶⁶ Michal Alberstein, ‘The jurisprudence of mediation: between formalism, feminism and identity conversations’ (2010) 11(1) *Cardozo Journal of Conflict Resolution* 1-28

⁶⁷ Patricia E Edwards, ‘Gender Issues in Family Law. A Feminist Perspective’ (2005) 35(4) *Family and Conciliation Courts Review* 424-442

⁶⁸ Rosemary Hunter and Sharon Cowan (eds), *Choice and Consent: feminist perspectives, engagements with law and subjectivity* (Routledge 2009); Christine Harrison, ‘Implacably Hostile or Appropriately Protective? Women Managing Child Contact in the Context of Domestic Violence’ (2008) 14(4) *Violence Against Women* 381-405

⁶⁹ Barlow and others (n 67)

⁷⁰ Thiara and others (n 48))

⁷¹ All-Party Parliamentary Group (APPG) on Domestic Violence Parliamentary Briefing, *Domestic Abuse, Child Contact and the Family Courts* (APPG Women’s Aid 2016)

⁷² Hunter and others (n 5) 31

become a certified mediator and the inconsistency in screening for domestic abuse.⁷³ Morris also found that mediators spent an average of less than 3 minutes to screen for domestic abuse as opposed to over 11 minutes when carrying out an assessment for public funding.⁷⁴ It is not clear from any further research whether this scenario has improved. However, critics have argued that mediation exemptions are not always allowed in practice and that there is pressure to enter the mediation process by legal professionals including judges, despite allegations of domestic abuse.⁷⁵

Private law child arrangement proceedings can be initiated when there is a disagreement as to where a child should reside, or how much time each parent should be allowed with a child. This replaces the previous statutory language of 'custody' and 'access' and subsequently 'residence' and 'contact' and is defined as:

Regulating arrangements relating to...with whom [and when] a child is to live, spend time with or otherwise have contact with any person' under S.8 Children Act 1989.⁷⁶

When considering women's experiences of the family courts it is important to remember that the welfare principle should be at the core of all child arrangements proceedings and is set out in Sec 1(1) of the Children Act 1989 (CA 1989).⁷⁷ Translated, this means that the child's welfare is of paramount consideration and the judge should be guided by the welfare checklist set out in Section 1(3). This checklist requires the court to pay attention to a range of factors including the child's wishes and feelings, their characteristics and needs, the capability of the parents to meet those needs and any harm which the child has suffered or is at risk of suffering.

At the time of the study, it was expected that allegations of domestic abuse are set out in a C1A form⁷⁸ and, if a fact-finding hearing (FFH) is listed, a Scott Schedule.⁷⁹

⁷³ Paulette Morris, 'Mediation the Legal Aid, Sentencing and Punishment of Offenders Act of 2012 and the Mediation Information Assessment Meeting' (2013) 35(4) *Journal of Social Welfare & Family Law* 445-457

⁷⁴ *ibid* 453

⁷⁵ Hunter and others (n 5) 89

⁷⁶ Rosemary Hunter, Adrienne Barnett and Felicity Kaganas, 'Introduction: contact and domestic abuse' (2018) 40(4) *Journal of Social Welfare and Family Law* 401-425

⁷⁷ Sec 1(3) Children Act 1989 (CA 1989) <https://www.legislation.gov.uk/ukpga/1989/41/section/1>; For further explanation see Chapter 3, Expert evidence and the law

⁷⁸ See appendix I

⁷⁹ Although now fit for purpose, see appendix I

However, the Court of Appeal in the conjoined appeals of *Re H-N*⁸⁰ held that Scott schedules were not appropriate for FFH's and consultation for a replacement is expected to be conducted over the next two years.

The C1A form was introduced in 2005 and is recommended for all applications under Section 8 of the Children Act 1989, in an aim to increase safety within public and private law proceedings:

this includes proceedings relating to residence, contact, prohibited steps, specific issues and also parental responsibility where there are issues of domestic abuse, violence and harm.⁸¹

The C1A form was intended to ensure that the court could obtain a better understanding of any allegations of abuse, particularly in respect of the safety of the children and would assist in deciding whether a FFH was necessary.

In an evaluation of the C1A form, Aris and Harrison⁸² aimed to ascertain whether the supplementary information was identifying the abuse, what the relationship was between allegations of abuse and the ordered child arrangements and overall, whether the C1A form was effective. The C1A form (and the Scott Schedule) is of particular relevance to the overall doctoral research question, as it forms part of the basis for deciding whether a FFH is necessary, and therefore, in most cases, whether an expert is also necessary. Amongst Aris and Harrison's⁸³ key findings were: the form did not reflect the complexity of people's lives, cultural and ethnic diversity in interpreting what is deemed important by the family courts and how to describe this in a different language to their own native language. Despite the form being designed for parents to complete, very often, legal professionals would take on the role. It was common practice for an inexperienced solicitor to be given the task due to the poor remuneration from legal aid, and therefore they may not be able to recognise domestic abuse in all its forms. This resulted in 'serious implications for women in suggesting

⁸⁰ *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448

⁸¹ Rosemary Aris and Christine Harrison, *Domestic Violence and the Supplemental Information Form C1A* (Ministry of Justice 2007)

⁸² *ibid*

⁸³ *ibid*

that their children may have been harmed by witnessing violence in terms of them being viewed as neglectful parents'.⁸⁴

One of the limitations of the study also became an overriding concluding recommendation; parent's perspectives of the C1A form needed to be ascertained and then also considered. The study found that despite trying to gather the views of parents on the C1A form, the uptake was poor. This may have been because the form was completed by a legal professional or that, given the nature of proceedings, parents felt unable to reflect upon their experience.

As mentioned, Scott Schedules are frequently required for FFH to provide the court with a summary of allegations of domestic abuse but they were criticised in *Re H-N*⁸⁵ because their focus on discrete incidents of abuse mean that they cannot provide an accurate and holistic picture of domestic abuse, particularly coercive and controlling abuse.⁸⁶ Similar to the C1A form, it was criticised for continuing to promote an incident-based model of domestic abuse. Additionally, courts developed the practice of limiting the number of allegations for adjudication contained in Scott Schedules, so that the range of abuse was narrowed even further.⁸⁷ Additionally, courts developed the practice of limiting the number of allegations for adjudication contained in Scott Schedules, so that the range of abuse was narrowed even further.

Until *Re H-N*,⁸⁸ criticisms of the Scott Schedule continued unabated with research findings suggesting that; there were inconsistencies with completing them, they were a mechanism for restricting the scope of FFH's, they placed the burden of proof on the survivor through this legal mechanism and they persisted in promoting an incident-based model of understanding and identifying domestic abuse.⁸⁹ Incident based models of collating evidence results in abuse being seen as discrete incidents of

⁸⁴ *ibid*

⁸⁵ *Re H-N and Others* (n 79)

⁸⁶ A Scott schedule is not an actual form but is an itemised schedule of allegations which the Family Court usually require a survivor to prepare if there is to be a fact-finding hearing. For an example see appendix I

⁸⁷ Michelle Leferve and Jeri Damman, *Practice Direction 12J. The experience of lawyers working with private law children cases?* (University of Sussex 2020)

⁸⁸ *Re H-N and Others* (n 80); See Chapter 1.5 for an outline of *Re H-N*

⁸⁹ Birchall and others (n 1); Hunter and others (n 5); Horman (n 35); Barnett (n 6); Leferve and others (n 87); Hunter and others (n 5)

behaviour and obscures patterns of abusive behaviour, particularly when there have been allegations of coercive and controlling behaviour.⁹⁰ One of the suggestions made on behalf of Rights of Women in *Re H-N*,⁹¹ was that there should be a narrative-based trauma-informed approach to documenting abuse, and a survivor should have one document that could be added to throughout the family court journey. In the meantime, while the consultation is awaited, survivors and legal professionals are left in a grey area as to how to best document evidence that show patterns of abusive behaviour.

On a side note, the burden of proof was also a factor in determining eligibility for legal aid because, as discussed, survivors participating in this study, needed to have met the two-point criteria; evidence of domestic abuse and financial eligibility. Paradoxically, it is usually women who request a FFH in an effort to prove the abuse but are also denied legal aid because they do not yet have the evidence to meet the legal aid criteria.⁹²

1.5 Practice Direction 12J

The purpose of Practice Direction 12J 'is to set out what the Family Court or the Family Division of the High Court is required to do in any case which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic abuse perpetrated by another party, or there is risk of such abuse'.⁹³ In principle, the court should first hear evidence relating to the allegations that are disputed and then should only decide upon child welfare issues after findings of fact have been found.⁹⁴ The practice direction was first implemented by the President of the Family Division in 2008 and was introduced into the Family Procedure Rules in 2010. A revision in 2014 incorporated changes that included a broader definition of domestic abuse which also included coercive control.⁹⁵ The Practice Direction was again revised in 2017 and is now referred to as PD12J 2017.⁹⁶ Amendments included the need to consider risks of

⁹⁰ Adrienne Barnett, 'Greater than the mere sum of its parts': coercive control and the question of proof' (2017) 29 *Child and Family Law Quarterly* 379-400

⁹¹ *Re H-N and Others* (n 80)

⁹² Eekelaar and others (n 67)

⁹³ For a more detailed explanation see, Chapter 3, Family law and expert evidence

⁹⁴ Roger Bird, *Domestic Abuse: Law and Practice* (Lexi Nexis 2018)

⁹⁵ Hunter and others (n 5) 406

⁹⁶ Barnett (n 6) 15

harm to the other parent, as well as the child, and the use of supervised contact centres if a parent poses a risk to the child.⁹⁷

As discussed earlier, the implementation of PD12J and subsequent amendments, can be seen to reflect the positive societal changes in the recognition and understanding of domestic abuse. However, the literature shows that despite the implementation of PD12J, survivors' lived experiences reveal a cycle of failure. Survivors continue to be placed at risk during the family court process and often feel that they have been re-abused by the system that they thought would protect them. Once again, one of the recurrent issues is the way that the family court understands domestic abuse and continues to rely on an incident based model of abuse rather than being able to look at the broader picture and patterns of behaviour.

The literature emphasised the need for a cultural change within the family court, particularly the need for a cultural shift within the judiciary. While the implementation PD12J was a positive step, arguably it is only as good as the judge who is applying it. As will be discussed, survivors' lived experiences reveal how often the judiciary's traditional views on the family and the role of women in society, has obfuscated evidence of coercive control. Survivors' have found that their allegations have been minimised or dismissed and resulted in potentially harmful child arrangements being ordered by the court.

Practice Direction 12J was implemented after years of calling for a change to the way that domestic abuse was recognised, understood, and managed by the family court. It has been widely accepted that one particular appellate case in 2000 instigated a shift in the understanding of, and the responses to domestic abuse in the family courts, known as *Re L (contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)* *Re M (Contact: Domestic Violence)* *Re H (Contact: Domestic Violence)*.⁹⁸ The case is of particular importance to this study's research question as its interpretation and use of

⁹⁷ Marie Crawford, 'The revised Practice Direction 12J: Child arrangements & Contact Order: Domestic Violence and Harm' <https://www.familylawweek.co.uk/site.aspx?i=ed182955> [Last accessed 01/06/2022]

⁹⁸ *Re L (contact: Domestic Violence)*; *Re V (Contact: Domestic Violence)* *Re M (Contact: Domestic Violence)* *Re H (Contact: Domestic Violence)* [2000] 2 FLR 33; Coy, Perks *et al* (n 41); Ravi K. Thiara and Aisha K. Gill, *Domestic Violence, Child contact and Post-Separation Violence. Issues for South Asian and African-Caribbean Women and Children. A Report of Findings* (NSPCC 2012); Women's Aid, *Nineteen Child Homicides*, (Women's Aid 2016); Hunter and others (n 5); Horman (n 19); Hunter and others (n 5); Barnett (n 6) 84

the case law has, and continues to, impact the experiences of women in the family Court. The case involved allegations of domestic abuse in four conjoined cases. Expert child psychiatrists, Dr Sturge and Dr Glaser, who were instructed as experts to prepare a report for the court on the issue of child contact and domestic violence, challenged the automatic assumption that contact with a violent parent is in the interests of a child and the guidance in the case became the starting point for all cases that involved domestic abuse.⁹⁹

The principles of *Re L*¹⁰⁰ became the foundation for Practice Direction 12J that was issued by the President of the Division in 2008, following the publication of the Women's Aid Twenty-nine Child Homicides in 2004 and a subsequent Family Justice Council report in 2007 which found that the *Re L* guidelines were not being followed properly by the courts.¹⁰¹ The Practice Direction in its current form reflects recent terminology, and places greater emphasis on the safety of survivors as well as children and is considered to be best practice within the family courts.¹⁰² Many of its provisions are mandatory.

However, concerns continue to be raised about the consistency of the application of the Practice Direction by legal professionals and survivors.¹⁰³ In 2020, the Ministry of Justice published a report entitled 'Assessing harm to children and parents in private law children cases' (the "Harm Panel Report").¹⁰⁴ The call for evidence:

'sought to build a better understanding of how the family court identifies and responds to allegations of domestic abuse and other serious offences in cases involving disputes between parents relating to their children following the separation, known as 'private law children proceedings'.¹⁰⁵

⁹⁹ Coy and others (n 41); Thiara and others (n 98) 18

¹⁰⁰ *Re L contact: Domestic Violence* (n 98)

¹⁰¹ Hilary Saunders, *Twenty-nine Child Homicides: Lessons still to be learnt on domestic violence and child protection* (Women's Aid 2004) https://www.judiciary.uk/wp-content/uploads/JCO/Documents/FJC/Publications/twenty_nine_child_homicides.pdf [Last accessed 01/06/2022]; Jane Craig, *Everybody's business?* (Family Justice Council 2007)

¹⁰² Barnett (n 6) 84

¹⁰³ Leferve and others (n 87)

¹⁰⁴ Hunter and others (n 5)

¹⁰⁵ Hunter and others (n 5)15

The call for evidence included: written evidence from individuals and organisations with experience of private law cases using an online questionnaire. The majority of the respondents (87%) were mainly mothers and their families and approximately 10% were professionals. Evidence was also gathered by conducting three roundtables which included members of the judiciary, Cafcass and professionals. Ten facilitated focus groups were also held across England and Wales involving mothers, fathers and children. One of the research objectives was to understand how Practice Direction 12J (“PD12J”) was being applied, its impact and its interaction with the risk of harm exception to the presumption of parental involvement.¹⁰⁶

A separate literature review which informed the Harm Panel Report¹⁰⁷ cited that there had been no recent empirical research regarding the operation of Practice Direction 12J 2017 but cited 5 pieces of research that had been carried out since 2014 which are extensively discussed in the Harm Panel Report’s supporting literature review.¹⁰⁸ One of the main areas of concern of participants, across the board of participants, was the application of PD12J 2017 in the family court. These concerns are grounded in the way in which domestic abuse is initially understood in the family court, and as discussed earlier, if the focus is on discrete incidents of physical violence rather than patterns of abuse.¹⁰⁹ The Harm Panel Report itself cited evidence provided by parents, including a mother who reported:

‘I reminded the judge of 12J and asked him why he hadn’t ordered a fact finding, he said and I quote, listen young lady – don’t tell me about the law. And ignored it’.¹¹⁰

The report provided general observations about the application of PD12J which included how individual parties claimed that PD12J was not mentioned, was never raised or brought to their attention, or was disregarded by judges and lawyers.¹¹¹ The report highlighted that PD12J was not operating as intended, particularly if abuse is

¹⁰⁶ Hunter and others (n 5) 15

¹⁰⁷ Barnett (n 6) 84

¹⁰⁸ Barnett (n 6) 86; APPG (n 70); Barnett (n 90); Birchall and others (n 1); Cafcass and Women’s Aid, *Allegations of domestic abuse in child contact cases* (Cafcass and Women’s Aid 2017); Women’s Aid (n 98)

¹⁰⁹ Barnett (n 6) 88

¹¹⁰ Hunter and others (n 5) 86

¹¹¹ Hunter and others (n 5) 86

not properly understood and is therefore not seen as a barrier to contact which potentially results in further harm to women and children.¹¹²

In 2021, a group of women's rights organisations (Rights of Women, Women's Aid, Welsh Women's Aid and Rape Crisis England and Wales) intervened in a landmark Court of Appeal case, referred to as *Re H-N and Others (children)*.¹¹³ The appeal is considered to be a landmark case and can be compared to *Re L*, as it provided guidance on important issues regarding domestic abuse and private law family court proceedings. The guidance was given against the backdrop of PD12J¹¹⁴ which included: determination of the need for a FFH and whether it is necessary: Scott Schedules no longer being fit for purpose: the court's approach to coercive and controlling behaviour: the relevance of criminal law concepts and the need for the family court to import these.¹¹⁵ However, the women's rights organisations believed that the Court of Appeal failed to 'grapple with the procedural flaws in the way victims of sexual violence are treated in the family court stating this was 'beyond the scope of this judgment'.¹¹⁶ The organisations criticised the court for not listening to the Harm Panel Reports message that a culture change is needed.¹¹⁷

In July 2021, Candour TV and journalist Ms Louise Tickle, released a Dispatches documentary, 'Torn Apart: Family Courts Uncovered'.¹¹⁸ The programme provided personal testimonies from survivors regarding their experiences of the family court and footage of children being forcibly removed from their mothers. Along with the documentary, Dispatches conducted a survey of 297 legal professionals (solicitors and barristers) practicing in family law as well as the largest ever survey of parents. The survey was an online (self-selecting) questionnaire for family court service users, with 2776 mothers and 1147 fathers respondents, as well as 33 young people.¹¹⁹ Candour TV published an Interim Survey Report which included the following findings: nearly

¹¹² Hunter and others (n 5) 84

¹¹³ *Re H-N and Others* (n 79)

¹¹⁴ Court of Appeal: Civil Division, Press Summary *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448, <https://www.judiciary.uk/wp-content/uploads/2021/03/H-N-and-Others-children-summary.pdf>. [Last accessed 20/06/2022]

¹¹⁵ Court of Appeal: Civil Division (n 114)

¹¹⁶ Rights of Women, 2021 <https://rightsofwomen.org.uk/author/jessyerow-org-uk/> [Accessed 06/2021]

¹¹⁷ *ibid*

¹¹⁸ *ibid*

¹¹⁹ Candour TV, <https://www.channel4.com/programmes/torn-apart-family-courts-uncovered-dispatches>. [Last accessed 02/06/2022]

¹¹⁹ Candour TV (n 118)

two thirds of 3337 parents said that the judge or magistrates were very (1,444) or quite (993) hostile towards them, allegations of domestic abuse featured in 85% of the cases of 3,672 parents who responded (over 3,000) and allegations of parental alienation were made in nearly 70% of the cases of the 3,655 parents who responded.¹²⁰ The report also included findings from the family law professionals including the court's understanding of domestic abuse/coercive control:

‘According to the views of the family lawyers surveyed based upon their experience over the past three years, judicial understanding of coercive control increases with the seniority of judicial officers. Over three quarters of 145 family lawyers said that magistrates have a poor or very poor understanding, while a third said that District Judges have a poor or very poor understanding. These findings are concerning, bearing in mind that child arrangements cases are commonly held before Family Magistrates and/or district Judges, according to the parents/professionals who responded to the surveys.’¹²¹

1.6 Mediation

Mediation continues to be raised by researchers as an area of concern and an opportunity for survivors to be placed at further risk.¹²² The literature reveals how mediation presents another challenge for survivors who are trying to seek protection from further domestic abuse. Not only are survivors expected to provide evidence of abuse when applying for an exemption to mediation but they can often feel pressurised into agreeing to mediation by legal professionals because of the positive optics this will provide to the court. Arguably, while the family court sensibly wishes parents to seek more cost effective alternatives to interventions by the family court, survivors' lived experiences point towards the continued ideology that 'family' disputes are a private matter and can be resolved accordingly, albeit with a mediator.

A First Hearing and Dispute Resolution Appointment ("FHDRA") is an initial hearing where the court will decide how the case should proceed, whether other agencies and reports are necessary to provide more information in order to make the most informed

¹²⁰ *ibid*

¹²¹ *ibid*

¹²² Hunter and others (n 5)

decision regarding a family and get the case ready for a judge to hear.¹²³ The court will expect that ADR has been exhausted before cases are brought to court, such as mediation. In 2011, Mediation, Information and Assessment Meetings (“MIAM”) became a statutory requirement before any application can be processed.¹²⁴ However, due to the concerns expressed by a wide range of professionals including, domestic abuse organisations about the appropriateness of this process, parties are now exempt from mediation if the mediator conducting a MIAM certifies such an exemption or if there are allegations of domestic abuse requiring resolution before a court can determine whether mediation is appropriate.¹²⁵ PD12J states:

Where any information provided to the court before the FHDRA or other first hearing (whether as a result of initial safeguarding enquiries by Cafcass or CAFCASS Cymru or on form C1A or otherwise) indicates that there are issues of domestic abuse which may be relevant to the court's determination, the court must ensure that the issues are addressed at the hearing, and that the parties are not expected to engage in conciliation or other forms of dispute resolution which are not suitable and/or safe.

Mediation has been criticised as being inappropriate in cases of domestic abuse as it has been suggested that this could be mitigated by using facilitators who are highly trained in understanding the dynamics of domestic abuse and can carry out accurate screening.¹²⁶ However, this has the potential to become adversarial and power imbalances created by violent, dominating or controlling behaviour cannot be compensated or evened out by a mediator.¹²⁷ Many women who appoint solicitors do so because they believe that their rights will be protected once the domestic abuse has been put into the public domain of family law.¹²⁸ Unfortunately, many women who are legally represented are coerced, by their own counsel, into minimising or eradicating the abuse and do attend mediation, as the abuse becomes ‘just verbal abuse’ or a ‘one off incident’ while, at the same time, encouraging women to pursue

¹²³ Aris and others (n 81)

¹²⁴ Barlow and others (n 27)

¹²⁵ Echo A Riveria, Cris M Sullivan and April M. Zeoli, ‘Secondary Victimization of Abused Mothers by Family Court Mediators’ (2012) 7(3) *Feminist Criminology* 234-252

¹²⁶ *ibid* 249

¹²⁷ Barlow and others (n 27)

¹²⁸ Edwards (n 65)

non-molestation orders.¹²⁹ Women have expressed their concerns about their relationship with their solicitor comparing it to the one that they had with their abusive partners.¹³⁰ Despite the concerns, solicitors continue to promote mediation as ‘it will look good to the judge’ and, as a consequence, diminish a mother’s capacity to consent, removing her autonomy and privately regulating her behaviour.¹³¹ A study by Cafcass and Women’s Aid supported the concerns of other academics that many women felt that the perpetrators behaviour was ignored, that women were being made to make unsafe arrangements for themselves, and their children, but the majority of interim and final orders, including those involving domestic abuse, were made by consent.¹³² Separate research has shown that the screening process for exemptions to MIAM is flawed and women have been traumatised by their experiences of mediation despite a background of domestic abuse, with the outcomes being singularly unfair.¹³³ Arrangements made in a coercively controlled environment increases the risk of the matter returning to the family court by the perpetrator, as arrangements made during mediation are, in reality, felt to be too unsafe to comply with by a mother, and could result in punitive measures being made against her. This is commonly not recognised by family courts because the coercion is being maintained within the private arena. Perpetrators weaponise the family courts and use it as a tool to further re-abuse by being able to conceal domestic abuse within the context of mediation and expose a mother to judicial punishment when court orders or arrangements are broken, which is described as institutional abuse.¹³⁴

As mentioned, the Harm Panel Report found that despite PD12J, mothers reported feeling pressured to attend mediation. The panel also received evidence from

¹²⁹ Eeklelaer and others (n 67)

¹³⁰ Michelle Bemiller, ‘When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts’ (2008) 5(3-4) *Journal of Child Custody* 228-255; Edwards (n 65); Phyllis Chesler, *Mothers on Trial* (Lawrence Hill Books 2011)

¹³¹ Rosemary Hunter, ‘Narratives of Domestic Violence’ (2006) 28(4) *Sydney Law Review* 733-776; Barlow and others (n 67)

¹³² Cafcass and others (n108); See Lorraine Radford and Marianne Hester, *Mothering through Domestic Violence* (Jessica Kingsley Publishers 2006); Adrienne Barnett, ‘“Like Gold Dust These Day’s’: Domestic Violence Fact-Finding Hearings in Child Contact Cases’ (2015) 23(1) *Feminist Legal Studies* 47-78; Hunter and others (n75)

¹³³ Barlow and others (n 67)

¹³⁴ Bemiller (n 129); Riveria and others (n 124)

domestic abuse organisations about unsafe mediation and community dispute resolution practices.¹³⁵

1.7 Fact-finding Hearings

The literature clearly shows that survivors' lived experiences continue to raise FFH's as an area of concern. As earlier identified, one of the overarching problems is the family court's inability to initially recognise the domestic abuse. The literature highlights that research carried out nearly a decade ago, drew attention to the low prevalence of FFHs being held in cases where domestic abuse allegations were raised.¹³⁶ Once again, the literature reveals that survivors continue to encounter problems with evidencing domestic abuse and this has impacted whether a FFH is held in the first instance, or if a FFH is held, the final order.

During a First Hearing Dispute Resolution Appointment (FHDRA), if there are disputed allegations of domestic abuse, a judge will need to decide whether more information, or evidence, is required. It is expected that in all child arrangement proceedings Cafcass will have carried out initial safeguarding checks to identify any prior criminal convictions, social services actions or concerns relating to domestic abuse or child abuse.¹³⁷ At this point professionals and/or experts are not expected to be appointed before a FFH however, in recent years the practice of instructing experts at this stage has emerged. However, this is not what PD12J envisaged but instead directs that an expert should be instructed after a FFH has been held.

PD12J directs that in:

‘determining whether it is necessary to conduct a fact-finding hearing the court should consider -

- (f) the nature of the evidence required to resolve disputed allegations;
- (g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court; and

¹³⁵ Hunter and others (n 5) 9

¹³⁶ Rosemary Hunter and Adrienne Barnett, *Fact-Finding Hearings and the Implementation of the Presidents Practice Direction: Residence and Contact Orders: Domestic Violence and Harm* (Family Justice Council 2013)

¹³⁷ Hunter and others (n 5)

(h) whether a separate fact-finding would be necessary and proportionate in all the circumstances of the case’.

In 2013, Hunter and Barnett concluded that despite the inception of the practice direction, the majority of respondents to their survey (623 judicial officers and practitioners across all HM Courts and Tribunal Services (HMCTS) regions) said that FFHs were held in ‘only 0-25% of cases in which domestic violence is raised as an issue, with the largest group (425) estimating that fact-finding hearings are held in fewer than 10% of such cases’.¹³⁸

In 2015, Barnett¹³⁹ explained that the majority of child contact cases occur in the context of domestic abuse but questions whether there has been an increase in FFH’s since the implementation of PD12J.

Drawing upon Barnett’s own doctoral research in 2014, findings suggested that there was an initial increase in the FFHs being held following the implementation of PD12J in 2008 but this number plateaued out over the proceeding years.¹⁴⁰ Factors attributed to this are the minimisation of domestic abuse by legal professionals and the poor understanding of domestic abuse and coercive control by legal professionals and the judiciary, particularly when trying to move away from an incident-based approach. Barnett concluded by suggesting that the narrow incident-based approach to domestic violence applied by some courts and professionals, particularly barristers, which underpins the origins of FFHs, may obscure the way in which coercive and controlling behaviours permeate the fabric of the parties’ lived experiences, rendering the abuse invisible. The extreme circumstances that appear to warrant the holding of a FFH suggests that the bar of ‘acceptable’ abuse is being increasingly raised to the point where the father has to be ‘practically a monster’.¹⁴¹

¹³⁸ Hunter and Barnett (n 135)

¹³⁹ Barnett (n 131); see also Adrienne Barnett, ‘Contact at all costs? Domestic violence, child contact and the practices of the family courts and professionals’ (DPhil Thesis, Brunel University, London 2014)

¹⁴⁰ *ibid*

¹⁴¹ *Ibid* 100

In 2015, Barnett continued to highlight that many disputed allegations of domestic abuse by women were disregarded and as a result many women and children were being put at risk in the family courts.¹⁴²

The Harm Panel Report literature review emphasised that there has never been a systematic review of court files since the implementation of PD12J, to ascertain how often FFH's are held.¹⁴³ However, a review of existing literature published focusing on case file analyses between 2007-2019, suggests that FFH's are held in less than 10% of cases, despite domestic abuse allegations being made in over 50% of all private law applications.¹⁴⁴ If a FFH was held it was usually restricted to recent allegations of severe physical violence.¹⁴⁵ The studies also revealed that the reasons given by legal professionals for not holding a FFH included causing unnecessary delay, the violence was historic or not serious enough and importantly, the violence was not deemed relevant to the contact decision.¹⁴⁶ Respondents to the Harm Panel Report stated no risk assessments had been carried out if a FFH had not been held, or allegations had not been proven, thus suggesting that an absence of findings meant an absence of risk.¹⁴⁷ Even when a FFH had been held, mothers reported that they felt that the case had been pre-judged, or that the judge showed no understanding of domestic abuse.¹⁴⁸

The Harm Panel Report and the supporting literature review raised two distinct issues surrounding FFHs. Firstly, the low prevalence means that domestic abuse allegations are ignored and as a result places survivors and children at greater risk. Secondly, even when FFHs are held, survivors often must meet the challenges posed to them by an adversarial system, outdated patriarchal stereotypes of domestic abuse

¹⁴² Barnett (n 131)

¹⁴³ Barnett (n 6)

¹⁴⁴ Barnett (n 6) 91; Alison Perry and Bernadette Rainey, 'Supervised, supported and indirect contact orders: research findings' (2007) 21(1) *International Journal of Law, Policy and the Family* 21-47; Joan Hunt and Alison Macleod, *Outcomes of Applications to Court for Court after Parental Separation or Divorce* (Ministry of Justice 2008); Hunter and others (n 136); Liz Trinder, Joan Hunt, Alison Macleod, Julie Pearce and Hilary Woodward, *Enforcing contact orders: problem-solving or punishment?* (Exeter Law School 2013); Barnett (n 131); Maebh Harding and Annika Newnham, *How do County Courts Share the Care of Children Between Parents? Full Report* (University of Warwick 2015); Cafcass and others (n 108); Jo Harwood, *Child Arrangements Orders (contact) and Domestic Abuse-an Exploration of the Law and Practice* (DPhil thesis, Warwick University 2019)

¹⁴⁵ Barnett (n 6) 93

¹⁴⁶ Barnett (n 6) 93

¹⁴⁷ Hunter and others (n 5) 98

¹⁴⁸ Hunter and others (n 5) 96

perpetuated by the Family Justice System, evidentiary barriers, and binary outcomes.¹⁴⁹ Pertinent to this study, the Harm Panel Report stated that even if there was a chance of a FFH being held, mothers were advised against it:

‘in some cases, mothers said that they had been advised by their lawyer not to proceed with a fact-finding hearing but had not been advised that the consequence would be that their case would be treated as if the alleged abuse had not happened. Other submissions noted that if a victim of abuse cannot face the prospect of a fact-finding hearing because it will entail further abuse, trauma and counter allegations, the court will conclude that the abuse did not occur and make orders accordingly’.¹⁵⁰

The Harm Panel Report has called for further research into FFH’s because the panel were unable to determine what proportion of domestic abuse allegations, and counter-allegations, are proved in the family courts.¹⁵¹ The Harm Panel Report also detailed how survivors described their fear of disclosing domestic abuse because of the risk that counter allegations be made ‘including false allegations of abuse, parental alienation, instability or inadequate parenting’.¹⁵²

It is worth noting that in the US, a large-scale study reviewed over 4300 appellate cases examining child custody outcomes when allegations of domestic abuse have been raised and counter allegations of parental alienation were made.¹⁵³ The findings indicated that survivors who reported the abuse of themselves and/or of their child were often penalised with a loss of custody, and ‘remarkably a fair number of mothers lost custody even when the court credited the father’s abuse’.¹⁵⁴

In 2022, the Court of Appeal provided some further guidance into the proper approach to FFHs in private law proceedings, *K v K*,¹⁵⁵ following the decision of *Re H-N*. The case concerned a mother’s allegations of controlling behaviours, verbal abuse,

¹⁴⁹ Hunter and others (n 5) 96

¹⁵⁰ Hunter and others (n 5) 97

¹⁵¹ *ibid*

¹⁵² Hunter and others (n 5) 60

¹⁵³ Joan Meier, ‘U.S child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?’ (2020) 42(1) *Journal of Social Welfare and Family Law* 92-105

¹⁵⁴ *ibid*

¹⁵⁵ *K v K* [2022] EWCA Civ 468

physical abuse of children, financial control and rape.¹⁵⁶ The father had also made allegations of abuse, but the children continued to have contact with their father and the mother had agreed to unsupervised contact on her C1A form.¹⁵⁷ General guidance set out: MIAMs should not be bypassed unless there is a genuine reason; FHDRAs should be used as intended; as an opportunity for judicially led dispute, the judge, when listing a FFH must identify the child welfare issues to which a hearing is relevant and understand the nature of the allegations and whether they are relevant to be identified as welfare issues.¹⁵⁸ Arguably, this judgment provides guidance which may be considered to be in contradiction to *Re H-N*¹⁵⁹ and the Domestic Abuse Act 2021 because of the points mentioned above, as well of its assertion that children who witness domestic abuse are not impacted, or are victims.

1.8 After a Fact-Finding Hearing has been Held or a Final Order has been Made

So far the literature explored in this chapter, has highlighted that the family courts still focus on an incident-based model of understanding domestic abuse and persistently concentrate on more recent, physical abuse rather than trying to examine patterns of coercive and controlling behaviour. As will be shown in this section, this ideology can have an obvious impact on the final order and whether post-separation abuse is provided further space to be perpetrated. It is also clear that despite landmark appellate cases over the last 20 years, and multiple amendments to PD12J survivors (and a broad spectrum of legal /non- legal professionals and parents) believe that there is a dissonance between what the law states and how the law is interpreted or implemented. The application of PD12J appears to be varied and survivors feel that their fate lies in a judicial lottery.

Pertinent to this study is the emerging pattern of experts being instructed at various points during proceedings, rather than what PD12J and PD25 envisaged. This section will review the literature which focuses on what happens after a FFH has been held and/or a final order has been made.

¹⁵⁶ Clive Styles, <https://becket-chambers.co.uk/2022/05/03/k-v-k-updating-guidance-on-fact-finding-hearings-in-private-law-proceedings/> [Last accessed 20/06/2022]

¹⁵⁷ Styles (n 154)

¹⁵⁸ Gill Honeyman, (May 2021) <https://www.familylawweek.co.uk/site.aspx?i=ed229294> [Last accessed 05/2022]

¹⁵⁹ *Re H-N and Others* (n 80)

The Harm Panel Report states that:

The evidence received by the panel, together with the literature review and review of case law highlighted four themes in the family court's approach to making orders in private law children's cases. These are: that children should have contact with their non-resident parents, that restricted contact should progress to unrestricted contact, that co-parenting should be promoted and that parental dependence upon the court should be minimised.¹⁶⁰

The ethos that underpins these findings is that domestic abuse is, for most cases, never a barrier to contact, that most abuse is historic, and a child needs both parents in their lives to be able to flourish into adulthood. The findings of the Harm Panel Report¹⁶¹ emphasises once again the need for a cultural shift within the family court and how, often, child arrangements orders are based upon traditional concepts of family and the role of women and children in society. As mentioned earlier, traditional, or outdated, ideology risks erasing the abuse as coercive control is reframed by the court as a man taking charge within the family. These types of orders also assume that both parents will be able to co-parent after the court application has been dispensed, despite the law acknowledging that if there has been evidence of domestic abuse at the beginning of proceedings, then mediation is not appropriate.

Regardless of whether a FFH has been held or not, inevitably there will be an order made for direct or indirect contact. As previously mentioned, one of the difficulties with the family court's current understanding of domestic abuse is that both scenario's (i.e. a FFH or no FFH) can result in a poor risk assessment, or no risk assessment being carried out at all. This issue, when coupled with the low rate of orders being made for indirect contact only, places survivors and their children at greater risk. The Harm Panel Report reviewed the current available literature relating to the incidence of orders being made for no contact and it revealed that the rate was between 0 - 2%, suggesting that the occurrence was extremely rare¹⁶² Furthermore, orders made for

¹⁶⁰ Hunter and others (n 5) 131

¹⁶¹ Hunter and others (n 5)

¹⁶² *ibid*; Barnett (n 6) 91; Perry and others (n 142); Hunt and others (n 142); Hunter and others (n 142); Trinder and others (n 142); Barnett (n 131); Harding and others (n 142); Cafcass and others (108); Harwood (n 142)

indirect contact only, such as telephone calls and letters only, proved only to be problematic.¹⁶³

Hunt and Macleod's¹⁶⁴ research into the outcomes of applications to court for contact in 2008, highlighted the judicial pressure felt by parents, to resolve a case as quickly as possible, resulting in few FFHs being held but also, orders being made for a gradual build-up of contact i.e. beginning with supervised contact which quickly moves to unsupervised contact and overnight stays.¹⁶⁵ Hunt and Macleod also found that Cafcass officers were the group who expressed the most reservations about the pro-contact approach for various reasons including the marginalisation of serious welfare concerns.

The Harm Panel Report¹⁶⁶ and the supporting literature review¹⁶⁷ highlighted other areas that organisations such as Rights of Women and Women's Aid have been raising for many years, such as the welfare principle and survivors lives after family court proceedings have been dispensed.

Birchall and Choudhry's research in 2018,¹⁶⁸ highlighted concerns that the right of a parent to see their child is placed over and above the voice of a child, and their right not to be abused during family court proceedings. Katie Ghose, the Women's Aid Chief Executive at the time of the report, succinctly described how the research revealed that non-abusive parents think 'child first' while perpetrators of abuse remain 'me first'.¹⁶⁹ As mentioned earlier, the court is more than likely to make an order of supervised or un-supervised contact, despite allegations and/or findings of domestic abuse. The family court may be seen to be considering the best interests of the child when ordering supervised contact (often held in a contact centre) to protect the child (and survivor) from further harm. However, this type of order is problematic as it could be seen as the family court's attempt to circumvent responsibility and also place the burden on the contact centre to manage any further 'conflict'.

¹⁶³ Barnett (n 6) 9; Perry and others (n 142)

¹⁶⁴ Hunt and others (n 142) 184

¹⁶⁵ *ibid*

¹⁶⁶ Hunter and others (n 5)

¹⁶⁷ Barnett (n 6)

¹⁶⁸ Birchall and others (n 1)

¹⁶⁹ Birchall and others (n 1) Foreword

One of the first issues with the use of contact centres is the way in which they are operated and the safety that they provide for survivors and their children. Aris, Harrison and Humphrey's research in 2002 pointed to an array of difficulties with the use of contact centres that included under-resourcing, the poor training of staff and the poor understanding of, and screening for, domestic abuse.¹⁷⁰ These concerns were later highlighted by Rainey and Perry in 2007,¹⁷¹ Harrison in 2008,¹⁷² Caffrey in 2013¹⁷³ and 13 years later by the Harm Panel Report which also highlighted the safeguarding concerns relating to supervised contact and the use of contact centres.¹⁷⁴ The Harm Panel Report highlighted survivors' experiences of contact centres being under-resourced, poor training, lack of understanding or recognition of abuse, dismissal of child disclosures of abuse as well as abuse being allowed to be perpetrated within the contact centre.¹⁷⁵ It is important to note that there is an expectation by the family court that contact should progress to unsupervised contact, and overnight contact where possible, and, as previously mentioned, survivors have described the pressure that they felt was being applied by the family court to promote the contact rapidly progressing.¹⁷⁶

The second concern related to contact orders is the lack of oversight after the case has been dispensed and the possibility that the matter needs to return to court.

The court's expectation is that parents will be able to progress contact and co-parent (even within the context of domestic abuse allegations and/or findings) and there should be no further dependence on the court.¹⁷⁷ Importantly, the Harm Panel Report refers to 'the willingness of the courts to direct that parents attend activities to support contact and co-parenting with the limited use of interventions to address abusive behaviour'.¹⁷⁸ Once again this ideology contradicts the exemption provisions put in place for mediation, when there is evidence of domestic abuse, and negates the

¹⁷⁰ Rosemary Aris, Christine Harrison and Cathy Humphreys, *Safety and child contact: an analysis of the role of child contact centres in the context of domestic violence and child welfare concerns* (Centre for Study of Safety and Well-being, University of Warwick 2002)

¹⁷¹ Perry and others (142)

¹⁷² Harrison (n 66)

¹⁷³ Louise Caffrey, 'Hearing the 'Voice of the Child. The Role of Child Contact Centres in the Family Justice System' (2013) 25(4) *Child and Family Law Quarterly* 357-379

¹⁷⁴ Hunter and others (n 5) 139; Barnett (n 6)

¹⁷⁵ Hunter and others (n 5) 139; It is also important to note that contact centre places are not always available and are expensive and survivors report having to fund the contact.

¹⁷⁶ Aris and others (n 167); Hunt and others (n 142) 158; Hunter and others (n 5)

¹⁷⁷ Hunter and others (n 5)

¹⁷⁸ Ibid 143

existing literature related to post-separation abuse. Previously review hearings were held but the court has now moved towards the staggered approach to contact as previously described which is ‘the most unregulated form’ and is a well-recognised site for on-going post separation abuse.¹⁷⁹ The reality for a survivor is that attempting to co-parent with an abusive parent is fraught with challenges and there is a high probability that the matter will need to return to court. This places the onus back on the survivor to make an application which in turn increases her risk of more punitive measures/orders being made.

1.9 Experts in the Family Courts

Central to this study’s research question, is an understanding of the role of the expert, and the subsequent expert report, within family court private law proceedings. An exploration of the literature reveals that, despite the increasingly important role experts can have within family court proceedings, minimal research exists about their effectiveness and impact. Furthermore, this study is the first to consider survivors’ lived experiences of an expert instruction and explore what happens outside of the confines of the court room.

In 2007, Sir Liam Donaldson, the then Chief Medical Officer, was commissioned to produce proposals to reform expert evidence, particularly in public law children’s proceedings.¹⁸⁰ This was partly precipitated by medical experts being involved in high profile criminal cases where women such as Sally Clark, Angela Channing and Tripti Patel had all been wrongly convicted, as well as the poor availability of medical experts and the slow process of assessing and reporting once the experts had been instructed.¹⁸¹ It was thought that medical professionals were deterred from becoming expert witnesses because of the outcomes of these high-profile cases, and deterred professionals from taking on an extra role. In response to the decline in expert witnesses, the British Medical Association produced guidance on becoming an expert

¹⁷⁹ Emma Katz, Anna Nikupeteri and Merja Laitinen, ‘When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence’ (2020) 29(4) *Child Abuse Review* 310-324; Laura Monk, Improving professional’s responses to mothers who become, or are at risk of becoming separated from their children, in contexts of violence and abuse (DPhil thesis, Coventry University 2017)

¹⁸⁰ The Chief Medical Officer, *Bearing Good Witness. Proposals for reforming the delivery of medical expert evidence in family law cases* (Department of Health 2007)

¹⁸¹ Iain McDonald, Susan Heenan and Anna Heenan, ‘Consultation Document: Bearing Good Witness - Proposals for Reforming the Delivery of Medical Expert Evidence in Family Law Cases’ (2007) 29(2) *Journal of Social Welfare and Family Law* 151-161

witness, outlining the duty of the professional, the differences between opinion and fact and how to write reports.¹⁸² Notably, the guidance was aimed at public law, rather than private law proceedings.

Masson used data from two studies of public law care proceedings to look at the use of experts in care proceedings, three years after Donaldson's proposals, aiming to see why so many experts were now being instructed.¹⁸³ This was before LASPO and obviously focused on care proceedings that are paid for out of the State purse. However, it is relevant to research regarding experts in private law proceedings as child arrangements hearings are still expected to work with the same timetable and use the same 'pool' of experts, albeit that public law proceedings tend to use more medical experts than private law cases.

Masson described a legal culture of using experts that can have varying degrees of impact on the judge's overall final decision. However, there was evidence that expert evidence added sway to outcomes, particularly if a decision was being appealed, as well as a suggestion that some judges were assisted by the expert. Although this finding related to public law proceedings, it is also important when considering the function of experts in private law proceeding, discussed later on in this chapter, particularly as private law and public law can often co-exist within child arrangements proceedings.

In 2012, the Family Justice Council funded research into evaluating expert witness psychological reports, aiming to assess the quality of expert reports that were being submitted to the family court.¹⁸⁴ The study examined 126 expert psychological reports on a mixture of adults and children. They were assessed using an admissibility-criteria that had been developed by the research team but dubiously drew upon a US standard of admissibility called the Daubert Standard, that was and is still not currently used in England and Wales. The Daubert Standard is named after a notable civil case in the USA that has since been seen as a landmark case when expert evidence is being

¹⁸² British Medical Association, (2007) <https://journals.sagepub.com/doi/abs/10.1258/135626207781251112>. [Last accessed 01/05/2022]

¹⁸³ Judith Masson, 'The use of experts in child care proceedings in England and Wales: benefits, costs and controls' (Annual Legal Research Network Conference, University of Groningen 1 -19 2010)

¹⁸⁴ Jill Ireland, *Evaluating Expert Witness Psychological Reports: Exploring Quality* (University of Central Lancashire 2012)

submitted.¹⁸⁵ It is important to know this difference when considering literature focusing on experts from other countries as only a minority of work can be relevant to England and Wales case law.¹⁸⁶ The study was the first of its kind to evaluate expert reports and made many recommendations including: making sure experts were not only qualified but had the relevant qualifications; expert reports should be periodically reviewed for quality and experts should be involved in clinical practice alongside their expert witness work. Connected to this, courts should be wary of experts claiming to complete excessive amounts of independent expert work'; psychometric testing should be used with caution 'and these should not unduly influence final judgments; 'experts reporting allegations more carefully as such and not reporting them as facts' and training for judges on what to expect from an expert report.¹⁸⁷

Following the report, allegations were made to the Health Care and Professionals Committee (HCPC) regarding Professor Ireland's professional conduct when carrying out the study. The hearing dismissed all of the claims made against Dr Ireland but, arguably, her report had an impact on the role of an expert in family court proceedings. However, recent literature suggests that the report's recommendations continue to not be acknowledged.

The current definition of an expert is in accordance with Practice Direction 25 (A-F):

'expert' means a person who provides expert evidence for use in family proceedings. An expert includes reference to an expert team which can include ancillary workers. However, this does not include a children's guardian (i.e. a Cafcass Officer) or a Local Authority social worker but it does include an Independent Social Worker. This definition has been used to inform the overall research question and the interview question posed during the data collection phase. An expert in family proceedings has an overriding duty to the court that takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid'.¹⁸⁸

¹⁸⁵ See Chapter 3.4

¹⁸⁶ *Daubert v Merrell Dow Pharmaceuticals* [1993] 509 US 579

¹⁸⁷ Ireland (n 183)

¹⁸⁸ See Chapter 3 Family law and expert evidence

The Family Procedure Rules 2010 (FPR) were amended so that as of 31st January 2013, judges have to find that an expert is 'necessary' in order to be instructed, in order to reduce the number of experts being instructed.¹⁸⁹ Bedingfield argued that before the change there had been an increase in experts instructed in public care proceedings cases and as a consequence cases became lengthier and more expensive with the funding squeezing an already reduced budget.¹⁹⁰ However, the author suggested that with the changes to legal aid, implemented in 2013, fewer experts may be instructed, although he felt that the judiciary were becoming better trained in being able to assess dangerous or bad parents.

The Family Courts Information Pilot was carried out in 2011/2012. It aimed to achieve 'greater openness in Children's proceedings by analysing the reasoning of expert evidence of 161 family proceedings court and County Court judgments that were then published on the British And Irish Legal Information Institute (BAILI).¹⁹¹ The focus of this study had shifted from the quality of the expert report to the judicial interpretation of the report and tried to test whether the acceptance of the reports (in the majority of cases) had been 'rationally cogent and not made in blind deference'.¹⁹² Overall, the paper gives a rare discussion into the family court's 'use' of experts and highlights the powerful position that experts have within the proceedings, describing the position as 'privileged as an expert is able to be eligible to give opinion evidence as well as evidence of fact'.¹⁹³ It is not clear what happened as a result of the study as Ward's research never progressed from the pilot study. However, three important points can be derived from this paper that impact on women's experiences of the expert in the family courts: it principally recognised that other professionals, such as Guardian's Ad Litem also file reports and are cross-examined and that their opinions are also powerful but do not fall within the family courts definition of an expert. However, a preliminary analysis of this study's findings suggested great confusion as to why Guardians are not experts *per se* but still appear to have great influence. As Ward highlights, this is of particular interest when 'the Guardian's own interpretation of those

¹⁸⁹ David Bedingfield, Expert Evidence - Another Chapter in a Continuing Story, <https://www.familylawweek.co.uk/site.aspx?i=ed116178> [Last accessed 20/06/2022]

¹⁹⁰ *ibid*

¹⁹¹ Tony Ward, 'Expert Evidence, Judicial Reasoning, and the Family Courts Information Pilot' (2012) 39(4) *Journal of Law and Society* 515-540

¹⁹² Ward (n186) 517

¹⁹³ Ward (n186) 519

interests, which may not coincide with the children's own view's'.¹⁹⁴ Ward also makes two further points: simply reading the report will not tell the judge what evidence has not been selected, or importantly when considering women's experiences, 'what alternative frames might be available'.¹⁹⁵ Drawing on the epistemology of expert evidence, reports are not always scientific and therefore cannot be tested with the same criteria. Psychiatric reports are based upon:

'Interpretive evidence based on a study of particular people and situations in the light of background knowledge and experience. It may also rely to a significant extent on 'intuitive knowledge which is implicit and only partially articulated' and which consequently 'is a defective source of public, shared knowledge'.¹⁹⁶

Despite the emphasis on US family courts, Prescott considers the influence of the social worker report when deciding the best interest of a child as well as drawing attention to the increase on the reliance of mental health professionals to assist the judiciary and is in parallel to the discourse at the time in the United Kingdom.¹⁹⁷

In a response to a consultation paper, with 140 replies to a set of questions, the Family Justice Council and the Ministry of Justice jointly published Standards for expert witnesses in Children's proceedings in the family courts.¹⁹⁸ The standards include recommendations that the Ireland report and the PD25 also covered.¹⁹⁹ However, the responsibility to regulate the expert lies with the individual professional body, such as the HCPC. There were no provisions made for an expert witness register, no proposals for training in domestic abuse or any mention of periodical quality checking of expert reports.

Coy *et al* conducted research including interviews and surveys with victim/survivors who had or were currently going through proceedings, and with legal professionals.²⁰⁰

¹⁹⁴ *ibid*

¹⁹⁵ *ibid*

¹⁹⁶ Eileen Munro, 'Effective Child Protection' (Sage Publications 2008) cited in Ward (n 189) 539

¹⁹⁷ Dane E Prescott, Social Workers as "Experts" in the Family Court System: Is Evidence-Based Practice a Missing Link or Host-Created Knowledge?' (2013) 10(5) *Journal of Evidence-Based Social Work* 466-481

¹⁹⁸ Family Justice Council and Ministry of Justice, *Standards for expert witnesses in Children's Proceedings in the family courts* (Family Justice Council and Ministry of Justice 2013)

¹⁹⁹ Ireland (n 181)

²⁰⁰ Coy and others (n 41)

Their findings recognised that many women considered experts to include anyone who had written a report such as a Guardian or a Local Authority social worker, but there was confusion as to the reason as to why the report was initiated and the importance that the expert report had on the outcome of the hearing. Contrary to other literature cited in their report (and in this chapter), they found that there had been a low percentage of experts (as defined by PD25) instructed and that judges had made decisions based upon reports written, for example, by Cafcass. It was also reported that women were ‘often likely to be blamed for violence’.²⁰¹

In 2015, the Ministry of Justice published a piece of research to ‘develop an evidence base on the use of experts in family law’.²⁰² While it acknowledged that experts were instructed in private law cases the focus was on public law proceedings. Several of the key findings are also relevant to private law proceedings: there is a substantial data base or data on the use of experts in family law (public/private law); there has been a decline in experts being appointed and this may have reduced the pool of experts. Judges believed that the appointment of psychologists to provide expert evidence prior to the new Rules was not ‘necessary’ and could be undertaken by a robust social work assessment instead.²⁰³

The study was not able to accurately identify why there had been a decline but attributed it to experts not being able to meet the court’s timetable due to other clinical practice, the delay in fees being paid to experts, as well the inconsistency in how judges interpret the term ‘necessary’ as directed by PD25. As there was no available data to look at the number of experts instructed in private law proceedings and it is worth bearing in mind that experts may have ceased to work in public law cases but shifted to private law. While private law continues to work within the required timetable, fees are more lucrative and are usually directly paid by the applicant and respondents if the expert is privately paid. Since 2000, the role and process of instructing experts has been highlighted as an area of concern particularly relating to cases where

²⁰¹ Coy and others (n 41) 54

²⁰² Sarah J Brown, Leam A Craig, Rebecca Crookes, Amy Summerfield, Natalie Elizabeth Corbett, Joanne Lackenby and Erica Bowen, *The use of experts in family law. Understanding the processes for commissioning experts and the contribution they make to the family court* (Ministry of Justice 2015)

²⁰³ *ibid* 24

domestic abuse has been alleged and the impact of an experts report on the judge's final order.²⁰⁴

Birchall and Choudhry raised concerns about the use of expert psychologists when there had been allegations of domestic abuse and perpetrators were using parental alienation as a counter claim.²⁰⁵ Despite the implementation of PD25 and the formulation of standards for experts, the study found evidence of unqualified experts and 'only one tenth of experts were engaged in clinical practice alongside the provision of expert witness work'.²⁰⁶ Their report recommended that the Ministry of Justice should conduct a review into the use of expert psychological witnesses and called for experts to be registered with a professional body while continuing working within a practice-based framework.²⁰⁷

Interestingly (as briefly mentioned) the Transparency Project a charity with a mission for open justice in the family courts, published a guidance note on using experts in the family courts for professionals and parents.²⁰⁸ The guidance attempted to detail the process of instructing an expert, expectations, and information regarding funding. While the document may influence women's experiences of having an expert as part of their own case, it may have been preferable to separate the guidance into parents and professionals, in order to make the information more accessible for both groups.

In 2019, the President of the Family Division, Sir Andrew McFarlane called for several working groups to evaluate the operation of the family courts. It is not clear as to the main reason for this however, this decision can be seen against a backdrop of domestic abuse organisations calling for an overhaul of the practices of the family courts, the Domestic Abuse Act 2021, and growing media attention and campaigns also calling for an enquiry.²⁰⁹ The Working Group into Medical Experts in the Family Court surveyed a mixture of 709 legal and medical professionals and there seems to

²⁰⁴ Brown and others (n 200)

²⁰⁵ Birchall and others (n 1)

²⁰⁶ *ibid* 35

²⁰⁷ *ibid* 55

²⁰⁸ The Transparency Project, *The Use Of Experts in Family Court Cases Involving Children*, (The Transparency Project 2019) <https://transparencyproject.org.uk/experts/> [Last accessed 06/2022]

²⁰⁹ Birchall and others (n 1); For an example see Liz Perkins writing in the Daily Express, Liz Perkins, 'Nanny to MPS forced to give her daughter to her abusive ex- 'Hell on earth'.' *The Daily Express* (London 6 Aug 2019) <https://www.express.co.uk/news/uk/1162559/end-this-injustice-daily-express-crusade-court> [Last accessed 01/06/2022]

be no distinction between experts working in public or private law.²¹⁰ The findings taken from the surveys of medical professionals seem to suggest that the focus was on expert work carried out in public law proceedings, as opposed to both public and private law proceedings.

Overall, the group's findings reflected the experiences of experts involved in public law proceedings and called for a wider range of experts such as neurologists, paediatricians, radiologists for cases that need to address issues such as non-accidental head injuries. However, the working party's final report does not reflect the experiences of female survivors, or more broadly the experiences of parents in private law proceedings and is predominantly focused on experts in public law proceedings.²¹¹ As the working group continues, it remains to be seen whether their focus might shift towards some of the issues raised in this thesis which occur principally in private law proceedings.

1.10 Parental Alienation Theory

The increase in the international recognition of the parental alienation belief system, the growing acceptance of the theory by the family court in England and Wales and its proliferation into law and social science, including the work of experts, has caused polarising and adversarial controversy.²¹² So far the literature explored, has revealed that concerns have been raised about the use of parental alienation by perpetrators as a counter claim to allegations of domestic abuse.²¹³ This final section explores the aetiology of parental alienation theory, the development of the theory outside of England and Wales and the current position of parental alienation theory in the England and Wales Family Court.

1.10.1 Dr Richard Gardner

Dr Richard Gardner has been credited with coining the term parental alienation Syndrome ("PAS"), which he described as 'a disturbance in which children are obsessed with deprecation and criticism of a parent's denigration that is unjustified

²¹⁰ Sharon Segal, Working Group on Medical Experts in the Family Courts, Final Report (Judiciary UK 2020), <https://www.judiciary.uk/wp-content/uploads/2020/11/Working-Group-on-Medical-Experts-Final-Report-v.7.pdf> [Last accessed 01/10/2020]

²¹¹ *ibid*

²¹² APPG (n 70); Meier (n 151)

²¹³ Birchall and others (n 1); Hunter and others (n 5)

and/or exaggerated' that results in the alienation of one parent in favour of the other.²¹⁴ However, the concept of aligning a child against a parent was identified earlier by divorce researchers Wallerstein and Kelly in 1976.²¹⁵

Gardner began his psychiatry career by counselling divorcing couples who he considered to be involved in 'high conflict' divorces, a term that is still used today. Gardner claimed that through his work with families he started to see a pattern of behaviour that he explained to be a 'psychiatric disturbance that arises in the context of litigated child custody disputes, especially when a dispute is long and acrimonious'.²¹⁶ Crucially, Gardner believed that during separation women would make false allegations of sexual abuse carried out by the father against the child in an attempt to align the child with the mother and this amounted to a syndrome that could be classified into three groups of severity: mild, moderate and severe.²¹⁷ Criticised for his circular reasoning, Gardner began to use his theories, based upon his own clinical work, to underpin his expert witness work, and his academic career, writing prolifically in several journals, most notably *The American Journal of Family Therapy* and publishing his work through his own publishing house, Creative Therapeutics Inc.²¹⁸

Gardner named his theory parental alienation 'syndrome' because he believed that he had identified a group of symptoms that exclusively presented in a child who had been coerced by one parent (usually the mother), to alienate the other (usually the father),

²¹⁴ Richard A Gardner, 'Trends in Divorce and Custody Litigation' (1985) 29(2) *Academy Forum* 3-7

²¹⁵ Judith S Wallerstein and Joan B Kelly, 'The effects of parental divorce: Experiences of the child in later latency' (1976) 46(2) *American Journal of Orthopsychiatry* 256-269; Joan B Kelly and Janet R Johnston, 'The Alienated Child. A reformation of Parental Alienation Syndrome' (2001) 39(3) *Family Court Review* 249-266; Joan S Meier, 'A Historical Perspective on Parental Alienation Syndrome and Parental Alienation' (2009) 6(3-4) *Journal of Child Custody* 232-257; Miguel Clemente and Dolores Padilla-Racero, 'Are children susceptible to manipulation? The best interest of children and their testimony' (2015a) 51 *Children and Youth Services Review* 101-107; Miguel Clemente and Dolores Padilla-Racero, 'Facts speak louder than words: Science versus the pseudoscience of PAS' (2015b) 56 *Children and Youth Services* 177-184; William Bernet, Maria Cristina Verrocchio and Stanley Korosi, 'Children are susceptible to manipulation: Commentary on article by Clemente and Padilla-Racero' (2015) 56 *Children and Youth Services Review* 135-138; Julie Doughty, Nina Maxwell and Tom Slater, Review of research and case law on parental alienation (Cafcass Cymru 2018)

²¹⁶ Richard A. Gardner, 'Family therapy of the moderate type of parental alienation syndrome' (1999) 27(3) *The American Journal of Family Therapy* 195-212

²¹⁷ Gardner (n 207)

²¹⁸ Jean Mercer, 'Are intensive parental alienation treatments effective and safe for children and adolescents' (2019) 16(1) *Journal of Child Custody* 67-113; Meier (n 208); Clemente and others (n 208b); William O' Donahue, Lorraine T Benuto & Natalie Bennett, 'Examining the validity of parental alienation syndrome' (2016) 13(2-3) *Journal of Child Custody* 113-125

during acrimonious divorce proceedings where there is contested custody.²¹⁹ Gardner diagnosed parental alienation syndrome on a cluster of eight symptoms, or primary manifestations, which were displayed by the child and included a campaign of denigration (against the father – the alienated parent), lack of ambivalence, absence of guilt and the presence of borrowed scenarios.²²⁰ Gardner believed that the child was an active participant and, over time, suggested that it applied to any child who refused to see the non-resident parent, i.e. the father.²²¹ Gardner designed a treatment regime for the syndrome, aimed at trying to de-programme the child and change their behaviour towards the alienated parent, by using a series of threats that gradually increased in their severity. This began with a therapist suggesting that if the child did not see the alienated parent, then a series of sanctions would be deployed which would ultimately be supported by the family courts, progressing to the severe action of transferring residence of the child to the ‘alienated parent’.²²² Gardner underpinned his theory of parental alienation syndrome by asserting that true allegations of sexual abuse, and later abuse more broadly, were a rarity but stated that ‘when bona-fide abuse-neglect is present, then the parental alienation syndrome diagnosis is not applicable’.²²³ Despite this, Gardner failed to define what he meant by bona fide abuse and how it should be managed. Gardner’s clinical experience and understanding of sexual abuse, or indeed abuse across the spectrum, is not clear but much criticism

²¹⁹ Richard A Gardner, ‘Differentiating between parental alienation syndrome and bona fide abuse-neglect’ (1999) 27(2) *The American Journal of Family Therapy* 97-107; Sandra S Berns, ‘Parents behaving badly: Parental alienation syndrome in the Family Court-magic bullet or poisoned chalice?’ (2001) 15(3) *Australian Journal of Family Law* 191-214; Joan S Meier and Sean Dickson, ‘Mapping Gender: Shedding Empirical Light on Family Courts’ Treatment of cases involving Abuse and Alienation’ (2017) 25(2) *Minnesota Journal of Law & Inequality* 311-334

²²⁰ Richard A Gardner, ‘Recommendations for Dealing with Parents Who Induce a Parental Alienation Syndrome in Their Children’ (1998) 28(3/4) *Journal of Divorce and Remarriage* 1-23; Gardner (n 212); Richard A Gardner, ‘Parental Alienation Syndrome vs. Parental Alienation: Which Diagnosis Should Evaluators Use in Child-Custody Disputes’ (2002a) 30(2) *The American Journal of Family Therapy* 93-115; Clemente and others (n 208); Richard A Gardner, ‘Denial of the Parental Alienation Syndrome Also Harms Women’ (2002b) 30(3) *The American Journal of Family Therapy* 191-202; Richard A Gardner, ‘Misinformation Versus Facts About the Contributions of Richard A. Gardner, M.D.’ (2002c) 30(5) *The American Journal of Family Therapy* 395-416; Richard A. Gardner, ‘Response to Kelly/Johnston article’ (2002d) 17(2) *Speak out for children* (a publication of the Children’s Rights Council) 6-10; Richard A Gardner, ‘Does DSM-IV Have Equivalents for the Parental Alienation Syndrome (PAS) Diagnosis’ (2003) 31(1) *The American Journal of Family Therapy* 1-21; Richard A Gardner, ‘The Relationship Between the Parental Alienation Syndrome (PAS) and the False Memory Syndrome (FMS)’ (2004) 32(2) *The American Journal of Family Therapy* 79-99; Clemente and others (n 208b); Clemente and others (n 213) 3

²²¹ Carol S Bruch, ‘Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases’ (2001) 14(4) *Family Law Quarterly* 381-400; Suzanne Zaccour, ‘Parental Alienation in Quebec Custody Litigation’ (2018) 59(4) *Les Cahiers de Droit* 1073-1111

²²² Gardner (n 213) 5

²²³ Gardner (n 207); Gardner (n 212)

has been levelled at his training, evidence base, his beliefs on sexual behaviour and his view of women.²²⁴ By the late 1990's Gardner's theory was largely discredited due to its lack of scientific credibility, empirical foundation or rigour and support of empirical research.²²⁵

Despite Gardner's theory largely falling out of favour in the 1990s efforts still remained by professionals and academics in certain jurisdictions around the world to assert that it was valid. Since the 1990s proponents of parental alienation theory have continued to push for its acceptance, and many have sought to distance themselves from Gardner's original concept of Parental Alienation Syndrome by re-naming it as parental alienation.²²⁶ However, it is argued that despite the rejection of parental alienation as a specific syndrome the term parental alienation is still used in practice to refer to Parental Alienation Syndrome.²²⁷ Importantly, the idea that the alienated parent's allegations of abuse (and subsequently a child's allegations) are mostly always false continues to appear to be one of the core concepts accepted by the majority of parental alienation proponents.²²⁸ This is despite proponents, such as Baker and Darnall, claiming that it was important to note that when there is a legitimate reason for the child's fear and hostility towards the targeted parent, such as founded abuse or neglect, the negative reaction to the parent is not considered parental alienation by Gardner.²²⁹

²²⁴ Linda C Neilson, Joan Meier, Elizabeth Sheehy, Margaret Jackson, Ruth Halperin-Kaddari, Susan Boyd, Peter Jaffe and Simon Lapierre, Collective Memo of Concern to: World Health Organisation, (2019), <https://www.learningtoendabuse.ca/docs/WHO-September-24-2019.pdf>. [Last accessed 20/06/2022]

²²⁵ Bruch (n 214); Kelly and others (n 208); Meier (n 208); Meier and Dickson (n 212); Zaccour (n 214); Doughty and others (n 208) 5

²²⁶ However, some proponents still use the term Parental Alienation Syndrome, see Amy J Baker, <https://www.amyjbaker.com>. [Last accessed 20/06/2022]

²²⁷ Doughty and others (n 208) 5; Meier (n 208)

²²⁸ Clemente and others (208a); Bernet and others (n 208); Clemente and others (n 208b)

²²⁹ Amy JL Baker and Douglas C Darnall, 'A Construct Study of the Eight Symptoms of Severe Parental Alienation Syndrome: A Survey of Parental Experiences' (2007) 47(1/2) *Journal of Divorce and Remarriage* 55-75, 56; see also Joan B Kelly 'Commentary on "Family Bridges: Using insights from social science to reconnect parents and alienated children" (Warshak, 2010)' (2010) 48(1) *Family Court Review* 81-90, who suggests that Family Bridges is not suitable for children whose rejection is a reasonable and a proportionate response, warranted by the history of the child's relationship with the rejected parent, such as those harmed by a parent's substance abuse or violent behaviour

1.10.2 Parental Alienation outside of England and Wales

Currently, parental alienation has no official or commonly accepted definition and the way in which proponents recognise alienation, distinguish it from the syndrome and treat it, varies according to the individual.²³⁰ Although this chapter focuses on literature predominantly derived from England and Wales, the majority of the literature relating to parental alienation is from other jurisdictions, particularly North America and Canada.²³¹ However, due to the belief that there is an increase in family court cases in England and Wales where parental alienation is cited, it is important to have an understanding of international thinking as arguably this will have an influence.²³²

As Doughty, Maxwell and Slater identified international research is dominated by a small group of authors who appear quite polarised in their acceptance or rejection of the nature and prevalence of parental alienation.²³³ There is also a lack of consensus between proponents over whether it remains a syndrome, how it is identified, whether treatment is child or parent centred, if a transfer of residence is necessary and whether reunification therapies are necessary.²³⁴ Reunification therapies are an intensive form

²³⁰ Ludwig Lowenstein, 'Parental alienation and the judiciary' (1999) 67(3) *Medico-Legal Journal* 121-123; Doughty and others (n 208); Meier (n 151)

²³¹ See also, Glòria Casas Vila, 'Parental Alienation Syndrome in Spain; opposed by the government but accepted by the courts' (2020) 42(1) *Journal of Social Welfare and Family Law* 45-55; Jodi Death, Clare Ferguson and Kylie Burgess, 'Parental alienation, coaching and the best interests of the child: Allegations of child sexual abuse in the Family Court of Australia' (2019) 94 *Child Abuse & Neglect* 1-10; Vivienne Elizabeth, 'The affective burden of separated mothers in PA(S) inflected custody law systems; a New Zealand case study' (2020) 42(1) *Journal of Social Welfare and Family Law* 118-129; Mariachiara Feresin, 'Parental Alienation (Syndrome) in child custody: survivors' experiences and the logic of psychosocial and legal services in Italy' (2020) 42(1) *Journal of Social Welfare and Family Law* 56-67; Simon Lapierre, Patrick Ladouceur, Michèle Frenette and Isabelle Côté, 'The legitimization and institutionalization of 'parental alienation' in the Province of Quebec' (2020) 42(1) *Journal of Welfare and Family Law* 30-44

²³² See Adrienne Barnett, 'A genealogy of hostility: parental alienation in England and Wales' (2020) 42(1) *Journal of Social Welfare and Family Law* 18-29; See also, Matthew Richardson, 'Parental Alienation: the vital early stages of litigation' (2019) 16(1) *Family Law*

²³³ Doughty and others (n 208)

²³⁴ For an overview see, William Bernet, Nilgun Gregory, Kathleen M Reay and Ronald P Rohner, 'An Objective Measure of Splitting in Parental Alienation: The Parental Acceptance-Rejection Questionnaire' (2017) 6(3) *Journal of Forensic Sciences* 776-783; Baker (n 219); Leslie M. Drozd and Nancy Williams, 'Is it abuse, alienation and/or estrangement? A decision tree' (2004) 1(3) *Journal of Child custody* 65-106; Michael Saini, Janet R Johnston, Barbara Jo Fidler and Nicholas Bala, 'Empirical evidence of alienation' in Leslie M Drozd, Michael Saini and Nancy Olesen (eds) *Parenting plan evaluations: applied research for the family court* (Oxford University Press 2016) 374; Linda C. Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton McQueen Ferguson Centre for Family Violence Research and Vancouver: The FRED Centre for Research on Violence Against Women and Children 2018)

of treatment for parental alienation and are predominately found in the U.S. However, the theory underpinning the treatment is also being used in other jurisdictions, including England and Wales, and will be discussed in the next the next section. Although debate exists about the validity, effectiveness, and the potential long-term harm that reunification treatments can have on families and particularly children, they remain a favoured treatment model for parental alienation in the USA.²³⁵ Reunification therapy is a psychological intervention over a set period of time, that is usually directed at changing the behaviour of the child but often can include the parents too. Treatment options differ depending upon the professional who is carrying out the therapy. A range of treatment options are available in the U.S including residential reunification camps whereby a child is removed from the preferred parent (usually with no contact allowed) for days, or even week, and has to undertake intensive treatment which may include watching videos on cognitive biases and removing alienating language.²³⁶ One of the better-known reunification treatment centres, the trademarked Building Family Bridges, was founded by psychologist Dr Richard Warshak and has been reported to charge approximately \$20,000 for a programme and can be ordered by the U.S Family Court.²³⁷

After evaluating U.S based parental alienation treatments, Mercer concluded that they lacked evidence base, had a potential for harm and that the family court should not order treatment.²³⁸ Importantly, Mercer also highlighted that the trademarked treatments ‘should never be regarded as evidence-based because of the conflicts of interests between commercial and scientific goals’, a point that this chapter will shortly return to.²³⁹ Doughty, Maxwell and Slater also concluded that they were ‘not able to

²³⁵ Stephanie Dallam and Joyanna L Silberg, ‘Recommended treatments for “parental alienation syndrome” (PAS) may cause children foreseeable and lasting psychological harm’ (2020) 13(2-3) *Journal of Child Custody* 134-143; Mercer (n 211)

²³⁶ Mercer (n 211) 81

²³⁷ Mercer (n 211) 81; see also Richard Warshak, ‘Reclaiming Parent-child Relationships: Outcomes of Family Bridges with Alienated Children’ (2019) 60(8) *Journal of Divorce & Remarriage* 645-667; Richard Warshak, <https://www.warshak.com/services/family-bridges.html> [Last accessed 20/08/2021]; <https://buildingfamilybridges.com> [Last accessed 20/08/2021]

²³⁸ Mercer (n 211)

²³⁹ Gerald M Rosen and Gerald C Davison, ‘Psychology should list empirically supported principles of change and not credential trademarked therapies or other treatment packages’ (2003) 27(3) *Behavior Modification* 300-312; Mercer (n 211) 1

identify any robust evidence for validated interventions and treatments around parental alienation'.²⁴⁰

1.10.3 Parental Alienation in the England and Wales Family Court

The first published England and Wales Family Court case to report parental alienation syndrome was the previously mentioned Court of Appeal hearing *Re L, V, M, H*.²⁴¹ A prominent proponent, at the time, of Parental Alienation Syndrome in England and Wales was psychologist Dr Ludwig Lowenstein who wrote prolifically (publishing over 100 articles and a book) and described Parental Alienation Syndrome as a “vicious form of gender opportunism or gender apartheid”.²⁴² Lowenstein is also known for his role as an expert witness in *Re L, V, M, H* who advocated for the acceptance that Parental Alienation Syndrome. However, the trial judge and the Court of Appeal described him as at “one end of a broad spectrum of mental health practitioners”.²⁴³ Lowenstein’s expertise was discredited in favour Dr Sturge and Dr Glaser’s expert opinions who questioned the validity of Parental Alienation Syndrome particularly because the ‘syndrome’ was not a classified internationally as a disorder and was not recognised by UK mental health systems/agencies.²⁴⁴ Although Lowenstein was discredited, and Parental Alienation Syndrome was disputed, Lowenstein, and father’s rights groups, such as Father’s 4 Justice, continued to advocate for an acceptance of the concept.²⁴⁵

Although Parental Alienation Syndrome was dismissed by the Court of Appeal hearing, parental alienation has continued to gain more acceptance since this time by certain experts, who have arguably imported Gardner’s concept of a syndrome under another guise.²⁴⁶ It is now understood that when the term parental alienation is not explicitly used within family court proceedings, other terms can be used instead with the intention that they allude to or mean parental alienation, such as ‘implacable hostility’ and ‘alienating behaviours’.²⁴⁷

²⁴⁰ Doughty and others (n 208)

²⁴¹ *Re L (Contact: Domestic Violence)* (n 98)

²⁴² Lowenstein (n 223)

²⁴³ *Re L (Contact: Domestic Violence)* (n 98)

²⁴⁵ Barnett (n 225); Doughty and others (n 208); John Mitchell, ‘Parental alienation syndrome; the debate’ (2002) 70(4) *New Law Journal* 776-783

²⁴⁶ Barnett (n 225)

²⁴⁷ Birchall and others (n 1); Doughty and others (n 208)

Currently there is no empirical evidence available on the prevalence of allegations of findings of parental alienation in the England and Wales family court.²⁴⁸ Doughty, Maxwell and Slater²⁴⁹ and Barnett²⁵⁰ provide the only current pieces of peer reviewed research which specifically focuses on parental alienation in England and Wales.

Doughty, Maxwell and Slater carried out a review of parental alienation research, including treatments, and case law between 2000 and 2018. The research did not include cases of domestic abuse and was only able to include published cases which had been heard in the High Court or Court of Appeal because judgments of the lower courts are rarely published. This resulted in 28 cases being reviewed within the study and concluded that there was a limited evidence base for parental alienation due to the lack of robust empirical studies and direct reference to research in court judgments was very rare in England and Wales.²⁵¹ The authors concluded that the treatments reviewed, which as mentioned were mainly in the U.S would not ‘stand up to robust scrutiny from National Institute for Clinical Excellence (NICE) (2012)’.²⁵²

Barnett was able to review all reported and published judgments from 2000-2019 where parental alienation, or associated terms of parental alienation, had been used. Barnett’s study produced 40 cases in 54 judgments. However, Barnett concluded that these cases were not able to provide a representative sample as the majority of cases are heard in the lower courts and their judgments are rarely reported or published.²⁵³ Barnett highlighted the increasing ‘enthusiasm’ for transferring residence of children from ‘alienating mothers’ to fathers and how parental alienation is used as an effective and powerful counter allegation to domestic abuse.²⁵⁴ Importantly, the case law revealed that once parental alienation has been raised within proceedings it has the ability to dominate to the exclusion of all else, including domestic abuse.²⁵⁵ Pertinent to this study, Barnett also explained that the increasing acceptance of parental alienation in the England and Wales Family Court has been partly due to credible experts who import Parental Alienation Syndrome under the guise of parental

²⁴⁹ Doughty and others (n 208);

²⁵⁰ Barnett (n 225)

²⁵¹ Doughty and others (n 208) 41

²⁵² Doughty and others (n 208) 27

²⁵³ Doughty and others (n 208); Barnett (n 225)

²⁵⁴ Barnett (n 225) 9

²⁵⁵ Barnett (n 225) 9

alienation.²⁵⁶ Barnett refers to Birchall and Choudhry who suggested that credible experts can make a father's case almost unanswerable.²⁵⁷ As soon as parental alienation is alleged, domestic abuse is either dismissed or reduced down to a divorce involving 'high conflict',²⁵⁸ as Gardner's original Syndrome also did, obscuring the abuse, and placing (usually) mothers and children at greater harm of further abuse.²⁵⁹

Notably, in 2016, Cafcass published a pathway which supported the idea of a high conflict divorce and despite the pathway being revised in 2018, survivors told the Harm Panel inquiry, in 2020, that they felt that domestic abuse was still being reframed as high conflict relationship.²⁶⁰ Cafcass have also produced a 'Implacable hostility-Parental Alienation resources' pack available from the Cafcass library which details the work of U.S advocates as well as Lowenstein and current U.K advocates Karen Woodall.²⁶¹ Cafcass continue to have 'Guidance on recommendations for the child when alienation is a factor' in the resources section of their website.²⁶²

Birchall and Choudhry and the Harm Panel Report²⁶³ have both highlighted survivors' lived experiences of the use of parental alienation in the family courts. Survivors have reported that they have been too frightened to raise allegations of domestic abuse because they fear that they will be accused of parental alienation and be at risk of losing their child/ren.²⁶⁴ This has also been compounded by the attitudes of legal professionals, and judges, towards survivors who are often met with suspicion and/or disbelief as their allegations of domestic abuse are seen as a mechanism to try to prevent a relationship between a father and his child/ren.²⁶⁵ As previously discussed,

²⁵⁶ Barnett (n 225) 9

²⁵⁷ Barnett (n 225) 9; Birchall and others (n 1)

²⁵⁸ See Barnett (n 225) 6

²⁵⁹ Birchall and others (n 1)

²⁶⁰ Cafcass, Cafcass Child impact assessment framework, <https://www.cafcass.gov.uk/grown-ups/professionals/ciaf/?highlight=CIAF>; <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parental-alienation/> [Last accessed 01/07/2021]; Hunter (n 5) 9

²⁶¹ Cafcass, 'Implacable hostility-Parental alienation resources' for a copy -library@cafcass.gsi.gov.uk

²⁶² Cafcass, 'Resources for assessing child refusal/resistance', <https://www.cafcass.gov.uk/grown-ups/professionals/ciaf/resources-for-assessing-child-refusal-resistance/> [Last accessed 20/08/2021]

²⁶³ Birchall and others (n 1); Hunter and others (n 5))

²⁶⁴ Birchall and others (n 1); Barnett (n 6)

²⁶⁵ Adrienne Barnett, 'Contact at all cost? Domestic violence and children's welfare' (2014) 26 *Child and Family Law Quarterly* 439-462; Adrienne Barnett, "'Like gold dust these days': Domestic violence fact-finding hearings in child contact cases' (2015) *Feminist legal Studies*, 23 47-78; Barnett (n 90); Coy and others (n 41); Harrison (n 66) 1; Harwood (n 42); Hunter and others (n 142); Hunter and others (n 5); Radford and others (n130); Thiara and Gill (n 98))

there have been concerns about the application of PD12J and the pro-contact culture within the England and Wales Family Court. The fear that parental alienation will be used as a counter allegation to any domestic abuse allegations has the capacity to prevent the implementation of PD12J, and any subsequent fact-finding hearings, as allegations of parental alienation are not managed by the family Court in the same way.²⁶⁶ As Meier concludes, counter allegations of parental alienation are often more powerful in the U.S, even when there have been findings made of domestic abuse and mothers had an increased chance of losing residency of their child/ren.²⁶⁷

Due to the lack of empirical research, the accessibility of court data and the way in which parental alienation is defined within the England and Wales Family Court there is no empirical data on how parental alienation is recognised or ‘treated’ in this jurisdiction. While literature exists relating to parental alienation treatments in North America it is less clear what happens in England and Wales once parental alienation has been determined by the family court.²⁶⁸ Doughty, Maxwell and Slater found that many of the interventions that they reviewed were mostly in North America and were ordered by the court, which is in contrast to England and Wales, whereby a court is not allowed to order treatment or therapy (although the court can expect it to happen).²⁶⁹

The way in which parental alienation is recognised, managed and/or treated within the England and Wales Family Court is still not properly understood. Recent case law suggests that if parental alienation is found then there has been an increase in treating it with parental alienation therapeutic intervention and /or a transfer of residence.²⁷⁰ An example of a case where a transfer of residence was ordered because of parental alienation is in *A (Children) (Parental Alienation)*.²⁷¹ The psychotherapist involved, who was also involved in another parental alienation case mentioned shortly,²⁷² asserted that a transfer of residence would be the only way to treat the parental alienation and

²⁶⁶ Doughty and others (208)

²⁶⁷ Meier (151)

²⁶⁸ See Mercer (n 211)

²⁶⁹ Doughty and others (n 208)

²⁷⁰ See, *A (children) (Parental Alienation)* [2019] EWFC B56; *X, Y and Z (Children: Agreed Transfer of residence)* [2021] EWFC 18

²⁷¹ *A (Children) (Parental Alienation)* (n 262)

²⁷² The same clinician was involved in a later mentioned case *Re H (Parental Alienation) PA* [2019] EWHC 2723 (Fam)

the child would 'emerge from the alienated state within minutes'.²⁷³ Despite this claim, the child was so distressed at being away from their mother that they were returned to their mother.

In 2020, Asen and Morris²⁷⁴ wrote about their work with families who have received support from the Anna Freud Centre for Children and Families. The psychiatrists discuss cases where allegations of domestic abuse have been made and the family courts are involved. The authors suggest that very often allegations are false, usually made by the mother against the father and framed as high conflict. Their 'family ties' model is clearly based upon Gardner's theory of parental alienation. Their guidance on treating alienating behaviour closely resembles Gardner's punitive measures which include transfer of residence.

In 2021, Mercer and Drew edited a book that provided an international perspective on parental alienation, as well as legal and scientific analysis.²⁷⁵ Barnett and two co-authors offer insight into parental alienation treatment in the US, as well as, for the first time, treatment in England.²⁷⁶

Most recently, in 2022, Birchall and Choudhry published findings of their exploratory study which analysed the experiences of women survivors of domestic abuse in the family courts in England.²⁷⁷ Seventy-two women participated in the study through a mixture of a survey, focus groups and interviews. Crucially, although not an initial focus, the prevalence of allegations of parental alienation made towards a survivor of domestic abuse emerged as a major finding.²⁷⁸ The study found that parental alienation allegations were used to: rebut allegations of domestic abuse and reinforce gender inequalities and oppressive constructions of masculinity and femininity.²⁷⁹ Birchall and Choudhry highlighted how the impact of parental allegations had the

²⁷³ *Re H (Parental Alienation)* PA [2019] EWHC 2723 (Fam) [11]

²⁷⁴ Eia Asen and Emma Morris, *High-conflict parenting post-separation: The making and breaking of family ties* (Routledge 2020)

²⁷⁵ Jean Mercer and Margaret Drew (eds), *Challenging Parental Alienation. New Directions for Professionals and Parents* (Routledge 2021)

²⁷⁶ Adrienne Barnett, Arianna Riley and Katherine, 'Experiences of parental alienation interventions' in Jean Mercer and Margaret Drew (eds), *Challenging Parental Alienation. New Directions for Professionals and Parents*, (Routledge 2021)

²⁷⁷ Jenny Birchall and Shazia Choudhry, 'I was punished for telling the truth': how allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse in family law proceedings' (2022) 6(1) *Journal of Gender- Based Violence* 115-131

²⁷⁸ Birchall and others (n 269)

²⁷⁹ Birchall and others (n 269)

dangerous function of silencing a child's wishes and voice as survivors were blamed for preventing the child to tell the truth.²⁸⁰ Over one third of the women who took part in the focus groups and interviews had had their children removed and transferred to the perpetrator as a result of parental alienation allegations.²⁸¹

Finally, Women's Aid asked for a 'call to action' in tackling the issues raised in the Harm Panel Report, two years on from its original publication.²⁸² The report specifically highlighted the need for 'action to tackle allegations of "parental alienation" being used in response to survivors' valid concerns around child safety'.²⁸³

As previously mentioned, the England and Wales Family Court cannot order therapy however it can make orders for parents to share the cost of therapy if it has been agreed.²⁸⁴ Similarly, to the cost of instructing an expert in private law proceedings, the cost of any recommended therapy can be prohibitive for parents but may have an impact on the child arrangements if it is not taken up.²⁸⁵ In a very recent case *Re H (Parental Alienation) PA*²⁸⁶, the judge ordered a transfer of residence of a 12-year-old boy from his mother to his father, after at least four parental alienation experts had been involved in assessing the situation.²⁸⁷ A short time later, in *Re H (costs)*²⁸⁸ the same judge ordered that the mother pay half the cost of the experts, at the total cost of £10,783.²⁸⁹ Notably, the judge stated that the mother had declined to engage with the professionals to undertake therapy which was an accepted pre-requisite to the commencement of re-establishing contact with her son.²⁹⁰ This leaves survivors in a vulnerable position whereby they not only are ordered into paying for experts/therapy they cannot afford but also, they are forced to engage with parental alienation therapies if they wish to see their child/ren again. There is currently no literature

²⁸⁰ Birchall and others (n 269)

²⁸¹ Birchall and others (n 269)

²⁸² Women's Aid, 'Two years, too long: Mapping action on the Harm Panel's findings' (Women's Aid 2022)

²⁸³ Women's Aid (n 274)

²⁸⁴ See *Re H (Costs)* [2020] EWHC B17 (Fam)

²⁸⁵ In *Re A (a Child)* [2007] EWCA Civ 899 the judge was highly critical of the father for not arranging an NHS mental health therapy (via Child and Adolescent Mental Health Services, CAMHS) for his son; In *Re L and M (Children; Private Law)* [2014] EWHC 939 (Fam) is an example of a court recommending therapeutic intervention (not for Parental Alienation) and both parties not being able to afford it

²⁸⁶ *Re H (Parental Alienation) PA* (n 265)

²⁸⁷ *Re H (Parental Alienation) PA* (n 265)

²⁸⁸ See *Re H (Costs)* [2020] EWHC B17 (Fam)

²⁸⁹ However, the published cost calculations appear to be incorrect.

²⁹⁰ *Re H (Costs)* [2020] EWHC B17 (Fam)

available which explores the cost of parental alienation expert witnesses or therapeutic interventions in England and Wales. Importantly, particularly for survivors and children, due to the way in which the current child arrangement programme is laid out in the law, there is no mechanism for a review hearing after a recommended treatment has been carried out and therefore there is currently no case law available to understand the outcomes of the orders made. *Re L (Costs)*²⁹¹ is one of the only pieces of published case law which gives a small insight into the cost of experts and parental alienation treatment centres in England. Doughty, Maxwell and Slater²⁹² do not detail the costs of the parental alienation treatments that were included in their review but because they are mainly in the US would be aligned to the costs mentioned by Mercer.²⁹³

Lastly, there have been cases which highlight the use of experts who then become the treating clinician, both pre and post court ordered assessments. The previously mentioned *Re H (Parental Alienation) PA*,²⁹⁴ is an example of this hybrid arrangement and calls into question issues regarding consent and coercion, particularly as the mother's only way of being able to see her child was if she engaged with parental alienation therapeutic work. Another case is *Re H (Children)*²⁹⁵ where the court appointed an expert who was allowed to carry out a 12-week therapeutic programme before reporting to the court.²⁹⁶ As a result, therapeutic relationships may have been established and a greater insight into the family dynamics had been able to be extricated by the 'treating' /expert clinician, a position that could not have been established with one initial, usual family court ordered assessment. The mother sought permission to appeal the decision not to treat the psychotherapist as an expert witness, but the judge determined that despite the 12-week programme the initial instruction had been for the clinician to be a Part 25 expert witness. As previously highlighted by Mercer,²⁹⁷ there are additional issues relating to conflicts of interest, particularly if the expert either recommends parental alienation therapy from themselves or recommends a treatment by a centre that they may be affiliated with.²⁹⁸ The emerging opportunity for experts to become treating clinicians is a grey area within

²⁹¹ See *Re H (Costs)* (n 272)

²⁹² Doughty and others (n 208)

²⁹³ Mercer (n 211)

²⁹⁴ *Re H (Parental Alienation)* (n 265)

²⁹⁵ *Re H (Children)* [2019] EWHC 237

²⁹⁶ *ibid*

²⁹⁷ Mercer (n 211) 81

²⁹⁸ For example: *Re A and B (Parental Alienation: No 1)* [2020] EWHC 3366

family law and it currently appears that it may be up to individual judicial interpretation of PD25 as to how much an expert becomes involved with a family.²⁹⁹

1.11 Conclusion

The literature review aimed to cover topics that reflected a survivor's journey through the England and Wales Family Court. The literature review did not strive to second guess what any study participants would eventually describe during their interviews but intended to understand the literature that informs current practice and legal and social scientific thinking.

The timeframe for the review was between 2000-2020 but was adjusted to reflect the time taken to complete the overall thesis, and therefore was added to up until October 2021. The literature review included peer reviewed academic papers, case law, book chapters, newspaper articles, research carried out by domestic abuse organisations as well as Cafcass and the Ministry of Justice. The literature review also included grey literature such as various guidance notes and blog posts as this is the information that is readily available to survivors of domestic abuse. The review attempted to identify literature that was solely related to the England and Wales Family Court, or at best the United Kingdom (despite the different jurisdictions). However, due to the lack of research and written literature on some issues, it extended the search to include other countries when necessary.

The prevalence of domestic abuse cases in private law child arrangements cases is considerably higher than in the general population and very often survivors believe that the family court is a place where they will be believed.³⁰⁰ Overall, the literature highlights the challenges survivors encounter when they try to raise allegations of domestic abuse. Very often, the way in which domestic abuse is documented contributes to its erasure as the case proceeds. One of the main themes identified within the literature is the continued focus on incident based models of domestic abuse rather than recognising patterns of behaviour. This reductive approach increases the risk to survivors in many ways, including the low prevalence of FFHs being held (or

²⁹⁹ Parental alienation as a belief system rather than a theory will subsequently be used in this thesis, see Mercer (n 211)

³⁰⁰ Barnett (n 6) Table 4.1, 20

FFH's being held but with no findings of domestic abuse), post-separation abuse and the family court ordering high risk contact.

The literature shows that there continues to be a poor understanding and recognition of domestic abuse in the family court, that the abuse is often dismissed or minimised and contact is more than likely to be ordered. Survivors' lived experiences continue to suggest that they are vulnerable to being referred to mediation or mediation style situations and/or orders are made for unsafe child contact arrangements, despite research highlighting the risks and harm that this can create.

Survivors are often under the misapprehension that a FFH will provide them an opportunity to prove that, on the balance of probabilities, the domestic abuse did occur and that they will be allowed a FFH. However, the literature continues to show that FFHs continue to be a rarity and that legal professionals often try to persuade survivors not to request one. Nevertheless, survivors who do succeed in being allowed a FFH often discover that these particular set of proceedings are traumatising and may not result in any finding of domestic abuse being made.³⁰¹ Furthermore, survivors are at risk of further harm, whether that is from counter-allegations of parental alienation, being disbelieved or from the risk of losing some or all contact with their children.

It is important to also point out that there are occasions where a fact-finding hearing is deemed not to be necessary because the domestic abuse has been admitted, or it is otherwise clear that the domestic abuse has happened without the need for this to be adjudicated on, for example, criminal convictions. Or if the perpetrator is not seeking any direct contact and a FFH would cause such trauma to a survivor that it would be disproportionate. On a broader level, It is also reasonable to suggest that legal professionals may also advise against a survivor requesting a FFH hearing because of the traumatising impact that they can have on a woman. Furthermore, a legal professional may also deter a survivor because of the high probability any evidence of domestic abuse provided to the court would be sufficient to prove that on the balance of probabilities the abuse did happen. Fact-finding hearings have financial, emotional and psychological ramifications on a survivor, regardless of the outcome, and the impact could be amplified if no findings are made.

³⁰¹ Hunter and others (n 5)

Another pertinent issue is that experts are bound by the findings of the court, regardless of whether a FFH has, or has not, been held. The high prevalence of domestic abuse found in private law proceedings and the poor recognition of the abuse by the court means that very often an expert will also be unable to recognise any domestic abuse during an assessment.

It is clear from an exploration of the literature that experts are instructed, as expert witnesses in Family Court proceedings, and are governed by their own regulatory bodies such as the HCPC,³⁰² British Association of Counsellors and Psychotherapists (“BACP”),³⁰³ General Medical Council (“GMC”)³⁰⁴ but an expert witness register, or expert witness governing body has not been established. Despite concerns being raised about the way in which experts are used in cases where domestic abuse has been alleged, particularly in private law proceedings, survivors’ experiences continue to reflect the need for a better understanding of how experts are instructed in the England and Wales Family Court.

The literature clearly shows that despite the implementation of PD12J and the subsequent amendments, and over two decades of research calling for changes, survivors continue to experience a cycle of failure in the family court. One of the central reasons to emerge, is the need for the family court to shift away from traditional expectations of the family and the role of women in society. Furthermore, the literature points towards the dissonance between the high prevalence of cases where allegations of domestic abuse are present and survivors’ lived experiences of managing unsafe contact following a final order.

Despite an extensive literature review, it is evident that the experiences of survivors, when an expert has been instructed, has not been written about or researched. Notably, Mr Justice Williams has been directed to investigate the role of experts within family proceedings by the President of the Family Court, Sir Andrew McFarlane, but the working group has failed to invite any parents to the panel. Arguably, a parent is as important as any legal professional and will be able to offer a valid experience.³⁰⁵

³⁰² Health Care Professionals Council, <https://www.hcpc-uk.org>. [Last accessed 20/06/2022]

³⁰³ British Association for Counselling and Psychotherapy, <https://www.bacp.co.uk> [Last accessed 20/06/2022]

³⁰⁴ General Medical Council, <https://www.gmc-uk.org> [Last accessed 20/06/2022]

³⁰⁵ Segal (n 204)

The aim of this doctoral research is to be able to understand the experiences of female survivors of domestic abuse when an expert has been instructed in private law child arrangement proceedings. Although there is evidence of research and literature relating to a survivor's journey through the family courts, there is no evidence of any literature exploring survivors' experiences of experts instructed in private law child arrangements proceedings. The Harm Panel Report was a landmark piece of research which placed survivors' experiences of the family courts at the centre and clearly shows that the family court needs to improve the way that cases of domestic abuse are managed. However, it was not able to specifically detail survivor experiences of instructing an expert. This is a significant gap in research because of the powerful role played by experts in family court proceedings.

The literature review supports the fact that that there is indeed a gap in knowledge relating to how survivors experience an expert being instructed in private law child arrangement proceedings.

Chapter 2

Methodology

2.1 Introduction

This study explored female survivor experiences of England and Wales private law child arrangements proceedings when an expert was instructed. It is a qualitative study that used a grand tour interview method to collect data from a sample of 29 women in England and Wales. This chapter outlines the theoretical framework that underpinned the study as well as the methods used to interpret the data. The chapter concludes by outlining ethical considerations, including the risks as a peer researcher.

2.2 Theoretical Framework

A theoretical framework is a set of ideas that acts like a lens with which to see the world and 'most feminists assume an integral relationship between theory and practice.'¹ This study is a piece of feminist research because it aimed to explore how women's experiences, and more pertinently experiences of domestic abuse, have been subjugated in favour of men's interests and how the instruction of an expert significantly contributed to the process.

A central tenet of feminist theory is the rejection of universal truth being produced through the positivist paradigm which has validated assumptions of masculinity and femininity. Generally, feminists believe that meaning can be only understood when it is grounded in experience.² 'Feminism, as a political and theoretical movement' is committed to understanding how and why women's experiences are oppressed and attempts to rectify this by using theory and research.³

2.3 Feminist Research

Feminist research began to emerge in response to the recognition that the systems that gave structure to the world failed to acknowledge that women's experiences and positions in society were different to men. These systems, including political, social,

¹ Chris Weedon, *Feminist practice & poststructuralist theory* (2nd edn, Blackwell Publishers Ltd 1987) 5

² Lisa Cosgrove, 'Feminism, Postmodernism and Psychological Research' (2003) 18 *Hypatia* 85-112

³ Vanessa Munro, *Law and Politics at the Perimeter. Re-Evaluating Key Debates in Feminist Theory* (Hart Publishing 2007) 11

cultural, and scientific, were governing women's daily lives on a micro and macro level and when scrutinised revealed that women were rendered invisible.

'The personal is political' a slogan attributed to second-wave feminism and made popular by Carol Hanisch's ⁴ seminal essay has been at the core of feminist research on domestic abuse.⁵ Second-wave feminism began to challenge the absence of women's voices and experiences across all systems that had resulted in women being 'othered'. Other, a term credited to the feminist writer Simone De Beauvoir, describes how historically women had not been considered autonomously but always in relation to a man and women's personal lives were generally confined to the private, or domestic, sphere within a traditional nuclear family.⁶ Rendering women's lives as private or existing behind closed doors 'protected' them from the public gaze and therefore inequalities could exist and go unchecked. This was harmful for the development of women's roles and space within all areas of society and particularly for women who experience domestic abuse.

'Traditionally the law has viewed violence in the family as a private issue, into which the law should not intrude, for fear of exposing the family to "public curiosity and criticism" and thus undermining it. Feminists have shown that, to the extent of family violence is beyond the reach of the law, men's abuse of *The second Sex* power over women is enabled and affirmed'.⁷

Feminists across the spectrum began to 'draw their attention to the politics of what had previously been regarded as paradigmatically non-political; the personal sphere of sexuality, of housework, of the family'.⁸ Broadly speaking, women realised that they needed to become political by challenging the systems in place that separated

⁴ Carol Hanisch, 'The Personal is Political' (1970), <https://webhome.cs.uvic.ca/~mserra/AttachedFiles/PersonalPolitical.pdf> [Last accessed 21/08/2020]

⁵ Jill Radford, Liz Kelly and Marianne Hester, 'Introduction' in Jill Radford Liz Kelly and Marianne Hester (eds) *Women, Violence and Male Power* (Routledge 1996) 2

⁶ Simone De Beauvoir *The Second Sex* (1st edn, Vintage 1949)

⁷ Katherine. T. Bartlett, 'Feminism and Family Law' (1999 33(3)) *Family Law Quarterly* 475-500

⁸ Susan Moller Okin, 'Gender, the public, and the private' in Anne Phillips (ed) *Feminism & Politics* (Oxford University Press 1998) 123

women's lives from the rest of society and governed all aspects of their lives, in particular the legal system.⁹

Social change as a political act was cited by the majority of survivors as the primary reason to participate in this study. Women described the need for their voice to be heard and for their experience to be recognised in relation to a man's, with the hope that their participation would change the future experience for other women and children. Survivors clearly articulated how their own personal risks and the potential impact of participating was outweighed by the opportunity to forge positive changes in the family justice system. Kaganas described this driving force to be a form of moral entrepreneurship, with its core commitment in trying to give a voice to oppressed women and encompasses characteristics which are pinnacle to feminist research.¹⁰

Feminist theory and research is not a 'unified project', and feminist theory itself is not unified but encompasses many feminisms, as there are many reasons why women continue to be subordinated, and various ways of combating this. However, its central and most distinguishing feature is the commitment to undermine traditional academic boundaries of the personal and political.¹¹ It has been over 70 years since De Beauvoir's claim and yet feminist research continues to challenge the ideology that men are the default human.¹²

This study draws on insights from post-structural feminism about the relationship between power and the production of knowledge as well as the political potential for change of standpoint feminism by privileging the experience of marginalised lives.

⁹ Carol Smart, *Feminism and the power of law* (Routledge 1989)

¹⁰ Felicity Kaganas, 'Domestic Violence, Men's Groups and the Equivalence Argument' in Alison Diduck and Felicity Kaganas (eds) *Feminist Perspectives on Family Law* (Routledge-Cavendish 2006) 141; Deborah L. Rhode, 'Feminist critical Theories' (1990) 42(3) *Stanford Law Review* 61-630; Gayle Letherby, *Feminist Research in Theory and Practice* (Open University Press 2003); Denise Leckenby, 'Feminist Empiricism: Challenging Gender Bias and "Setting the Record Straight"' in Sharlene Nagy Hesse-Biber and Patricia Leavy (eds), *Feminist Research Practice* (Sage Publications 2011); Basarat Hussain and Amir Zada Asad, 'A Critique on Feminist Research Methodology' (2012) *Journal of Politics and Law* 5 (4) 202-207

¹¹ Letherby (n 10) 4; Sandra Kemp and Judith Squires (eds) *Feminisms* (Oxford University Press 1998) 4

¹² Caroline Criado Perez, *Invisible women. Exposing data bias in a world designed for men* (Chatto & Windus 2020)

2.4 Post - Structural Theory

Post structural theory has arguably never been more relevant in a post-Trump era, as the politics of privileging one truth over another has played out globally with the birth of fake news, Me Too, Climate Change and Black Lives Matter. Closer to home, and pertinent to this study, England and Wales saw the publication of the 'Harm Panel Report', in 2020, which evidenced the way in which the experiences of survivors of domestic abuse were discounted in favour of their abuser within private law family proceedings.¹³

At its most basic, post-structuralism is a theoretical framework, or an epistemological standpoint, that acts as a lens with which to view the world, aiming to understand how and what knowledge is produced.¹⁴ The French philosopher Michel Foucault (1926 - 1984) was one of the most influential post-structural theorists and his analysis of power will underpin this study.

Post-structuralism rejects modernist claims that absolute truth and objectivity can only be produced through the positivist paradigm of validity, rationality, and scientific method, and therefore sits well with feminist thinking.¹⁵ Foucault does not suggest that positivism is not credible but questions existing ways of thinking so people are freer to recognise authoritative knowledge.¹⁶ By this, Foucault means that multiple truths, or knowledge, exist that are all different in amplitude, chronological breadth, and capacity, which create different effects.¹⁷ Essentially, knowledge is manifold because it is not 'discovered' in the way that a positivist paradigm claims but is made up of socially constructed discourses, or systems of thought and language, 'that create meaning in different ways'.¹⁸

¹³ Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020)

¹⁴ Letherby (n 10)

¹⁵ Nicola Gavey, 'Feminist poststructuralism and discourse analysis. Contributions to Feminist Psychology' (1989 35(1)) *Psychology of Women Quarterly* 183-188; Louise McNay, *Foucault. A Critical Introduction* (Polity Press 1994); Cosgrove (n 2) 97; Joey Sprague, *Feminist methodologies for critical researchers. Bridging differences* (Rowan & Littlefield 2016)

¹⁶ Caroline Ramazanoglu, *Feminist Methodology. Challenges and Choices* (Thousand Oaks 2003); McNay (n 15) 25

¹⁷ Paul Rainbow (ed), *The Foucault Reader* (Oxford 1984)

¹⁸ Weedon (n 1) 22; Dean MacCannell and Juliet Flower MacCannell, 'Violence, power and pleasure. A revisionist reading of Foucault from the victim perspective' in Caroline Ramazanoglu, *Up Against Foucault. Explorations of some tensions between Foucault and Feminism* (Routledge 1993); Julie Wallbank, 'An unlikely match? Foucault and the lone mother' (1998) 9 *Law and critique* 59-88

At the core of post-structural theory is the notion that the production of knowledge is always 'bound up with historically specific regimes of power, and therefore, every society produces its own truths which have a normalising and regulatory function'.¹⁹ Foucault uses the term Power/Knowledge to convey the idea that 'in the modern world, the two are inextricably linked: power is enacted through the organisation of knowledge, and knowledge is constructed as a form of domination'.²⁰

Totalising concepts which have previously been used to explain the mechanisms of oppression have been criticised for hiding more than they reveal 'and being much more complex than previous analysis' had considered.²¹ Foucault does not consider power to be a repressive force monopolised by the State but instead described power as productive and complex, running through every individual and system like a capillary network, or micro-structures.²² Power is relational and should not be seen in its totality but on micro and macro levels that cannot be transcended but only negotiated and managed in ways that create greater or lesser opportunities for resistance and destabilisation.²³ Foucault described this as a precarious system of power that never finds congruence with the object but distance and domination.²⁴

But how do discourses attain and maintain dominance? Put simply, power co-exists with resistance and it is this tension that produces new knowledge and therefore new power. It is this tension that creates a dominant discourse and as a result, has the ability to discount all other competing discourses and render them inferior.

Post-structural theory is able to show how dominant discourses are seen, for an indeterminate period of time, to embody absolute truths and how this power maintains a particular social system, school of thought and behaviour. At this point, there is a

¹⁸ Louise McNay (n 15) 25

¹⁹ Louise McNay (n 15) 25

²⁰ Sprague (n 15) 34

²¹ Susan B Boyd, 'Some Postmodernist challenges to feminist analyses of law, family and state: Ideology and discourse in child custody law' (1991) 10 *Canadian Journal of Family Law* 79-113

²² Dominique D Fisher, Review Essay. Should Feminists "Forget Foucault"? (1998) 22(11) *Studies in 20th Century Literature* 227-244; Munro (n 3) 90

²³ Vanessa E Munro, 'Violence Against Women, 'Victimhood' and the (Neo) Liberal State' in Margaret Davies and Vanessa E Munro (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Routledge 2013) 236

²⁴ Michel Foucault, *Power: Essential works of Foucault 1954-1984, Vol. 3* (Penguin Classics 2020)

tension between the dominant claim to truth, and what is considered to be less true, and consequently the relations of power shift as new knowledge is given credibility.²⁵

Foucault distinguishes power as either juridical, bound up with notions of command, sanction and sovereignty or, disciplinary, that secures compliance through techniques of surveillance, normalisation and self-regulation.²⁶ Although Foucault was criticised for never addressing law as a system, other commentators have attempted to use his theory to show how it is, or is not, applicable to the law and how it operates to maintain its power.

Pertinently Smart uses the example of family law, relevant to this study, to explain how law's claim to truth attempts to maintain its authority by setting itself apart from the social order, as science also does, by using its own method of legal rigour.²⁷ It is useful to explore Smart's illustration to demonstrate why this study draws upon Foucault's theory of power to explore survivor experiences.

Historically, decisions about the welfare of the child had solely been made by judges as law had set itself aside from emerging disciplines, such as psychiatry or sociology, that also made claims to truth. But at the same time feminist discourses of motherhood were also competing to be heard. The law had to find ways of discerning what non-legal truths to make relevant and so gradually integrated psychiatry and social work into legal practice to help inform, not determine, judicial decisions. This process maintains the power of the law by mobilising other forms of power which creates new epistemic rules that have a normalising and regulatory effect.²⁸

This study's literature review and findings will demonstrate that Smart's analysis of law's maintenance of power concurs with what is currently being experienced by female survivors who claim that the family court privilege expert 'truth' over their own experiences.

²⁵ Sprague (n 15) 40; Louise McNay, 'The Foucauldian Body and the Exclusion of Experience' (1991) 6(3) *Hypatia* 125-139 125; Weedon (n 1) 34

²⁶ Munro (n 3) 66

²⁷ Smart (n 9) 10

²⁸ Smart (n 9) 10; Gerald Turkel, 'Michel Foucault: Law, Power and Knowledge' (1990) 17(2) *Journal of Law and Society* 170-193; Munro (n 3)

2.5 Feminist Post-Structural Theory

A predominant critique of Foucault's post-structural framework has been that his analysis 'perpetuates a gender blindness' and by doing so fails to recognise the meta-narratives which exist in response to the social institutions that regulate women's everyday lives.²⁹ This is problematic because women's experiences of the world are then seen in a collective form and as a result continue to be 'othered'. Importantly, the framework in its original form, does not take into account theories of intersectionality that uphold and value difference that should ground feminist scholarship.³⁰ Nevertheless, feminists have adopted post-structuralism as it provides a suitable lens with which to explain systemic power imbalances and gender can then be used to disrupt feminine and masculine subjectivities to understand why certain discourses are subjugated while others remain dominant.³¹

'Feminist post-structuralism, then, is a mode of knowledge production which uses post-structuralist theories of language, social processes and institutions to understand existing power relations and strategies for change'.³²

Foucault's ideas of power, and its capacity to maintain claims to truth by using a diffuse network of micro-powers, is significant when analysing survivors' experiences of the family courts. Women who see family court as a place of protection can be detrimentally affected by the normative frameworks of the nuclear family, gender, race, sexuality, and motherhood that dominate family law discourse.³³ Survivors within this study revealed how their experiences of domestic abuse had been discounted, or set aside, in place of more dominant discourses that value normative and regulatory expectations of motherhood. Survivors found that they were met with essentialist and contradictory expectations of what it means to be a good mother, as they were expected to protect their children by removing them from the abuse but at the same time promote 'contact at all costs' within a pro-contact framework that is accepting of

²⁹ McNay (n 15) 32

³⁰ Nancy Ettlinger, N, 'Delivering on Poststructural Ontologies: Epistemological Challenges and Strategies' (2014) 13(4) *ACME: An International E-Journal for Critical Geographies* 589-598

³¹ Adrienne Barnett, 'Contact and Domestic Violence: The ideological Divide' in Jo Bridgeman and Daniel Monk (eds) *Feminist perspectives on Child law* (Cavendish Publishing 2000)

³² Weedon (n 1) 40

³³ Susan B Boyd, 'Motherhood and Law' in Margaret Davies and Vanessa E Munro (eds) *The Ashgate Research Companion to Feminist Legal Theory* (Routledge 2013)

a certain level of abuse.³⁴ Furthermore, as Foucault's analysis of power demonstrates, dominant discourses of motherhood (and all this entails) are reinforced and perpetuated by the capillary networks of 'social agents', such as Cafcass and social services by their own regulatory measures that are empowered by the disciplinary power of the family court.³⁵

Interestingly, survivors often expressed their relief when an expert was deemed necessary in private law proceedings, as they hoped that the expert would be able to offer them a form of 'resistance' by reporting independently and identifying the domestic abuse. However, the 'interpenetration of legal and non-legal systems has generated an incredibly complex, incoherent, and confusing array of concepts'.³⁶ Arguably, these concepts are never value-free and like law, normative assumptions of womanhood are deeply entrenched in psychiatry and psychology.³⁷ Often, instead of identifying domestic abuse, the dominant discourses propagated by the family court are upheld by the psychological theories used to guide the expert report. Subsequent reports are found to reinforce notions of vengeful or damaged mothers through language, with the use of value laden terms such as 'implacably hostile' or 'enmeshed'. Critically, the expert report becomes a site of further oppression as it is used to inform the judicial decision-making process which, although expected to follow the same rules of objectivity as the expert, is influenced by the power of the micro-politics that law has accumulated over time.³⁸ Inevitably, this removes another possibility for a survivor to resist, particularly as challenges to expert reports are often met with opposition from the family court and perpetrators of domestic abuse.

While there are helpful aspects of post-structuralist theory, in particular in relation to explaining how power operates in the family court, this project does not seek to export

³⁴ See Marianne Hester, 'Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence' (2011) 41(5) *British Journal of Social Work* 873-853; Adrienne Barnett, "'Like Gold Dust These Day's": Domestic Violence Fact-Finding Hearings in Child Contact Cases' (2015) 23(1) *Feminist Legal Studies* 47-78

³⁵ Munro (n 3) 91

³⁶ Turkel (n 28) 180

³⁷ Cosgrove (n 2) 97

³⁸ Tony Ward, 'English Law's epistemology of expert testimony' (2006) 33(4) *Journal of Law and Society* 572-595; Munro (n 35) 90; Stephen Yanni, 'Experts as final arbiters: state law and problematic expert testimony on domestic violence in child custody cases' (2016) 16(2) *Columbia Law Review* 533-572

Foucault's ideas wholesale and recognises its limitations. There are other pertinent feminisms, and in particular standpoint feminism, which has great utility for this study.

Like post-structuralism, standpoint feminism, which emerged from the second-wave feminist movement, sees knowledge as socially situated. Unlike post-structuralism, however, standpoint feminism retains a commitment to the value of objectivity but sees socially situated knowledge from marginalised locations as enhancing, rather than detracting from the goal of objective enquiry by revealing subjugated truths. According to standpoint feminism, the social location of the knowing subject (in terms of gender, race, class, sexuality) informs and shapes what we know and how we understand the world and limits what we are able to know. With its commitment to advancing change in women's lives, standpoint feminism describes and analyses the effects of power structures on knowledge by privileging marginalised lives, in this case women's lived experiences, as the start and epicentre of social scientific enquiry. As Sandra Harding explained: "Standpoint theories map how a social and political disadvantage can be turned into an epistemic, scientific and political advantage."³⁹

Patricia Hill Collins who asserts that intellectual activism can be achieved by speaking truth to power, as many survivors believed that they were doing by participating in this study.⁴⁰ Dorothy Smith theorised that power is always a mobilisation of people's concerted activities, and resisted the view that knowledge necessarily creates a relationship to power.⁴¹ Privileging the accounts of the survivors who participated in this study, therefore, enables a greater understanding of the power structures underpinning family court proceedings and has immense potential for political change.

³⁹ Sandra Harding, ed., *The Feminist Standpoint Theory Reader* New York and London: Routledge, 2004, 7-8

⁴⁰ Patricia Hill Collins and Gloria Gonzalez-Lopez, 'Truth telling and intellectual activism' (2013) 12(1) *Contexts*

⁴¹ Mirja Eila Satka and Caroline Skehill, 'Michel Foucault and Dorothy Smith in case file research: Strange bed-fellows or complementary thinkers?' (2011) 11(2) *Qualitative Social Work* 191-205

2.6 Methodological Approaches

2.6.1 Discourse Analysis

Discourse analysis can be described as a set of approaches, rather than a method, that can be used ‘to investigate how meanings are produced within narrative accounts’ such as interview transcripts.⁴² Considered to be a discursive practice in itself, discourse analysis can be used to translate survivor voices into a theoretical account.⁴³ Cosgrove stresses the challenges feminist researchers face by becoming focused on the connections between power and experience when trying to find meaning in texts.⁴⁴ However, Thompson, Rickett & Day point out that a discourse analysis approach views discourse ‘as the primary site of power and meaning in construction of identity and meaning’.⁴⁵

Feminist post-structuralist research is compatible with discourse analysis because of its ability to pay attention to and ‘interrogate problematic patriarchal discourse’ which is central to survivor’s lived experiences of the family court.⁴⁶ Many feminist post-structural researchers conduct a form of discourse analysis that is informed by Foucault’s understanding of the relationship between discursive practices and cultural and social structures.⁴⁷

This study used feminist post-structural discourse analysis to explore how meaning within child arrangements proceedings was produced rather than revealed and investigated if, and how, dominant discourses are resisted.⁴⁸

⁴² Maureen C McHugh, ‘Feminist Qualitative Research: Toward Transformation of Science and Society’ in Patricia Levy (ed) *The Oxford Handbook of Qualitative Research* (Oxford University Press 2014)

⁴³ Lucy Thompson, Bridgette Rickett, and Katy Day, ‘Feminist Relational Discourse Analysis; putting the personal in the political in feminist research’ (2018) 15(1) *Qualitative Research in Psychology* 93-115

⁴⁴ Cosgrove (n 2) 100

⁴⁵ Thompson and others (n 40) 94

⁴⁶ Weedon (n 1); Gavey (n 15) 460; Thompson and others (n 40) 95

⁴⁷ Sherianne Kramer, ‘The power of critical discourse analysis: Investigating female-perpetrated sex abuse victim discourses’ in Samaya Laher, Angelo Flynn and Sherianne Kramer (eds) *Transforming Research Methods in Social Sciences from South Africa* (Wits University Press 2019) 236; Thompson and others (n 40)

⁴⁸ McHugh (n39) 152

2.6.2 Qualitative Research

Denzin and Lincoln suggest that qualitative research is a situated activity that locates the observer in the world and consists of a set of interpretive, material practices that make the world visible.⁴⁹ These practices transform the world, attempting to make sense or interpret phenomena in terms of the meanings that people bring to them. Silverman argues that researchers should go beyond the basic premise of understanding human experience, and also go beyond subjective meaning, by considering language, representation and social organisation.⁵⁰ Fundamentally, qualitative research tends not to assume there is only one version of reality, knowledge, or truth but multiple versions that exist and are closely connected to the context in which they occur.⁵¹

Feminist post-structural researchers challenge traditional scientific methods of inquiry because they believe that they fail to recognise the context of women's lives and this creates a bias that can only be corrected by analysing the structures of oppression that seek to maintain power.⁵² Commentators agree that there is no single qualitative method of research but particular methods should be chosen because of their appropriateness to answer the research question.⁵³ However, central to any feminist qualitative research is the commitment to provide opportunities for women to have their voices heard, with the hope that by doing so, our understanding of women's experiences will be advanced.⁵⁴ In this sense qualitative research is particularly relevant for a standpoint feminist approach through its ability to illuminate the lived experiences of marginalised peoples, in this case women subjected to family court proceedings.

⁴⁹ Norman K Denzin and Yvonna S. Lincoln, 'Introduction. The Discipline and Practice of Qualitative Research' in Norman K Denzin and Yvonna S. Lincoln (eds) *Handbook of Qualitative Research* (Sage Publication Inc 2000) 3

⁵⁰ David Silverman (eds), *Qualitative Research* (5th edn Sage Publications 2017)

⁵¹ Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006a) 3(2) *Qualitative Research in Psychology* 424-445; Virginia Braun and Victoria Clarke Teaching thematic analysis: Overcoming challenges and developing strategies for effective learning, (2013b) 26(2) *The Psychologist* 20-123

⁵² McHugh (n 39)

⁵³ Letherby (n 10) 89; Nicola Westmarland and Hannah Bows Researching Gender, *Violence and Abuse. Theory, Method, Action* (Routledge 2019) 15; Westmarland and others (n 50) 15

⁵⁴ McHugh (n 39) 144

2.7 Research Methods

2.7.1 The Research Question

This study is the result of the researcher's lived experience of domestic abuse and private law child arrangements proceedings since 2014 that has involved a series of experts. Each of the experts had a crucial, and arguably detrimental, impact on the outcome of the overall case, as well as on the researcher and her daughter. Throughout this time, the researcher met with many survivors who would discuss their own journey in the family court and co-incidentally mention that they felt an expert had had an impact on their case too.

As outlined in the literature review, there has been no research into the role of experts in private law child arrangements proceedings or the impact that they can have, despite growing concerns from domestic abuse organisations about the 'use' of experts. As mentioned in Chapter 1.9, in 2018, The President of the Family Division, Sir Andrew McFarlane, established a working group to consider the shortage of medical experts in fact-finding hearings against the wider backdrop of an internal review of particular areas of the family court, and a final report was published in 2020.⁵⁵ Three observations can be made in reference to this report. Firstly, there was a failure to invite a member of the British Psychological Society (BPS), whose members make up a large percentage of experts instructed in private law child arrangements proceedings. Secondly, there was a failure to invite a service user (a parent). Thirdly, the report placed greater emphasis on public law proceedings, with minimal consideration of private law proceedings. Therefore, the report could not, even inadvertently, address the concerns that are being raised by organisations and echoed by the survivors within this study. Consequently, the following research question was formulated:

What are the experiences of female survivors of domestic abuse when an expert has been instructed in England and Wales private law child arrangements proceedings?

The study was mindful of the terminology used and was careful to reflect the changes in domestic abuse discourse as will be explained in the next section of this chapter.

⁵⁵ Segal (n 204)

Victim-survivor labels have given rise to recent debate because of the different connotations that they carry and how this can identify the person who has experienced abuse.⁵⁶ Historically, it was common to use the term victim to apply to anyone who had suffered abuse, but commentators have argued that this is paternalistic, diminishes agency and suggests passivity.⁵⁷ However, a survivor label, a term that is increasingly used in domestic abuse discourse, is associated with a positive healthy narrative that 'paints a picture of agentic individuals who do not passively experience abuse'. There seems to be no definitive answer, with researchers using both terms as well as the hybrid victim/survivor label.⁵⁸ This study has used the term 'survivor' purely because, given the lack of consensus found in the literature, it was a term that I found the most comfortable to use having experienced the stigma of the term 'victim' as applied to me in the family courts. Despite this decision the study design provided an opportunity for each participant to identify themselves with the language with which they felt most comfortable, and this is reflected in the discussion.

It is important to note that participants entered the study as self-identified survivors of domestic abuse and evidence was not required to back up allegations. The aim of the research was not to question the validity of survivor accounts but to approach each interview from a place of belief.

The term domestic abuse, rather than domestic violence, was used within this study to reflect the language and the definition used within the Domestic Abuse Act 2021, as well as PD12J. Both the Act and PD12J recognise that domestic abuse can consist of physical, psychological, emotional, economic, and coercive and controlling behaviour that can be a single incident or a repeated pattern of behaviour.⁵⁹ The study recognised that post-separation abuse is also a characteristic of domestic abuse, can be manifested in many forms and is also now reflected in the Domestic Abuse Act 2021.

⁵⁶ Aanchal Setia, Michael John Marks and Sieun An, 'Double Standards in Perceived Traits of Women Labelled Victims Versus Survivors' (2020) 24 *Sexuality & Culture* 1562-1578 1563

⁵⁷ Westmarland and others (n 50) 15; Setia and others (n 53); Setia and others (n 53) 2

⁵⁸ Westmarland and others (n 50)

⁵⁹ The Rt. Hon. Lord Wilson of Culworth, His Honour Judge Anthony Cleary, The Rt. Hon. Lady Black of Derwent, *Family Court Practice* (Jordan Publishing 2022)

PD 25B outlines the expectations and duties of an expert who is instructed in family proceedings and covers both private and public law cases.⁶⁰ Pertinent to this study, it is important to point out that evidence from a family court advisor (such as Cafcass) and a local authority social worker is not expert evidence. However, evidence from an Independent Social Worker is considered to be expert evidence.

The study focused on private law child arrangements proceedings that can be described as applications made to the court to resolve disputes between parents, as well as wider family members such as grandparents, under the Children Act 1989 (CA 1989).⁶¹ Previous legal terms such as residence and contact have been replaced with child arrangements.⁶² Despite this change to the statutory language, the term ‘custody’ is still largely used by the public to describe parental time spent with children of separated families and flows through the interviews in this study.

Lastly, it is useful to acknowledge that there is still a confusion as to the distinction between public and private law proceedings, even by survivors in this study who experienced both types of proceedings. This study recognises public law proceedings to be those brought by local authorities or the NSPCC for matters including care orders, supervision orders and emergency protection orders. Private law proceedings can be brought by private individuals for matters generally related to children on their parents’ separation or divorce.⁶³

The study’s premise and subsequent research question took the position that ‘service users’ experiences should be included in the body of knowledge that will inform social and legal change. Mullender & Hague describe how historically service design and policy have overlooked survivors’ experiences and this has resulted in unsafe and inadequate service provision.⁶⁴ While there has been a shift within domestic abuse organisations to place the service user at the centre of policies this practice is slow to

⁶⁰ See Chapter 3.3.3 for further explanation.

⁶¹ See Chapter 3.2

⁶² Adrienne Barnett, *Domestic abuse and private law children cases. A literature review* (Ministry of Justice 2020)

⁶³ Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020)

⁶⁴ Gill Hague and Audrey Mullender, ‘Who Listens? The Voices of Domestic Violence Survivors in Service Provision in the United Kingdom’ (2006) *Violence Against Women* 12(6) 568-587

filter into the family court.⁶⁵ This study aimed to highlight the important observations survivors have made based upon their own experiences of experts being instructed in their private law proceedings and their belief that these experiences are important for any future change.

2.8 Sampling Method

The study set a sample size of 30 survivors. This number was based upon the known difficulties in trying to research issues related to the family courts and the existing constraints as a sole researcher. Due to the chosen methodological approach the study did not require generalisable findings and consequently the sample size enabled the researcher to obtain rich, in-depth data from a sufficiently wide range of respondents. In fact, the study advert triggered a surprising response within a period of 10 days which resulted in over 50 information participation sheets and consent forms emailed to potential participants.

2.9 Research Recruitment

It was decided that the most effective form of recruitment was tweeting a research advert on Twitter because this would reach a large audience and could be re-Tweeted by domestic abuse organisations. This method far outweighed trying to send adverts through the post and removed any responsibility from organisations. The advert was posted on Twitter in May 2020, and it ran for 6 weeks until all interviews had been scheduled and the sample size had been reached.

⁶⁵ See Surviving Economic Abuse for examples of service users (as Experts By Experience) being consulted regarding policy <https://survivingeconomicabuse.org/get-involved/experts-by-experience/> [Accessed 06/2022]

Figure 1 Twitter Recruitment Advert

Survivor's experience of the Family Courts & the expert

- My name is Rachael Grey. I am a PhD researcher at the University of Worcester.
- I am looking for female survivors' of domestic abuse and/or coercive control, aged over 18 years old, who have, or continue, to be in private law child arrangement proceedings in the Family Courts where an expert has been instructed (for example psychologists, psychiatrists, independent social workers, or anyone who has offered their professional opinion or evidence based upon their assessments).
- I will be conducting telephone interviews where I will be asking about the experiences of Family Court when an expert is involved. The Interviews will take approximately 45-60 mins.
- If you are interested, please respond to this email address only:

r.grey@worc.ac.uk



It was decided that survivors throughout England and Wales should be recruited. One of the primary issues was how to reach a group of women who could be described as a hard-to-reach group who maybe frightened to speak about their experiences of the family court.⁶⁶ As a peer researcher, these fears were recognisable as this research had been described as 'dangerous' and 'a crusade for family justice' by professionals who had attempted to discredit the researcher's allegations of domestic abuse. The ramifications of being a peer researcher in the field of domestic abuse while continuing to endure coercive control is under-researched. This study hoped to show that it is possible and can be advantageous but it can also feel traumatising and exhausting without support.

The study recognised how Twitter can become a toxic environment, particularly for survivors and therefore ensured that survivors responded to the advert via the university email address, rather than directly online. This protective measure was

⁶⁶ Louise Ryan, Eleonore Kofman and Pauline Aaron, 'Insiders and Outsiders: Working with peer researchers in researching Muslim communities' (2011) 14(1) *International Journal of Social Research Methodology* 49-60

designed to prevent perpetrators identifying survivors participation and this information potentially being used in their family court cases. Lewis, Rowe & Wiper cite that online abuse is growing but little attention has been paid to how gendered and misogynistic it can become.⁶⁷ The authors' study focused on women who engaged in online feminist debate because of the resurgence in feminist communities. It aimed to understand the context of the online abuse and how women responded. The study found that Twitter was the platform where women reported receiving the highest amount of online abuse but suggested that it should be seen within the broader context of experiencing abuse generally, as a pattern of behaviour, rather than fitting within an outdated incident-based model of abuse.

The researcher was extremely grateful to Ms Natalie Page, the founder of 'The Court Said', who re-tweeted the advert but also shared it on her Facebook page. This was impactful for two reasons; firstly, Ms Page had already garnered a global following of survivors who trusted her and so I was trusted, by association. Also, 'The Court Said' has a global membership, which increased the overall reach of the advert and was seen by women who explained that they had previously not participated in research because they felt frightened. However, they wanted to join the study because 'The Court Said' had helped them to feel understood, included and supported within an online community. Nevertheless, one of the difficulties with relying on Twitter was not being able to control what happened to the information or to whom it was sent.

2.10 Consent and Covid-19

Unfortunately, the Covid-19 pandemic coincided with the interview phase of the research. The University of Worcester had raised concerns about women being locked down in unsafe environments, and/or with children, making them further vulnerable and so it was felt that they should be excluded from the study. As a peer researcher, this concern was recognised but was not felt to be a barrier to participation because it was believed 'that the women who participated should not be viewed as passive victims but as skilful managers of risk and harm who have the ability to assess whether involvement in research would place themselves or their children at further risk.'⁶⁸ The

⁶⁷ Ruth Lewis, Michael Rowe and Clare Wiper, 'Online abuse of feminists as an emerging form of violence against women and girls' (2017) 57 *British Journal of Criminology* 1462-1481

study also supported the view that vulnerability does not automatically equate to incapacity however, was mindful of the greater risks involved because of the Covid-19 lockdown.⁶⁹

A Consent form and a Participant Information Sheet were sent to survivors who had responded to the advert via the University of Worcester email account. The returning email also explained that if, after reading all of the information, a survivor wished to participate they would need to return (by email) a completed consent form and suggest a convenient date and time for the telephone interview.

All of the telephone interviews began by verbally consenting to the interview and checking that each survivor was informed about the study and had signed the consent form. This moment also provided an opportunity for questions and a place in the process where I could begin to build trust and rapport.⁷⁰

Telephone interviews were chosen to protect each of the participants anonymity. However, this method prohibited the ability to ascertain if children were present during the interview, but survivors did make it clear if children were close by and made an arrangement to prevent them from being in the same room.⁷¹ There were two occasions where an infant or toddler were present, but the participant wished to proceed. During these interviews, a continual assessment was carried out as to whether the interview needed to conclude and/or be rearranged for a later date however, this was never necessary.

2.11 Demographics

One of the disadvantages of a grand tour interview is that the researcher is not in control of the information that will be revealed, as it aims to be as non-directive as possible. Another is that it is difficult to collect demographic data.

⁶⁸ Westmarland and others (n 50) 23

⁶⁹ Julia Downes, Liz Kelly and Nicola Westmarland, Ethics in Violence and Abuse Research - a Positive Empowerment Approach, (2014) 19(1) *Sociological Research Online* 29-41

⁷⁰ Svend Kvale and Steinar Brinkmann, *Interviews: Learning the Craft of Qualitative Research Interviewing* (2nd edn, Sage Publications 2008)

⁷¹ Meredith Mealer and Jacqueline Jones, 'Methodological and ethical issues related to qualitative telephone interviews on sensitive topics' (2014) 4 *Nurse Research* 32-37

Due to the highly sensitive and confidential nature of the study the author was conscious that survivors may feel threatened or anxious about disclosing information that they perceived could jeopardize their anonymity. Apart from knowing that each survivor met the inclusion criteria, the study could not justify asking for any other demographic information. Survivors described how frightened they were about participating in the study because they had been told that they were not allowed to discuss these 'private matters' in public. They feared that, if found out, the judge or perpetrator may seek to punish them and cited this as the main reason that they had not spoken out before.

One of the study's most compelling requirements was to reflect the experiences of a diverse group of female survivors. This was aided by the sole use of telephone interviews which facilitated being able to cover England and Wales.⁷² However, while it was hoped that the study could be underpinned by intersectional philosophy, unfortunately, it was still difficult to reach many survivors from Black, Asian and Minority Ethnic ("BAME") backgrounds, but this provided the opportunity for further research.⁷³ Any data relating to ethnicity, culture, disability and sexuality was provided by choice and is included in chapters 5-9.

2.12 A Grand Tour Interview

Spradley describes a grand tour question as a verbally stimulating experience by asking to take the participant on a verbal tour of a particular moment or period of time, depending on whether the question is general, guided specific or task related.⁷⁴

Grand tour interviews are used to gather data that are rich in content, they allow for limited researcher bias and are particularly useful when conducting experiential research. Weedon emphasises that a common factor in post-structuralist feminist

⁷² Platforms such as Skype, Zoom or MS Teams were not used to maintain anonymity during the interview. Most of the survivors preferred this method.

⁷³ This was also a finding in the 'Staying Mum' peer research, AVA, 'Staying Mum; Findings from peer research with mothers surviving domestic abuse and child removal' <https://avaproject.org.uk/staying-mum/>. [Last accessed 20/06/2022]

⁷⁴ James Spradley, 'Asking Descriptive Questions' in James Spradley (ed) *The Ethnographic Interview* (Wadsworth 1979) 44-53; Dorothy Fox, Jonathan Edwards and Keith Wilkes, 'Employing the 'grand tour' approach to aid understanding of garden visiting' in Greg Richards and Wil Munsters (eds), *Cultural Tourism Methods* (CABI 2007) 75

theory is language, and is used in the analysis of social organisation, social meanings, power, and individual consciousness.⁷⁵

The grand tour interview method was chosen specifically because it provided a space for survivors to prioritise what they considered to be important about their experience of instructing an expert.⁷⁶ The method was also chosen over a more directive, structured, interview because it was felt that women may have already had their lived experiences minimised, silenced or altered by professionals and/or the family court. The grand tour interview reduced the risk of a survivor's lived experience being altered or misinterpreted by a set of directive questions.⁷⁷ As mentioned within this thesis, the space created by the grand tour interview may have been the very first time that a survivor had had the opportunity to discuss her lived experience in its entirety, if she so wished. It also appeared that for many of the women the interview provided an opportunity to not only reflect on their lived experiences but to be able to piece elements together for the first time. As mentioned, many women saw their participation as a political act. Several survivors expressed their gratitude at just being heard and understood which was a rare moment in their lives.

It is argued that unstructured or semi structured interviews may be overwhelming for some people (particularly when discussing traumatic experiences) and so the study designed several prompt questions, or mini-tour questions, that could further help a survivor. In the majority of interviews, the study found that they were necessary.⁷⁸

⁷⁵ Weedon (n 1)

⁷⁶ Beth L Leech, 'Asking Questions: Techniques for Semistructured Interviews' https://dornsife.usc.edu/assets/sites/298/docs/interviewing_techniques_asking_questions.pdf [Accessed 21/01/2023]

⁷⁷ Odis E Simmons, 'Is That a Real theory od Did You Just Make It Up? Teaching Classic Grounded Theory (2010) 9(2) *Grounded Theory Review*

⁷⁸ Spradley (n 70); Weedon (n 70); Mary E Brenner, 'Interviewing in Educational Research' in Handbook of Complementary Methods in Judith Green, Gregory Camilli, Audra Skukauskaiti and Patricia B Elmore (eds), *Handbook of Complementary Methods* (3rd ed American Educational Research Association 2006) 357-370

Figure 2 Interview Schedule

<u>Interview Schedule</u> Can you describe the process through which the expert (or experts) were instructed in your case, and how you think the expert influenced your experience of the family court? Just to clarify, an expert may be a psychologist, psychiatrist, independent social worker or anyone who has been asked to offer their professional opinion or evidence based upon their assessments. <u>Mini Grand Tour Questions</u> Can you tell me about any interactions you had with the expert? Can you tell me about your experiences of talking about domestic abuse/coercive control within the family court proceedings? Is there anything that you feel that you would like to tell me about your experiences in the family court?

2.13 Research Stakeholder Group

A stakeholder group can be defined as ‘an iterative process of actively soliciting the knowledge, experience, judgement, and values of individuals selected to represent a broad range of direct interests in a particular issue, for the dual purposes of creating a shared understanding; making relevant, transparent, and effective decisions’.⁷⁹

Implementing a stakeholder group within the research design is considered to be a form of mobilizing knowledge as it distributes information from knowledge producers (researchers) to knowledge users for amplification.⁸⁰ Essentially individuals should be invited to participate if they have a vested interest, and/or experience, in the research topic. However, there are no strict rules about what constitutes a doctoral research

⁷⁹ Patricia A Deverka, Danielle C Lavalley, Prikyana J Desai, Laura C Esmail, D Scott, ‘Stakeholder participation in comparative effectiveness research: defining a framework for effective engagement’ (2012)1(2) *Journal of Comparative Effectiveness Research* 181-194; Annette Boaz, Stephen Hanney, Robert Borst, Alison O’ Shea and Maarten Kok, ‘How to engage stakeholders in research: design principles to support improvement’ (2018) 16(60) *Health Research Policy and Systems* 1-9

⁸⁰ Jennifer A Boyko, C Nadine Wathen and Anita Kothari, A, ‘ Effectively engaging stakeholders and the public in developing violence prevention messages’ (2017) 17(35) *BMC Women’s Health* 1-4

stakeholder group, and it is up to the researcher as to the influence that they ultimately will have over the project.

The stakeholder group consisted of a female chief executive of a national domestic abuse charity, a female therapist at a London based mental health domestic abuse charity, a female film director who has focused on domestic abuse and the family courts, a female documentary producer and survivor of domestic abuse, a female solicitor-partner specialising in domestic abuse/founder of a stalking prevention charity, a male retired district judge with family court experience, a male solicitor advocate/legal writer with an interest in domestic abuse and children's representation within the family courts.

Each stakeholder was invited to join the group because of a personal connection due to domestic abuse or as a result of the study. Invitations were sent to individuals which provided an outline background, study objectives and the expectations of a stakeholder.

Stakeholders were sent regular updates about the study as well as pieces of work or information about conferences associated with the research. The stakeholders offered advice as well as encouragement. Overall, stakeholders provided a valuable foundation of experience, particularly when the research was based in a psychology department as opposed to law. Stakeholders have provided kindness, interest, and support throughout the progression of the doctoral research. The stakeholder role provides support during the research but also provides opportunity to disseminate the research and some of this study was shared at an early stage by a member of the group.

2.14 Data collection and Transcription

Participants were informed that audio recording began from the moment that the telephone call was answered however, the interview transcription would only begin after the first question had been asked. This unrecorded time provided the opportunity to discuss the consent form, the participant information sheet, to check if they had a cup of tea nearby and that each survivor felt safe and comfortable enough to continue with the interview. This time also helped to begin to build trust and rapport.

The mobile phone was on speaker mode so that a recording of the conversation could be used with a voice recorder. The interviews were transcribed by using Apple Mac's own dictation software. This was achieved by using headphones to listen to the conversation and repeat the words aloud. There were no concerns about being overheard and confidentiality was always maintained. The study was self-funded through a student loan and so there was no finance available to pay for private transcription. Despite the physical demands of transcribing, due to disability, this method proved to be beneficial as it provided the researcher with the opportunity to focus on the language, context and tone that was used as the words were spoken aloud and it helped to carefully relisten to the survivors' experiences. An important example of how useful this was occurred during an early interview. It was apparent that the survivor was nervous which resulted in fast and broken speech and consequently fractured the narrative.

The specific study's reflective journal entry described the difficulty in following her narrative as her words tumbled out and resulted in a vast amount of information being relayed during a two-hour interview. It was crucial that the survivor had ownership of her lived experience and as a grand tour interview schedule dictates should not be interrupted. However, on re-listening to the interview, it was clear that the survivor had been describing being raped but this had been hidden by her lengthy, painful descriptions of abuse and her ability to survive.

As promised, all of the interviews, were transcribed within six days and sent to each survivor on day eight, providing them with the opportunity to identify and react to any areas that were potentially compromising.

All of the transcripts were verbatim. Survivors reported that they felt quite daunted by pages of, almost, uninterrupted script that were punctuated by normal discourse markers such as 'er' and 'you know'. A number of survivors explained that they were re-triggered by reading the transcript for approval and maybe this is an area of the research process which needs to be reconsidered.⁸¹ While it is critical to empower

⁸¹ Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, (1989) 1(7) *Yale Journal of Law & Feminism* 7-36

survivors to have their lived experiences accurately retold, it is also imperative that this process has minimal impact.

Anonymised informal notes were taken during the interviews and were referred to by a participant ID number. These notes were only used for the purpose of data analysis.⁸²

2.15 Research Ethics

2.15.1 Insider Knowledge and Peer Research

Ryan, Kofman & Aaron describe how peer researchers should be engaged to carry out research involving hard-to-reach groups because their insider knowledge is matched to the individual or community under investigation.⁸³ The authors state that there is little research into understanding the relationship between the peer researcher and the study participants. They also cite Fawcett & Hearn who explain how more traditional positivist research methods has produced difference by the formation of the interviewee and the 'other', rather than seeing experience as a shared phenomenon.⁸⁴ Feminist research acknowledges that an imbalance of power has historically existed between the researcher and the researched and therefore aims to redistribute the power more evenly by recognising the complexity of experience and situated knowledge.⁸⁵

AVA (Against Violence and Abuse)⁸⁶ is an organisation that seeks to change policy through research. After seeing the success of Revolving Doors peer research about aspects of the probation service, the charity realised that the best people to understand gaps in policy and services are the people who have had to navigate them.⁸⁷ They began by publishing a peer researcher report entitled 'Survivors of Multiple Disadvantage Discuss Service & Support'.⁸⁸ In 2020, the author was asked to

⁸² Sharlene Nagy Hesse-Biber, 'The Practice of Feminist In-Depth Interviewing in Feminist Research Practice' in Sharlene Nagy and Patricia Leavy (eds), *Feminist Research Practice* (Sage Publications 2011)

⁸³ Ryan and others (n 63)

⁸⁴ Barbara Fawcett and Jeff Hearn, 'Researching others: epistemology, experience, standpoints and participation' (2004) 7(3) *International Journal of Social Research Methodology* 201-218

⁸⁵ Donna Haraway, 'Situated Knowledge: The Science Question in Feminism and the Privilege of Partial Perspective' (1988) 14(3) *Feminist Studies* 575-599; Fawcett and others (n 78)

⁸⁶ AVA (n 69)

⁸⁷ Revolving doors, (2013) <https://revolving-doors.org.uk> [Last accessed 20/06/2022]

⁸⁸ AVA (Against Violence & Abuse), *Hand in Hand: Survivors of Multiple Disadvantage Discuss Service & Support* (2018)

join another peer research project called 'Staying Mum' as it aims to understand the experiences of survivors who have been threatened with or experienced the temporary or permanent removal of their child/ren.⁸⁹ Although the interview phase of this study had been completed by the time the AVA research commenced, it was clear that a similar peer research approach had been adopted.

Although the author was discussing children as researchers, Brownlie draws upon the broader issues of empowerment, the need for political change and citizenship as rationales for participation in research that were shared by myself, and the majority (if not all) of the survivors in this study.⁹⁰ Little is known about the impact of peer research on both parties involved and it is only through documenting the process that this be rectified.⁹¹ This study hoped to add to a growing body of knowledge regarding the importance of peer research.

One of the most difficult areas to resolve, as a peer researcher, was the positionality as a peer researcher with regards to how much personal experience to share with the public and the impact that this may have on the overall study. Initially, the research vision was to conduct an auto-ethnographic style study as this seemed to be a growing method for domestic abuse research. Bochner describes auto-ethnography as having evolved from narrative inquiry which emphasizes subjectivity, reflexivity, emotionality, and dialogue, with the goal of connecting social sciences to humanities through storytelling.⁹² Auto-ethnography seeks to remove barriers between the researcher and the subject, seeking to find another truth that is not governed by positivism, and bridges the gap between experience and expression. Despite critics suggesting that it meets neither scientific, nor creative inquiry standards, Hayes & Jeffries and Olson are examples of how auto-ethnography is capable of transcending convention by becoming fully immersed in often devastating experiences.⁹³

<https://avaproject.org.uk/hand-in-hand-survivors-of-multiple-disadvantage-discuss-service-support/>

[Last accessed 20/06/2022]

⁸⁹ AVA (n 69)

⁹⁰ Julie Brownlie, 'Researching, not Playing, in the Public Sphere' (2009) 43(4) *Sociology* 699-716

⁹¹ Ryan and others (n 63)

⁹² Arthur P Bochner, 'On first-person narrative scholarship. Autoethnography as acts of meaning' (2012) 22(1) *Narrative Inquiry* 155-164

⁹³ Samantha Jeffries and Sharon Hayes, *Romantic Terrorism? Survivor Narratives of Psychological and Emotional Tactics of Domestic Violence*, in (Stop Domestic Violence Conference, 7-9 December Canberra A.C.T 2015); Loreen N. Olson, 'The Role of Voice in the (Re)Construction of a Battered

An auto-ethnographic study was motivated by two factors; Firstly, the positive impact that this type of research could have on the public understanding of domestic abuse and secondly, the opportunity it would provide me in trying to process, accept and make room for future personal experience. Despite both factors being tremendously persuasive, it was important to balance the implications that an auto-ethnographic study would have on a child and continuing private law child arrangements proceedings, and this informed the decision to not go ahead with this research methodology.

2.15.2 Understanding Risk and Potential Harm for Participants

The research question posed many challenges because, as previously mentioned, there was a desire to uphold ethical standards and protect a survivors' agency.⁹⁴ This was a challenging and complex issue which was helped by maintaining a reflective journal. Bender⁹⁵ points to the inherent tension present when survivors are involved, arising from an instinct to be protective which is carefully balanced against maintaining participant autonomy and a desire to make an important contribution to a better understanding of domestic abuse.⁹⁶

As mentioned earlier, the consent form was discussed at the beginning of the interview, and this included ascertaining that each survivor was signposted to further support services.

The majority of survivors explained that they were concerned with the way that the interview transcripts potentially could be used. Every survivor was reassured that all transcripts would be anonymised, that they would all be destroyed on the completion of the study and, crucially, they would never be reproduced in their entirety. All names, locations, dates and identifying features would be removed from the transcripts to prevent jigsaw identification. Additionally, survivors names were replaced with a

Woman's Identity: An Autoethnography of One Woman's Experiences of Abuse' (2004) 27(1) *Women's Studies in Communication* 1-33

⁹⁴ Lisa DeMarni Cromer and Elana Newman, 'Research Ethics in Victimization Studies: Widening the Lens' (2011) 7(12) *Violence Against Women* 1489-1508

⁹⁵ Annah K Bender, Ethics, 'Methods, and Measures in Intimate Partner Violence Research: The Current State of the Field' (2017) 17(12) *Violence Against Women* 1382 -1413

⁹⁶ Mary Ellsberg, Lori Heise, Roldofo Peña, Sonia Agurto and Anna Winkvist, 'Researching Domestic Violence against Women: Methodological and Ethical Considerations' (2001) 3 2(1) *Studies in Family Planning*, 1-16; James J Clark and Robert Walker, 'Research Ethics in Victimization: Widening the Lens' (2011) 17(12) *Violence Against Women* 1489-1508

prominent feminist name instead of being assigned a research study reference number.

Following each interview, a seven-day cooling-off period was applied during which time participants could leave the study and all the information would be erased.⁹⁷ On the eighth day, participants were emailed an anonymised copy of their transcript and were given the opportunity to make changes before notifying their final approval. Assurance was provided that all information would be deleted on the completion of the study and all subsequent published works.

Despite robust risk assessment, a few issues did arise, most notably in relation to the re-reading and approval of the transcript. Several women expressed difficulty in having to re-read the transcript after the interview because they had already felt triggered by the interview and then re-triggered, for the second time, because of the approval process. This is an area that requires further research as harm needs to be finely balanced against agency and a survivor's ownership over their own narrative.⁹⁸ It is particularly relevant in this study as survivors described how their own lived experiences were reconstructed by professionals involved in their family court proceedings and was consistent with the feminist research principles of empowerment of co-production.⁹⁹

In May 2020 the University of Worcester granted full unconditional ethical approval for this study¹⁰⁰ and this was upheld by Brunel University in 2020.¹⁰¹ The initial ethical process involved thinking carefully about how to take care of all participants and the researcher. As mentioned, care was taken to ensure that participants could not be identified and that they were signposted for support. Survivors were given the opportunity to participate even if they were currently going through the family courts, as the inclusion criteria stipulated proceedings from 2014 onwards.

⁹⁷ Andrew K. Shenton, 'Strategies for ensuring trustworthiness in qualitative research projects' (2004) 22 *Education for Information* 63-75

⁹⁸ Nedelsky (75)

⁹⁹ Westmarland and others (n 50) 9

¹⁰⁰ See appendix A

¹⁰¹ See appendix B

2.15 Understanding Risk and Potential Harm as a Peer Researcher

The author had to be mindful of the risks that were posed to her by being a peer researcher including, the challenges presented by hearing similar lived experiences.

While it is recognised that researchers can find interviews about domestic abuse distressing and could challenge agency, there is very little written about the potential risks for peer researchers.¹⁰²

The study was designed to ensure that psychological support was in place before the study commenced as well as recognising the potential impact on the author of continuing family court proceedings.

2.16 Reflexivity

It was decided that a reflective journal would be maintained during the interview phase of the study, and this would address any issues of bias and monitor peer researcher impact.¹⁰³ Reflexivity is associated with qualitative research methods and is particularly essential for researchers with insider knowledge, or peer researchers.¹⁰⁴ Peer researcher positionality was initially discussed and boundaries regarding personal experience.¹⁰⁵

2.17 Analysis

Initially, the interviews were viewed as a whole data set and read in their entirety to allow for a total immersion of the lived experiences which were then allowed to settle, as this helped to gain an accurate overview of the findings.¹⁰⁶

Following on from a full reading, the data derived from the interviews was analysed thematically across the entire dataset, which identified patterns and themes.¹⁰⁷ A

¹⁰² Ellsberg and others (n 90); AVA (n 82)

¹⁰³ Shenton (n 91); Amanda Shea Hart, 'Child Safety in Australian Law: Responsibilities & Challenges for Social Science Experts in Domestic Violence Cases' (2011) 46 *Australian Psychologists* 31-40; Laura Monk, 'Improving professionals' responses to mothers who become, or are at risk of becoming separated from their children, in contexts of violence and abuse' (DPhil Thesis, University of Coventry 2017)

¹⁰⁴ Westmarland and others (n 50)

¹⁰⁵ Westmarland and others (n 50)

¹⁰⁶ Braun and others (n 48b)

¹⁰⁷ Braun and others (n 48b); Victoria Clarke and Virginia Braun, 'Thematic Analysis' (2017) 12(3) *The Journal of Positive Psychology* 297-298

theme captured something important about the data overall but may have been as prevalent in every individual data item. However, this should not diminish its importance¹⁰⁸

The study chose to use Braun and Clarke's¹⁰⁹ typology for thematic analysis and used an inductive, bottom-up, approach to identify themes that would allow them to be discovered without trying to fit a pre-existing coding frame and would sit well alongside a post-structural theoretical framework.¹¹⁰ This was carried out by a process of familiarisation with the data, coding, searching for themes, reviewing themes, defining the themes and writing up the findings.¹¹¹ Hesse-Biber also recommends memoing, during the coding process, as another pathway into the data, which requires 'summarising the data through description, including key quotes, reflexively writing ideas about analysis and asking questions about patterns and links'.¹¹²

Inductive thematic analysis was integral to this study as reduced the potential bias that may have been evident and may have led to a top-down approach, resulting in pre-conceived themes which may have risked crucial themes being overlooked.

A feminist discourse analysis approach allowed dominant discourses to be revealed but important gave space to the discourses that have traditionally been silenced and oppressed.¹¹³ Through the process of deconstruction, the study has been able to ask why, and how, some discourses have maintained dominance while others have remained absent from particular lived experiences.

All the interviews were analysed using NVivo software Version 12.

2.18 Limitations

Despite the grand tour interview method providing a rich source of data, it also created a limitation in what data could be collected. As previously discussed, survivors decided what to share about their lived experience, to prioritise what they felt was important

¹⁰⁸ Braun and others (n 48b)

¹⁰⁹ Braun and others (n 48a)

¹¹⁰ Braun and others (n 48a); Hesse-Biber (n 76)

¹¹¹ Braun and others (n 48b)

¹¹² Hesse-Biber (n 76)

¹¹³ Nollag Frost and Frauke Elichaooff, 'Feminist Postmodernism, Poststructuralism, and Critical Theory in Sharlene Nagy Hesse-Biber (ed), *Feminist Research Practice. A Primer* (2nd edn, Sage Publications 2014) 50

and their narratives were not shaped by directive questions. The information that was gathered revealed elements of the expert process that cannot be found in the current literature.

However, the research design also prevented the study collecting elements of data that could be standardised. This included why an expert was deemed to be necessary and was instructed, a full schedule of domestic abuse allegations, whether a FFH was held and how many hearings occurred. This information would have been helpful in providing further legal context to the survivors' lived experiences and could be considered beneficial to similar future studies.

Chapter 4.9 sets out the available information collected from survivors about the family court including, where possible, why an expert instruction was deemed necessary.

2.19 University transfer

It is important to acknowledge that in November 2020 the author transferred from the psychology department at the University of Worcester to the law department at Brunel University, London.

2.20 Survivor names

Survivors names were changed and replaced with a renowned feminist name. It is important to acknowledge that Gloria did not directly participate in this study but gave her permission for a close female friend to discuss her lived experience as her advocate. Gloria was a disabled woman who was assisted through court by the same friend.

Chapter 3

Family Law and Expert Evidence

3.1 Introduction

The research conducted between 2018-2022 focused on survivors' experiences of child arrangements proceedings when an expert had been instructed to help the judge in making a final decision about where children should live and how much time they should spend with each parent. The findings of the research have outlined how the expectations of the court, and ultimately the law, does not always align with the experiences of survivors. Survivors' accounts illustrated how they felt that family law can be complex and, how despite it being set out in legal documents and frameworks, it is often subject to interpretation. Findings of the research suggested that every survivor needs to have a basic knowledge of family law so that they can understand and follow proceedings, or competently succeed as a litigant in person. Survivors' experiences also highlighted the lack of understanding related to the instruction of an expert, the roles and responsibilities of an expert and the admissibility of evidence.

This chapter begins with setting out the legislation that underpins private law child arrangements proceedings, before explaining three relevant practice directions used to guide the court, particularly when allegations of domestic abuse have been made. The chapter continues by outlining the various standards that experts are expected to adhere to before concluding by discussing the admissibility of evidence within the family court.

3.2 The Children Act (1989)

Underpinning survivors' experiences of experts instructed in private law proceedings is the legislation that provides a framework for child arrangements orders. The Children Act (1989) was introduced into Parliament in 1988 and received Royal Assent in autumn of 1989.¹ It came into force in 1991. The Act brought together 'the public and private law concerning the care, protection, and upbringing of children and the provision of services to them and their families'.² The formation of the Children Act

¹ Jo Delahunty, 'The 30th anniversary of the Children Act 1989: is it still fit for purpose' (2019) *Family Law* 490

² Lord Chancellor (Lord Mackay of Clashfern) in Jo Delahunty, 'The 30th anniversary of the Children Act 1989: is it still fit for purpose' (2019) *Family Law* 490

1989 had followed a period of time when the UK had witnessed a series of high profile child abuse scandals including the Cleveland child abuse case.³ The Act was designed to balance the rights and responsibilities of a parent with the welfare of the child. 'Section 1 of the Children Act sets out three general principles: the welfare of the child is paramount; delay is likely to prejudice the welfare of the child; and the court shall not make an order unless to do so would be better for the child than making no order (the 'No Order' principle)'.⁴ Essentially, the Act shifted the legislative focus from a judicial paternalism towards trying to keep families together, and valuing children as individuals with their own interests and rights.⁵

Pertinent to this study which focuses on private law proceedings, the Act introduced the 'gender-neutral concept of parental responsibility, which has underpinned family law ever since'.⁶ This signified a shift from parental rights to a parental responsibility that diminishes over time as a child becomes more able to make decisions for themselves⁷ (what is known as a child being Gillick competent).⁸ A mother and a married father automatically have parental responsibility at birth however, an unmarried father can obtain parental responsibility through various processes.⁹ 'The Act moved away from seeing one parent as having greater 'rights' over a child than another, and the child as a possession to be fought over'.¹⁰ As Barnett¹¹ points out:

by framing parental responsibility as a status, distinct from the exercise of care, the effect was to elevate parental rights to decision-making rather than responsibility for childcare, so that the practice of caring for children became increasingly invisible as the status of fatherhood gained political, legal and political currency.

³ Report of the inquiry into child abuse in Cleveland [1987] Cm 412 HMSO London

⁴ Delahunty (n 1) 0

⁵ Politics, <https://www.politics.co.uk/reference/children-act-1989/> [Last accessed 08/03/2022]

⁶ Adrienne Barnett, 'Contact at all costs? Domestic Violence, Child Contact and the Practices of the Family Courts and Professionals' (DPhil thesis, Brunel University, London 2014)

⁷ Politics (n 5)

⁸ A child is Gillick competent if they are assessed to have an understanding of the circumstances and consequences of any action under consideration. See *Gillick v West Norfolk and Wisbech AHA* [1985] UKHL 7, 1986 1 AC 112, [1985] 1 All ER 533; see also David Burrows, <https://dbfamilylaw.wordpress.com/2019/10/12/childrens-rights-thirty-years-on-from-the-children-act-1989/> [Last accessed 20/06/2022]

⁹ Politics (n 5)

¹⁰ Delahunty (n 1)

¹¹ Barnett (n 6) 73

Critically, parental responsibility entrenched the pro-contact culture as it fostered the message that parenthood is forever and prioritised this message over what is in the best interests of a child. Survivors involved in this study often described how they felt that a perpetrator would conflate parental responsibility with parental rights and would often argue that it was their right to see their child/ren.¹² This was a source of concern for survivors who described trying to explain to the court that harm caused to themselves and their children, by the perpetrator, wasn't in the child's best interest and was not responsible parenting. Notably, during the formation of the Children Act (1989) Baroness Hale¹³ explained that it was the states principal role to help rather than interfere,¹⁴ and placed the onus on parents to resolve private (family/domestic) matters. Survivors' accounts discussed in the proceeding chapters, clearly show how often this ideology continues to prevail despite the introduction of PD12J and, more recently, the Domestic Abuse Act 2021.

It is also worth mentioning that the Children Act 1989 Sec 1(5) also adopted a 'No Order' principle which simply means that the court must consider whether there is any benefit in making an order rather than no order, and that 'a court's paramount consideration must show that an alternative arrangement would lead to an improvement in the child's welfare'.¹⁵

The Children Act (1989) changed the terminology from 'custody' and 'access' to 'residence' and 'contact' to remove the perception that there was a 'winner takes all' approach to post-separation legal ordering. However, following further representations from fathers' rights groups to the Family Justice Review,¹⁶ the terminology was changed yet again, in the Children and Families Act 2014, to 'child arrangements' involving 'lives with' and 'spending time with' orders.

¹² See, Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020) 141

¹³ Now Lady Hale, Baroness Hale was closely involved with the structure of the Children Act 1989

¹⁴ Delahunty (n 1)

¹⁵ Politics (n 5)

¹⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf

3.2.1 The Welfare Principle and Section 8 Orders

At the core of the Children Act 1989 is the paramountcy principle which simply put, means that the welfare of the child will be the court's paramount consideration. Sec 1(3) of the Children Act 1989 outlines the welfare checklist. This checklist is a set of considerations that the court must pay attention to when making decisions relating to the upbringing of a child including a child arrangements order but does not apply to every decision regarding a child. The welfare checklist requires the court to have regard in particular to: a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding); b) his physical, emotional and educational needs; c) the likely effect on him of any change in his circumstances and e) any harm which he has suffered or is at risk of suffering.

The welfare principle applies when courts are considering making a child arrangements order under Sec 8 of the Children Act. Child arrangements orders should be made after careful consideration of the welfare checklist and any risk factors that have been raised against the presumption of both parents having contact with a child. The welfare principle is characterised by indeterminacy, which means that there are no knowable answers to concrete problems. Child arrangements orders are based on a prediction of what may happen and therefore what will be in the future best interests of a child. It is argued that the criteria for what is considered to be in the best interests of a child change over time because of social, cultural, geographical and political ideologies.¹⁷ The law has to choose between different notions of welfare, as well as relying on other fields, such as social science to make what is usually a binary decision regarding what is in the best interest of a child.¹⁸ Survivors' lived experiences indicated how they depended upon a judge being able to see the domestic abuse as a risk factor for future contact between a father and child. However, very often the domestic abuse was dismissed or minimised but, importantly, it was treated as historic and therefore could not be a risk factor to future contact arrangements.

¹⁷ Robert H Mnookin, 'Child Custody: Adjudication: Judicial functions in the face of indeterminacy' (1976) 39(3) *Law and Contemporary Problems* 226-293; Michael King, *Childhood, welfare and justice* (Michael King 1981)

¹⁸ Christine Piper and Michael King, *How the law thinks about children* (Ashgate Publishing Limited 1995)

Another important provision of the Children Act 1989 which has been reflected in survivors' accounts is the presumption of parental involvement in Sec 1(2A) which was introduced by the Children and Families Act 2014 and states:

A court, in the circumstances mentioned in subsection (4) (a) or (7), is as respects each parent within subsection (6) (a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

This addition to the Children Act 1989 requires that the court will presume that 'the involvement of a parent in the child's life will further the child's welfare'¹⁹ as long as the child is not at risk of harm. The onus is on a survivor to provide evidence to the contrary, as well as trying to understand the court's threshold for what is considered to be 'harm' or 'unmanageable risk'.²⁰

Sec 11(7) of the Children Act 1989 allows for conditions to be attached to a Section 8 order, for either parent. Warning notices can be attached to the bottom of an order which outline what could happen if an order has been breached and this may range from a fine to imprisonment. An enforcement order can also be made and, if breached, may result in punitive measures. The Children Act was amended to allow for these provisions to be added to discourage mothers from not cooperating with child arrangements orders and to penalise them if they did not do so. The conditions were included as a compromise between fathers' rights groups pressing for stronger measures such as imprisonment, and women's groups arguing for stronger measures against domestic abuse. Many of the conditions, such as fines and unpaid work requirements were intended to side-step the demands of father's groups for mothers to be imprisoned for breaching contact orders. These changes were made because of the 'Making Contact Work Consultation in the early 2000's'.²¹ Survivors involved in this study described feeling frightened about the warning notices they had received.

¹⁹ Adrienne Barnett, *Domestic abuse and private law cases. A literature review* (Ministry of Justice 2020) 74

²⁰ See PD12J [35]

²¹ Making Contact Work, [https://www.familieslink.co.uk/download/Making%20contact%20work%20\(sic\).doc](https://www.familieslink.co.uk/download/Making%20contact%20work%20(sic).doc) [Last accessed 01/06/2022]

Consequently, some survivors said that they had felt forced to support contact between their child and ex-partner because they did not want to go to prison.

3.3 Practice Directions

Practice Directions, within family court, are supplemental protocols to the Family Procedure Rules 2010, which set out how the court should function. They usually have the effect of providing guidance only, but many of the provisions of PD12J (discussed further below) have mandatory effect. This section provides an overview of Practice Directions 12J, 3AA and 25 as they have underpinned the lived experiences of the survivors during private law proceedings.

3.3.1 Practice Direction 12J

As explained in Chapter 2, PD12J was implemented in 2008, introduced into the Family Procedure Rules in 2010, amended in 2014 and 2017 and is now referred to as PD12J 2017. The Practice Direction was designed to provide best practice guidance for Family Court and High Court family proceedings when domestic abuse is a factor (either alleged or admitted). The Domestic Abuse Act 2021 was given Royal Assent in April 2021 and therefore it is envisaged that PD12J will be aligned with the definition of domestic abuse in Sections 1 and 2 of the Act.²² It is understood that PD12J will recognise that children who see, hear or experience domestic abuse are also victims of domestic abuse.

The general principles of PD12J are for a court to identify whether domestic abuse is a factor at the earliest opportunity, usually at the FHDRA, and to identify the factual and welfare issues involved. The court must then consider the nature of any allegation, admission, or evidence, and give directions to enable contested relevant factual and welfare issues to be tried as soon as possible, and fairly. The court should ensure that child arrangements orders will protect the safety and wellbeing of the child and the parent with whom the child is living and does not expose either of them to the risk of further harm. As previously discussed, PD12J states that the statutory presumption of parental involvement applies unless there is evidence to the contrary.

²² PD12J now contains the definition of domestic abuse in the Domestic Abuse Act 2021.

PD12J clearly sets out what the expected best practice is for further investigations and hearings. As survivors' lived experiences have indicated, after an application under Sec 8 of the Children Act 1989 has been lodged, it is expected that Cafcass will carry out their initial safeguarding enquiries, which is usually (but not always) a phone call by a Cafcass officer to both parents and checks with the police and local authority.

At the FHDRA the court must ascertain at the earliest opportunity, and record on the order, whether domestic abuse is an issue and likely to be relevant to the welfare of the child, and specifically whether the child and/or parent would be at risk of harm in the making of any child arrangements orders. If no admissions of domestic abuse have been made, the court must then determine whether it should conduct a fact-finding hearing in relation to the disputed allegations. In order to do this, the court must also consider various other points including the views of Cafcass, whether risk and welfare can be determined without a fact-finding hearing, the nature of evidence required to resolve disputed allegations and whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court.

Survivors' lived experiences have indicated that fact-finding hearings were consistently determined not to be necessary.²³ If this is the case a judge is expected to record, in the order, the reasons for this decision.

If the court determines that a fact-finding hearing is necessary, it needs to establish the key facts in dispute and what evidence is required in order to determine the existence of domestic abuse. The allegations of domestic abuse are currently expected to be summarised in a Scott Schedule,²⁴ and evidence should be provided in the form of statements from both parties as well as any available external evidence such as documents from police, health services and domestic abuse organisations.

²³ This finding is supported by literature see, Jenny Birchall and Shazia Choudhry, *"What about my right not to be abused?": Domestic abuse, human rights and the family courts* (Women's Aid 2018) 25; Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020) 86; Barnett (n 18) 91

²⁴ Scott Schedules have been deemed not fit for purpose and will be replaced over the next few years. See *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448. For an example of a Scott Schedule see appendix J.

PD12J outlines what should happen in the intervening time and expects the court to consider whether an interim child arrangements order needs to be made before the fact-finding hearing can be conducted.

The FFH is carried out to determine findings of fact as to the existence, nature and degree of any domestic abuse which is alleged and its effect on the child, the child's parents, and any other relevant person. At the conclusion of a FFH the court must consider whether it is necessary for a Sec 7 welfare report to be prepared by a Cafcass officer or social worker before making a final child arrangements order.

Following any determination of the nature and the extent of domestic abuse, irrespective of a fact-finding hearing, the court must consider two key points when deciding upon child arrangements. Firstly, whether the court would be assisted by the opinion of a social worker (including a Cafcass officer), or an expert such as a psychiatrist or psychologist. The court expects that any assistance provided will be within the context of any findings made, any previously established findings, or any previous admissions of domestic abuse. PD12J para 33 states:

Following any determination of the nature and extent of domestic abuse, whether or not following a fact-finding hearing, the court must, if considering any form of contact or involvement of the parent in the child's life, consider -

(a) whether it would be assisted by any social work, psychiatric, psychological or other assessment (including an expert safety and risk assessment) of any party or the child and if so (subject to any necessary consent) make directions for such assessment to be undertaken and for the filing of any consequent report. Any such report should address the factors set out in paragraphs 36 and 37 below, unless the court directs otherwise.

Secondly, whether any party should seek advice, treatment, or other intervention, as a precondition to any child arrangements being made, and may (with the consent of the party) give directions for such attendance. Survivors' lived experiences have indicated that experts were instructed with and without a fact-finding hearing being conducted. Also sometimes, experts recommended that mothers should undergo a

course of psychological treatment as a pre-condition to child arrangements order which directed that a child lives with the mother.

PD12J paragraphs 36 and 37 outline the factors that need to be taken into consideration, when making a child arrangements order, when domestic abuse has been found or admitted. Paragraph 36 states that:

36 (3) The court should make an order for contact only if it is satisfied-

- a) That the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and
- b) that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.

Paragraph 37 provides that:

In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider-

- a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;
- b) the effect of the domestic abuse on the child and its effect on the child relationship with the parents;
- c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
- d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
- e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future abuse.

Paragraph 35 provides that when deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child. This sets a high threshold for a court to make a no contact order and reinforces the contact at all costs ethos.²⁵ Arguably, it also places the responsibility on the non-abusive parent (usually the mother) to manage ‘safe’ contact with a perpetrator.

However, PD12J does acknowledge that there might be times when a no contact order is appropriate but asks the court to consider whether an indirect contact order should be made, e.g., by cards, letters, or virtual platforms such as Skype.

If the court concludes that direct contact is safe and beneficial for the child, PD12J Para 38 requires the court to consider whether contact should be supervised and if so, where and by whom, whether to impose any conditions on the parent having contact; whether contact should be for a specified period; and whether the operation of contact order should be reviewed. A number of survivors’ lived experiences indicated that a review hearing was not put into place, and instead a final order was made. This then places the onus back on a survivor to return to court, and commence a fresh set of family proceedings, if the post separation abuse continued and the contact arrangements break down.

3.3.2 Practice Direction 3AA (Special Measures)

Practice Direction 3AA (PD3AA) and Part 3A Family Procedure Rules 2010 make provisions for the safety and effective participation of vulnerable parties (including witnesses) in family proceedings and which are referred to as ‘special measures’.

PD3AA initially asks the court to consider how a vulnerable adult can participate in proceedings. The objective of the practice direction is to ensure that a vulnerable adult

²⁵ See Chapter 1; *Re L (Contact: Domestic Violence) Re V (Contact: Domestic Violence) Re M (Contact: Domestic Violence) Re H (Contact: Domestic Violence)* [2000] 2 FLR 334; Maddy Coy, Katherine Perks, Emma Scott and Ruth Tweedale, *Picking up the Pieces: domestic violence and child contact* (Rights of Women 2012); Ravi K. Thiara and Aisha K. Gill, *Domestic Violence, Child contact and Post-Separation Violence. Issues for South Asian and African-Caribbean Women and Children. A Report of Findings* (NSPCC 2012); Women’s Aid, *Nineteen Child Homicides* (Women’s Aid 2016); Rosemary Hunter, Adrienne Barnett and Felicity Kaganas, Introduction: Contact and domestic abuse, (2018) 40(4) *Journal of Social Welfare and Family Law* 401-425 ; Hunter and others (n 12); Barnett (n 18)

can participate fairly in proceedings and to support them being able to give the best possible evidence. PD12J outlines the need for special measures to be discussed at FHDRA. While the court will determine the specific special measures necessary for a particular case, examples are screens, video link and separate entrances/exits. Survivors are also able to ask for special measures in their C100 application form.

The Harm Panel Report²⁶ provided evidence that survivors were being denied special measures in court even when a survivor was supported by a domestic abuse organisation. Another concern raised was the practice of allowing perpetrators, who were litigants in person, to cross examine survivors (as well as survivors who are litigants in person having no choice but to cross examine the perpetrator). The report was instrumental in effecting a change to the Domestic Abuse Bill 2020, and the subsequent Domestic Abuse Act 2021 prohibits this type of cross examination, and now expects an advocate appointed by the court to cross examine on behalf of a survivor.²⁷ Survivors involved in this study described how they were denied special measures and how they felt this negatively impacted their case. Conversely, other survivors were too afraid to request special measures because they feared that this may present a negative image to the court.

3.3.3 Part 25 FPR/Practice Direction 25B

Part 25 of the Family Procedure Rules 2010 ('Part 25'), supported by PD25B (PD25B) outlines the expectations and duties of an expert who is instructed in family proceedings and covers both public and private law. The Rules and practice direction are comprehensive and cover most of the expert process, except for the assessment of parties.

The definition of an expert is a person who provides expert evidence for use in family proceedings (Part 25(2)). Part 25(3) explains that it is the duty of an expert to help the court on matters within their expertise and PD25B Para 3.1 that the expert's overriding duty is to the court and not to the person whom they have received instructions from or have been paid by. This is a crucial point and distinguishes between an expert being independent of the court (and being able to independently assess) and an expert's

²⁶ Hunter and others (n 12)

²⁷ These provisions are not yet in force.

duty to the court (and being bound by the findings of the court). Survivors' lived experiences indicated that this point is often not recognised or understood and is discussed in chapters 8 and 9.

An expert can only be instructed if the court deems it necessary to assist in answering questions that need to be answered to make a child arrangements order. The court will need to establish the reason for an expert instruction and consider the questions that a party/or parties wish to ask the expert.

PD25B sets out who can be an expert but suggests that it is too cumbersome to list every potential acceptable expert:

'An expert includes a reference to an expert team which can include ancillary workers in addition to experts. In an expert team, an 'ancillary' worker may be, for example, a play therapist or similar who undertakes work with the child or family for the purpose of the expert assessment. It is perfectly possible that such workers will be experts in their own right and in their own field, but it would be cumbersome to name everyone in that position in an order giving permission for an expert to be instructed, a child to be medically or psychiatrically examined or otherwise assessed or expert evidence to be put before the court or in a letter of instruction to an expert. The purpose of the term 'expert team' is to enable a multi-disciplinary team to undertake the assessment without the order having to name everyone who may be involved. The final expert's report must, however, give information about those persons who have taken part in the assessment and their respective roles and who is responsible for the report.'²⁸

Crucially, Section 13(8) Children and Families Act 2014 clarifies that an expert cannot be a Cafcass officer or a social worker however, an independent social worker is considered to be an expert. The usual types of experts in family proceedings, where contact arrangements are the main issue, currently tend to be psychologists and psychiatrists.

²⁸ The Rt. Hon. Lord Wilson of Culworth, His Honour Judge Anthony Cleary, The Rt. Hon. Lady Black of Derwent, *Family Court Practice 2022* (Jordan Publishing 2022)

Part 25 and PD25 clearly sets out how an expert should be instructed and how an expert should respond to an instruction. Part 25(12) provides that if more than one party wants to instruct an expert, the court may direct that the evidence is to be given by a single joint expert. If the parties cannot agree on a single expert the judge can decide how the expert should be selected.

As soon as an expert has been agreed, both parties are expected to agree upon a letter of instruction. Once again, a judge has the power to make the final decision if the parties are unable to agree. The letter of instruction outlines the questions that are before the court, and which are required to be answered by the expert and will assist the judge in making a child arrangements order.

The practice direction does not give guidance on how an expert should carry out their investigations, in order to answer the court's questions. Para 9.1 of PD25B particularly outlines the court's expectations of an expert report and the information needed, including: a description of the expert's own professional risk assessment process and process of differential diagnosis; being able to identify and explain, within the range of opinions, any 'unknown cause', whether arising from the facts of the case (for example, because there is very little information to form a scientific opinion) or from limited experience or lack of research, peer review or support in the relevant field of expertise; contain a statement that the expert has no conflict of interests (or if stated otherwise, that this will not affect their ability to be an expert and evidence that the expert has complied with the Standards for Expert Witnesses in Children Proceedings in the Family Court.²⁹

An expert is expected to answer supplemental questions about their report which could be asked by either party and/or the judge. The court may direct attendance of an expert at court to give oral evidence (Para 10 PD25B). PD25 acknowledges the costs incurred by an expert instruction, as well as the time constraints placed on professionals carrying out expert work and acknowledges the benefits of experts giving evidence by telephone, virtually or in writing.

²⁹ Practice Direction 25 Annex, Standards for Expert Witnesses in Children Proceedings in the Family Court

3.4 Expert Standards and Guidelines

This section explains the standards and professional guidelines that an expert is expected to read and adhere to before carrying out expert witness work. Although the various guidelines are briefly discussed here, relevant areas related to survivors' lived experiences, are outlined in greater detail throughout the proceeding chapters.

3.4.1 Standards for Expert Witnesses in Children proceedings in the Family Court

Set out in the Annex to PD25B, the standards require that an expert's area of competence is appropriate to the issue for which the court has identified that an opinion is required, and the relevant experience is evidenced in their CV. The court expects that the expert is active in the particular area of work, has sufficient experience of the issues before the court, and is familiar with the breadth of current practice. Experts are expected to be up to date with continuing professional practice, safeguarding requirements and carry current indemnity insurance.

An expert must be able to either provide evidence that they are registered with a statutory body such as the GMC or HCPC, if their title is protected, or, if their title is not protected, be able to demonstrate appropriate qualifications on a case-by-case basis (which may mean that the judge will determine whether the expert has the appropriate qualifications to be instructed).

Lastly, an expert should be able to show a working knowledge of, and comply with, the requirements of the practice directions relevant to providing reports and for giving evidence to the family courts in England and Wales. This includes compliance to identify where their opinion on the instant case lies in relation to other accepted mainstream views and the overall spectrum of opinion in England and Wales.

3.4.2 Psychologists as expert witnesses in the Family Courts in England and Wales: Standards, Competencies and Expectations

This document was jointly published in 2016 by the BPS and the Family Justice council.³⁰ It sets out the role of psychologists as expert witnesses in family

³⁰ The British Psychological Society and Family Justice Council, *Psychologists as expert witnesses in the family Courts in England and Wales: Standards, competencies and expectations* (The British Psychological Society and Family Justice Council 2016)

proceedings, regulations including protected titles, codes of conduct and the expectations for continuing professional development. The guidelines are based upon PD25B, and the guidelines set out by the HCPC.³¹ These standards continue to be referred to because they are considered to be the most current. However, in 2021 the BPS published 'Psychologists as expert witnesses: Best practice guidelines for psychologists'.³² This publication is similar to the aforementioned document and states that it should be read in conjunction with BPS code of Ethics and Conduct,³³ HCPC Standards of performance³⁴ and HCPC standards of proficiency,³⁵ where relevant. It is not clear if the most recently published set of guidelines have replaced the jointly published standards of 2016, or whether they are to be used in conjunction. However, the family court continue to reference the 2016 publication.³⁶

3.4.3 Royal College of Psychiatrists

The Royal College of Psychiatrists, in 2015, published 'Responsibilities of psychiatrists who provide expert opinion to courts and tribunals'.³⁷ The guidelines set out the expert's duties, the nature of expert testimony (including referencing important case law), ethics, governance, confidentiality, taking instructions and evidence bases, child protection cases and expectations regarding professional appraisal and continuing professional development. The guidelines outline PD25.

3.4.4 Health and Care Professions Council

As previously mentioned, the Health and Care Professions Council has published various documents that members are expected to have read and follow before commencing expert witness work. Standards of conduct, performance and ethics³⁸ and Code of ethics and conduct³⁹ are less comprehensive and provide an outline on standards and fitness to practice.

³¹ Health and Care Professionals Council, *Standards of conduct, performance and ethics* (Health and Care Professionals Council 2016)

³² The British Psychological Society (n 32)

³³ The British Psychological Society (n 32)

³⁴ Health and Care Professionals Council (n 33)

³⁵ Health and Care Professionals Council (n 33)

³⁶ Presidents of the Family Division, President's memorandum: Experts in the Family Court (Judiciary of England and Wales 2021)

³⁷ Royal College of Psychiatrists, *Responsibilities of psychiatrists who provide expert opinion to courts and tribunals* (Royal College of Psychiatrists 2015)

³⁸ Health and Care Professionals Council (n 33)

³⁹ Health and Care Professionals Council (n 33)

3.4.5 Psychometric Testing

The Royal College of Psychiatrists set out the use of psychometric testing within the previously mentioned document.⁴⁰ Two documents have been published by The British Psychological Society: 'Psychological testing: A test user's guide'⁴¹ and 'Psychological Testing: A test taker's guide'.⁴² Both documents explain what psychometric tests are but have specific sections for either professionals or service users. The test user's guide discusses test reliability and validity and the qualifications needed to carry out psychometric testing.

The International Commission on Testing has published guidelines on test use,⁴³ as well as a test-takers guide.⁴⁴ The document on test use is referred to in The Royal College of Psychiatrists' guidelines.⁴⁵

3.5 Expert evidence and Admissibility in Family Proceedings

This section discusses the two pieces of case law with which family law considers evidence to be admissible. The first case law is *Kennedy v Cordia*,⁴⁶ and has been used since 2016, to help the judiciary determine whether evidence can be deemed admissible. The second piece of case law has only more recently been used to assist the England and Wales court and originates from the US.

3.5.1 Kennedy (Appellant) v Cordia (Services) LLP (Respondent) (Scotland) [2016] UKSC

The family court takes guidance, relevant to the admissibility of evidence in family court proceedings, from the leading judgment of Lord Reed PSC⁴⁷ in the Supreme Court in *Kennedy (Appellant) v Cordia (Services) LLP (Scotland)*.⁴⁸ This case began in a lower court in Scotland and was initiated by Ms Kennedy, who in the course of her

⁴⁰ Royal College of Psychiatrists (n 35)

⁴¹ The British Psychological Society, *Psychological testing: A test user's guide* (The British Psychological Society 2017)

⁴² The British Psychological Society, *Psychological Testing: A test taker's guide* (The British Psychological Society 2017)

⁴³ International Test commission, *ITC Guidelines on Test Use* (International Test commission 2013)

⁴⁴ International Test Commission, *A Test-Taker's Guide to Technology-Based Testing* (International Test Commission 2010)

⁴⁵ Royal College of Psychiatrists (n 39)

⁴⁶ *Kennedy (Appellant) v Cordia (Services) LLP (Respondent) (Scotland)* [2016] UKSC 6

⁴⁷ (PSC) President of the Supreme Court

⁴⁸ *Kennedy* (n 46)

work as a home care worker, slipped on ice outside a client's home and injured her wrist. Ms Kennedy sued Cordia, the company who had employed her. As part of her case Ms Kennedy instructed an engineer, named Mr Greasley, as a skilled witness (expert witness in England and Wales), who proposed that Cordia should have provided Ms Kennedy with an anti-slip overshoe, which could have prevented her from falling over. Cordia objected to the evidence on the basis that the witness did not have the sufficient, and specific, expertise to be able to make this claim, but this was initially rejected by the court.⁴⁹ During the first appeal, the court decided that the judge should not have allowed the engineer to provide evidence because his recommendations fell outside of his expertise. Ms Kennedy appealed to the Supreme Court and asked them to decide on the admissibility of the engineers evidence and whether Cordia had breached their statutory duties by failing to provide Ms Kennedy with an overshoe.⁵⁰

The Supreme Court considered the issues that arose in relation to the engineers evidence and drew upon the experience of other jurisdictions both on the admissibility of skilled/expert evidence and in relation to the duties of an expert.⁵¹ The court considered four matters relating to expert evidence: admissibility, the responsibility of a party's legal team to make sure that an expert keeps to their role of giving the court useful information, the court's policing of the performance of the expert's duties, and economy in litigation.⁵²

The court initially explored the matter of admissibility and acknowledged that an expert can be expected to provide evidence of fact and/or opinion. It was the court's view that there were four considerations which govern the admissibility of expert evidence, and to which an expert should be able to affirm: whether the proposed skilled evidence will assist the court in its task; whether the witness has the necessary knowledge and expertise; whether the witness is impartial in their presentation and assessment of the evidence and, lastly, whether there is a reliable body of knowledge or experience to underpin the expert's evidence.⁵³ The court stated that 'all four considerations apply to opinion evidence, although, as we state below, when the first consideration is

⁴⁹ Mark Solon, New expert witness guidance? *Kennedy v Cordia* 2016, (2016) *Bone and Joint*

⁵⁰ Solon (n 48)

⁵¹ Kennedy (n 46)

⁵² Kennedy (n 46)

⁵³ Kennedy (n 46)

applied to opinion evidence the threshold is the necessity of such evidence'.⁵⁴ Therefore, opinion evidence (on which most case law focusses) has a threshold of necessity when these four considerations are assessed.⁵⁵ The court explained that when an expert provides an opinion they must be able to show their reasoning, which is more often more important than their conclusion.⁵⁶ Crucially, the threshold did not apply to an expert providing factual evidence, as the court could ask other experts with the same specialised expertise, and the evidence would be the same.

Ms Kennedy won her appeal because the Supreme decided that the engineer was found to have the sufficient experience and qualifications in health and safety and his evidence on factual matters was deemed admissible.⁵⁷

The Supreme Court stated that a witness's:

knowledge and expertise must demonstrate to the court that he or she has relevant knowledge and experience to give either factual evidence, which is not based exclusively on personal observation or sensation, or opinion evidence. Where the skilled witness establishes such knowledge and experience, he or she can draw on the general body of knowledge and understanding of the relevant expertise.⁵⁸

Crucially, the Supreme Court also acknowledged that:

in many cases where the subject matter of the proposed expert evidence is within a recognised scientific discipline, it will be easy for the court to be satisfied about the reliability of the relevant body of knowledge. There is more difficulty where the science or body of knowledge is not widely recognised.⁵⁹

The judgment also placed the initial responsibility in policing an expert's evidence and whether, in the first instance it will be deemed admissible, with the parties and within the context of case management. However, in the absence of any objection regarding

⁵⁴ Kennedy (n 46)

⁵⁵ Solon (n 48)

⁵⁶ Kennedy (n 46)

⁵⁷ Solon (n 48)

⁵⁸ Solon (n 48); Kennedy (n 46)

⁵⁹ Kennedy (n 46)

the expert evidence, the judge will be able to also test the evidence using the four considerations, outlined earlier.⁶⁰

Lastly, the Supreme Court acknowledged the cost of litigation (the economy of litigation), the added cost incurred by expert instruction, as well as the concerns regarding increased reliance on expert instruction, and concerns about an uncontrolled proliferation of experts.⁶¹ As a result, the Court urged parties to carefully consider whether an expert instruction was necessary and stated that they possessed the power to discourage the excessive use of experts.⁶²

3.5.2 Daubert Standard

*Kennedy v Cordia*⁶³ explored in depth the matter of admissibility of expert evidence and considered evidence that was opinion evidence based upon the experience and skills of the expert. The judgment also referred to US case law, *Daubert v Merrell Dow Pharmaceuticals (Inc)*,⁶⁴ which has seen a gradual reception within England and Wales.⁶⁵ Crucially, the case provided guidance on the admissibility of scientific knowledge as evidence.

The case began in the lower court (trial court) and addressed whether Bendectin, an anti-emetic drug prescribed during pregnancy, could have caused birth defects. The case was dismissed due to the lack of evidence that was deemed admissible. However, the decision was appealed and was carried through to the US Supreme Court. *Daubert v Merrell Pharmaceuticals (Inc)* explored and redefined the criteria for the admissibility of evidence, and advanced the then current criteria, known as the Frye Standard⁶⁶ which had been applied to the case before reaching the Supreme Court.⁶⁷ The judgment from *Frye v United States* stated:

⁶⁰ Kennedy (n 46)

⁶¹ Kennedy (n 46)

⁶² Kennedy (n 46)

⁶³ Kennedy (n 46)

⁶⁴ Kennedy (n 46); *Daubert v. Merrell Dow Pharmaceuticals, Inc* (1993) 509 US 579

⁶⁵ Burkhard Schafer and Aitken D. Mavridis, 'Daubert in the UK - Second order evidence between courts and commissions' (University of Edinburgh), <http://maths.ed.ac.uk> [Last accessed 01/06/2022]

⁶⁶ *Frye v United States* 293 Fed. 1013 (1923)

⁶⁷ Alexis Abboud, 'Daubert V. Merrell Dow Pharmaceuticals Inc. (1993)' (1993) *The Embryo Encyclopaedia Project*, <https://embryo.asu.edu/pages/daubert-v-merrell-dow-pharmaceuticals-inc-1993> [Last accessed 06/2022]

that evidence which has been ‘deduced from a well-recognised scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs’.⁶⁸

The judgment from *Daubert v Merrell Pharmaceuticals (Inc)*, emphasised the importance of a judge’s gatekeeping responsibility when determining the admissibility of evidence, and provided a non-exhaustive list of factors to consider including: whether the expert’s technique or theory can be tested and assessed for reliability, whether the technique or theory has been subjected to peer review and publication, the known or potential rate of error of the technique, the existence of standards and controls and whether the technique or theory has been generally accepted in the scientific community.⁶⁹

Crucially, the court dismissed the appeal and agreed with the decision of the lower court, being that the evidence put forward was not scientifically accepted and was not reliable after it had been tested by other scientists (including that the evidence submitted had been tested on animals rather than humans). The judgment has resulted in the Frye Standard being abandoned by the federal courts and many state courts but it continues to be in use in some lower courts.

Over time, the England and Wales Family Court has also adopted elements of the Daubert Standard to assist the court and will now be discussed.

3.5.3 Presidents’ Memorandum: Experts in the Family Court

The literature review in Chapter 2 has already mentioned how there has been increasing concerns raised by organisations, academics, and survivors regarding the way that experts are instructed in the family court. In response to calls for more transparency in the family court, the President of the Family Division, Sir Andrew McFarlane, initiated various working groups to evaluate certain aspects of the court,

⁶⁸ Frye (n 65)

⁶⁹ Angelica Cappellino, ‘Daubert vs. Frye: Navigating the Standards of Admissibility for Expert Testimony’ (2022) *The Expert Institute*, <https://www.expertinstitute.com/resources/insights/daubert-vs-frye-navigating-the-standards-of-admissibility-for-expert-testimony/> [Last accessed 01/06/2022]

including a group focusing on medical experts led by Mr Justice Williams.⁷⁰ In October 2021, the President issued a memorandum ‘outlining the principles applied by the family court when it considers whether to authorise or admit expert evidence’.⁷¹ The memorandum outlined that the court is guided by Practice Direction 25 A-C and *Kennedy v Cordia*.⁷² McFarlane also referred to *Daubert v Merrell Dow Pharmaceuticals (Inc)*,⁷³ stating that it now assists the England and Wales Family Court when determining the standard of admissible evidence.⁷⁴

As in *Kennedy v Cordia*,⁷⁵ the memorandum outlined four criteria which govern the admissibility of evidence, and are as follows:

- (i) whether the proposed expert evidence will assist the court in it’s task;
- (ii) whether the witness has the necessary knowledge and experience;
- (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.

These criteria are embedded within the Family Procedure Rules and within the guidance for experts written by the British Psychological Society and the Royal College of Psychiatrists.⁷⁶

The President continued by explaining that the court is assisted by the Daubert Standard when considering whether expert evidence can be admitted into proceedings and highlighted the following:

If scientific, technical or other specialised knowledge will assist the trier of fact to understand the evidence or to determine a fact an issue, a witness qualified as an expert by knowledge, skill, experience, training,

⁷⁰ Sharon Segal, The President of the Family Division Working Group on Medical Experts in the Family Courts Final Report, (Judiciary UK 2020), <https://www.judiciary.uk/wp-content/uploads/2020/11/Working-Group-on-Medical-Experts-Final-Report-v.7.pdf>. [Last accessed 06/2022]

⁷¹ President’s memorandum (n 38)

⁷² *Kennedy* (n 46)

⁷³ *Daubert* (n 63)

⁷⁴ *Daubert* (n 63)

⁷⁵ *Kennedy* (n 46)

⁷⁶ The British Psychological Society and Family Justice Council (n 32); Royal College of Psychiatrists (n 39)

or education, may testify thereto in the form of an opinion or otherwise.⁷⁷

The President reiterated that all expert evidence is subject to scrutiny and needs to be impartial, independent and based on reliable and established body of knowledge. Evidence which is considered to have unreliable methodology can be omitted from the proceedings.⁷⁸

The President's memorandum concluded by 'making plain' that 'pseudo-science, which is not based on any established body of knowledge, will be inadmissible in the Family Court'.⁷⁹

⁷⁷ Daubert (n 63) [588]

⁷⁸ This was the case for Betty and is detailed in Chapter 8.

⁷⁹ President's memorandum (n 38)

Chapter 4

Women's Lives. In and Beyond the Family Court.¹

4.1 Introduction

As a single mum with no job, no education, no nothing...like to... stand there in that position and then to be able to stand there in the position [many] years later where I've got a first-class degree, I've got a really good job, I've done everything to provide for my child and I stand next to a man that doesn't work, doesn't have an education, has a criminal record, and they still favour his experiences. (Julie)

Many of the survivors who participated in this study said that their family court experience did not consist of one or two hearings, but it became a journey, over a period of many years. Their family court journey dominated every aspect of their lives and had an extensive impact on other relationships including extended family, friends, and employers. Predominately, survivors described how they felt exhausted and frightened even before the family court process began, because of the domestic abuse that continued to be perpetrated on them. Survivors had perceived the family court to be the last bastion of hope for themselves, their children's protection and an opportunity, finally, for justice. However, they were shocked to discover that they found themselves being re-abused by a new system, this time 'sanctioned by the state' and survivors explained how they felt that they had been naïve to initially 'trust the system'.² Overall, survivors explained how they felt that their hopes, dreams, expectations, and self-esteem had been methodically chipped away until, for many women, they were left with two wishes: to keep their children safe (or have them returned to their care) and to use their last bit of agency to participate in this doctoral research.

The study found that survivors' lives became a one-dimensional existence that predominately revolved around the family court. While this may seem like an over dramatisation to anyone not familiar with the family court, survivors have eloquently been able to capture the exhaustion that was the consequence of trying to navigate

¹ This chapter contains details about domestic abuse that may be triggering for some readers.

² Maya Oppenheim, 'Family courts carry out 'state sanctioned abuse' of domestic abuse of survivors by letting perpetrators see children, commissioner warns' *Independent* (London, 22 July 2020)

pre and post separation abuse, systems abuse and the demands of the family court. Survivors explained how they felt that the family court assisted the perpetrator in continuing post-separation abuse, particularly related to child contact and this was often aided by the instruction of an expert. Survivors' lived experiences indicated that professionals and the court often overlooked domestic abuse allegations, and their mothering capacity became the focus of the family court assessments and subsequent reports. Many survivors had been threatened with the removal of their children, sometimes into foster care (as the father did not want the children to be transferred into their care), or had their children removed, usually as a direct result of an expert's recommendation.³ Essentially, a survivor is expected to show the court that she is managing a myriad of contradictory advice, post separation abuse and a family court schedule, whilst providing a loving and safe environment for her child/ren and promoting contact with an abusive father because if she does not, she may be deemed to be 'mentally unstable'.

This chapter hopes to bring to light the remarkable resilience and courage of the women who were brave enough to participate in this study. It was clear that for many, if not all of them, the need to continue to be there for their children had kept them alive. Yet it was their motherhood that was consistently used by the perpetrators and family court professionals to maintain the compliance of each mother as the system countered any forms of a survivor's resistance with draconian threats of the transfer of their child/ren's residence. The chapter concludes by outlining some further information gathered about survivors cases and provides some legal context to the decisions that were made, which are discussed in chapter 8.

The study illustrated how survivors' identities were continually challenged, transformed, or nearly destroyed as the result of domestic abuse, and systems abuse, which included the family court system. The following chapter introduces the 25 remarkable women who agreed to share their lived experiences in interviews that generally lasted between forty minutes to two hours and offers an insight into survivors' lives before, during and after their family court journey. Their lived experiences are interwoven with, and partly revealed through, their encounters with an expert who often, controversially, delved into the most intimate aspects of a survivor's life. The

³ See Chapter 8.3

benefit of a grand tour question has been that survivors have been able to emphasise significant, and often very painful, aspects of their lived experience, which have been carefully identified within this chapter. As noted in Chapter 3, however, utilising a grand tour question meant that not all aspects of survivors' experiences could be captured consistently.

4.2 Survivors and their Family Court Proceedings

The first section in this chapter outlines the information that survivors shared regarding their individual case and offers some of the legal context to their lived experiences. As will be revealed throughout the remaining chapters, there were times when survivors did not understand certain decisions, procedures or advice offered by professionals and this finding raises concerns about how survivors are being educated about what is happening to them during child arrangements proceedings. It should also be noted that the grand tour interview method means that similar information on each survivor cannot consistently be provided. Some of the information included in this section will be subject to further discussion in the proceeding chapters and a table of results is included in the appendices. There are times where a minimal amount of information has been omitted to prevent jigsaw identification but this is not intended to reduce the factual content of this study.

Alice

Alice had two young children; their ages were unknown. A Guardian was appointed for the children. Cafcass recommended that contact must continue between the father and the children.

Alice described how she had endured physical abuse and coercive and controlling behaviour before she separated from her ex-partner. This included being dragged by her hair through the house, not being allowed to bathe her baby, banning heating in the home while he was at work and not being allowed to go to the toilet, resulting in becoming incontinent. Alice explained that there was police reports related to his previous partner which detailed that he had repeatedly stamped on her head. Alice was told by the court that she had to limit her evidence of abuse to two pages.

Alice explained that there had been a FFH but no findings of domestic abuse were made. Alice's medical records were disclosed in the hearing which left her feeling suicidal. Alice was represented by a solicitor and a barrister but it is not clear whether this was privately paid for or funded by legal aid.

The Guardian suggested that Alice needed to be assessed by an expert and the judge recommended a psychiatrist.

Due to covid, contact between her children and their father continued online rather than in a contact centre.

Alexandria

Alexandria had one young child, who was appointed a Guardian. The Guardian recommended that an expert was necessary. The first expert was a paediatrician and the second one was a psychologist. Alice was initially accused of Fabricated Induced Illness, which was eventually not found.

Alexandria explained that she had disclosed the sexual abuse of her child by the father. During court proceedings, the father also received a conviction of battery against another person and was on probation at the time of the interview. Alexandria said that she had reported his abuse to the police, as her ex-partner was stalking and harassing her.

Alexandria was represented at times but asked her barrister to step down as she felt that her specialism in immigration was not appropriate to her case. The litigation was funded by legal aid and at times, privately. The nature of the application made to the court is not available.

Alexandria was threatened with the removal of her child. However, the final order was a shared care order with unsupervised contact. Alexandria explained that she recently found out that her ex-partner had assaulted his new partner and so she changed the contact herself to supervised contact. At the time of the interview, social services had just intervened as they were concerned that Alexandria was causing her child emotional harm and she was preparing to return to court.

Amal

Amal, a business owner, was the mother of a teenager. A Guardian had not been appointed for her child.

Amal had endured physical abuse and coercive and controlling behaviour. Despite leaving her ex-partner ten years ago, she described continuing post-separation abuse. At one point, Amal had reported one incident of physical abuse to the police but no further action was taken. Amal had also disclosed the abuse to her GP.

Amal was represented by a barrister which was paid for privately. The nature of the application initially made to the court was not available.

At the time of the interview, Amal had not seen her child for 18 months as a result of a transfer of residence order. A FFH was not conducted and a final order stated that there should be no contact between herself and her child, unless the child requested it. Amal's child was living with her father who had made allegations of abuse against her.

Amal described how she had already spent £26,000 in litigation related fees and was contemplating selling her house to use the equity to fund further proceedings.

Angela

Angela was the mother of three children, comprising of one biological child and two step-children. The children were raised altogether by Angela, who was a stay at home mum.

Angela described being pushed down the stairs and being assaulted. Her ex-partner was charged by the police for physical abuse.

The nature of the application made to the court was not available but her ex-partner was the applicant and initiated proceedings after he had left the family home. Her ex-partner accused Angela of domestic abuse. However, a FFH was not deemed to be necessary. Angela was represented by a solicitor but it is not clear how they were funded. Angela explained that she was denied special measures in court, such as a screen and separate waiting area.

Cafcass was involved and supported the court's decision to separate the children. This resulted in Angela's step children moving to live with their father, his new partner and her children. Her own child was expected to live with the father 50% of the time.

Barbara

Barbara was the mother of one child who was young at the time of family court proceedings. Barbara described herself as middle class and educated. Cafcass was involved in the proceedings but it is not clear whether a Guardian had been appointed. Barbara said that she had submitted a complaint to Cafcass but it was not upheld.

Barbara described physical, psychological and financial abuse perpetrated against her by her ex-partner, as well as childhood sexual abuse. Barbara also explained that her child also endured abuse from their father.

Barbara was represented by a solicitor and a barrister but it is not clear how this was funded. The nature of the initial application made to the court is not available. Barbara's child was removed from her care and transferred to her ex-husband. Her child was only returned eight years later, after making several suicide attempts and enduring abuse perpetrated by the father. On her child's return, Barbara discovered that the school and police had been made aware of concerns about ongoing abuse but she had never been notified. The teenager had been under the care of the Child and Adolescent Mental Health Service (CAMHS).

The expert instructed in Barbara's case was a psychologist who specialised in inter-racial adoptions. Barbara was accused of 'brainwashing' her child through a baby monitor and alienation.

Bell

Bell was the mother of one young child. A Guardian had been appointed. Bell made a complaint to Cafcass which was not upheld. Bell said that the father was coercively controlling and abusive toward their child.

The nature of the application made to the court is not available. A FFH was not mentioned. Bell was occasionally represented by a solicitor as well as being a litigant in person at other times.

Bell's child was removed from her care and, at the time of the interview, living with her ex-partner. Bell was struggling to have any contact with her child and this was further impacted by Covid-19. Bell had just submitted a new application to the court in an attempt to transfer the residence of her child back to herself.

Betty

Betty had just given birth to her baby at the time that family court proceedings were initiated by her ex-partner, who was the father of her second child. Betty was employed but had to stop work due to injuries caused by an unrelated accident. During the pregnancy, the father had threatened Betty with the removal of their baby. A Guardian was appointed.

Betty described post separation abuse which included physical abuse, stalking and harassment. Betty reported the abuse to the police but no further action was taken.

Betty was represented by a solicitor and a barrister which was funded by legal aid. Betty said that a FFH was refused because she was not objecting to contact. Initially, a contact centre was used but the father objected to this method, as well as other suggestions made by Betty to support 'safer' contact. A final order was made which allowed for contact between the father and child, but the child lived with Betty. Betty managed the contact herself.

Coretta

Coretta was mother to more than one child. One of her children had special educational needs which were only identified during the expert assessment.

Coretta described how she had endured emotional and coercive and controlling behaviour perpetrated against her by her ex-partner.

The nature of the application made to the court is not available but Coretta explained that there had been many years of family court proceedings whilst also enduring post-separation abuse. The children were removed from her care and transferred to live with their father under a 'full care order'. At one point, the father had suggested that the children be placed in foster care. The father had told the court that he was in a stable relationship with a new partner at the time that they were transferred to live with him, but this relationship broke down after several months of the order being made.

At the time of the interview, Coretta was supposed to have limited contact with her children but her ex-partner was preventing this. Coretta was not sure if she was able to go back to court, despite their placement with him being classed as 'unstable' by social services. The children had also recently made allegations of abuse against their father and Coretta was not sure what would happen. Coretta had not seen her children for 21 weeks.

Doris

Doris was the mother to two young children. Doris was employed by a school at the time that family court proceedings were initiated. Cafcass was mentioned but it was not clear if a Guardian had been appointed for the children. Doris described physical, psychological, financial and litigation abuse and coercive and controlling behaviour, as well as physical and psychological abuse perpetrated against the children by their father.

Doris described how the family court process began with a divorce and a FFH was conducted, which resulted in findings of domestic abuse. The father appealed on two occasions. Doris was accused of 'unconscious alienation'.

Doris was represented by a solicitor and barrister who were funded by legal aid and, at times, privately funded by herself. However, Doris occasionally had to instruct a direct access barrister and act as a litigant in person.

Doris explained how her ex-husband had been allowed to see the children in a contact centre, the day after findings of domestic abuse had been made in court, and he hit one of his children. However over the years, Doris described how supervised contact was resumed after a short interval, despite the children self-harming after seeing their father.

Emma

Emma was a mother to one young child who had disclosed sexual abuse to her, perpetrated by the father. Emma explained that she was a victim of 'extreme' childhood sexual abuse. Emma was a professional with her own business but nevertheless needed to take out a loan from a friend to help pay for the litigation fees, which included a solicitor.

The nature of the application made to the court is not available but Emma described how she was nearing the end of the 'third set of proceedings', which had dominated most of her child's life. Emma did mention a FFH, where no findings of child sexual abuse perpetrated against her child were made, despite the child disclosing sexual abuse to a schoolteacher. Emma described throwing up in her solicitors office as she was so distressed by the outcome of the hearing. Emma's solicitor advised her not to appeal as they could end up in 'a worse position', such a transfer of residence. An order was made for the father to have overnight weekend unsupervised contact with his child.

Emmeline

Emmeline was a mother to one child. Cafcass was involved but it was not clear if a Guardian was appointed.

Emmeline described how she had endured physical abuse, rape and coercive and controlling behaviour and mentioned that she had reported the abuse to the police after she had ended the relationship but no further action was taken.

The nature of the application made to the court is not available but Emma described a FFH (but never used the exact term). Allegations of sleep rape (sexsomnia) were not found. Emmeline explained that she had attended family court proceedings for many years. Findings of domestic abuse had been made but Emmeline described how the 'judgment had not been properly made' and so the next judge refused to allow any mention of domestic abuse and eventually the allegation of rape was also dismissed. Emmeline was accused of alienation.

Emmeline's ex-partner asked the court to remove their child into the care of his mother but this was refused. An order for contact was made but Emmeline admitted that she stopped contact as she believed that her ex-partner was too dangerous.

Gloria

Gloria was a disabled mother to one child. Gloria consented to an advocate speaking on her behalf who had also supported her throughout the family court proceedings. A Guardian had been appointed. It was not clear if Gloria was legally represented.

The application to the court was made by the father because their child was refusing to spend time with him and contact orders were continually broken.

Gloria's case involved many court hearings and at one point 'findings' were mentioned but the term 'fact finding hearing' was never used. Gloria's advocate explained how they were discouraged from discussing the abuse by their legal representative because they must not 'upset the judge'. The expert assessment identified that the child felt safe and secure with their mother but not with the father.

Despite this, an order was made for immediate overnight contact. The father had moved far away from Gloria as he had started a new family. The court placed the onus on to Gloria to facilitate and finance the contact. Gloria had a low income and could only drive for short periods of time and this resulted in her relying on her retired father to drive her child to and from contact with the father.

The judge told Gloria that if he saw her in court again he would consider transferring the child's residency to the father.

Isabella

Isabella was a mother to one child, who was appointed a Guardian. Isabella described physical, emotional abuse and coercive and controlling behaviour against herself and her child. Despite reporting the abuse to the police no further action was taken.

The nature of the application made to the court is not available, however a FFH was conducted. Isabella had legal representation but it was not clear how it was funded. Isabella's child was removed from her care during their school day and she was having

irregular supervised contact. At the time of the interview, Isabella said that social services were trying to push her back into mediation with the father.

Jess

Jess was a mother to five children from different relationships, with three children being party to the family court proceedings. A Guardian was appointed for the children. Jess described her ex-partner as an extremely violent man who perpetrated abuse against herself and the children. The children had disclosed the abuse to a social worker and this resulted in the police interviewing the children. The children's ABE interviews were never submitted into the family court proceedings.

Jess had initiated family court proceedings because of domestic abuse. However, her ex-partner wanted to have 'full custody' of the children. Jess was represented by a solicitor but it was not clear how this was funded.

Initially an undertaking addressing the abusive behaviour was written into a court order, which was later broken. Jess was granted a non-molestation order but she continued to be scared and eventually had to move to another region of the United Kingdom, but not before herself, and her children, had to attend the psychological assessment with the father in attendance.

Julie

Julie was the mother to one child, who was appointed a Guardian. Julie had a first-class honours degree in a relevant subject to the family court proceedings, was employed and was not eligible for legal aid.

The nature of the application made to the court is unclear. At the time of the interview, Julie's ex-partner had removed their child and was refusing to return them during the Covid-19 pandemic.

Julie described being in court since the child's birth but a pattern of abusive behaviour had not been recognised, and the abuse was often seen as singular events. However, at one point an order was made for the child to live with her because of the father's mental health but this arrangement did not last long and another court application was made (it is not clear who initiated it). Julie mentioned 'finding of fact' but never

specifically used the term 'fact finding hearing'. Julie also mentioned trying to get a Sec 91(14) order and a prohibited steps order. Her application was eventually refused as the court suggested that the issues before the court amounted to conflict between the parents and a fresh start would be better. Julie explained that the judge said that she wanted to give the father a chance and reserved all future hearings to herself. This was despite Julie telling the judge that the abuse would continue.

At the time of the interview, Julie was hoping to be able to ask the court for an enforcement order and wanted to have a police escort to accompany her when she tried to retrieve her child.

Jacqueline

Jacqueline was the mother to three young children. Jacqueline had a degree but was not working at the time of the interview. Jacqueline described domestic abuse including economic abuse. Jacqueline was a litigant in person and was supported by a McKenzie Friend.

The nature of the application made to the courts is not available. However, Jacqueline explained that family court proceedings had been continuing over many years. A FFH was conducted and this was appealed by the father. Jacqueline did not discuss what findings had been made at the FFH. However, the father was given a mental capacity certificate, which meant that he did not have the mental capacity to continue with the family court proceeding for a specific time period and the appeal was never heard.

Jacqueline's ex-partner threatened her with the prospect of removing her children and placing them in foster care. At the time of the interview, Jacqueline's children had no contact with their father but she was unsure what would happen next. The father was not paying child maintenance and she was in contact with the Child Maintenance Service regarding her next steps.

Kathleen

Kathleen was the mother to one child and was employed as a lecturer. Kathleen described a Cafcass officer but did not mention a Guardian.

Kathleen described physical abuse, stalking and coercive and control behaviour, as well as non-fatal strangulation, which had resulted in a police arrest. The abuse resulted in several Multi-Agency Risk Assessment Conferences (MARAC).

The nature of the application made to the courts is not available but Kathleen's ex-partner initiated proceedings for 'child access'. Kathleen was represented by a solicitor and a barrister, funded by legal aid. Kathleen did not mention a FFH. However, Kathleen mentioned being in court approximately 20-30 times and at some point the court provided her with a screen, as a special measure. Despite an escalation in stalking, being placed as high risk by MARAC and living in a refuge, the court wanted to move the supervised contact to unsupervised and overnight. Kathleen found an advocate who helped her write position statements.

At the time of the interview, an order for supervised contact was in place but the father had chosen not to see his child. At the last court hearing Kathleen's ex-partner had demanded to know her new address.

Mary

Mary was the mother of two children. Mary was a business woman who worked extensively in her community. Mary mentioned that the children had their own legal aid certificates and a solicitor.

Mary described physical and verbal abuse as well as coercive and controlling behaviour perpetrated against herself and her children.

Mary's ex-husband initiated the family court proceedings as he wanted the children to be removed from her and placed in foster care. The father had never made an application to transfer them to his full time care and lived with a new partner who also had children. Mary explained that a 'FFH never took place' and she had been accused of parental alienation.

At the time of the interview, an order was made for the father to have supervised contact with the children. The family court proceedings were set to continue.

Maya

Maya was a mother to two young children who at the time of the interview were living with their father and his new partner. Maya was a Black woman and her ex-partner was a white man, his new partner was also white. Maya's children were mixed race with Afro hair and were transferred into an all-white household.

Maya described racism and domestic abuse, including coercive and controlling behaviour.

The nature of the application made to the court is not available. However, a transfer of residence was ordered by the court and, at the time of the interview, Maya had limited supervised contact with her children. Initially Maya had a Non-Molestation order for 12 months. Maya was legally represented and received legal aid. Maya described the allegations of domestic abuse being 'unfounded' in court but a FFH was not mentioned.

Michelle

Michelle was a mother to one child, who was appointed a Guardian.

Michelle described mental, emotional, coercive control and financial abuse and one incidence of physical abuse when she was pregnant.

The nature of the application made to court is not available. It was clear from the interview that Michelle seemed to struggle with understanding what had happened in the family court proceedings and found it hard to explain the process, despite instructing a solicitor.

An order was made to transfer the residence of her child to her ex-partner, who had remarried. At the time of the interview, Michelle was trying to 'fathom' a way of getting her child back.

Phoebe

Phoebe was the mother of two older children who were young at the beginning of family court proceedings but were teenagers at the time of the interview. The children had been appointed a Guardian.

Phoebe had a degree and was not able to use her degree due to the family court proceedings but was working in low paid positions.

Phoebe described enduring physical, financial and emotional abuse as well as coercive and controlling behaviour.

Phoebe was a litigant in person but also received pro bono representation from a direct access barrister.

The nature of the applications made to court is not clear. A FFH was refused. Phoebe was denied special measures in court and said that PD12J was not followed despite raising this as a litigant in person. The judge ordered Phoebe to produce her bank statements as evidence that she could not afford to pay for 50% of the expert instruction fee. Phoebe was told that she would have to repay the fee in instalments at the legal aid rate.

Phoebe was accused of parental alienation and an expert recommended that the children be transferred to live with their father because the reunification therapy had failed. They were removed by family court tipstaff and the police.

The children returned to Phoebe of their own volition, despite a court order being in place. The father had not challenged the children's return. This meant that the post-separation abuse could continue, as she was unable to claim child maintenance.

Ruth

Ruth was the mother to two children who were appointed a Guardian.

Ruth described domestic abuse including coercive and controlling behaviour.

The nature of the application made to the court is not available. Ruth described many years of family court proceedings, which included approximately four 'separate hearings' with 'extensive social work involvement' but a FFH was not considered necessary. Ruth also described private and public law proceedings.

Ruth explained how her children were transferred to her ex-husband and then placed into foster care for a period of time, before returning to her. Ruth was a litigant in person and occasionally had legal representation funded by legal aid.

Ruth explained that at the time of the first family court hearing, coercive control was not a term that was widely recognised and there was greater emphasis on identifying physical abuse.

At the time of the interview, Ruth's children were having unsupervised contact with their father but he wanted more time and was threatening to return the matter back to the family court.

Simone

Simone was the mother of one child. At the time of the interview, Simone was living in a refuge. Simone's child had been removed from her and lived with their father and it was not clear if her child had been appointed a Guardian. Simone was employed and had accepted a place to study a social work degree at university.

Simone described enduring physical and financial abuse as well as stalking and coercive and controlling behaviour. Simone had reported the abuse to the police but no further action was taken. Simone was continually at risk of professionals disclosing her refuge address to her ex-partner and received abusive text messages from him because she was told that she had to provide him with her phone number.

The nature of all of the applications made to the court is not available. However, Simone explained that her ex-partner had made a successful application for a transfer of residence, accusing Simone of emotional harm. Her child had never lived with their father and had not spent any more than five days with him, at one time. Simone's ex-partner was in a new relationship and her child had to share a room with one of her children. Simone was legally represented and received legal aid. Her ex-partner was a litigant in person. A Sec 91(14) order was in place preventing Simone returning to court without permission. Simone said that her solicitor was trying to find a way of appealing the order.

Sivitribai

Sivitribai was a mother to a very young child when the family court proceedings began. Sivitribai was a British Indian woman who was highly educated and had previously been employed in a high paying role.

Sivitribai described physical abuse, rape, financial and drug abuse, as well as coercive and controlling behaviour which included coercive conception. In the past, her ex-partner had received a caution for drug possession. When Sivitribai's child was very young, her ex-partner was arrested for domestic abuse but she refused to press charges and he received a caution.

The nature of all of the applications made to the court is not clear however, family court proceedings had continued over many years. Savitribai was represented by solicitors and a barrister but later became a litigant in person. At one point, Savitribai was ordered to hand over her child's passport, along with her own passport, to her ex-partner's solicitor. A FFH was conducted but Savitribai did not discuss the outcome. Savitribai explained that there was a shared care order in place but her ex-partner had threatened to apply to the court for a transfer of residence. He also threatened to apply to the child maintenance service. The expert psychological report was sent to Savitribai's local police force, as an attempt to dissuade her from calling the police.

Despite trying to find ways to maintain contact between her ex-partner and their child Savitribai found it very difficult as she was being threatened with her child's removal. Savitribai 'voluntarily' agreed to a transfer of residence in order to provide her child with stability, as the post-separation abuse continued.

Tarana

Tarana was a mother to two children who were appointed a Guardian. Tarana was planning to study a master's degree in psychology and had just become a trustee to a charity.

Tarana described fleeing domestic abuse and moving into a refuge.

Tarana initiated family court proceedings although the nature of the application made to the court is not available. Tarana had legal representation and mentioned a solicitor a paralegal and a barrister, but it is not clear how this was funded. Tarana explained that a FFH was conducted, where no findings of domestic abuse were made. At one point in the proceedings, the Guardian suggested a transfer of residence because of parental alienation, despite the father not having a home for the children to live in.

At the time of the interview, the father was seeing the children on a limited basis which was being monitored by Tarana.

4.3 Childhood and Education

For those survivors that discussed their childhoods, their lived experiences generally fell into two categories, those with happy childhoods and those who had been subjected to childhood abuse which was usually sexual. The main reason that childhoods were mentioned to me was because the expert had asked about them, with one or two experts paying particular attention to childhood and past sexual relationships.⁴

Savitribai's interview lasted over two hours, it was the first and the longest one in the study, and she generously provided extensive detail about her life before she was subjected to domestic abuse. Savitribai explained how her family, who were not born in the UK, had sacrificed so much to support her in her education. As a highly intelligent young woman she was given many opportunities by her parents, who she described as loving and kind. It was interesting to hear that she had a very close bond with both of her parents and extended family but singled out her father as 'very progressive' not just because of his culture 'but for any family. Until this day that it's just how it is and it's not a big deal. It's just how you run your family'. It appeared that Savitribai had brilliant parenting role models and she consciously wanted to reflect this in her own mothering. Savitribai herself came across as kind, gentle, considered and, on hearing the outcome of her family court journey, was undoubtedly an altruistic mother.

Savitribai had been provided with a high level of education, and because of this, and her intellect, she had achieved a successful career. As well as focusing attention on her cultural background, education and career Savitribai said that she had discovered that the expert had been involved in other court cases where a mothers IQ had been 'attacked'. Savitribai's IQ was also a focus for the expert, and she was told by his 'research assistant', 'the psychologist is known for attacking mother's IQs and he probably got into trouble for it, hence why he didn't mention yours to be an issue'. At one point during the assessment the experts focus shifted to asking Savitribai about her past sexual history and he wished to ascertain all of her previous partners,

⁴ See Chapter 8

information that the father of her child/ren did not know but would be shared with everyone involved in the private law proceedings.

Generally, survivors talked about their childhood and education if the expert had asked about it, they felt it was relevant to their lived experiences of domestic abuse, or if the survivor had felt that their education (and understanding of what was happening to them) negatively impacted their family court proceedings. Seven women revealed that they were educated to degree level before the first private law application. Significantly, several survivors were compelled to return to education directly because of their experiences in the family court because they wanted to intellectually understand what was happening to them, and why.

Seven women told me that they had degree level education that appeared to have been gained before family court proceedings. On the day of the interview Julie explained that she had just been celebrating her first-class honours degree that had been awarded to her the previous day. The degree was in a subject that had helped her gain extra knowledge into issues that were relevant to some of the concerns within her family court case.

Tarana explained:

I'm divorced...so, I'm going to study psychology basically I'm going to do a Masters...I've got to get my, I've got my conditional offer. (Tarana)

It's horrible but it's...because of what's happened to me. I think I can't quite believe that good things happen to me, if that makes sense? (Tarana)

Twelve women mentioned their careers. Careers included medical based professions, artistic performance, a charitable trustee, local government, business owners, interior design, stay at home mothers and a lecturer. Gloria was disabled, was unable to work and she relied on her family to support her, including significant help in court, and managing the demands of the child arrangement orders. Most of the women did not discuss the impact of the family court proceedings on their careers or ability to earn money but given the length of many of the proceedings, it would be reasonable to infer that it would have had a significant impact.

Phoebe had an honours degree in a highly relevant subject but domestic abuse, post separation abuse and the forcible removal of her child/ren had impacted her career. Phoebe explained that the family court order stating that she was emotionally abusive could have an impact on any future work:

I need to get the order dismissed because I don't like the fact that it's down on record that basically, I'm a child abuser because that's what I'm accused of. I caused emotional abuse to my children. Emotional abuse is child abuse; therefore, I am a child abuser, and when I have a [DBS] check to enable me to work with [children] which I do, it's not helpful.⁵ (Phoebe)

4.4 Children

There were approximately 44 children shared between the 26 mothers in the study, with an average of 1.69 children per mother.⁶ This figure includes children that lived with a mother but were not related, as in Angela's case.

Angela explained that she was a full-time mother who had supported her ex-partner's various careers over the duration of their relationship, while she raised their children. This included caring for a child from his previous relationship, who lived with them, and she considered to be one of her own children. Angela's ex-partner now had a new partner with her own family. Angela said that Cafcass proposed that her children should be split up and the eldest child move in with the new partner's family:

I didn't think that they would separate the children either, but he immediately got together with a woman he was having an affair with, who had children and so Cafcass people just said 'no, that's a blended family' and they acted like the girlfriend's children were equal to my eldest child who had grown up with the other children. I just couldn't believe it. I feel like, until you've gone through it, you've just got no idea. (Angela)

⁵ Disclosure and Barring Service (DBS) used by employer to check future employee backgrounds.

⁶ This is an approximate figure as data was not explicitly taken. There is a query as to two survivors' families and so the exact figure may be between 44-46.

Betty left her ex-partner while she was pregnant. Another life changing event had given her a wake-up call and she wanted to protect herself and her unborn child from further domestic abuse. Betty was admitted to hospital during her pregnancy:

He would email me, you know, 'X amount of days until you give birth, make the most of it while you're carrying our child' and then when [child] was born, he was saying, you know, you'll be in court within a week, and I really became quite traumatised by what he was saying to me and believed it was a possibility. So, I was doing anything to appease him. So, if he'd say, 'I want to see you on this day, at this time'. I would agree to it and I was really struggling to meet those agreements because when I would be present with him, he would be abusive to me, but I was doing everything because, I believed that if I didn't do these things he would take me to court, trying to get custody of our child. (Betty)

Simone explained that her child/ren had never spent more than five days with her ex-partner but despite having to flee abuse and move into a refuge, her child/ren were ordered to be removed from her care. Simone's child/ren now lives with her ex-partner and his new partner, where they have to share a bedroom with the partner's child/ren.

It was clear that every mother's first wish was to protect their child/ren. Many of the survivors expressed how precarious their lives became after leaving, as the abuse continued, but with the children becoming the focal point, as a method of coercively controlling the mother. There was a sense that mothers who had had their children removed from their care wished that they had stayed in the relationship as they would be able to be a protective factor for their child.⁷

4.5 Cultural Background and Values

As previously mentioned, information regarding ethnicity was not specifically collected and it was entirely a survivor's choice if they wished to disclose it. Usually this occurred if a survivor had found that this had had a bearing on their family court proceedings.

⁷ See Chapter 8.2.14

Maya and Savitribai spoke about the importance of their culture in varying ways. As already discussed, Savitribai's very close and happy upbringing was seen as unusual by the expert, who may not have been Asian and may not have had an understanding of traditional cultural values.

Maya spoke about the difficulties in trying to maintain cultural values after she had become separated from her child/ren.

So, I'm a Black woman and my children are mixed race, and they have Afro hair and he's a white male with a white partner, my children are the only mixed race, they are the only black children in all, all white household and they're constantly told things about their skin, or their hair, that I don't think promotes a healthy image, or healthy self-image.
(Maya)

During the assessment Maya had explained to the expert that she would always take her child/ren to a hairdresser to have their hair professionally maintained. Nail care was also important and considered to be a bonding activity between mother and her child/ren. Maya painfully recounted how, after her child/ren were removed, a social worker asked Maya to confirm where she had previously taken the child/ren for hair and nails. The social worker told Maya that this would be a good bonding activity for her child/ren to do with their father's new partner.

Phoebe is a white woman who had lived in Africa. On reading the experts CV and seeing a photograph Phoebe said:

'I saw a photograph of him, and I'm not embarrassed to say I took an instant disliking to him, short and weasel, and I immediately thought 'oh god', and also...for me it is quite personal in that he is South African. Now I used to live in Africa, and there are not many male South African's who are pro-women, that is all I'll say'. (Phoebe)

Phoebe was instantly concerned about the expert's nationality because of the cultural values that she felt that he may apply during the assessment and subsequent report. As discussed in Chapters 8 and 9, Phoebe may have been right to question the expert's independence.

4.6 Survivor Identity Through the Family Court Journey

The overall impression gathered from the study was that women enter the family court still with their sense of identity, albeit altered by domestic abuse, and this core strength remained throughout the family court proceedings. There was also a very clear impression that survivors identified strongly as mothers, and their ability to be a good mother was essential to their identity. Survivors conveyed a deeply inherent need to protect their child/ren from harm and this persisted even if there had been child/ren removal, as then the focus became about doing everything in their power to have them returned to their care. Although survivors described how they felt that their mothering had been attacked by professionals and the family court, their mothering also provided the impetus to continue to fight for their child/ren's voices to be heard.

Exhaustion is a thread that runs throughout the interviews, as women recounted the length of time that they have had to endure the family court process, before and during domestic abuse. Survivors faced the dichotomy of continuing to want to mother to the highest standard while simultaneously having to attend endless court hearings/court related appointments which focused on their mothering abilities. Mothers were held to impossible standards where they were expected to meet the demands of various groups of professionals, try to shield their child/ren from adult issues, protect them from domestic abuse while being criticised for raising concerns about unsafe contact with an abusive father. Several mothers cried as they described the challenges that they had encountered throughout the family court process, and their exhaustion was palpable. Despite their enervation, each survivor showed a determination and strength to participate in the study. As Maya said:

So, for example, in public, because I'm a very open person about my situation because I refuse to hold any shame about something, that the person, he should be ashamed, is walking around...as he's got nothing to be ashamed of, so I will not be ashamed, I've got nothing to be ashamed of. (Maya)

Overall, survivors intimated, or explicitly stated, that they felt that perpetrators, professionals, and the family court had tried to prevent them from speaking about the domestic abuse and their experiences of the family court. Many survivors felt frightened about participating in the study, but these fears were outweighed by their

desire to try to make a difference for women and children in the future. The interview was also an opportunity to reflect on their family court journey and for their lived experience to be validated, often for the first time. Predominately, survivors recognised that the problems they encountered were systemic and not caused by who they were, their capacity to mother or their mental health, which was usually the immediate focus for professionals, rather than domestic abuse. Survivors' lived experiences consistently revealed the absence of a trauma informed approach taken by experts or family court professionals. Many of the mothers' accounts echoed how Amal felt when she said, 'and I'm sitting there going, I'm not crazy, you know, I'm distressed'.

During the interviews, survivors were able to confidently assert who they were, perhaps because they were speaking in a safe space. However, they also described how cautious or frightened they were to be so forthcoming with other professionals. It is reasonable to assume that the trepidation was caused by their lived experiences of abuse being seen as less credible than their perpetrators and they had learned to be careful how they presented themselves. For example, Savitribai explained, 'but when he [the expert] started to ask me what kind of student I was, I was kind of, I downplayed it, and I downplayed it a lot'. Emmeline behaved in a similar way, 'I walked away, and I felt like I was completely blaming myself for everything that happened'.

Barbara was the only woman who explicitly said, 'I'm ok, angry. Angry now. Angry', after she had explained that her child/ren had been removed from her care during her family court journey. Barbara's lived experience reveals years of worry, heartbreak, and an endless struggle to have her child/ren returned, while all of the time being in fear that they were being abused by her ex-partner. Now with her child/ren returned to her care, it appeared that Barbara felt safe enough to be able to express her anger.⁸

4.7 Domestic Abuse and Identity within Legal Proceedings

Crucially, survivors described how domestic abuse was at the core of family court proceedings, but this had been obfuscated by the court and associated professionals shifting their focus onto themselves. Survivors felt that this transference mirrored the abuse that they had endured and, as Maya said, it felt like being gaslighted by

⁸ This was a personal reflection on Barbara's description of how she felt able to say that she was angry.

professionals. Survivors found that professionals and perpetrators had made disparaging remarks within the context of family court proceedings, which were usually aimed at their mental health or mothering, as follows:

Alice: 'The mother's the irritant in the system'.

Maya: 'So, it's almost like, what we want you to do is recount the abuse, we want you to retraumatise yourself ... and then we want to ignore all of that and say that you are entrenched'.

Maya: 'I'm not maternal'.

Maya: 'The judge said that I was too emotional'.

Maya: 'Even the judge went so far in his judgment to explain away the abuse by saying that I am too sensitive, that it's a personality thing'.

Jacqueline: 'I am a danger to my children'.

Amal: 'I'm kind of like an incendiary person, but just kicks off at the slightest trigger'.

Savitribai: 'The judge is saying that you lied'.

Barbara: 'I'm an alienating mother'.

Julie: 'I'm not a good mum'.

Betty: 'He threatened that if I terminated the relationship ... he would say that I was an unfit mother'.

Jess: 'And they will try to make you look crazy and I think the more you say that this is the system, this isn't right, the more crazy you look'.

Gloria's advocate: 'And the father always implies that the mother has mental health problems'.

Tarana: 'I had histrionic traits'.

Angela: 'He said that I was financially abusive ... that I did, neglected the children and that I had mental health problems'.

Kathleen: 'I was hostile'.

Emma: 'I'm neurotic, I'm obsessed with sexual abuse and that my opinion cannot be relied upon'.

Michelle: 'Then eventually when I did speak up about it ... you are just not believed'.

4.8 Past Abuse

Survivors' lived experiences offered an insight into some of the abuse that had been perpetrated on them. There were many ways in which survivors disclosed the domestic abuse before the family court proceedings began, sometimes after many years of enduring the abuse quietly in an attempt to maintain their own, and their children's safety. The main professionals to whom survivors said they had disclosed abuse were police, domestic abuse organisations, judges (via a C1A form /Scott schedule and/or during cross examination), solicitors, barristers, Cafcass and experts. Sometimes there were concurrent criminal and family court proceedings taking place and the abuse would be a factor in the criminal case but would not have been found by the family court. Critically, all survivors, at some point, had trusted at least one professional enough to report the abuse and had trusted that their allegations would be managed within professional and/or legal parameters.

One of the criticisms of the family court has been that it is more willing to recognise incidents of physical abuse as opposed to coercive and controlling behaviour, despite the latter being made a criminal offence in 2015.⁹ However, a number of survivors described that for numerous reasons even the physical abuse was minimised or ignored. Reasons included that the abuse was not deemed bad enough to be a barrier to child contact or was disbelieved.

But the judge didn't think that it was a big deal or the fact that he... keep me until I wet myself because he said that I had already been to the toilet...apparently, that didn't happen...and he didn't drag me by the hair down the corridor...I talked about things like he wouldn't let me

⁹ Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (Ministry of Justice 2020)

reach my baby from the bath...he wouldn't let me get to [child/ren] like, these are the things that the judge said didn't happen. (Survivor)¹⁰

Another survivor explained:

...then he said [the judge] that he didn't want a fact-finding hearing, even though he had ticked all that, I, I felt as well, I, I felt they minimised what I had been through because there hadn't been much physical violence, he had, got charged and knocked me over a few times, and he'd pushed me down the stairs, down a few of the stairs but I felt like it was, they made out that there are women going through so much worse. (Survivor)

Survivors courageously shared, often harrowing, descriptions of the domestic abuse that they had endured which included rape, stalking, punching, stamping, financial abuse, verbal abuse, intimidation, non-fatal strangulation, online abuse, coercive reproduction, sleep rape, threats to take children away from their mothers, refusing to return children to their primary residence and coercive and controlling behaviour (which may have been continuing at the time of the interview).

One survivor recounted in painful detail how her ex-partner would rape her in her sleep and had coerced her into becoming pregnant, only to then find that she was threatened with the transfer of her child/ren residence if she did not stay in the relationship.

Several women explained how they were concerned that their child/ren were being physically/sexually abused by the father and the abuse had been disclosed to professionals (including a judge) but it had been dismissed.

A survivor described how her ex-partner had told the child/ren 'I'm gonna smash your mothers face in, she is a C.U.N.T and a prostitute'. Another survivor detailed how her ex-partner not only had a history of abusing her and her child/ren but of grooming other women who had been sexually abused.

Several of the survivors in this study were so afraid of their perpetrator that they had to move to a new county, country or seek shelter in a refuge. A survivor who was living

¹⁰ Survivor's name not provided to prevent jigsaw identification.

in a refuge at the time of the interview, had lost residency of her child/ren and was at risk of having her location revealed because of a failure in the family court process. The study found that even when survivors felt the need to move to an undisclosed address to protect themselves and their child/ren, this could be overlooked, minimised, or dismissed by professionals including the judiciary and an expert.¹¹

4.9 The Impact of Re-Packaging Lived Experiences of Domestic Abuse

The penultimate part of this chapter details the impact of the abuse that women had to not only endure but were expected to 'get over' or dismiss. Many women explained that on the balance of probability the abuse was found not to have been perpetrated, therefore it would follow that if the abuse did not happen then there should not be an impact. However, as this thesis will show, even when the domestic abuse has been found not to have happened, women are then advised by professionals, usually NHS professionals, to commence a form of therapy for domestic abuse-related trauma and Post Traumatic Stress Disorder (PTSD).

This section was initially titled 'The impact of domestic abuse' but this would have been inaccurate. Survivors have described how they had been impacted by domestic abuse that had then been examined in the family courts, by court professionals and, pertinent to this study, by court instructed experts who had then minimised or dismissed the abuse. So, to be more precise, the final segment is about the impact of the 'repackaging' of abuse by a plethora of court professionals, and the effect that this has on a survivor's life, as she exits the courtroom.

Once again, women's experiences of the impact fell, roughly, into two categories: mental health and mothering. All survivors in the study told me that their mental health was the focus of professional/family court enquiry at some point when they disclosed domestic abuse. Any mental health concern regarding a mother would invariably prompt an expert to be instructed, with or without a fact-finding hearing being directed. At some point concerns for a survivor's mental health could precede an expert and

¹¹ For examples see, Coy and others (n 7) 32; Hunter and others (n 7) 134

then remain an issue following assessment, final reports, and a final family court hearing.

A recurrent theme throughout the interviews was the repeated dismissal of domestic abuse by professionals and the impact that this had on a survivor (usually not by the police or by NHS professionals). As Alice described:

...but that's how the family courts make you feel, and I can't believe what a rollercoaster it's been and it's still continuing. Like the fact that the judge doesn't believe me, that I've been psychologically assessed. I feel like what they are going to put me [sic] in next if I keep saying there was abuse, there was abuse, there was abuse. I feel like they're going to put me in a straitjacket [laughs]. It's just like, what...the fact that you, they make out that you're mental. I think it has a serious effect on your mental health, the fact that so many people, by telling you that, oh we think that this didn't happen because we can't...because he gave the kids a packet of crisps [laughs] he's not abusive, he just makes you think, oh, it makes you well I, think I was made ill by the courts...but I don't know what else to say, apart from, I could do a lot of swearing' [laughs]. (Alice)

Maya concurred with Alice, when she said:

it's a very confusing experience, to be constantly dealing with professionals where they are gaslighting you. They are telling you, you said or did things that you clearly did not and actually...that's what the perpetrator would also do so, so it becomes an, a very, a very disillusioned experience, confusing experience, a frightening experience, because with the perpetrator it can be clear what their motives are, but it's not clear why, independent professionals... (Maya)

Amal cited the court 'arena' as a place of trauma because of the impact of professionals not believing her:

...to talk to people that are quite frankly disbelieving in the extreme, you know, and, and also dealing with his barrister's abusive tactics ...understand, like, you know, I spent two hours on the stand being cross examined here his barrister asked me a question...relating to one part of the bundle...I was...turning to that part of the bundle so he then asked me another question, and then another question on top of that. (Amal)

Amal explained that as a result of family court proceedings her child/ren were removed from her care, and following this life changing order:

for the first...three months I could barely work...but the whole process has been, like putting me back into the middle of the abusive relationship because essentially that's what he is doing. He is now using the court process and the court officers...Cafcass, social workers etc...to re-abuse me and using the child/ren as the weapon. (Amal)

There is a scarcity of scholarly research about the health impacts for survivors arising from domestic abuse and the family court journey and there is a gap in knowledge, from a public health and legal perspective. Many women explained that they had to manage PTSD, or complex PTSD, that had been present after leaving the abusive relationship. They felt that these conditions had been exacerbated by family court proceedings, which included interactions with an expert.

One survivor disclosed the impact on her life of an aspect of the incredibly traumatising and abusive behaviour incident that she endured.¹²

I was so worried about him because he would hide my glasses a lot at night, you normally take out your contact lenses and put your glasses on...and he would hide them. I know it because I would just feel his body...it was just, but it was also hard...is so hard even to think about it but I got into the habit of falling asleep, falling asleep with my contact

¹² Survivor's feminist name has been removed to prevent jigsaw identification.

lenses and never taking them out and because he was so controlling about money. (Survivor)

As mentioned earlier, another aspect of a perpetrator's abuse was to focus on a survivor's mothering and this would usually culminate in a threat to apply to the family court for the children to be transferred to the father's home. Bell explained:

I can't describe it any other way, like, once you step foot through that door of the family court then, that's it, your life's ruined, your child's life is ruined even more than yours, my [child/ren] suffer majorly and no one's taking any consideration for that. (Bell)

A perpetrator's threat to have a child/ren removed from their mother and transferred to themselves carries a lot of power and is still an area that is under researched. Even less understood are the mechanisms used by perpetrators to recruit professionals to help them achieve their goal. The majority of survivors explained how their own decision making had become governed by the fear that their children would be removed from their care. This was despite disclosing domestic abuse and, very often at the same time, having to support the perpetrator seeing their child/ren. Crucially, the threat to remove children from their mothers wasn't just made by perpetrators but also by family court professionals who threatened survivors with their children being removed to foster care or with adoption. One survivor explained that her ex-partner supported their child/ren being transferred to foster care rather than remaining with herself, but he did not wish to care for the child/ren himself.

Ten mothers said that they had their child/ren removed from their care. Thirteen of the remaining women explicitly told me that they had been threatened with the removal of their children. Phoebe explained that her child/ren had been forcibly removed by the family court and the Tipstaff¹³ had been ordered and this decision had been supported by the expert psychiatrist who had been instructed. Speaking from a woman's refuge Simone explained how the family court had ordered that her child/ren be removed from her care and yet the father had not spent more than five nights with them since

¹³ Tipstaff is an officer of the High Court of England and Wales appointed under section 27 of the Courts Act 1971. A judge can ask that Tipstaff accompany the police to assist in transferring a child from one parent to another.

birth. I am unable to describe the heartbreak that was conveyed to me by her silences and tears during our conversation.

Even when child/ren are not removed, survivors were able to illustrate the continual threat that overshadows their lives. Mary eloquently explains:

I've had a couple of shaky moments...where you think my children are gonna get taken away from me...absolutely nothing, you know, and that, it just builds in your head and, and you start playing it out and coming up with these crazy things like...do I need to kidnap my own child/ren? Do I need to go abroad? Do I need to run away? Do I need, you know, it's...it's a cycle of over thinking is...just crazy... sleepless nights, anxiety, stress...loss of appetite...just awful. (Mary)

4.10 Conclusions

This chapter has introduced the reader to the survivors who participated in this study by exploring their lives before their journey in the family court began and how the court process framed their lives. Many women described how their lives became controlled by the perpetrator through the court process and this was partly achieved by the threat of and/or the removal of their children. A high number of women also described enduring post-separation abuse during court proceedings such as stalking, harassment and assault, although this was often dismissed or minimised by the court and was regularly not seen to be a barrier to contact.

Survivors revealed high levels of resilience and the desire to improve their lives by returning to education. Women who had already received higher education when family court proceedings began, felt that their education was often used against them in court and they were seen as less important than the perpetrators, even when the perpetrator had not obtained the same standard of education.

Overall, survivors' lived experiences illustrated how family court proceedings dominated their lives, with their schedules revolving around meetings with professionals such as solicitors and social workers, as well as the reading and preparation of extensive court documentation.

Survivors' accounts clearly showed how women prioritised their role as a mother and the need to keep their children safe. However, this was often impacted by the continuing post-separation abuse and the worry that they will lose their children. As will be explored further in this thesis, the sheer amount of issues and expectations that women had to manage on a daily basis, had an impact on their mental and physical health as well as their ability to work. Arguably, this increased their vulnerability and their risk of child removal.

The Survivor's Journey Through The Expert Process

Chapter 5

The Initial Stages

5.1 Introduction

The following 4 chapters will use interview data to follow survivors' journeys through the family courts, but more specifically through the process of instructing and involving an expert in private law child arrangements proceedings. Each chapter will be broken down into various stages of the expert instruction process that also correlate with the process laid down by PD25B. Each chapter will begin with survivors describing their own lived experiences of the expert instruction process, followed by a theoretical discussion and a conclusion.

5.2 Survivors' Definition of An Expert

The study's participant recruitment advert had used PD25 to describe what was considered to be an expert.¹ Following the publication of the Twitter recruitment advert, the study received many emails from survivors who wished to participate in the research but had initial questions.² The predominant question was to clarify if the 'expert' instructed in their case was, in fact, an expert. For many of the women who asked this question, it appeared that they had considered, or had been told (it was not clear), that the Cafcass officer was the expert. The majority of the emails suggested that there was confusion as to what constituted an expert, even if their court proceedings had concluded and an 'expert' had been involved.

The call for participants received over 50 emails, mostly over a three-week period. Each survivor stipulated that an expert had been instructed and a consent form and Participation Information Sheet was sent in response. 30 women returned the consent form, and an interview date and time was agreed.

Following an initial discussion, either at the beginning of the arranged interview or via email before the interview date, it became evident that a few survivors had not had an expert instructed but had thought that a local authority social worker or Cafcass officer

¹ Summary of an expert - see Chapter 3 Family law and expert evidence.

² See Chapter 2.9

was the expert. As a result, the interviews were discontinued. However, there were two exceptions: Angela because her lived experience was a good example of when a professional had been misidentified as an expert and Amal, who was in the process of instructing an expert.³

Angela said, 'I just feel that I went in there blind' as she had thought that the Cafcass officer was the expert. It was not clear if Angela had been told this by Cafcass or that she had assumed this to be the case. Out of the 30 women who participated, five women were under the impression that either a Cafcass officer or a local authority social worker was the expert in their proceedings. Despite having experts involved, Michelle and Jess also referred to local authority social workers and Cafcass officers as experts. This was also the case for Amal who said that she felt that the court treated the Cafcass officer, who was asked to complete a Section 7 report, as an expert.⁴

As the interviews progressed, Maya immediately wanted to outline what she thought of the term 'expert':

So first of all, can I just...can I just clarify, so, so there was recently an expert...[sighs] and also, I [sighs]...to add, I really, I really, I, I take issue with the term expert. They are referred to as experts in the system, and I understand for the purposes of the research, they are considered experts, but actually my experience has been that quite the opposite [sic]. I just want to say, that to be clear, so, so I don't mind using the term for this, at this research [sic] but actually, in my mind, they're not experts at all but it's just a term, that, that is being used.
(Maya)

³ Angela and Amal had received the Participation Information Sheet and signed and returned the consent form before participating in the study.

⁴ A Section 7 report can be ordered by the court if the judge requires more information about the welfare of a child and is completed by Cafcass.

5.3 How An Expert is Instructed

Survivors were able to explain a mixture of ways in which an expert became part of their private law child arrangements proceedings. It was not always clear at which point within the proceedings the expert was instructed.

Alexandria's family court journey involved two different experts who were both suggested by the Cafcass Guardian. Firstly, a paediatrician who produced a report on Alexandria based solely upon reading medical records and had never seen the child/ren. Alexandria explained that the paediatrician's CV claimed that she was 'highly experienced in Fabricated Induced Illness' (FII).⁵ The second expert was a psychologist who Alexandria felt had been suggested by the Guardian because the first one had not worked out in court 'for them'. On both occasions Alexandria felt that she had 'no say to any expert'. Crucially, referring to the instruction, Alexandria said:

That again, was done via the Guardian, [she] wanted the psychologist, this was a Guardian who said that she was concerned with my presentation, yet she had never. She'd only come onto the case two days earlier...that it was granted, I was told that if I don't do that then they will deem me to have mental health...if I don't do the psychological. (Alexandria)

Alice explained:

...and then all of a sudden, I got a letter saying that I [the Guardian] was worried about the way that the mother presented herself and I have appointed myself Guardian. (Alice)

Guardians were cited by numerous survivors as instigating the need for an expert to be instructed, including Emma who explained that the Cafcass Guardian⁶ had spoken to a child psychologist before suggesting that an expert was necessary.

⁵ Fabricated Induced Illness, formerly known as Factitious Disorder Imposed on Another and Munchausen's by Proxy, is rare form of child abuse and happens when a parent or carer exaggerates or deliberately causes symptoms of illness in the child. <https://www.nhs.uk/mental-health/conditions/fabricated-or-induced-illness/overview/>

⁶ Survivors occasionally would use the term 'Guardian' and 'Cafcass officer' interchangeably.

Phoebe described how, despite domestic abuse and the abuse of her children by their father, she continued to support a relationship between the child/ren and the father. However, the child/ren were of an age where they were able to voice their opinions and were refusing to see the father. An expert child and adolescent psychiatrist was instructed to determine the reasons behind the refusal to see the father '...and so, they brought in an expert. They gave...we didn't have...you can choose which one you wanted, there was just one choose (sic)' (Phoebe).

At the time of the interview, Amal had not seen her child/ren for approximately 13 months as the family court had made a transfer of residence order to their father. However, Amal felt that she needed to find an expert who had expertise in parental alienation theory so that she could prove that her ex-husband had alienated her from their child/ren.

Coercion was another issue that was raised and was a subject that weaved its way through the interviews and will be discussed at various points in the remaining chapters. None of the survivors reported that they were encouraged to have time to think about whether they wanted to engage with an expert. Alexandria said that she felt 'under duress' to choose an expert but made sure that the court order reflected her objection, even though an expert was eventually instructed against her wishes.

Savitribai's experience was similar:

But then very soon after that my barrister came back to me and said, 'the other side wants you to do two things. One they want you to hand over your passports and two they want you to have a psychological assessment'. I said, and I thought...that's really weird, you know, where did that even come from? And again, I asked my barrister, 'is this common? What is this?' He said, 'you know, if you don't do it, they'll say to you that, you know, why doesn't she want to do it? And then the judge is going to make you do it'. (Savitribai)

Savitribai continued by saying:

...so, my own lawyers were telling me this, you know, if you don't do it the judge, the judge is going to make you do it. And I thought, well

okay, you know, well that's a bit...if he phrased it in that way, why would I disagree with something...They said., 'you would be really seen, pretty badly especially after the fact-finding today because none of the findings were found, that you'll be seen really badly by the judge'. So, I thought okay, kind of, I didn't really have an option. (Savitribai)

Isabella details:

In a way, a lot of what happened, and decisions made, were not really, not really in the situation where I was...given the opportunity to...have discussed with me, as to whether I was in control of that process, or whether that was something that had been decided by lawyer, or that was something that just had to happen. I would say that most people who were instructed, I was never quite certain whether I'd agreed to it...without consent, or whether it was something that was just, you know, standard procedure, that you were just told that you had to do, and therefore, it was never...sort of quite clear how it had come about in the first place...certainly looking back on that...you know, you didn't know what your rights were, you didn't know what your choices were...even with an advocate...when people are appointed, it was either sort of come from the opposition, so you didn't realise until afterwards. One of the experts was actually...encouraged by the oppositions lawyer but I didn't realise until much later, after it happened. (Isabella)

5.4 Choosing An Expert

Alice - I've never been in anything like that before in my life...and ...the judge went for it, she was like, we'll hire a...both do that...I've got a...psychiatrist...that will do that...and...

Researcher - Sorry, just to confirm you said ... who said that they've got a psychiatrist?

Alice - Yeah. It was the court appointed psychiatrist.

Researcher - Sorry, who said...was it the judge that just said that?

Alice - The judge.

Researcher - The judge?

Alice - Yeah.

Overall, there seemed to be no clear pathway that was taken by professionals as to how an expert was chosen. Survivors' accounts highlighted that the process appeared chaotic, hurried and was described as lacking any sort of process. There were numerous ways in which an expert was chosen which included the procedurally correct route. However some survivors described that an expert was chosen on their behalf, despite their wish not instruct an expert. Alice, above, and Emmeline were told which expert would be instructed by the judge. In Emmeline's case, social services had put forward four names and from this list the expert was chosen by the judge. Barbara's account reflects other survivors who illustrated how there appeared to be no formal process in finding the most appropriate expert:

Oh my God...well...okay...wow it really takes me back to being in a little windowless, airless room in a court building...with my solicitor and there was someone else there...talking about, okay, we'll need an expert, and they had these sheets of paper, and they were like, what about this person, what about that person? What about that person? And in the end, they said, 'oh, you know, this guy, he should be okay'. It seemed very much dictated by...well...that will be alright because he's available. (Barbara)

Experts seemed to be chosen because they had a good reputation, 'so, she is supposed to be the best in [the county]' (Doris) or due to availability:

Yes, so it was that solicitor, it was the Cafcass solicitor that said... that one that we would want to use isn't available. So, all this had been worked out before we went into the courtroom, you've got to bear in mind, otherwise why would they know that it hadn't, but they weren't

available? So, the one that they wanted to use wasn't available but these other two were, so they basically just turned around and looked at me and said...I was sat next to the social worker, and they went, 'so which one do you want to pick?' And I was sat there, and I was like, I don't know these people, but not research these people, I don't know who these are, and I just literally said, 'well it doesn't matter does it? Whoever'. (Michelle)

Or the Cafcass officer suggested an expert instruction:

'they mentioned that they might look at doing a psychological... interview...on everybody...the recommendation came from...from the Cafcass officer'. (Ruth)

Survivors also spoke about the Guardian recommending the expert:

'That again, was done via the Guardian, wanted the psychologist, this was a Guardian who said she was concerned about my presentation, yet, she had never met me. She'd only come on to the case two days earlier'. (Alexandria)

'She [the Guardian] spoke to a child psychologist, she...somebody that's part of the Cafcass team, she spoke to her manager...and spoke to her solicitor and basically, what, what they came up with is we come away needed an expert report. So, she wanted somebody ...to look into it...as to how we could move forward in a safe way... and...so she put forward, I don't know how she came up with these experts but she put forward two names...one was an organisation that deals with sex offenders and...which actually would have been really...for me, that would have been, that was my preference that we go to that organisation...but the other one that was put forward was just a, a clinical psychologist who what, just seemed to work on their own, they didn't seemed to be part of, or they we're not part of a big practice and then on their website it, it said that they were specialist experts in parental alienation'. (Emma)

Or the Guardian's solicitor suggested an expert:

'So, so it was that solicitor it was Cafcass a solicitor that said...the one that we would want to use isn't available. So, all this, all this had been worked out before we went into the courtroom, you've got to bear in mind, otherwise why would they know that it hadn't, but they weren't available? So, the one that they wanted wasn't available but these other two were, so they basically just turned around and looked at me and said...I was sat next to the social worker and they went, 'so which one do you want pick?' And I was sat there, and I was like, I don't know these people, but not (sic) research these people, I don't know who these are, and I just literally just said, 'well it doesn't really matter does it? Whoever'. (Michelle)

Now, the Guardian's solicitor was trying to find an appropriate person and she seems to have a list of...people that they use regularly. Now, luckily for us...these people weren't available so, so she found one that wasn't known to her. She didn't know what their work was like or anything like that, which at the time I thought this might not be a good thing. (Gloria's advocate)

Survivors also described how they felt that they had very little say in the final expert choice:

So, I previously got some quotes from three psychologists...[names deleted] checked her profile, I really liked her profile, got some timelines. She is very...family court orientated, she's domestic abuse aware...at first childhood experience trained, things like that. So, I thought, she was applicable to the case. Now, what happened was, when we went to court, the children's solicitor said, 'the only person available to do this is [name deleted], so, I suggest that we instruct him, and the judge agreed. Now [chosen expert] is not domestic abuse qualified, trained in any shape or form...doesn't do any work around adverse childhood experience, equally I suppose, the flipside of that

is, because they're trying to...accuse me of parental alienation, he's also not a huge advocate of parental alienation. (Mary)

Bell's experience concurred with Mary's:

...we both had one expert...each we put forward...my expert could do in a quicker timescale...that got dismissed and the Guardian and the father said that I had to go with [deleted]. (Bell)

Bell also explained that she had met over four women (one of whom also participated in this study) from the same locality who had been allocated to the same Cafcass office, where they had been recommended the same male psychologist.

Savitribai explained:

So, they were just, I feel like my lawyers were just, they didn't look at anything they didn't look at his background, they didn't even know any names of psychologists and they just picked names out of the blue, it was just so weird. (Savitribai)

Savitribai's experience reflects other women who described the random way in which an expert was chosen.

5.5 Appropriateness of the Chosen Expert

Before continuing, it is important to remember that PD25B 8.1 states:

b) that the work required is within the expert's expertise.

This discussion touches on some of the themes explored in the next chapter but it is vital to include the following aspects of the survivors lived experiences as they relate to the expertise of the instructed expert. As Barbara explained:

...we ended up with a man called [deleted] and in the intervening years I've Googled him. He seems to be an expert on interracial adoptions...I don't know, where in [deleted], we are all white, you know, [laughs]. Yeah, there's no interracial aspect or, or expertise that he could bring to an extreme case of domestic abuse. (Barbara)

Emmeline described how one of the experts involved in her proceedings was instructed because of her ex-partner stating that his behaviour was the result of a rare sleeping disorder:

Well, the expert was involved because my ex claimed he suffered from [rare sleeping disorder]. Basically, I put allegations of rape across, and he turned around and said he's got [the expert]. (Emmeline)

Phoebe's experience correlates with Barbara and Emmeline's, as she detailed:

They gave...we didn't have...you can choose which one you wanted, there was just one to choose, when I googled him, you know you obviously do your research, the main speciality...was adolescent food disorders...and there was a very small amount, at the time, of how he'd been involved in PA cases. (Phoebe)

Jacqueline's case contains elements that could possibly lead to jigsaw identification and so it has been difficult to try to document her lived experience, but it is necessary to emphasise certain aspects. Jacqueline's private law proceedings have almost been the length of her child/ren's life/lives. Jacqueline described how she is a survivor of domestic abuse; however, the focus became about her ex-partners mental capacity and his ability to be able to continue with private law proceedings under the Mental Capacity Act 2005.⁷ This was despite her ex-partner stating that Jacqueline was an unfit mother and saying he would rather have the child/ren placed in foster care in preference to Jacqueline as he did not wish to care for the child/ren full-time. An expert psychiatrist was instructed, who had also been the father's treating psychiatrist, to write a report on the father. Jacqueline explained that she felt that this did not make the psychiatrist independent, and he was not aware of the court documentation.

Betty was one of the only survivors who had carried out research before her barrister 'threw the name' of an expert at her. Betty knew of the expert and trusted that this was an appropriate recommendation.

⁷ Mental Capacity Act 2005, <https://www.legislation.gov.uk/ukpga/2005/9/contents>

Amal's lived experience was slightly different because she thought that because her ex-partner was accusing her of parental alienation, she should suggest a parental alienation expert:

So, I am hoping that there will be...a parental alienation expert on, on board...even though, as I said, that's a high-risk strategy in itself, given the record of parental alienation and its use in Britain...but nevertheless...I'm hoping that if I can get...get an expert in alienation that they will at least understand the fundamental dynamics of what is going on with a child that...suddenly out of the blue, completely refuses contact'.

5.6 Cost of Instructing An Expert

The cost of instructing an expert was mentioned by survivors, particularly within the context of the total (or ongoing) cost of private law proceedings. Experts are expected to respond to preliminary enquiries and within their response should set out a schedule of costs.⁸ Women who were privately paying described a range of prices for legal professionals, including a barrister who charged approximately £2,500 for 15 minutes of court time. Doris explained how she was supporting her child/ren without receiving any financial maintenance from her ex-husband, but she believed that he had spent over £400,000 in the first two years of a six-year course of private law proceedings. Amal spoke about having already spent most of her life savings, amounting to approximately £26,000, trying to have her child/ren returned to her care. Amal said that she would have to sell her home to release the equity to be able to finance any potential future appeal case.

Betty, Doris, and Mary were charged between £4,000-£5,000 by the experts. Mary had received three quotes from different experts, all charging roughly the same fee.

Savitribai was advised by her barrister that an Independent Social Worker should be instructed as, 'they're much better, they're better than the Local Authority, they're

⁸ PD25C 3.5 Expert's response to preliminary enquiries includes at the last paragraph, 'These conformation include that the work is within the expert's expertise, the expert is available to do the work within the relevant timescale and the expert's costs'.

better than Cafcass, they're better than everybody, all of these, like, the government ones' (Savitribai).

Savitribai told her barrister that she could not afford to pay for the Independent Social Worker and was told that, 'he was willing to pay for it. The father is willing to pay for it (Savitribai).

Savitribai continued by saying:

I said, what are the disadvantages? That was my first question. They said, there's really no, there's no negative to it because they'll be more focused on your family, they won't be rushed about, they'll be really committed to you. So, I thought okay. Normally the negative is the cost. (Savitribai)

Phoebe, who had a child and adolescent psychiatrist instructed, explained:

...I was also told that I would have to pay for it [the psychiatrist]. Now, I have no money, absolutely no money, and this whole divorce and everything with my ex-husband was all about power and money. He made a point of saying to me when I said that I was going to leave or, I wasn't allowed to leave...we got through that bit...he made sure I had nothing. No house. No [child/ren]. No money, by the time he'd finished with me. I explained this to the judge, that I didn't have any money. The judge didn't believe me, so asked me to produce all my bank statements. All my money so that my ex-husband could see all of that and he sort of said...oh right...what they agreed was that the money would be, I'd have to pay the Legal Aid rate, the [child/ren] would have to pay the Legal Aid rate but that would come out of the legal aid budget because the [child/ren] was represented by Cafcass. And he would have to [pay] the normal rate. It was just over £1,000, I'd have to pay, and I mentioned it to a barrister friend of mine, and he went, don't pay it. Don't worry they cannot come for you. And just as a footnote, they sent me an invoice, but they have never chased me, and I have never paid it. (Phoebe)

5.7 Letter of Instruction

As outlined in PD25C 4.1 a Letter of Instruction is a document that is sent to the chosen expert which must, amongst other things:

4.1 set out the context in which the expert's opinion is sought (including any ethnic, cultural, linguistic, religious or linguistic contexts)

4.2 set out the questions approved by the court and which the expert is required to answer and any linked questions ensuring that they are

i) within the ambit of the expert's area of expertise.

When a single joint expert is instructed, it is usually expected that both parties (both parents in this study) will formulate questions that an expert is then expected to answer. A single joint expert means that one expert has been instructed on behalf of both parties.

Three survivors specifically mentioned the Letter of Instruction. The lead solicitor in all cases had been the Guardian's solicitor.

Tarana explained:

...so, I saw a psychologist last year...and she had...a list of questions that the Guardian's solicitor had put together...so they then, my solicitor gave me the list of questions, or the things that the psychologist needs to know about. Now, one thing that was clear, from my paralegals point of view, is that in there...the Guardian's solicitor wrote, something along the lines of...you are not allowed to, to ask [name deleted] it was better than this, but you get the idea when I say it...you're not allowed to ask...whether what [name deleted] was saying is true, as in, were my allegations true because the court in their eyes...I was lying and I was fabricating and exaggerating and that wasn't...that's how they looked at it, and so my...paralegal said that was very odd that that was written there ... (Tarana)

Tarana continued by saying:

And there was a lot of very unusual things in my case...that being one of them...and so she wasn't allowed to ask me about that and so basically it was looking at whether I was a fit mother...whether I could meet [deleted] needs. (Tarana)

So, the next part of it, the children's solicitor was due to write the Letter of Instruction...which given that he is...extremely biased towards dad and in some cases has actually represented dad's views in court...rather than the children's...that...the Letter of Instruction should have been a collaboration between mum, dad and all professional parties. (Mary)

Mary explained that the current version of the Letter of Instruction for the psychologist stated that:

the parties seek leave of the court to instruct [psychologist] to undertake an assessment of the family dynamics. The instruction is deemed necessary to provide the court with an understanding of the individual needs of the child/ren and to enable appropriate planning to ensure that the child/ren have regular contact with both parents... it is of the view of the children's Guardian that there is no justifiable reason why the child/ren are not having contact with the father. (Mary)

Although it was not stipulated within the research design, it was important not to be shown privileged family court documents. Despite the interviews taking place on the phone, numerous survivors offered to show relevant court documents, but these offers were declined for a multitude of reasons. However, Gloria wanted to detail the Letter of Instruction over the phone, particularly as it highlighted the barriers in trying to have questions accepted by the Guardian's solicitor.

Gloria had submitted 20 questions for the expert but was told, by the Guardian's solicitor that they were 'inappropriate', as the expert 'would not be able to answer them'. This also applied to the father's initial questions. Gloria described how she felt 'vetted'. However:

the next minute she tries to say, if you re-word them...maybe you'll get them through. So, we re-worded them, and I got my solicitor involved in it. She re-worded it down to five, and they were five pathetic questions. (Gloria's advocate)

In the end Gloria was allowed to submit two questions via the Guardian's solicitor. Gloria explained that she had suspected that this might happen and so she submitted her questions directly to the expert, despite knowing that this was not procedurally correct. Although the expert did tell Gloria that this was wrong, she answered questions from both parents. Gloria explained, 'so, it worked okay for us in the end...so there the psychologist could obviously...see the wood for the trees and responded appropriately'. (Gloria's advocate)

5.8 The Court Bundle

The court bundle should be a paginated folder of relevant documents that can be used by the court. The expert is expected to be provided with a paginated separate bundle of documents which contains all the information relevant to being able to answer the questions contained in the Letter of Instruction.

Survivors spoke about the court bundle mainly within the context of the entire proceedings rather than specifically about the expert's copy.

Ruth felt that the majority of the money spent on the expert could be attributed to the large bundle that the expert was expected to read. However, Ruth felt that the psychologist had a good insight into their case because of the time taken to read the case history.

Savitribai and Mary had been concerned that vital information about domestic abuse, police reports and emails from the perpetrator admitting to the domestic abuse had not been entered into the bundle. Savitribai intimated that this may have been because the responsibility for formulating the bundle had been given to a trainee solicitor.

Kathleen's concerns were different as she described:

And then she [the psychologist] came to see my [child/ren], yes, and it was really late in the day when I met her and it was like she made me

wait about an hour and then she, like, spent half an hour with me. She wasn't interested, she clearly was just not interested in what we had to say. And she made it clear that she never read the court bundle or anything. (Kathleen)

Kathleen was the only survivor who explicitly explained that an expert had not read the bundle. However, it was clear that survivors were concerned that bundles had not been read properly. Ruth told me that she was troubled by the size of the court bundle and wondered whether it was possible for the psychologist to have the time to thoroughly read it.

Phoebe explained how her medical records were included in the bundle and said, 'my ex-husband's team got to see my full medical records'. Savitribai also explained that letters from her GP were also included in her bundle.

5.9 Discussion

Abuse causes disorder which creates division and chaos. Survivors described the family court process as causing disorder which created divisions between family, friends and loved ones. From all survivors' accounts, there appeared to be no systematic, linear progression through the family court system.

In its place, survivors' lived experiences illustrated a chaotic process where what is expected by legal procedures, was not consistently followed, and this is a strong theme throughout the study. Overall, survivors described how they felt that the only way that they could resolve the chaos that had been created by abuse in their own lives was to engage with the family courts. This was very often because survivors had tried every possible way to seek protection from perpetrators, as well as finding safer ways to manage contact, only to find that they had no other choice but to make an application to the family court. However, despite survivors describing how they needed to feel safe when engaging with the family court process, often they said that they were shocked at the lack of a robust process. Throughout all of the interviews, survivors offered an array of examples of how their family court journey felt chaotic and frightening. These included the way that experts were chosen and instructed, as well as last-minute cancelled hearings.

5.9.1 Determining Who can be An Expert

As Chapter 3.3.3 outlines, PD25B sets out who can be an expert and how an expert should be instructed within family court proceedings. It would be reasonable to assume that most survivors (or parents) would not be familiar with the Family Procedure Rules and may only know about them if they have legal counsel. The Family Procedure Rules are a set of rules which are quite difficult to digest and access (requiring access to the Red Book⁹ or access to the internet) and require a level of education that not all parents may have attained. The literature review in Chapter 2 did not discover any information solely aimed at helping parents understand the expert process.¹⁰ As Angela stated, ‘I went in blind’ and this is indicative of the experience of many survivors. As mentioned at the beginning of this chapter, a number of survivors who wished to participate in the study were not sure who an expert was within their family court proceedings. In fact, several survivors who participated also believed that the Cafcass officers were also experts in their case.

5.9.2 The Necessity of an Expert Instruction

As outlined in Chapter 3, PD25 B & PD25 C set out who an expert is and how an expert should be instructed. PD25 B 5.1 states ‘that the court is under a duty to restrict expert evidence to that which in the opinion of the court is necessary to assist the court to resolve the proceedings’. This study revealed that, for many survivors, it was suggested by another party (rather than a survivor) that an expert was necessary, and in most cases this was either the father and/or Cafcass. It is important to remember that the decision that an expert was necessary occurred at different times within the family court process. This is because, despite all cases in this study involving adult survivor women who had domestic abuse perpetrated on them, only five women mentioned that they had been allowed a FFH. This finding reflects the concerns raised

⁹ The 2022 edition of Family Court Practice (Red Book) costs £669.99 and for most litigants in person this is a barrier to accessibility, see, The Rt. Hon. Lord Wilson of Culworth, His Honour Judge Anthony Cleary, The Rt. Hon. Lady Black of Derwent, *Family Court Practice 2022* (Jordan Publishing 2022); The Transparency project, 2019 is the only document that attempts to help parents, but this document is written for professionals and parents and is potentially confusing for parents, see The Transparency Project, *The Use Of Experts in Family Court Cases Involving Children*, (The Transparency Project, 2019), <https://transparencyproject.org.uk/experts/> [Last accessed 06/2022]

¹⁰ Since completing the literature review Rachel Watson has written a blog to help parents with the experts who use Parental Alienation theories, Rachel Watson, <https://www.rachelwatsonbooks.com/blog1/notorious-parental-alienation-experts> [Last accessed 06/2022]

in the Harm Panel Report¹¹ and Barnett¹² who estimated that FFHs took place in less than 10% of all cases.

The rationale for instructing an expert mostly centred around the need to explore why there were problems with contact between children and their fathers. However, as discussed in chapter 8 the focus of the expert's assessment was usually a survivor, even when they supported contact between children and their father.¹³ As seen in the survivor accounts featured in this chapter, many women described that pressure was applied to have an expert instructed, predominately by Cafcass, but sometimes, as in Savitribai's case, it was exerted by their own legal counsel.

Savitribai was placed in a difficult position and her lived experience alludes to a situation whereby she may have felt uncomfortable in challenging her legal counsel and/or she wanted to trust the advice that she was paying for. Interestingly, survivors never said that they had had a discussion with their legal team about the necessity of instructing an expert (including the scope of the instruction and what value an expert instruction may have in the case). That is not to say that such discussions did not occur, but this was not something raised by any of the women interviewed. The study found that survivors appeared to mostly accept the need to have an expert instructed in their case; however, any objections that were made were dismissed or ignored. In certain cases, such as Savitribai and Alexandria, survivors described feeling pressured by professionals to acquiesce. Problematically, survivors did not describe their legal counsel challenging the lack of parity of expert assessments, or the motivation for an expert instruction, particularly when the survivor was the sole focus.

¹¹ Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases. Final report* (Ministry of Justice 2020)

¹² Adrienne Barnett, "Like gold dust these days' Domestic violence fact finding hearings in child contact cases' (2015) *Feminist Legal Studies* 23(1) 47-78; Barnett (n 17)

¹³ Evidence suggests that despite allegations of domestic abuse mothers continue to try to support contact between children and fathers. See, Barnett (n 17); Stephanie Holt 'Domestic Violence and the Paradox of Post-Separation Mothering' (2017) 47(7) *British Journal of Social Work* 2049-2067; Fiona Morrison, (2015) "All Over Now?" The Ongoing Relational Consequences of Domestic Abuse through Children's Contact Arrangements' (2015) *Child Abuse Review* 24 274-284; Maddy Coy, Katherine Perks, Emma Scott and Ruth Tweeddale, *Picking up the pieces: domestic abuse and child contact* (Rights of Women and CWASU 2012); Jane Fortin, Joan Hunt and Lesley Scanlan, 'Taking a longer view of contact: the perspectives of young adults who experience parental separation in their youth' School of Law, University of Sussex 2012); Ravia Thiara and Aisha Gill, *Domestic Violence, Child Contact, Post-Separation Violence: Experiences of South Asian and African-Caribbean Women and Children* (NSPCC 2012); Lynne Harne *Violent Fathering and the Risks to Children* (The Policy Press 2011); Lynne Radford and Marianne Hester *Mothering through Domestic Violence* (Jessica Kingsley Publishers 2006)

Once again, this is not to say that it did not happen, but this did not emerge from the survivor interviews.

Survivors' experiences also revealed that despite a number of survivors stating that judges refused to allow a FFH, experts were always allowed, even when a party had objected. This indicated another significant point in a survivor's family court journey where a certain path seemed to have been set and could not be altered as the instruction was supported by the majority of professionals involved in the case. Generally, it appears that survivors were confused by the rationale behind the expert instruction, particularly when it seemed that the focus was not on the best interests of the child but on the mother's presentation. Critically, there seemed to be a consensus amongst survivors that if an expert instruction was suggested it was, predominantly, unquestionably supported by the judge.¹⁴

As previously mentioned, survivors described how chaotic their lives were already because of domestic abuse and how this escalated as soon as they had to engage with the family court process. One of the most chaotic points in the family court journey for a survivor seemed to be at the point when an expert was being chosen. At this juncture, survivors conveyed how frightened they had felt because they were having to manage a myriad of issues that included: ongoing domestic abuse, coercive control of children, the fear and/or threat that they may lose their child/ren, Cafcass's alignment with the father as well as the general confusing and demanding family court process.¹⁵ Survivors described the impact that these factors had on their physical, emotional, and mental well-being. An example of this is Alice's account, as she described how her parents were frightened that she would commit suicide due to the impact of domestic abuse and family court proceedings.

5.9.3 Expert Preference

Barbara's evocative account also illustrated the chaos caused by a lack of procedure when an expert was being chosen, as she described pieces of paper flying around as her legal representative grappled with unfamiliar expert CVs. Survivors' accounts emphasised how they felt that the process of choosing an expert often felt erratic

¹⁴ See Alice's account in paragraph 5.4 above

¹⁵ Isabella's lived experience is an example

because their legal counsel often relied on word of mouth, case law, or a past history of successful expert instruction.

Choosing the most appropriate expert for proceedings is a critical moment for any parent because an ill-informed choice could be determinative in preventing a survivor from being able to protect her child/ren and/or for an order to transfer the residency of her child/ren.

The study found that the ways in which experts were chosen and instructed was often precarious, lacked consistency and potentially set a harmful pathway for survivors and their child/ren. An example of this is Barbara's lived experience, as she painfully explained the method used in choosing an expert for her case and how this resulted in a catastrophic outcome for herself and her child/ren. However, Barbara and other survivors intimated that they felt that they had to trust their legal representatives to use their own expertise to make the right decisions on their behalf. Survivors' accounts show how difficult it can be to recognise problems at the time, or challenge them, and it is only with hindsight that they are able to suggest that more due diligence should have been carried out. As Barbara emphasised, legal counsel did not explain to her what qualities/experience were being sought in an expert to make them appropriate for her case, and instead, she felt that an expert was primarily chosen because they were available.

Bell's lived experience highlighted the power that a Cafcass recommendation can potentially have on a case. Despite Bell recommending an expert who could work to a faster timetable, Bell felt that the Cafcass officer exerted their power to ensure that their chosen expert was instructed. Bell's case was not an isolated example and other survivors described putting forward names, only to be told by Cafcass's acting solicitor that they were not available, resulting in their preferred expert being instructed. Bell explained that she had uncovered a group of mothers within the same Cafcass locality who had all experienced a similar scenario whereby Cafcass were able to instruct their favoured expert. The group of women had all been assessed by the same expert and it appears that the recommendations made in each of the reports generally remained the same as, Bell painfully recounted, '[deleted name] is involved with you in the family court... people have said, you might as well pack your kid's bags...ready because it is a done deal...' (Bell)

Survivors' accounts emphasised how powerless and frightened they felt as they tried to challenge another system of power, one which mirrored the abuse that they were trying to seek protection from, as well a system that had the authority to transfer the residency of child/ren to the perpetrator, regardless of the allegations/proven findings/criminal convictions of domestic abuse. Survivors clearly described trying to navigate a precarious pathway whereby they were attempting to hold on to any remaining agency as a mother, while simultaneously trying to be seen as 'compliant' and not hostile, by the courts and professionals, such as Cafcass and social workers.

There could have been a multitude of valid reasons why one party wanted to instruct one expert over another including those mentioned already: availability, experience, or cost. However, when domestic abuse is the primary feature of a case, it could be expected that an important factor in selecting an expert would be their expertise and/or specific training in domestic abuse. It seemed that once it was deemed 'necessary' for an expert to be instructed, this obfuscated any need to explicate the reasons for the instruction and this led to a general acceptance of the proposed expert by the majority of professionals involved in the proceedings.

5.9.4 Strategic Expert Instruction

Survivors' lived experiences indicated the strategic proposal of experts, which fed into the adversarial family court system and obfuscated the best interests of the child by shifting the focus onto the mother's behaviour. Survivors did not refer to the motivation of the father in wanting to instruct an expert. (That is not to say it didn't occur, but this was not mentioned by any of the interviewees). Several survivors described how they believed that certain experts were proposed by the other party because of the expert's explicit approach or belief system, such as parental alienation. Furthermore, survivors such as Bell strongly believed that an expert may have been chosen to recommend a drastic change to a child's living arrangements, while also reinforcing the narrative of no abuse. Survivors' accounts indicated that a way of maintaining the dominant discourses that obscured domestic abuse was to suggest that an expert was necessary and, additionally, provide recommendations of experts who supported certain approaches or belief systems, such as parental alienation. The parental alienation belief system obscures domestic abuse and has a systemic regulatory

effect.¹⁶ This situation places a survivor in an extremely vulnerable and potentially harmful position, particularly if a survivor and/or her legal counsel fail to recognise that parental alienation is being suggested by the other party. The majority of survivors did not mention that they had thought about or been asked to carry out any research regarding the proposed experts. Throughout the study, there was an overall impression that survivors either trusted their legal counsel to make decisions in their best interests or described feeling so overwhelmed that they felt could not challenge what had been agreed on their behalf.

5.9.5 Domestic Abuse Experts

The Harm Panel Report highlighted that an under-used option to the court is to seek a report from a domestic abuse expert witness. However, many survivors' lived experiences suggested that this option would not have served the interests of the perpetrator, who had the most power. As mentioned in Chapter 3.3.3, PD12J requires the court to consider whether an expert safety and risk assessment could assist the court. The study did not find one survivor who described having a conversation with their legal representative about asking for an expert risk assessment and/or domestic abuse expert. Chapter 8.2 details Alice's account of a therapist, who had received training in domestic abuse, but this occurred more by luck and certainly was not a court appointed expert. Mary was the only survivor who explained how she felt that she needed to receive an opinion from an expert in domestic abuse. However, she paid privately for her to make an assessment based upon the papers that she provided, and it was not clear if Mary was required to ask the permission of the court to share any of the documents. It was also not clear whether Mary's legal counsel had supported her decision to independently instruct a domestic abuse expert to carry out an assessment based on the paperwork. Mary said that one aspect of the report was to 'scale the abuse' that had been perpetrated upon her. Mary provided a copy of the report to her solicitor who was reluctant to add it to the court bundle and therefore it was never put before the court. While it was not clear why Mary's solicitor did not wish for the report to be included in the bundle, survivors' accounts often suggested that legal professionals were conscious of trying not to inflame proceedings further by highlighting domestic abuse, particularly if the court had not made any findings of

¹⁶ See Chapter 1.11

abuse. Mary's unique example in the study emphasises the absence of specialist domestic abuse risk assessment within survivors' family court proceedings despite PD12J making provision for it.

Survivors described feeling quite powerless and having very little agency, both personally and within their family court journey, particularly at the point when an expert is being introduced. However, it is reasonable to assume that, in most cases, the judge will not have known the barriers that survivors faced when trying to put forward an expert and/or rejecting the opposing party's choice. Therefore, the court may have had the impression that survivors will have had the same opportunities as their alleged perpetrator, as Allen explains:

the network of power relations in which women find themselves is congealed, so that women are incapable of exercising power; instead, this network is constricted, so that women's range of options for the exercise of power is limited.¹⁷

Despite survivors describing a loss of agency and lack of equality, many women including Barbara felt that the expert assessment would possibly provide them with one last opportunity to resist the dominant discourse that there was no abuse and show that they were telling the truth. Survivors explained how they felt this could be achieved by agreeing to the expert instruction and the proposed expert. At the time, survivors believed that the expert would be independent, would have the necessary training to identify domestic abuse and would naturally seek to find the truth. Crucially, overall the survivors' accounts emphasised how they believed that they still had the chance to turn their case around. Unfortunately, their lived experiences revealed how the possibility of exercising any further agency at this point in their proceedings was just illusory, particularly when the expert had been chosen by a Cafcass officer or the father's legal counsel.¹⁸ Paradoxically, survivors vulnerability increased by trusting that they would be believed by an expert. This is discussed further in Chapter 7.4.

¹⁷ Amy Allen, Foucault on power - 'A theory for Feminists' in Susan J. Hekman (ed) *Feminist Interpretations of Foucault* (Pennsylvania State University Press 1996) cited in Vanessa E Munro *Law and Politics at the Perimeter. Re-Evaluating Key Debates in Feminist Theory* (Hart Publishing 2007) 105

¹⁸ Survivors' accounts revealed that experts were recommended by Cafcass officers, Guardians and Guardian's solicitor.

Survivors' accounts have also exposed how vulnerable women are at this point in the process and how easy it is for an expert instruction to remain unchallenged and without any background research carried out. Their lived experiences emphasised how there was very little information available to women in relation to the type of expert that would have been appropriate for their case, and more specifically to identify what arrangements would be in the best interests of a child. Survivors were only able to recognise how vulnerable they were on reflection, particularly after the final order had been made. There was an overall impression that the outcome of proceedings might have been different if they had been able to make an informed decision about the expert instruction. Examples of this were Phoebe and Barbara's lived experiences, who had questioned how experts who specialised in adolescent eating disorders and inter-racial adoptions respectively, were qualified to decide on what was in the best interests of their child/ren (both women had their children removed from their care). Both women only discovered that the experts supported the parental alienation belief system and the use of reunification treatments such as flooding and the transfer of residence, after they had been instructed. Betty was one of the only survivors who mentioned that she had done her research before her barrister 'threw a name' out to her.

5.9.6 Expert Fees and the Cost of Family Court Proceedings

It is expected that all parties within private law proceedings are apportioned equal responsibility to pay expert fees and this is also applicable to any party that is in receipt of legal aid. The fees are expected to be equally split between parties who are entirely privately funded; however, there is a risk that the expert can set their own rate, as there are no rules as to what an expert can charge a privately paying client. This contrasts with the Legal Aid Agency which has set out remuneration rates for experts instructed in family court proceedings.¹⁹ The Legal Aid Agency expects a psychologist or psychiatrist to take 25 hours to complete an assessment and report. This is increased by 10 hours for each person who is being assessed.²⁰ At the time of writing, the Legal Aid Agency rates for a psychiatrist are currently, at the time of writing, £108

¹⁹ See appendix M

²⁰ The Legal Aid Agency rates for a psychiatrist are currently, at the time of writing, £108 p/h and a psychologist is £98.60 p/h. There is a cap of £5,000 and it is expected that authorisation needs to be sought for any work over this figure.

p/h and for a psychologist £98.60 p/h. There is a cap of £5,000 and it is expected that authorisation needs to be sought for any work over this figure.

Many survivors described the impact of the cost of expert instruction, particularly within the context of the overall cost of proceedings and economic abuse in the form of litigation abuse.²¹ Survivors described how there was an expectation that as a mother they were expected to use every financial resource possible to protect their child/ren, or to continue to litigate for their return. One survivor explained that the total cost of her private law proceedings was well over one million pounds. Women were expected to use life savings, borrow from friends and family, to take out loans and re-mortgage or sell their homes to continue the litigation. Amal was seriously considering using her life savings to try to have her child/ren returned to her care. While Amal clearly expressed feeling scared, she indicated that she would do everything in her capacity to try to get her child/ren back.

Several survivors revealed that the experts instructed in their proceedings had charged between £4,000-£5,000 which appeared to be higher than the legal aid rate, particularly when only one person was being assessed. However, Savitribai explained that the psychologist instructed in her case followed the legal aid remuneration guidance, but he also used a trainee psychologist to carry out parts of her assessment.²²

Savitribai's lived experience raised another important issue about the cost implications of instructing an expert, specifically when the party who proposed the expert also solely finances it. Arguably, Savitribai was correct to be concerned that her ex-partner was the driving force behind the instruction, the assessment and report, particularly because she was the only person to be assessed. Furthermore, the psychologist was clear that he would be sharing information with her ex-partner. It is worth mentioning at this point that Savitribai's child/ren have had to move to live with their father, a father who was paying for the assessment of their mother while the father and child/ren were not assessed.²³ This dynamic creates a further imbalance of power between the parties, as well as between the expert and survivor. It can also potentially send a

²¹ The literature points to survivors raising the economic impact of continual litigation see, Hunter and others (n 12) 104

²² It was not clear whether the psychologist charged for the extra staff.

²³ See Chapter 8.3 for further discussion regarding the impact of the expert on Savitribai's case.

message to the court that the perpetrator is so invested in his child/ren's welfare that he will fund an assessment (sometimes solely for the mother).

The impact of the high costs of private law proceedings on survivors is far reaching and can cause life-long irreparable damage. Birchall and Choudhry highlighted the economic impact felt by survivors because of the cost of legal proceedings and, very often, an imbalance of financial and economic resources between the parties.²⁴ Crucially, while survivors' accounts correlated with more recent research about survivors' experiences of the cost of legal proceedings, no current research has been identified that focuses on judicial understanding of the cost of private law proceedings, litigation abuse and the impact on survivors.²⁵ Fundamentally, these accounts strongly suggested that gender norms continue to be perpetuated within the Family Justice System in the way that survivors felt that there was an expectation that they had to sacrifice everything to prove that were a good mother.²⁶

5.9.7 Letter of Instruction - Agenda

Understanding who is the driving force behind an expert instruction is a theme that emerged from most of the survivors' lived experiences. In most cases, survivors felt that the expert instruction was driven by either the father, Cafcass or sometimes by both. In the cases where Cafcass suggested the expert instruction, they often deployed their solicitor to become the lead solicitor and take responsibility for the overall instruction process.²⁷ Consequently, survivors explained how the Guardian's solicitor accepted responsibility for the preparation of the letter of instruction but at times also acted as a gatekeeper to the proposed questions for the expert to answer. A number of survivor accounts described how Cafcass had told them that they were not allowed to ask certain questions (usually related to domestic abuse) or that their questions were heavily edited.

Issues raised by survivors relating to the letter of instruction require further research as there are clear implications for survivors. This is another point in the family court journey where a survivor might feel that they are able to resist the narrative of no abuse

²⁴ Birchall and others (n 32) 43

²⁵ Hunter and others (n 12); Candour TV survey interim report, <https://candour.tv/films/torn-apart> [Last accessed 01/06/2022]

²⁶ See Chapter 2.5

²⁷ PD25C 3.10(d)

by being able to submit questions that directly ask the expert to consider domestic abuse. However, as discussed, this did not always happen, usually because the court had made no findings of domestic abuse, but obviously survivors felt that this further reduced the opportunity to identify the abuse. Similarly, to the possible lack of judicial awareness of the problems with expert selection, a judge may not have known how the letter of instruction was formulated and be left with the impression that the parties were working together in the best interests of the child/ren.

Survivors' lived experiences relating to the letter of instruction clearly highlighted how coercive and controlling behaviour is continued through the family court process. Removing a survivor's ability to be an equal party in the formulation of the letter of instruction was another example of how the system is able to exercise its power, and as Allen said, can limit the range of options available to women.²⁸ Several survivors described the difficulty in trying to challenge abusive behaviour generally but more specifically how futile it felt when trying to confront abusive practice perpetrated by a professional.

5.9.8 Conclusions

Survivors' accounts detailed the difficulties that they encountered when they attempted to keep domestic abuse visible throughout proceedings. Many survivors described how the idea of an expert instruction was mentioned very early on in proceedings by the other party and/or a Cafcass Guardian but, in the majority of cases, the primary focus was on assessing the mother. Survivors spoke about their feelings during this time and explained that although they were not clear about the reasons for needing an expert, they thought that this might be their last opportunity to prove the domestic abuse and be believed. However, survivors' accounts revealed that the imbalance of power caused by the domestic abuse, was further exacerbated by the expert instruction process. Survivors explained how they felt decisions were being made without their input and they did not understand what was happening, which further eroded any agency that they may have initially had. As Isabella's experience highlighted important decisions were being made without her feeling that she was properly informed, or in control of the scenario that was happening in front of her. This was made even harder for survivors who were litigants in person, as, in these cases,

²⁸ Allen (n 29) 105

they were often 'guided' by the perpetrators legal counsel. Furthermore, survivors explained that, on reflection, they felt that experts were strategically instructed, because professionals and/or the perpetrator had an expert in mind; this was often the expert that was eventually instructed. It is evident from the findings of this study that there was a lack of scrutiny when choosing an expert and a poor understanding of the impact that a ill informed choice can have on the outcome of the court case. However, survivors continued to remain hopeful that they would be properly heard by an expert only to discover the probability of this happening decreased as the process of instruction progressed.

Survivors' accounts revealed how the letter of instruction was another critical key moment in the process, as they had hoped that questions might be proposed related to the domestic abuse, only to discover that they had minimal, or no input, in its formation. Pertinently, survivors were also surprised to learn that any mention of domestic abuse was either disallowed from the outset or removed completely after they had submitted their version.

The cost of an expert instruction was identified as another key moment. The barriers to legal aid for survivors meant that, in many cases, they were expected to privately provide 50% of the fees or pay the entirety of the bill. Even when this was challenged, as in Phoebe's case, the court expected a survivor to pay. Survivors felt that expert fees were exorbitant, particularly in cases where they did not want an expert instructed and/or the costs would cause a further economic impact. Survivors discussed the financial difficulties they faced by trying to find the money for court and litigation fees as well as expert costs which exacerbated the existing imbalance of power. Savitribai's case clearly highlighted how a perpetrator's power, as a driving force within court proceedings, can be sustained by insisting on paying in full for the cost of the expert instruction in order to take control of the process and ensure that only the mother was assessed.

Survivors' accounts of the initial stages of an expert instruction revealed how difficult it can be to challenge a system that continues discount or discredit their lived experiences. Many survivors were unsure about the need for an expert instruction but believed that this would be their last opportunity to challenge the persisting dominant

discourse of no domestic abuse. The next chapter will explore preparations for the assessment and the information that survivors received before the assessment day.

Chapter 6

Assessment Preparation

6.1 Introduction

This chapter explores survivor's lived experiences of the time immediately before the assessment was carried out and the impact of the choices made by professionals, such as Cafcass and the expert, in relation to who was assessed and where it took place. The chapter also explores how experts prepared survivors for the assessment in terms of any information provided and whether informed consent was obtained. This is followed by a comparative discussion on the expectations of the court and professional bodies regarding information and consent versus survivors' lived experiences. The chapter concludes by suggesting that there needs to be a re-examination of how consent is understood and obtained within the process of instructing an expert in the family court.

6.2 Mothers become the Court's Primary Focus

Twenty-one survivors were assessed by an expert. Seven survivors were assessed along with their ex-partners and children. Despite the best interests of the child being at the core of Children Act 1989 proceedings only seven cases involved the child/ren meeting with the expert. Many survivors explained that they felt that what was in the best interests of their child/ren became secondary to the court wanting to determine whether they were fit mothers and/or if there were any mental health issues. Consequently, survivors described how they felt that they had become the primary focus for the expert assessment.

Kathleen highlighted how she felt that she had had to apply to the family court because of domestic abuse. However, her experiences and concerns were negated by the shift in focus to her behaviour, physical and mental health:

Nothing, you know, the dad was squeaky clean. The reason why we were originally in court was because of his violence and was safe for him to see a child but none of that was asked, it was all about me.

(Kathleen)

Alice emphasised that Cafcass focused on her mental health, and while Alice felt mentally well, she was told that she would be considered mentally unwell if she did not agree to an assessment. Maya concurred with Alice:

So, the process...as I experienced it was very much one where...I was forced to engage...and if I didn't want to engage with the process then adverse assumptions were immediately made about me. (Maya)

Several survivors said that the judge had directed that an expert be instructed and at times the study found that the judge had also chosen the expert. Savitribai explained that the judge told the court, 'right, mums going to go and have a psychological assessment because it's what the other side want'. (Savitribai)

Overall, survivors explained that they remembered being concerned that fathers were not being assessed as part of the process. However, these worries were outweighed by their concerns that their child/ren were not expected to be seen by the expert.

So, this psychologist wasn't, she didn't think it was important in her report to see me with my child/ren but yet she made a lot of inferences about my relationship with my child/ren. (Maya)

Jess explained that her children had disclosed abuse to herself and to other professionals, including Cafcass:

That's all I wanted as a mother, to see that they are being heard, not me, not their dad, just them. Because there's no amount of anything that I can say that can express the children's feelings better than they will express them themselves. (Jess)

Despite this, the expert assessed Jess and spoke to the children in front of her for only a few minutes. Jess continued by saying '...and then the children were told to go in with their father into the room. They hadn't seen him for months, this was the first contact that they'd had with him'. (Jess)

There appears to be inconsistencies in how an expert assessed a separated family. If a survivor was assessed and the child/ren were also assessed, it did not always follow that a father would be seen, or a father would be seen with his child/ren. There were

also occasions were children felt uncomfortable about being assessed or had refused to be assessed, as in Phoebe's case. Phoebe who was a litigant in person described during an exchange with the judge:

'he [the expert] also hasn't mentioned that he physically dragged the children out of the car and if they didn't talk to him they would be arrested and sent to you for a talking to, do you think that that might have affected how they dealt with him when they spoke to him?
(Phoebe)

Ruth was the only survivor whose children met with the expert and were accompanied by their father. Ruth had had little or no contact (it wasn't clear how much) with her child/ren at the time of her assessment and it was not clear why she did not have an assessment with her children.

6.3 Assessment Time and Location

The assessments were all carried out in different ways, and apart from two women who recounted that they had shared the same expert, all of the survivors had met with different experts, in various locations throughout England and Wales. There were three main locations for assessments to be carried out: Cafcass offices, expert's own premises and a survivor's own home. There were a couple of assessments that were carried out online due to Covid-19, but the initial intention had been to meet face-face in one of the aforementioned locations.

Online assessments during Covid-19 posed a different problem for survivors because they may not have been able have access to childcare, unless living with other people/family, as well as privacy, being another issue.¹ Some experts chose to meet with survivors in their own homes (or they unexpectedly turned up) which raised issues around consent and is discussed later in this chapter. Alexandria had specifically asked to be interviewed in her own home, which was partly due to childcare issues and because she had wanted to record the assessment. Incidentally, Maya also stated that she had recorded the interview and had chosen to ask a friend to accompany her during the assessment, but her assessment was not conducted in her home.

¹ This was described in detail by one survivor but would result in a risk of jigsaw identification.

Barbara described how the psychologist met with her twice at her home while she was alone in a fairly rural area of England. However, Barbara did not disclose whether she had been given the opportunity to meet with the expert at a neutral location. It transpired that the expert was based in a location hundreds of miles away from Barbara and this was confirmed by Barbara describing how the expert was lost but dismissed her help, telling her that she did not live where she said she did. Barbara recalled:

He'd never been to my home, probably never been to my tiny village, and yet in asking for help he was rude, dismissive and ignored my instructions. Another insight into his character and not a pleasant one.
(Barbara)

The location for the assessment became a strong theme throughout the interviews. Doris explained how one of the two experts involved in her proceedings set a very different tone with each parent.² The expert knew of Doris's family due to a shared interest and so had an affiliation with Doris's ex-partner. Doris explained that because of this connection, the expert decided to carry out the father's assessment with the children while carrying out their shared passion (for over two hours), and that this became more of a social occasion rather than a formal assessment for the family court. The first assessment of Doris's ex-partner was carried out at his friend's home, a place where she thought that the father would have felt comfortable. Doris continued by describing how the male expert arrived, unannounced, one evening at her home:

...and then he came to me. So, he...now the way that he did it to me, is that he didn't give me any prior notice that he was coming. He turned up at my doorstep one night, I had to go to school to get [deleted] because [deleted] had been ill at school, so I actually was coming back on a, a dark night. It was all wet, my [deleted] was being ill, hadn't had supper yet, there were [deleted] who needed supper on time and there was this man on my doorstep, and I didn't know who he was, and he said, 'yes, I've come to interview you'. And I was like...I was new to the legal system, okay, I didn't know that I had authority to say, no, go

² Specific details restricted due to the risk of jigsaw identification.

away. I felt intimidated and he, he pushed that he should come in and, and interview me then. So, he interviewed me with my child/ren not settled...with him in the background...[deleted] so, we chatted and I, I gave, I think I did alright, apparently in the circumstances. (Doris)

During Doris's lengthy proceedings, a second expert report was ordered, and the same psychologist was asked to return, despite her objections. The expert tried to assess Doris on a Saturday at her home because his wife had wanted to shop nearby but Doris explained that at this point, she had 'got a little more assertive' and refused and asked for an alternative date.

Jess described the psychological assessment as 'one of the hardest days of the entire proceedings'.³ Jess had to travel quite a distance to the Cafcass offices where she had been told by the Cafcass officer that the father would not be present in the building, as he would be assessed first and would then leave.

So straight away I thought I can't believe you are interviewing an abusive person first, who is obviously going to tell this wild tale of how I'm abusing my child, like, surely the first person that you should speak to is [deleted] and then the father. But they interviewed him first and I was, I was just filled with fear. It makes me feel physically anxious right now just thinking about how I felt that day, getting the train with [deleted] and we made our way through [deleted] and I was having, I was like on the edge of a panic attack the whole way and I got into the building and we walked past all of these rooms that had glass...doors so I could see all the way through and I looked in, and the father was actually in one of the rooms...he was still there and I was, I was horrified, I just can't believe, I've been reassured that he will not be in the building when we arrive. Me and child/ren are all terrified of him, so you can imagine when I see him ...I think what the hell is going on? (Jess)

³ The proceedings last over two years.

Jess continued by explaining how Cafcass had reassured her that her ex-partner would not be in the building when she arrived for her assessment:

And I really, so, like, the Cafcass officer had said to us, in that saying, because she had lied to us. He was still there, and I just couldn't believe it. So, I was on the verge of tears. I was with my child/ren and, you know, I was really having a difficult [deleted]. I'd had a [deleted] and I wasn't well ... so I was so stressed, and I was trying to stay calm and they, then my child/ren were told to go in with the father, into the room. The child/ren hadn't seen him in months, this was the first contact that they'd had with him... (Jess)⁴

Ruth had also been told to attend the Cafcass offices for the assessment, a trip that took approximately 90 minutes. As previously mentioned, Ruth's child/ren had been removed from her care and transferred to the father, despite domestic abuse. Ruth explained:

So, she [the Cafcass officer] brought us all in on the same day...so they staggered it slightly, but...on the day...so I wasn't allowed to see my child/ren, at that point, because they weren't living with me...I was in one room and the child/ren and their dad were in the room next door...yeah, and I could hear him laughing and, what have you, through the, through the wall...so it was a bit strange...sort of situation to be in. (Ruth)

Kathleen described how after surviving a non-fatal strangulation, her ex-partner was directed to be assessed by a psychiatrist. Kathleen's perpetrator was ordered by the court to complete a Domestic Violence Perpetrator Programme (DVPP).⁵ However, Kathleen's ex-partner did not complete the course as he stated that he had 'learnt enough'. Kathleen had to have emergency major surgery that required at least three months of rest and recuperation. Despite Kathleen having a medical reason for delaying the assessment, the expert told the court that they felt this was an example

⁴ The Cafcass officer was also not present on the day of the assessment.

⁵ The terminology has since changed to Domestic Abuse Perpetrator Programme.

of the mother's hostile behaviour. The expert psychiatrist submitted a complaint to the residing family court judge regarding Kathleen's delay in attending the assessment.

6.4 Expert Introductions

Bell and Emma were assessed by the same male psychologist. Bell described how the assessment was carried out in 'his really creepy basement flat', whereas Emma described it as a 'horrible basement flat'. Emma explained:

He just opened the door...and just said, 'Emma' and I said, 'yes'. 'Right put your coat there...go in that room...sit in that chair...I will be back' and then he just left the room for 10 minutes and then he came back again, and he just looked at me and said, 'so...your, your child was not sexually abused, the judge said it didn't happen, so...you understand that, so why, why are you here?' (Emma)

Bell concurred with Emma's experience by explaining that, 'he walks out the room and leaves his pad there thinking that you're going to look at his notes'. Bell and Emma were not sure if they were also being filmed without their consent.

Alexandria revealed that in the initial moments of her assessment she was able to see sight of her own report:

...I had already read my report on her lap, she had written it before she had even assessed me. I read the paragraphs, she it on her lap ...and I read paragraphs about myself that she had written. (Alexandria)

As previously mentioned, Maya and Alexandria explained that they had recorded the assessment without the expert knowing, and that this was a practice that they carried out for all of their professional interactions.

Simone explained that the expert had initially told her that she would arrive at a certain time, but the time was inconvenient for Simone as she would be at work. The expert documented that Simone would not return her calls and was obstructive, despite Simone compiling her own log of calls that she had made, during her lunchbreak.

Jess described:

The psychologist came in and sort of, introduced herself...was very sort of, she was not, personable and not very warm at all. She was just, everything was matter of fact, and I'll do this, and I'll do that and so, she looked at me. I felt like she was looking at me with...discussed really, like she'd already decided that she doesn't like me, and I felt like, clearly because he's been in there first and it felt like, so unfair, I mean, I feel like crying just now talking about it because it was horrible saying, you know, the way she looked at me and...she took my children into him. (Jess)

6.5 Consent

The issue of consent was raised in many of the interviews and at various stages. Although the word 'consent' wasn't used, survivors discussed the concept of consent and issues related to consent. Often discussions around consent overlapped with concerns about coercion and are explored later in this chapter.

As previously mentioned, Alexandria and Savitribai's lived experiences also reflected other survivors, as they both felt that they were left with little choice and had to agree to the expert assessments. Alexandria was told that she would be given a diagnosis whether she attended an assessment or not and Savitribai was told that the judge would have a poor opinion of her if she refused.⁶ Doris also described how she was left with little choice but to invite the expert into her home, when he turned up unexpectedly at home, late one midweek evening, while she was trying to care for her child/ren.

Barbara explained how she felt that she had to 'comply' with the expert process and did not feel that she was able to challenge it at any time. At no point did a survivor explain that they had been given a consent form to read and sign before the assessment could begin. The study cannot make a finding that this did not happen however, survivors overwhelmingly described feeling as if they had very little choice but to agree to the expert assessment.

⁶ See Chapter 5.3

6.6 Expert Information

Expert information was mentioned in two ways, the information that an expert offered a survivor about the assessment and overall process, and the information provided to an expert about the case i.e. the court bundle.

Survivors' lived experiences suggested that they had been provided with minimal information regarding the expert. Ruth was the only survivor who mentioned that an expert explained what was about to happen in the assessment and how long she would be expected to stay. It was not clear if the expert had explained the rationale about the psychological tests but Ruth was not sure why those particular tests had been carried out.⁷

Savitribai explained that the only information that she received from the psychologist was when he told her that she was not allowed to record the interview:

...which I found very weird because I knew instantly that he was recording everything. That I was saying...because he was seated at his computer and, you know how someone, who, someone is recording something on the computer, you can turn...the computers there but he's not fully writing on one part of the computer...it was just odd.. I could just tell it was probably, not what he was supposed to be doing because I think it is illegal for a psychologist, in the profession, to record when they are not telling me that they are... (Savitribai)

Survivors did not mention that they had been given information sheets about their assessment and how it would be carried out, i.e. whether it would be in the form of a discussion, questionnaire, or a psychometric test. Crucially, survivors did not mention if they had received any information which signposted them to other services that they may need after the assessment was complete. Once again, this does mean that it did not happen. However, it is significant as it does raise issues about survivors being able to receive support after expert assessments, even when the court has made no findings of domestic abuse. For example, Jess described feeling 'quite triggered' as

⁷ See Chapter 7.3

the expert 'bought the question back to the abuse again. Following the assessment, Jess said that she felt alone and unsupported while needing to care for her child/ren.

Several survivors explained that it was not always apparent to them what information the expert had about them and about the case before the assessment wasn't always apparent. As discussed in Chapter 5.7, the letter of instruction and the court bundle appeared to be the main source of information for the expert, but survivors had sometimes felt that these documents did not provide a complete picture or account of what had happened. Kathleen was doubtful that the expert in her proceedings had even read the bundle because she felt 'there were masses of stuff that was taken out of context'.

Several survivors explained that they took extra information along with them to the assessment with the hope that they could assist the expert with filling in any gaps in knowledge. Betty wanted to give the expert her extensive medical reports to provide evidence of PTSD due to an unrelated event that occurred at the onset of the family court proceedings. Betty explained that she wanted to show the expert:

...a snippet of, of...how I was managing to, to parent, given what I was struggling at the time. I also took a letter direct from my GP who has been my GP for [deleted], so knows me and my child/ren well. I also took a letter...from the time I still had a Health Visitor. (Betty)

Betty later continued:

I laid out on her dining room table, I lay things out really cleverly, and just said, you know, can I have ten minutes to just, just, to put my paperwork out and when she came back into the room, she said, 'I'll tell you now, I'm not going to look at any of that'. So, the reason I'd carefully prepared the completely, you know, the professional wasn't even prepared to sit down and look. What she said, 'you know, I want to talk to you. I want to hear from you what happened'. (Betty)

6.7 Length of Assessments

Survivors indicated that their assessment time ranged from approximately forty-five minutes to over five hours, and two survivors explained that they were assessed over

a two-day period. The time taken depended on the type of assessment being carried out. It was not always clear whether survivors had always been given the information regarding the length of assessments. A number of women explained that they had only been informed at the beginning of the assessment and as a result, this may have prevented them from making plans, including arrangements related to employment and childcare.

Survivors also highlighted the limited amount of time allowed for breaks, especially when assessments took many hours to complete. The expert involved in Michelle's case was randomly chosen from a list compiled by Cafcass and she was the sole focus of the assessment. Michelle explained that she was expected to tolerate a five and half hour assessment with a 20-minute break. Alexandria's assessment was carried out at her home and was approximately five hours with a five-minute break. As previously mentioned, Ruth was assessed at the Cafcass office, while she knew that her child/ren, who had been removed from her care, were next door. The assessment took between five and six hours. Alice's assessment was approximately six hours and was carried out over two consecutive days.

6.8 Individuals to be Assessed

All survivors were assessed by an expert, with the exception of Angela, Amal, Emmeline and Jacqueline. However, only 11 fathers were assessed. Merely seven survivors were assessed along with their ex-partners and children.

A prevalent theme that emerged from the study related to survivors' concerns about the lack of parity in assessments which usually resulted in mothers becoming the sole focus. Parity-related concerns extended to the unequal amounts of time an expert spent with both parents (if both parents were assessed) because some women described how an expert's time with a father was tokenistic.

Crucially, survivors explained how they could not understand why an expert did not meet with their child/ren or wish to observe mothers and children together, in an environment that child/ren felt comfortable in. Although survivors also said that they could not understand why fathers were not always assessed as well, their main complaint was related to experts not meeting with children as they believed that their voices were paramount. As Maya explained:

So, this psychologist wasn't, she didn't think it was important in her report to see me with my child/ren but yet she made a lot of inferences about my relationship with my child/ren. (Maya)

Jess said that her children had disclosed the abuse to herself and to other professionals including Cafcass:

That's all I wanted as a mother, to see that they are being heard, not me, not their dad, just them. Because there's no amount of anything that I can say that can express the children's feelings better than they will express them themselves. (Jess)

Despite the disclosure to professionals, the expert assessed Jess and met with the father while he was with their child/ren. The expert did not meet or assess the child/ren separately and they were only spoken to very briefly.

6.9 Discussion

6.9.1 The Build-up to an Assessment

Survivors' lived experiences highlighted how difficult it would have been to fully prepare for the assessments and to know what was to be expected when there was a lack of information available. It was evident that there can be a lot of preparation involved for a survivor, as soon as the assessment time and location has been agreed. A number of women had had to prepare for a long journey, perhaps on public transport which, in some cases, involved travelling with young children.

It is also important to emphasise the psychological preparation that survivors had to undergo before meeting the expert. Although survivors did not explicitly mention this, it would not be unreasonable to assume that time would also be needed to explain and support any child/ren who were to be involved.⁸

All survivors described how they were trying to manage some degree of trauma before the assessment took place and explained how the process was traumatic and re-triggering. One of the reasons for this was because, as Jess highlighted, a survivor knew that an expert had already met with her ex-partner and were concerned about

⁸ The impact of the assessment on children is discussed in Chapter 7.

the risk that this would lead to the expert forming an opinion that there had been no abuse. Jess's experience also revealed what happens when the wrong information is provided by professionals and how this can place survivors in harmful situations. Jess and her child/ren were placed in extremely vulnerable positions and this could have been potentially dangerous. Neither Jess or her child/ren had been warned that her ex-partner would be in the building or critically, that the child/ren would be expected to meet with their father after allegations of child abuse and domestic abuse.

Many survivors had to psychologically prepare for the assessments knowing that they were the only ones to be assessed and the focus would be solely on them. As discussed, a number of survivors described how they felt they had little, or no choice, in having an assessment. The pressure to comply seemed to be applied by survivors' legal professionals who suggested that it could reflect badly on them if they refused and/or the judge would overrule their refusal anyway. Critically, Alexandria's lived experience revealed that she would be given a mental health diagnosis if she did not agree to be assessed which is further discussed in 6.9.2 onwards. This highlights how the family court process exacerbates survivors' lack of autonomy and how the family court process and domestic abuse had compounded this feeling.⁹

6.9.2 Location of Assessment

The location of the assessment was a significant issue for many of the survivors.

Many women described how their vulnerability increased because of the location of assessments. The location choice was an interesting theme as it offered insight into the way in which a survivor's agency, safety and general worthiness were viewed within the court proceedings. Barbara, Bell, Doris, Emma, Jess and Ruth's lived experiences all emphasised the vulnerability of the women being assessed but also the impact of the 'chosen' locations on each of them.

⁹ Ravi K Thiara and Christine Harrison, *Safe not sorry. Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence* (University of Warwick Centre for the Study of Safety and Wellbeing 2016); Jenny Birchall and Shazia Choudhry, *"What about my right not to be abused?": Domestic abuse, human rights and the family courts* (Women's Aid 2018)

Although Barbara and Alexandria explained that their assessments were carried out in their own home, this could not be considered an independent location. Even if the women might have felt more comfortable being assessed in their own surroundings, it is concerning that this may have been the expert's choice or agreement. Despite survivors' accounts indicating trauma, it is not clear why the experts agreed, or arranged, to carry out assessments on traumatised women in locations which potentially left both parties more vulnerable, personally and professionally.

Bell and Emma both described the 'creepy basement' in which their assessments were carried out. Both women's accounts clearly call attention to how exposed they were to further harm by being alone with a male psychologist (no chaperone or other adult was mentioned as being present within the expert's office/home) who explicitly explained that the abuse did not happen.¹⁰ The choice of location for the assessment is problematic because the male psychologist acknowledged that there were allegations of sexual abuse, but because the judge made no findings, the expert had chosen to dismiss them too. Although the expert was bound by the findings of the court, this type of scenario raised issues regarding an expert's independence as a clinician.¹¹ Bell and Emma's accounts reveal how male experts agreed to an instruction to assess vulnerable women who had made allegations of domestic abuse, without making provisions for a chaperone, or advocate, to be present. Even if information related to domestic abuse was not in the letter of instruction, it is likely to have appeared in the court bundle. Crucially, it could be also argued that an expert should be mindful of this, as well as the possibility of a survivor's trauma, but Bell and Emma's lived experiences show the contrary occurred.

Doris's account of the psychiatrist unexpectedly arriving at her home, on a weekday evening as she was preparing dinner for her child/ren emphasises how the process increases survivors vulnerabilities. Although Doris was able to refuse the expert's next attempt at seeing her at very short notice in her home, the expert was able to exert his power and reinforce the power imbalance between survivor and expert. Arguably, this was achieved in a number of ways: not allowing time for Doris to prepare herself or her child/ren, not offering Doris an independent location, and working outside of

¹⁰ Discussed in Chapter 7.4

¹¹ Discussed in Chapter 8.9

expected normal working hours. Furthermore, home assessments can provide an expert with additional information that could be detrimental to a survivor, particularly in family court proceedings, such as whether the home was clean. Although this was not a finding in the study it is important to recognise that traumatised women were being placed in physically and psychologically vulnerable positions because of certain assessment locations.

Recommendations relating to how or where assessments should be carried out are not available in any of the published standards or guidance.¹² However, the code of conduct published by the Health and Care Professionals Council (HCPC) states that experts ‘must treat service users and carers as individuals, respecting the privacy and dignity’.¹³

The British Psychological Society (BPS) code of ethics and conduct states¹⁴ that psychologists need to ‘use their own professional and ethical judgment’ and ‘behaving ethically requires ethical awareness – noticing what ethical issues are raised by a course of action makes it more likely that ethical practice will follow’. The BPS code also provides a statement of values¹⁵:

Psychologists value the dignity and worth of all persons, with sensitivity to the dynamics of perceived authority or influence over persons and peoples and with particular regard to people’s rights.

In applying these values, Psychologists should consider:

- i) Privacy and confidentiality;
- ii) Respect;
- iii) Communities and shared values within them;
- iv) Impacts on the broader environment – living or otherwise;
- v) Issues of power;

¹² Family Justice Council Standards for Expert Witnesses in the Family Courts in England and Wales (Ministry of Justice 2013); Royal College of Psychiatrists, *Responsibilities of psychiatrists who provide expert opinion to courts and tribunals* (Royal College of Psychiatrists 2015); British Psychological Society (Psychologists as expert witnesses 2021)

¹³ Health and Care Professions Council, *Standards of conduct, performance and ethics*, (Health and Care Professions Council 2016) 1.1

¹⁴ The British Psychological Society (n 14) 1.5

¹⁵ The British Psychological Society (n 14) 3.1

- vi) Consent;
- vii) Self-determination;
- viii) The importance of compassionate care, including empathy, sympathy, generosity, openness, distress, tolerance, commitment and courage.¹⁶

The Health and Care Professionals Council states:

6. Manage Risk

Identify and manage risk

6.1 You must take all reasonable steps to reduce the risk of harm to service users, carers and colleagues as far as possible.

6.2 You must not do anything, or allow someone else to do anything, which could put the health or safety of a service user, carer, or colleague at unacceptable risk.¹⁷

6.9.3 Power, Dignity, and Respect

As the BPS guidelines set out above, psychologists need to be aware of the dynamics of perceived authority or influence over a person, and issues of power. Survivors' accounts related to assessment location raised questions about power. Although Barbara described feeling excited that she was going to finally speak to an expert, it is not clear as to whether this was because her main focus had been to be heard by an 'independent' professional who would recognise the abuse, and this may have superseded concerns about safety, vulnerability and consent. It is important to remember how frightened many women initially felt when they agreed to participate in this study as well as their descriptions of how vulnerable the process made them feel. Several survivors' accounts revealed how the experts clearly gave the message, inadvertently or not, that they were in control. Examples of this can be seen in Doris's case when the expert turned up at her house unannounced and in both Emma and Bell's because they believed that they were being filmed by the expert without their

¹⁶ The British Psychological Society (n 13)

¹⁷ Health and Care Professions Council (n 12)

knowledge or consent. It appeared that all three women were aware of the power imbalance but did not feel safe enough to know that they could challenge the expert.

The BPS guidelines set out above provide that psychologists need to value dignity, be respectful and understand the importance of compassionate care, including empathy. Pertinently, psychologists need to also consider a client's distress. It is difficult to see how the psychologists in both Ruth and Jess's assessments showed respect, dignity, empathy, or carried out compassionate care to either woman or their child/ren. Ruth was made to endure sitting in a room next to the child/ren who had been removed from her care, who she could hear laughing through the wall. Jess was made to sit in a room knowing that her perpetrator was next door and her child/ren later were forced to engage with their father. Both women described their distress during the assessments and the impact that they had to manage afterwards. Despite, their distress at the situation presented to them, neither of the women challenged the psychologist's decision in a way that changed the situation and, psychologically and physically, protected them. While it is difficult to know what information the psychologist had read, there is a strong possibility that they would have been aware of the allegations of domestic abuse and the child/ren's disclosures of abuse. Therefore, it is remarkable that both experts took the professional decision to place parents in rooms next door to each other and not stagger the assessments. The decision to conduct assessments in this way calls into question the ethical decision-making of the expert, as well as their understanding of abuse and trauma.

6.9.4 Informed Assessment

Overall survivors were given minimal information about the assessment and the use of information sheets was not mentioned by any survivor. This is contrary to recommended practice by professional bodies. The Royal College of Psychiatrists recommends that:

...experts give people to be assessed an information sheet about the nature and purposes of the assessment and the limits of confidentiality. Most assessing experts give verbal advice about the limits of confidentiality; a minority record this in their opinion, and an even smaller subgroup ask those assessed to sign a document that indicates that they have understood and consented. This is not yet an

established standard, but it may be so in the future. Such a document can easily be combined with the information sheet.¹⁸

The BPS recommends that ‘psychologists acting as expert and professional witnesses may wish to consider the use of a standard information sheet/guide to aid with obtaining [informed consent]’.¹⁹ The Health and Care Professionals Council state that ‘you must give service users and carers the information they want or need, in a way that they understand’.²⁰ Many survivors explained how they had never had to undergo a psychological assessment before and they did not know what to expect or have a real understanding of why they being assessed.

6.9.5 Reviewing Consent

One of the most problematic areas highlighted by survivors’ lived experiences was the issue of consent.

The Royal College of Psychiatrists state that:

Written consent on a form that is part of a detailed document setting out the nature, purpose and potential consequences of the psychiatric evaluation may become particularly important in cases where, as a result of changed funding arrangements, people act without legal representation. Such ‘litigants in person’, as they are known, are increasingly common in the family courts. They are particularly likely to misunderstand the duties and role of the expert and believe that they are ‘buying’ an opinion favourable to their case. A well-constructed, and signed, consent form can assist both the litigant in person and their instructed expert in the event of a complaint.²¹

The British Psychological Society states:

It is best practice to gain informed consent from individuals regarding the consent to participate in the psychological assessment. Psychologists acting as expert and professional witnesses may wish

¹⁸ The Royal College of Psychiatrists (n 11) 16

¹⁹ British Psychological Society (n 13) 21

²⁰ Health and Care Professionals Council (n 12) 5

²¹ The Royal College of Psychiatrists (n 11) 16

to consider the use of a standard information sheet/guide to aid with obtaining this. Information provided should make clear the differences from normal clinical consent. Specifically, it should be made explicit that the results of any assessment may be used for legal purposes in a report or oral evidence during proceedings.²²

The Family Justice standards does not mention consent but expects experts to comply with their professional bodies' guidelines.²³

Consent can be defined as a voluntary agreement to another's proposition to voluntarily agree to an act or proposal of another, which may range from contracts to sexual relations.²⁴ O' Regan explains that there are three preconditions to consent, voluntariness, knowledge and rationality.²⁵ The first precondition to consent is voluntariness which O' Regan explains is broadly understood to be a legal recognition of free and unrestrained choice and suggests that this is the most common ground upon which validity of consent is tested.²⁶

6.9.6 Voluntariness

Voluntariness suggests that consent has been given without an undue influence or coercion, although, pertinently, certain political theories recognise that certain coercive elements are necessary as part of state functionality.²⁷ Consent, within the context of this study, revealed that there is an intersection between family law's interpretation of consent and the medical/social sciences understanding of consent. The medical model of consent, often referred to as the process model, suggests that consent has been obtained following assessment, the giving and receiving of information and that consent is ongoing but can be revoked at any point.²⁸ An example of this in medicine or psychology is the way in which informed consent is obtained, as directed by the aforementioned professional guidelines, by providing all available information including the risks and side effects of any proposed treatment to the patient. This can

²² British Psychological Society (n 13) 21

²³ Family Justice Council (n 11)

²⁴ Law Dictionary, <https://dictionary.law.com/Default.aspx?typed=consent&type=1> [Last accessed 06/2022]

²⁵ Karla M O' Regan, *Law and consent. Contesting the common sense* (Routledge 2020)

²⁶ O' Regan (n 25)

²⁷ O' Regan (n 25)

²⁸ Regan (n 25); Shaun D Pattison, *Revisiting Landmark Cases in Medical Law* (Routledge 2018)

be partly achieved by providing an information sheet, while also allowing space and time for the patient to ask questions before being able to make decisions based upon the information that they have been given.

However, survivors described that they agreed to the instruction of an expert because they felt coerced by professionals or because they felt that this was the only option that remained for the domestic abuse to be identified. Survivors who explicitly said that they did not want to have an expert instructed were told that they did not have a choice because the judge would overrule their wishes.²⁹ Survivors described their lack of agency as so disempowering that they felt frightened. Crucially, survivors were not just 'consenting' to the instruction of an expert but, for the majority of survivors, they were also agreeing to being assessed by the expert knowing that they would be the sole focus of the expert process. Essentially, survivors were describing feeling coerced into agreeing on a course of action which was then, perhaps unwittingly, being conflated to be a sign of consent too. Survivors did not discuss whether an expert had instigated a discussion regarding consent at the beginning of the assessment, and the study cannot make findings either way. Even though survivors did not explicitly mention discussions about consent, it can be argued that family court judges and professionals assumed that consent had been provided by a survivor by approving the letter of instruction. As many survivors explained, for a myriad of reasons they did not feel that they had a choice but to agree to the instruction of an expert, even when they had initially tried to object. The court is also able to override any objection to an instruction and although it cannot order a survivor to be assessed, the court can make punitive orders if she does not, and it is because of this mechanism that it is argued that consent has not been ethically obtained.

Furthermore, even if consent was obtained directly before carrying out the assessment, this does not mean that the consent is valid. As O' Regan explains, voluntariness must also be considered within the context that it is understood.³⁰ Within the context of this study, it is clear that structural inequalities existed, and it can be argued that any consent given by a survivor was, in the majority of cases, just a perception and instead, an external observer would have recognised that a survivor's

²⁹ See Savitribai's account in Chapter 5.3

³⁰ O' Regan (n 25)

response was an act of submission, and of obedience to the court.³¹ At this point, it is important to consider what the family court expects a survivor to be consenting to and what survivors' lived experiences have revealed that they are consenting to as, arguably, they are two different entities. Survivor accounts indicated that the court strongly suggested that an expert was necessary, and that the expert's main focus should be the mother (survivor).

This study has found conflicting explicit and implicit expectations of consent, and fundamentally what a survivor is expected to 'consent' to. The perception of consent is very powerful, and it is important to understand how it is being used to reinforce the law's authority while undermining the concept of consent, how it is understood and how it is utilised outside of the family court.

It appears that the issue of consent was not considered during court proceedings. It is not possible to determine why this did not happen, and there is no research to suggest that consent is normally raised within child arrangements family court proceedings. Additionally, judges may assume that they do not need to raise the issue of consent as they may assume that experts will comply with their professional duties. However, the issue becomes more complex once it is acknowledged that the judge has the authority to deem that an expert is necessary, even if a survivor makes an objection. It is clear from survivor accounts that, at this point, a judge may not be aware of a survivor's objection to an expert assessment and will proceed to deem the instruction necessary. However, Alexandria's lived experience highlighted how despite her explicit objections, the expert was instructed.

An important issue is that there seems to be no understanding, by the court or professionals, that survivors are 'consenting' for a professional psychiatrist or psychologist to assess their mental health and the consequences that this can have.

It is at this juncture, where there is an intersection between family law and medicine/social science, that the issue of consent becomes problematic. Although the family court's message might be paternalistic i.e. that it knows best, its authority to impede a survivors ability to choose suggests that it is more regulatory.

³¹ O' Regan (n 25)

The situation becomes more contentious because of the way in which the court is able to uphold its power (in the form of authority) by recruiting the experts to accept that consent has been obtained and as a result positions the expert as a regulator. Examples of this regulatory mechanism are seen in survivors' accounts which revealed that even when consent had been explicitly obtained by the expert before the assessment was carried out, the expert appeared not to consider the context in which the consent has been given. Put simply, if the court considers the issue of consent at all, it may think that the expert will obtain the consent, and the expert may think that consent has already been obtained because the court has deemed the instruction necessary.

There appeared to be an expectation by survivors that experts would act as advocates because they are grounded within medical models of care and therefore would be able independently to assess the situation. Crucially, they expected the expert to be able to recognise the structural inequalities that lead them to 'consent', including trauma caused by domestic abuse. If experts had attempted to obtain informed consent at the beginning of an assessment, they should have concluded that it did not meet the pre-conditions which O' Regan sets out and should therefore deem it invalid. However, many survivors' accounts reflected that this did not happen and an expert's duty to the court superseded their professional duty to their client (survivor). This was evident when an expert explained to a survivor that they could not go against the court's wishes/findings/orders stating that there was no domestic abuse and therefore, no domestic abuse-related trauma. Arguably, if an expert ignores the validity of consent and doesn't independently assess for the inequalities that impact that decision, the impartiality of any evidence produced is questionable.³²

It is worth mentioning one final point related to the voluntariness of consent within the context of this study. It may be argued that when an expert is deemed necessary it is because they need to use their expertise to assist the court because the judge does not have the required expertise needed to make a final decision. There is nothing in the literature or the interviews to suggest that a judge would question the issues that have just been raised about the voluntariness of consent, or the way in which family law appeared to supersede any duties that a clinician would 'normally' be expected to

³² See PD25 [44]

carry out towards their patient and within the scope of their professional bodies standards. Instead, there appears to be a tacit understanding that an expert must balance their duty to the court along with their duty to their client whilst not challenging the court's findings, even if this may exert undue influence on a survivor's ability to give valid consent.

The study is unable to determine whether there is enough judicial understanding about the complexities related to the voluntariness of a survivor consenting to an expert instruction and assessment. The impression taken from survivors' lived experiences is that while the court rightly take expert instruction seriously, there appeared to be little insight into whether and why survivors do consent. Furthermore, it is also not clear how much a judge, or court professionals, understand the impact that an expert assessment can have on a survivor, particularly when consent is invalidated and how this can mirror the abuse that a survivor has tried to leave.

6.9.7 Knowledge

The second precondition to consent is knowledge which is defined as the explicit understanding of what will take place, and within the medical process model, an assessment of general cognitive understanding.³³

Survivors described how they did not really understand why an expert was deemed necessary or understand the expert's role in assisting the court to make a decision about where their child/ren should live, particularly when an expert only met with one parent, usually the mother. Very often survivors felt that an expert was randomly chosen, and they had very little, or no, understanding of the methodologies/theories that the expert chose to guide their practice. Emma's lived experience was an example of how she was able to recognise and understand the expert's approach and challenge it, but this was only because of her own professional background.³⁴ The study found that unless survivors were explicitly told to carry out research about the expert's professional background, or do so of their own volition, they did not have a comprehensive knowledge of what they were actually consenting to. It is important to recognise that survivors were often not given information about the expert's practice,

³³ O' Regan (n 25)

³⁴ See Chapter 4.2

the assessment process, or potential outcomes of the assessments (i.e. risks) before consenting. Survivors may have implicitly trusted legal professionals to make recommendations if they were legally represented. However, it is not clear whether they also understood the complexities regarding the theory and approach that each expert took or the implication of these professional practices. Crucially, survivors' accounts indicated how important it was to possess this knowledge (by its absence in their cases) because of the potential harmful consequences that theories such as parental alienation can have.

Nevertheless, It is also important to remember that even when a truly informed decision has been made a judge still has the authority to propose an expert, which may be very difficult to challenge, as in Alice's case.³⁵ The judge may recommend an expert for a myriad of reasons including past experience with the expert, case law and the eminency of the expert, but this can also be potentially harmful for a survivor.

6.9.8 Rationality

The final precondition of consent is rationality, which along with voluntariness and knowledge can debatably be used to regulate and uphold a dominant discourse. O' Regan explains that a key component to the precondition of rationality is an evaluation of how well reasoned or deliberated a particular decision has been and argues that it is only valid if it is deemed to have made sense.³⁶ Once again, this precondition can have a regulatory effect in the family court, because how sense is understood, and whom it is determined by, has the potential to exclude certain choices that are not considered to be commonly sensible but may be just as valid to the individual proposing them.³⁷ Survivors' descriptions of experts being recommended by professionals such as Cafcass, because it 'makes sense' has the capacity to legitimise a decision and further 'other' a survivor if they disagree with the instruction. In turn, this subjects the survivor to further scrutiny, and within the context of domestic abuse, applies pressure to have their behaviours regulated, mirroring the abuse that they are trying to leave.

³⁵ See Alice's account in Chapter 5.4, where the judge recommends a psychiatrist.

³⁶ O' Regan (n 25)

³⁷ O' Regan (n 25)

Determining what is common sense, or not, is a powerful tool that can be deployed at any time to support an instruction of an expert, or to disagree that it is necessary. The regulatory force of the court can not only legitimise the instruction of an expert, but it can also set the terms, for example, by approving a letter of instruction that prevents the expert from mentioning domestic abuse. As O' Regan highlights, common sense can privilege certain behaviours and subjectivities while obscuring alternative accounts of being and acting in the world.³⁸ Within the context of this study, experts are instructed to uphold certain dominant discourses, for example, that domestic abuse should not be a barrier to child contact, whether a survivor has consented or not.

6.9.9 Conclusions

This chapter has analysed and discussed the lived experiences of survivors just before the assessment was carried out and highlighted how much preparation can be involved. Survivors' lived experiences show that as well as the physical preparation, the psychological effects of a planned assessment can have an impact, particularly when a survivor becomes the sole focus.

The study has found that there is a lack of parity in the way in which separated families are assessed and survivors' accounts raised concerns about experts wanting to meet children, despite the child's best interests being at the core of the child arrangements proceedings. Problematically, survivors' accounts have also revealed that the focus of the expert assessment is the mother and her behaviour. As a result, mothers are often the only person within the separated family to be assessed which shifts the focus away from the perpetrator's behaviour.

Survivors' accounts revealed inconsistencies in the way that experts made arrangements for the assessments and what information, if any, was provided to them. Survivors' lived experiences highlighted the vulnerable positions they were placed in by the experts' decisions, such as choosing to carry out an assessment next door to the room where a perpetrator was sitting. Furthermore, survivors explained how they were expected to sit through assessments which lasted many hours, sometimes days,

³⁸ O' Regan (n 25)

leaving them feeling exhausted and even more traumatised. The inconsistencies in the way that experts approached the assessments were also highlighted, with several mothers describing how the expert appeared remote and/or rude.

One of the most concerning issues that the study has exposed is around consent and how it is understood by professionals, experts' and the court. Survivors' lived experiences revealed that survivors may have a diminished ability to consent to assessments in the first instance because of trauma caused by domestic abuse and ongoing family court proceedings, as well as the feeling that they are unable to object to the assessment. Even when a survivor does object to the assessment the court is able to use its regulatory powers to ensure that it proceeds which is arguably a coercive act.

One of the apparent issues is that if the court has not made findings of domestic abuse it cannot accept that a survivor is traumatised because of the abuse. The court is not, therefore, in a position to accept that a survivor's ability to provide implicit, or explicit, informed consent is not diminished. In any event, the study's findings suggest that the court does not consciously consider the issues of consent, particularly in situations where a survivors objects to an expert instruction but is inevitably persuaded to proceed, often as a consequence of pressure effectively being applied from the court and professionals. Survivors' accounts highlighted the limited space for action that this creates for them and how they often had to consciously balance their increased lack of autonomy with the hope that an assessment would recognise the domestic abuse. It is reasonable to assume that if a judge was asked if informed consent had been obtained, they may respond with an affirmative because no objection had been recorded and they were not aware of internal pressures that professionals placed upon a survivor, as highlighted in Chapter 5.

As a result of these findings, it has to be questioned whether consent within the expert process is a tokenistic and illusory and in reality survivors are really submitting to the coercive functionality of the state. O' Regan and other feminist commentators on consent, such as Hunter & Cowan, discuss the preconditions of consent particularly within the context of structural inequalities such as domestic abuse.³⁹ Survivors' lived

³⁹ O' Regan (n 25); Rosemary Hunter and Sharon Cowan, *Feminist Engagements with Law and Subjectivity* (Routledge 2009)

experiences have suggested that the pre-conditions discussed particularly by O' Regan of voluntariness, knowledge and rationality were not met within the process of instructing an expert and therefore may have invalidated that consent. This is problematic for many reasons but it is argued that this could essentially invalidate the consent, or make the subsequent evidence, i.e. the expert report presented to the court, inadmissible.

The issues and concerns raised by survivors' lived experiences will continue to be explored and discussed in the following chapters as consent is at the core of the process of instructing an expert. This is because there is an important intersection between family law and medicine/social science's understanding of consent and the mechanism behind which consent is obtained/re-assessed/re-established and this thesis suggests that these areas have not been sufficiently examined before.

The following chapters will look at the final stages of the process of expert instruction and will focus on what happens during the assessment and the impact of the assessment.

Chapter 7

Assessment Day

7.1 Introduction

Chapter 6 explored survivors' lived experiences immediately before the expert assessments began and described issues relating to location, expert information, and consent. The following chapter will explore the actual assessment, what happened during the assessment, some of the methods that were employed by the expert and the information that the expert wanted to obtain. This is followed by a discussion of the survivor's physical and psychological safety during assessments, the professional conduct of experts and the assessments of children.

7.2 Assessment Questions

Survivors described a multitude of methods that experts used to carry out assessments. Generally, experts were instructed for the same reason, to aid the judge in determining what child arrangements would be in the best interests of the child/ren. However, the findings show that almost every expert's approach and assessment was different.

Jess's assessment appeared to be quite an unstructured face-to-face discussion with the psychologist and no psychological tests were carried out. Jess described feeling in a state of anxiety throughout the assessment as she had learned that her ex-partner was in the room next door to her and her child/ren, having been assured by Cafcass that this would not happen. Jess was able to see her ex-partner through a glass fronted office and discovered that the expert had assessed him first. Jess explained that her anxiety about the assessment had built up over time and at the beginning of the assessment she felt on the 'verge of tears'. As part of the assessment the psychologist decided to take the child/ren away from Jess and place them in the same room as the father, despite not seeing each other for several months. This distressed the child/ren and Jess. Jess said that the last time that the child/ren saw her ex-partner was when he told them to 'get the fuck out my house' and had been 'manhandled' by him. Jess was assessed by the expert immediately after the child/ren had been seen with the father.

...but you can imagine, this state, the anxiety and the state I was in by the time I'd got into the room with her, I was so on edge but, I was, you know, all of her questions were just being fired at me and I really felt like attacked, I really felt so attacked...because she, everything that she was asking was based on everything he just told her, so I really felt that they were enabling him to still abuse me through other people all the time... (Jess)

Jess described how she felt that she had to defend herself during the assessment:

(and) sort of...make her aware that there's been a lot of violence and that, I think she challenged why you didn't report that? And why didn't you do this? And I thought, does she not understand domestic abuse at all? (Jess)

Jess also explained that at the time of the assessment she had not received any therapy, despite going through 'major trauma' and therefore 'hadn't got a full understanding of how it had impacted' her. Jess felt that the assessment had made her re-live everything again, but, at the time, she did not have the awareness of how this could affect her. Jess described the assessment as 'one of the worst experiences of my life'.

During face-to-face assessments, where psychometric tests were not carried out, there was minimal consistency regarding the information that the experts wished to ascertain and what subjects that they wanted to focus upon. Several survivors described how they felt that experts were keen to understand their background history including their childhood. Alice, Barbara, Savitribai, and Michelle explained how the expert wanted to know more about their childhoods, whether they remembered being happy as a child, and if their parents were still married. Michelle and Savitribai both said that they felt that the expert had asked whether they had had happy childhoods to try to lure them down a different pathway, hoping that they would say the opposite was true and this could be used negatively within the court proceedings. Michelle said:

I suppose that's what she was trying to do, is prove me to be some sort of mental case, you know, but, like, she went into details about my childhood...lots about my childhood, and I had a really good childhood

and I made that very clear...but she was almost [sighs] I don't know, staring me down...I don't know how to explain it, I can't, I can't...she wasn't putting words into my mouth by any stretch of the imagination, she was actually lovely with me in the actual assessment but I did feel very much lead down a certain path, you know, like the questions that were asked, I've later found out that the Cafcass solicitor put the questions forward, so I wasn't involved in any of the questions that were asked and the questions that were asked were obviously, she had to ask, were very much lead in a certain direction. (Michelle)

While discussing a survivor's background, a number of women explained how the expert had become fixated on their past sexual history. The study found that when this was mentioned during an interview, the expert was usually a male psychologist, and the questions were asked against a backdrop of the survivors knowing that this information would not remain confidential and may be seen by the ex-partner.

Barbara was in her fourth decade when she was assessed alone in her own home over a two-hour period. Barbara explained:

He wanted my sexual history, in great detail, from teens through to my twenties, very interested, and all my sexual history...quite what that had to do with anything, I don't know. I was already traumatised by...childhood abuse...an abusive marriage...an abusive system, already by that point and I just complied, and I answered all the questions. And I think that it was highly inappropriate. (Barbara)

Barbara also made another observation about the assessment, one that other survivors also made:

The main thing was, that he really didn't ask me an awful lot about my parenting...for him to come at the first interview in my home...with the, the one where he was fixated with my sexual history, in great depth. (Barbara)

Alice explained that the expert in her proceedings 'went through every relationship' that she had ever had and was asked who she lost her virginity to.

Kathleen also explained:

It was just under a 3-hour meeting, it was held at my solicitors...it was very intrusive. It basically dissected, he wanted to know my life from day one, from birth onwards. It was very invasive, like all about your sex life. We need to know this stuff and I did ask why on earth do we need to know this? And...he said, just tell me, so I didn't want to say anything because I didn't...then he just dissected what this, what that, what the other, and I just don't understand the, it didn't make sense, you're meant to be asking questions about what, am I a fit mother basically, that's what it was boiling down to and he, he was asking me all of these questions about my sexual history. I just didn't get that but there you go. (Kathleen)

Alice described the impact that the child arrangements proceedings were having on her before the assessment and how she had consequently become very ill.

Alice explained that her ex-husband's barrister had 'ripped her to shreds' and 'just wanted to talk about our sex life'. This was followed by a female expert who:

went through every relationship that you have and...who, who you've lost your virginity to. And it, it was just a bit like...I didn't, I just felt like I had no privacy anymore...so we talked about all my relationships that had, had, which is like...he was the main one. (Alice)

Savitribai's account of her assessment was the most detailed in the study. As mentioned earlier, Savitribai was assessed by a male psychologist who was assisted by a female psychology student. Savitribai explained:

The psychologist asked me 'how many relationships were you in? How old were you when you were first intimate with somebody?' He said, 'What was your partner's name? What was your second partner?' And I thought this is so weird, why you asking me...how is this relevant and

when he got to the point when he was asking what is, what was your first partner's name I refused because I said I know what my ex-partner is. He doesn't need to know the name of my first ever boyfriend or my second boyfriend, or whatever, and I said, 'I'm not going to...is it okay if I don't give you any names is there a reason you need the name, I'm happy to refer to them as A and B'. And the psychologist didn't like it. (Savitribai)

Savitribai continued by saying:

But he has the power to do that, and he asked me a lot of questions about my sexual history. How many people I had been with and again, my ex-partner supposed to view all this. It's just horrible, that it has nothing to do with anything, you know, he could have just asked me, have you been with so many, or whatever?...I understand you need to know about a pattern of something, or whatever, but he just asked me so many details that I feel that they were almost like a power, I don't know. I don't know, like...and I remember my ex-partner afterwards saying, 'oh, I didn't know you were with so and so. (Savitribai)

At no point in the study did a survivor mention that they were given an explanation as to the rationale for taking a past sexual history within the context of child arrangements proceedings.

7.3 Assessment Tools/Instruments

As well as face-to-face assessments, which appeared to have no structure and felt more like a general chat, a number of survivors explained that they had been subjected to questionnaires, IQ and personality tests. Although the term 'psychometric test' was rarely mentioned during the interviews, the tests which were described appear to be psychometric or psychological tests. Survivors were not always sure what the test was called or the rationale behind them and in one case, the test could not be completed as the assistant did not know how to implement the tool.

Alexandria's first experience of an expert was a paediatrician who did not meet with either herself or her child/ren and had been instructed by Cafcass. Alexandria had

sight of the paediatrician's CV which showed that she had experience in 'Munchausen's by Proxy'. Alexandria believed that Cafcass were trying to 'get her on' a diagnosis of Munchausen's by Proxy. However, when this was not successful a psychological assessment was recommended. Alexandria explained that the psychologist asked Alexandria to complete a 144-point questionnaire, referred to as a Personality Assessment Inventory ("PIA"). Alexandria described the assessment as taking over 5 hours to complete with a 5-minute break. Alexandria continued by saying:

And then when her report was submitted to court...there was something in it that gave me the impression that the father's assessment was done differently to mine, and so [inaudible] to clarify about whether she supervised his...PIA test and it came back, she said no, she had posted it to him, to do at home. But what I've read about that, after, that I don't think that the test is supposed to go into the public domain, I, I think you're supposed to supervise that test... and because he could have distributed it to anybody, couldn't he?
(Alexandria)

Julie explained that after her ex-partner refused to return her child/ren regularly from a young age and following many applications to the court, it was recommended that a psychologist should be instructed. In the interview Julie said that the psychologist was appointed by the judge and was 'pretty sure that the courts actually financed it as well'.¹ Julie explained what happened at the assessment:

He basically just asked for a story, he just wanted to know how we've got to the point where we had got to...then he also did some, I think they were, like, clinical personality tests, if you will, to pick up on any disorders...he did them and then did 5 questions that the court had given him, that he had to ask both of us. (Julie)

As described in Chapter 6.3, Ruth's assessment was carried out in the room next door to her child/ren who had been removed from her care and whom she was no longer

¹ The Family Court does not finance expert instructions but this was Julie's perception.

allowed to see. The assessment was carried out by the psychologist and a colleague who made notes. Ruth explained:

And they started off by leaving me with about eight different...I can't think what they're called, the psych, I can't think what they are called...like psychoanalysis sort of questionnaires, so she left me with about 8 of these to complete...about myself...she didn't ask me to complete any about the children...just about myself...which, you know, I was given sort of an hour and a half to complete...so...I did those...then I did an interview with, with her for about an hour and a half. It was herself and her colleague, her colleague was taking notes and...the doctor was talking to me...and asking me questions'. (Ruth)

Ruth continued to explain that the psychologist asked her questions relating to the information that had been provided in the bundle including the history of her relationship with her ex-partner. The psychologist then left Ruth alone with her colleague while she went to meet with the father and child/ren. Ruth continued by explaining the next stage of the assessment:

And I had to complete...it's like...you have different, different things, different people. You pick the different people in your life and who, who represents you and then you have like a post box, and then you have about 90 different...things written on these pieces of paper so, like, this person loved me the most, or this person...was the person that, that I liked. So, there was lots and lots of different things, or I didn't, this is the person that I didn't like, and it basically, each one had a post box at the bottom of the person... so, you know, I had my mum, my dad...and...my brother, sister...I had [deleted] as one, I had my husband now as one...I had [deleted] and then I basically had, you know, post these, read the things and post them in, in which person they represented and then you could also have a pile that didn't really go to anybody...yeah, so we did that as well, for a while. (Ruth)

After Savitribai had completed an in-depth assessment with the male psychologist, the trainee student was directed to complete the psychometric testing. Savitribai explained:

I have been in that position [as a student needing work experience] so I know what it's like. I know that if you don't have the right person overseeing your work especially for something like that it's very serious and she was just, oh you got to do this. I'm not quite sure where this is, what this says, what that is. She wanted to get me to do some, you know, like putting shapes together like a toddler. She couldn't find the pieces. She couldn't find the right paper and she kind of just brushed everything off. She said, 'I can't find, it's fine'. I mean we chatted, me and her, and we chatted. (Savitribai)

Savitribai continued by saying:

...and there was, she took out some papers and she said, 'you've got, we've got to do this. I'm not quite sure'...it was just that was not any kind of psychometric testing there is, no kind of anything that was really done' (Savitribai)

Although the expert reports will be discussed in Chapter 8, it is important to note at this point that when Savitribai, as a litigant in person, challenged the expert in court about his method, the psychologist explained that he used his own methodology. Savitribai also had discovered that, within the 50 minutes that the psychologist had spent with her, he had alleged to have carried out an assessment known as the Paulhus Deception Scale as well as another test, as Savitribai explained:

...and then he apparently conducted this...what do you call it? Intelligence, like IQ test and said that her full-scale IQ was 103. There's nothing wrong with this. I just think I, I didn't consent, what IQ test? (Savitribai)

7.4 Recognition of Domestic Abuse

As previously emphasised, many survivors hoped that the expert assessment might be an opportunity for the domestic abuse to be recognised, as well as discuss any

abuse that the child/ren had suffered. The opportunity for this to happen lessened if the questions outlined in the letter of instruction had not specifically asked the expert to address abuse within the assessment. Other challenges that survivors said that they had encountered were: not knowing whether the expert had read the court bundle, the court bundle not containing information about abuse and the expert's refusal to look at any additional evidence related to domestic abuse that a survivor took to the assessment. Overwhelmingly, survivors' accounts revealed the extent of their attempts in trying to have an expert identify the abuse, the impact that this had on their mental health and the trauma that they were managing.

Emma described the two sessions that she had with the male psychologist as feeling like she was sitting with her abuser. After initially being left alone for 10 minutes in the psychologist's 'creepy basement', the expert proceeded to say 'so your, your child...was not sexually abused, the judge said it didn't happen, so...you understand that, so why, why are you here?' During the second assessment which was carried out over Zoom (due to the Covid 19 restrictions) Emma noticed that the psychologist was falling asleep. In between Emma's two assessments, her ex-partner had also been assessed and Emma explained:

And in the second interview, he started to, to, my child/ren's father because what he was saying to me was literally, verbatim, the...paranoia, the lies, all this stuff, you know, my, my child/ren's father has a really elaborate narrative about who I am and all the terrible things that I've done...and he genuinely, I think, that he believes them, like he is very paranoid, he has, he really thinks he is the victim...and he's had this story that he will just repeat to anybody who will listen...so, a lot of the things that the psychologist was asking me, I was just, like, that is literally straight out of the mouth of my child/ren's father' (Emma)

Isabella had two 'experts' in her proceedings, a forensic psychologist and a 'parenting expert'. Isabella described how she felt gaslighted by the experts and felt frightened and confused about the whole process. This was compounded by feeling that she needed to try to describe the abuse to the psychologist, as she explained:

...so, it was confusing, it was frightening, it was a bit like a nightmare. I remember describing it to...one of the psychologists that way...doing the assessment. I remember saying it was a living hell...the process...the perpetrator, and the courts, and the experts, they were all very much, although they acknowledged that the abuse had happened, they were very much in...in denial about the impact, it had, and was likely to have. (Isabella)

During Phoebe's assessment with the male psychiatrist, she tried to explain that there had been domestic abuse:

...and when I mentioned it to the psychiatrist he said, 'well you would say that wouldn't you?' And I happened to be wearing one of Rachel William's white ribbons. This was before the Stand UP to Domestic Abuse, she used to get people to wear white ribbons. I had it on my jacket when I went to see him for an interview. He said, 'I see you're wearing the feminist lesbian badge'. And I said, 'I'm not aware that domestic abuse is just carried out by, that I think that men are equally affected and that this white ribbon is worn for, and I believe that even male members of Parliament wear it with pride. I think you're wrong'. And I knew from that moment on, I thought I'm done. I'm cooked, he's going to fry me, and he did...how dare I, as a mere female stand up to a man, who I am taller than in flats, take a woman standing there. Napoleon complex just reigned supreme with him. (Phoebe)

Phoebe also described another moment where she had tried to explain to the psychiatrist about the abuse:

So, he said, that because I, I had not, because of what had happened with our marriage, i.e. I decided to leave, he asked me, why did I leave? And I said, 'because of coercive control. I wasn't allowed to have any money. I couldn't go out. I couldn't do that'. And he said, 'yes, but what was the real reason?' I've just given you the real reason. (Phoebe)

Phoebe continued to tell the psychiatrist how her ex-partner was happy for her to sleep in the spare room, how he had refused her a divorce and that she had been told that they just had to carry on as they were:

...and the psychiatrist said, 'Well why didn't you, what's wrong with that?' And he wasn't meaning that to try to explore more of my feelings, well this is my interpretation, that was because he genuinely believed that's what I should have done. So, you know, you're on a sticky wicket, and I think it was about...probably about...it was meant to be an hour, and I think I only did half an hour because after about 10 minutes, and you, you can, you know, you can tell the way a conversation is going. I then totally zipped up. I thought, anything I say is going to be twisted, so the safest thing for me to do is to zip it. I'm just going to say anything and I'm going to be very, very, non-committal and you can tell that he knew what I was doing, and he tried to goad me to say more. And I thought, no because you will throw me under a bus. I...matched his requirements, for what a person was like who had alienated their child/ren against the other parent and the trouble is, if you are a domestic abuse victim or survivor ... [deleted] so, anyway...I...he...I think if you read all he ticks for parental alienation syndrome, it used to be called parental alienation syndrome, and this is what happens. (Phoebe)

Throughout her interview, Savitribai described the abuse that she had endured, sometimes recounting incidents in harrowing and painful detail. In comparison, it was not clear how much detail she gave to the psychologist:

Yeah, one of the big things was that the psychologist, he did not believe at all that there was any domestic abuse that had taken place. He thought that, you know, for lack of a better word, he thought it was fiction. So...my medical records, my other psychologist report, the police records. The psychologist just felt that it was all fiction and, I don't know how he got to that, because you know...the police was saying that my ex-partner had admissions of all of his, even with the

Cafcass officer in the beginning...so yeah, even the experts did not consider the domestic abuse at all. (Savitribai)

Maya described how difficult she had found the assessment with the psychologist particularly because of the way in which she had tried to discuss the abuse and how it had later been framed in the subsequent report. Maya had told the psychologist how she had encountered racism in her former relationship, as a Black woman who had had a child/ren with a White man. Maya had given examples of the racism to the psychologist, but she felt that the expert had dismissed her experiences. Maya had tried to show the psychologist examples of coercive control which had included not being allowed to take her child/ren to a specialist hairdresser for Afro hair, since the child/ren had been removed from her care. This bonding activity had been stopped at the behest of the father, and was supported by Cafcass, and was subsequently carried out by the father's new White partner. Maya explained that she had tried to show the psychologist how she felt that her own cultural values, and the child/ren's Black heritage, were being dismissed and erased in preference to normative White values. Maya believed that this was being achieved by the father's ability to control child arrangements through Cafcass and the family court and controlling the overall narrative by using power and money to influence professionals.

Maya also explained that the psychologist had 'repeatedly' asked her what her relationship was like with the child/ren's father and why she had left him. Maya continued by saying:

And, I was quite concise because...for me...I've had a number of times where professionals...ask me questions about my relationship with him but, but, when I present myself them with the evidence about the psychological, emotional, financial abuse from external agencies such as Woman's Trust (detail deleted)...my GP, they are uninterested...so it's almost like what we want you to do is recount the abuse, we want to retraumatise yourself...and then we want to ignore all of that and say that you are entrenched, so that word has been used a few times, to say...that you are stuck, I'm stuck in some way, which I am not, so, I simply when she was asking me about this relationship, I said, I left because it was abusive and that was it and then I, I wanted to focus

on what...this perpetrator or the child/ren's father's behaviour, what effect it had on my child/ren but she wasn't interested in that. So, what she then put in her report was that...I was very focused on the [the father], which was really interesting, because she was trying to focus my attention there but again, that's not where my attention was... (Maya)

Alice also explained how worried she was that the expert would change her narrative:

And...like she's [the expert] got all the degrees and everything, and I felt then...I thought oh my God, she read me like a book, and like, it was or like I was worried that she would...twist things, because I already had, had a new narrative put on me...that there was no abuse, I thought that she would read me and twist my words or how does it work? Or, if...if I'm anxious would like, for example, I'm scratching my arm...will she think that I'm lying or, or, I just...I just felt sick. I didn't know, like, what to do and I felt really, like, oh my God, they're going to change, in my head I'm thinking he was abusive...and all the way, at the time I thought what if I was wrong? What if he wasn't? What if it was all in my head? (Alice)

Alice continued by describing some of the abuse to the expert:

So the psychiatrist was asking me things, and then I kind of said different things that had happened in the relationship, for example, ...like...I wasn't allowed to have the heating on, and then he would come back from work and that, I lied, and said that I hadn't had the heating on...and then he checked and there was coconut oil between the radiator in the cupboard that he had planted there...but the judge didn't think it was a big deal or the fact that he...help me until I wet myself because he said I'd already been to the toilet [sighs] apparently that didn't happen...and that he didn't drag me by the hair down the corridor...I talked about things like he wouldn't let me reach my baby from the bath...he wouldn't let me get to them...like...these are the things that the judge said they did not happen. It's all in my head and

I just talked about them with the psychiatrist...and I was scared because I thought they're probably going to go, oh she's on about this again. (Alice)

The expert proceeded to ask Alice questions relating to her medical history and explained that she felt that the professionals, who had access to her medical records, had focused on a childhood phobia. Alice said that they suggested that the childhood phobia was the cause of her anxiety and not the abuse that she had endured. The assessment was carried out over two days and after the assessment the expert went directly to Alice's solicitor to inform her of the outcome. Alice said:

There was no way I was going home without, it makes you so paranoid...that there's no way I, no way I was going to, to wait another day, not knowing what was happening, and what was wrong with me even though she said I had no disorder, I don't, she just said I just want you to know that you have no disorder...and I'm still not satisfied with that [inaudible word] there must be something else that's bad...and...I then went and...waited in the waiting room. She came out and, I went in, and my solicitor said that she wanted to know that you don't have a disorder and there was abuse...and I cried. (Alice)

As previously mentioned, Simone was living in a refuge at the time of being interviewed for this study. The expert in her case was a newly qualified Independent Social Worker who turned up, unannounced, to speak to Simone before writing a report for the family court. Simone explained that the ISW had wanted to 'get a background history' and try to understand 'why we are in court, you know, all these years down the line'. The ISW then asked Simone what outcome she wanted. Simone told her that she wanted her child/ren to live with her, that she understood that her child/ren would need to see the dad but said that this should only happen if it was safe to do so. Simone remembered the ISW responding by telling her that the child/ren will have to see their father.

7.5 Assessments of Children

Survivors' interviews revealed that in conjunction with hoping an expert will independently recognise abuse, their other concern was for their child/ren's wishes and feelings to be heard, without being shaped by a narrative of no abuse. Survivors

were surprised when experts did not wish to meet with their child/ren either separately or to be seen together with each parent. As Maya said, 'she [the expert] didn't think it was important in her report to see me with my child/ren but yet she made a lot of inferences about my relationship with my child/ren'. Survivors were also keen for the expert to understand the impact of domestic abuse on their child/ren. Despite the child's best interests supposedly being at the centre of the child arrangements proceedings there was no definitive method of independently eliciting a child's wishes and feelings. Survivors questioned why an expert, who was interested in their capacity to mother, would not want to meet and observe mothers and children together. At the time of the assessments, Maya and Ruth had had their children removed from their care and it was not clear if there were restrictions in place regarding each mother being able to see the children for an assessment. Several survivors did report that an expert had met with the child/ren too but as Table 2² shows, there was no consistency as to how an expert assessed a child/ren.

Bell explained that the psychologist met with her child/ren as he observed a supervised contact session. It appeared that the focus was on the interactions between the mother and child/ren and there was no attempt to independently understand the child/ren's wishes and feelings. Bell also explained how she knew other mothers who had been assessed by the same psychologist and they had all spotted similar patterns:

We all have to have supervised visits...and me, personally, had one in front of him...I had to sit there in a room...no bigger than a bedroom, with me, my [child/ren], Cafcass worker and him, and then he writes a report 'Mum is very wary, and so was [child/ren], of me being there' and things like that and like...it's not a normal situation. (Bell)

As mentioned in Chapter 6.3, Doris explained that the expert assessed the child/ren with the father while carrying out an enjoyable activity, while Doris was assessed unexpectedly against a backdrop of sick child/ren, homework and preparing dinner. Doris described one of the experts as not being 'very child friendly' and the child/ren referring to him by a nickname. One of the experts met with the children alone but it is not clear whether either expert properly observed Doris with her child/ren, despite

² See 7.6.4

doing this with the father. Doris was able to see a transcript of the meeting between the expert and child/ren and said:

But unfortunately, what's happened is any wishes and feelings from the children have now been completely ignored [inaudible] so [child/ren] were very eloquent, [child/ren] said how [child/ren] didn't want to see [the father], [child/ren] did want to see him occasionally but not very often. [child/ren] said how he looks through them [inaudible] how he would open cupboard doors so that it would almost hit [child/ren]...how he didn't comfort [child/ren] if [child/ren] cried.
(Doris)

The expert in Jess's proceedings clearly attempted to meet with the child/ren separately and with each parent. Jess criticised the expert's judgement in meeting the child/ren with the father, after many months of no contact, as well as not meeting the child/ren alone, for more than 10 minutes.

The psychologist in Emma's case did meet with her child/ren alone. It wasn't clear what the psychologist had asked and there was no one else present in the room during the assessment. As can be seen in the excerpt below, Emma had spoken to the psychologist beforehand about assessing her child/ren and felt that she had not been listened to. Emma was concerned that her child/ren were being sexually abused by their father and the psychologist knew about her concerns. Emma was worried that the psychologist would discuss this with her child/ren when she had specifically told him that it would impact her child/ren. Emma did not know what the psychologist discussed but he had not offered any support for the child/ren after the assessment. Emma explained that it was really upsetting for her to witness the impact of the assessment on her child/ren:

My [child/ren]...just so...just so, so upset. I had a really bad feeling, when I sent [child/ren] in...to these people that I don't trust. It was horrible. It was really horrible and when [child/ren] came out...like, very pale...very upset, we sort of got in the car and drove away and [deleted] just kept saying, 'mummy, I really missed you, I really missed you. I don't feel okay. I feel really sad'. [Deleted] wasn't able to say to

me what the doctor had asked [deleted] but the doctor had specifically said to me before that he wouldn't ask my [child/ren] any sort of direct questions. I said to him, you know, my [child/ren] do not like talking about this, so, you know, like build up a relationship with [child/ren] before...and can you please, you know, like, could you at least tell me afterwards, if you have spoken about it because [child/ren] will be upset, [child/ren] doesn't want to talk about this stuff. And he didn't, he didn't do any of that, the doctor, he just came out...smiled...and you know, there was no conversation or anything, so, so my [child/ren] was not really okay, for quite a few days... (Emma)

Phoebe described her case as being framed as a parental alienation case and the psychiatrist instructed was a proponent of parental alienation theory. Phoebe said:

My ex-husband's barrister who was also a PA specialist, decided that we needed an expert because I kept on saying that child/ren were quite welcome to see [the father], whenever [the child/ren] wanted to, it was up to [child/ren] if the [child/ren] wanted to, what did they expect me to do about it? Because my child/ren were [age] and the [child/ren] still cannot make up their mind. (Phoebe)

Phoebe said that the psychiatrist did see the child/ren for about 10 minutes and then they refused to see him again.

Phoebe explained that the psychiatrist was involved with the case for about one year and he became the treating expert. Phoebe clearly stated that despite the domestic abuse she would never stop her child/ren from seeing the father. The child/ren had made it very clear to all of the professionals involved, including the psychiatrist, that they did not wish to see the father. Phoebe said:

All these decisions were made without the child/ren being briefed or anything because...speaking to [my child/ren] now...[deleted] says, what was the point of going over the same thing? So [deleted] would say something like, a common one [deleted] was younger was, 'I don't want to see my dad because he makes my tummy feel weird' or 'I don't, I want to live with my mum instead'...and my dad this...and my dad

that etc and the Cafcass lady [deleted] said, 'those aren't your words, they're your mother's words'. (Phoebe)

Phoebe also explained that the child/ren refused to see the psychiatrist again, after their initial meeting. However, this had various detrimental consequences including the judge stipulating that he would not acknowledge that the child/ren were Gillick competent, unless the expert met with the child/ren again. Phoebe described how as a litigant in person, she had attempted to explain to the judge how the psychiatrist 'had physically dragged [the child/ren] out of the car' to talk to the judge and threatened the child/ren with arrest if the child/ren did not comply.

7.6 Discussion

7.6.1 Assessment Methods and Safety

The experts featured in this study, who were mainly psychologists and psychiatrists, had a wide range of assessment options available to them. Family assessments may include the following: initial interviews with both parents, interviews with significant family members such as Grandparents, separate assessments with both parents and child/ren, observation of child/ren with both parents, parenting assessment and psychological/psychometric testing.

Van Rooyen and Mahendra explain:

'Psychological tests (or psychometric tests) are carried out by a psychologist or a trained psychometrist for the purpose of systemically (and sometimes quantitatively) assessing psychological functions associated with behaviours involving neurological, cognitive and emotional and personality dimensions. The word test can be misleading as some of the psychological tools could be questionnaires or projective techniques'.³

The BPS have written two sets of guidelines for psychological testing, and these also make reference to the International Test Commissions (ITC) guidelines on test use.⁴

³ Celest Van Rooyen and Bala Mahendra, *Psychology in Family and Child Law* (Jordans Ltd 2007)

⁴ The British Psychological Society, *Psychological testing: A test users guide* (The British Psychological Society 2017)a; The British Psychological Society: *Psychological testing: A test taker's*

Van Rooyen and Mahendra point out that it is important to remember that no single test result should be taken and acted upon in family and child care proceedings.⁵ Instead, they suggest that a range of psychological tests should be used in an assessment 'to provide the opportunity for the different levels of functioning of the subject to be given the chance to manifest themselves'.⁶ They also suggest that psychological testing be used in conjunction with options from the list above, including the need to observe parents with their children. There are a wide range of psychological tests available, and the relevant ones will be discussed later in this chapter. Van Rooyen and Mahendra seem to imply that all family members should be assessed, and they do not mention a situation whereby a parent is the sole focus of an assessment.⁷ Van Rooyen and Mahendra also suggest that the court should be assisted by a parenting capacity assessment that could be carried out in conjunction with other forms of assessment.⁸ This would be helpful to determine the family dynamics and would be an opportunity to identify any conflict or domestic abuse.⁹ Van Rooyen and Mahendra outline areas of professional good practice for experts who conduct expert assessments in the Family Court. However, survivors' lived experiences indicated that many of the expert assessments did not demonstrate this level of good practice.

Survivors described a range of methods used to assess either themselves or in a number of cases, other family members. Apart from two women who, coincidentally shared the same expert, all of the assessments were different.

One of the overwhelming themes that emerged from the interviews was the physical and psychological safety of the survivor during an assessment, which was impacted by the way in which an expert chose to carry out an assessment. Overall, survivors described high levels of anxiety before, during and after meeting the expert. Many survivors explained how their level of anxiety increased at the beginning of the assessment as they felt physically and/or psychologically unsafe, and these experiences are reflected in previous research relating to survivors experiences during

guide (The British Psychological Society 2017)b; International Test Commission, *ITC Guidelines on Test Use* (International Test Commission 2013)

⁵ Van Rooyen and others (n1) 20

⁶ Van Rooyen and others (n1) 13

⁷ Van Rooyen and others (n1)

⁸ Van Rooyen and others (n1) 17

⁹ Van Rooyen and others (n1) 17

family court proceedings.¹⁰ For example, it is not known why the expert in Jess's case decided to keep the father in a neighbouring room and insisted that the children were assessed with him despite having no contact for a prolonged period of time. It could be argued that the expert had been professionally negligent, and she failed in her duty to safeguard. The BPS state:

2.10 Where appropriate, psychologists must also meet any necessary safeguarding standards that apply within the jurisdiction in which they are working.¹¹

Jess's lived experience correlates with survivor accounts featured in the Harm Panel Report which highlighted the detrimental impact that the close proximity of a perpetrator can have on a survivor during family court proceedings.¹² It is clear from Jess's account that her physical and psychological safety was put at risk despite the Cafcass officer reassuring her that her ex-partner would not be present. The study will never know whether the Cafcass officer relayed this information to the expert or if the expert overrode the Cafcass officer's plan. However, there may be another explanation which also relates to many of the other survivors' lived experiences, and that is the expert's inability to identify domestic abuse.

As previously discussed, the interviews suggested that an expert instruction can occur at various points in court proceedings, despite the family court having a child arrangements programme in place providing a clear pathway for professionals and parents who are litigants in person. The study has also found that despite allegations of domestic abuse being present in every survivor's lived experience, there is an inconsistency in FFH being carried out, and this finding is also reflected in research included in the literature review.¹³ Survivors' lived experiences reveal that unless the expert has been specifically instructed to explore and identify domestic abuse, it is very difficult, if not impossible, for domestic abuse to be reported within the expert

¹⁰ Jenny Birchall and Shazia Choudhry, *"What about my right not to be abused?": Domestic abuse, human rights and the Family Courts* (Women's Aid 2018) 48; Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases. Final report* (Ministry of Justice 2020)

¹¹ The British Psychological Society and Family Justice Council, *Psychologists as expert witnesses in the family Courts in England and Wales: Standards, competencies and expectations* (The British Psychological Society and Family Justice Council 2016)

¹² Hunter and others (n 8) 108

¹³ See Chapter 1.8

assessment. Generally, survivors described three common threads, as seen in the table 1 below:

Table 1
Survivor experiences of fact-finding hearings, domestic abuse, and expert assessment

Scenario	Fact-Finding Hearing	Finding of domestic abuse	Police convictions	Expert assessment
1	Yes	No	In some cases	Domestic abuse discounted as not factor
2	No	No	In some cases	Domestic abuse not proven (but not disproven) so not a factor
3	Yes	Yes	In some cases	Domestic abuse not seen as a factor

Overall, survivors experiences have revealed that, even when domestic abuse has been found in the family court, it does not appear to be a factor, or is secondary to exploring other reasons why there is a problem with child contact arrangements. Usually, an exploration entailed solely focusing on a mother's 'hostile' behaviour and identifying the reasons why she was unable to be positive about contact between a father and their child/ren. Survivors who thought that an expert assessment would perhaps be the final opportunity for the domestic abuse to be identified, were shocked when they found that the expert would not allow the abuse to be mentioned or dismissed it when they had tried to discuss it. Survivors also had not realised that the shift in focus, from domestic abuse to the mother's behaviour, had the powerful potential to sanitise the abuse from further proceedings in order to support child contact with the father. This finding is consistent with research included in the literature

review¹⁴ and points towards the family court upholding a contact at all costs mentality, with the assistance at times, of expert instruction.

The study has found that even when an expert did identify domestic abuse, independently of any decision made in the family court, survivors were told in the assessment that the expert felt unable to challenge the court's findings. It is argued that it is totally indefensible to not make safeguarding provisions for survivors and children who have alleged domestic abuse during the assessment, even when there have been no criminal convictions or findings of fact. Nevertheless, it is also possible to identify reasons why an expert may choose not to initiate safeguarding measures and they may have included: the risk of damaging a career as a family court expert if the findings of the court are challenged; being afraid to challenge the findings of the court; and the belief that a safeguarding assessment had already been carried out and any concerns that had arisen from this had been addressed. However, it is critical to emphasise that an expert is also bound by their professional bodies code of conduct and their duties to safeguard and consider issues of power¹⁵ and must take all steps to identify and manage risk.¹⁶ An expert who identifies safeguarding concerns, despite the court's findings, must reflect on their own moral obligations as well as their professional duties.¹⁷

Psychological safeguarding issues prompted an exploration into how trauma-informed the assessments were. Logically, and similar to the possible arguments identified for the lack of safeguarding measures, if a no abuse narrative is ubiquitous the need for a trauma-informed approach has also been removed. The erasure of domestic abuse before or during an assessment allowed experts to focus their attention on trying to establish reasons for the breakdown in child arrangements. The study has found that predominately experts cited this to be the survivor's behaviour.

Trauma and its impact is one of the themes that is prevalent throughout each one of the survivors' lived experiences along with the absence of a trauma-informed approach, and its impact. Research that focuses on domestic abuse and the family

¹⁴ See Chapter 1.8

¹⁵ The British Psychological Society and Family Justice Council (n 9)

¹⁶ Health and Care Professions Council, *Standards of conduct, performance and ethics*, HCPC 2016

¹⁷ Safeguarding is also discussed in chapters 8.13 and 9.6

court often includes evidence and discussion about the need for the family court process to be trauma informed or trauma responsive.¹⁸

Barbara plainly described how abuse, court proceedings and the expert instruction had continued to retraumatise her, and her account was representative of the lived experiences of the majority, if not all, the survivors involved in this study. As highlighted, survivors have also spoken about the impact of the trauma and described feeling traumatised at the beginning of the expert assessment. Research recognises that trauma can impact survivors in a multitude of ways including memory, emotional state, and demeanour. This can be negatively perceived by family court professionals, for example by deeming survivors' evidence as less credible than a perpetrator's.¹⁹ Emma's harrowing experience also clearly showed how a survivor can be re-traumatized by an expert declaring that the abuse did not happen because the court had made no findings.

7.6.2 Professional Conduct and Assessment Questions

The majority of survivors described their assessments as consisting of a face-face interview with the expert which felt like an unstructured and informal conversation. Although the discussions appeared to be informal, several survivors described feeling re-triggered and attacked particularly when the questions were fired at them, rather than being calmly posed. Presumably, this style of questioning would feel interrogative and aggressive which could potentially mirror the adversarial approach of the family court. It is also another example of the impact that the absence of a trauma-informed approach can have on a survivor.

Although many of the survivors were the sole parent being assessed within their set of proceedings, it was not always clear what the rationale was behind the questions that were asked. Generally, survivors believed that the focus of the assessment was going to be on their ability to be a mother but were often surprised to discover that

¹⁸ For a sample see; Linda Neilson, *Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights?* (Fredericton: Muriel McQueen Fergusson centre for Family Violence Research and Vancouver: The FREDA Centre for Research on Violence Against Women and Children 2018); Rosemary Hunter, Adrienne Barnett and Felicity Kaganas, Introduction: contact and domestic abuse, (2018) 40(4) *Journal of Social Welfare and Family Law* 401-425; Hunter (n 8)

¹⁹ Neilson (n 17); Joyanna Silberg and Stephanie Dallam, 'Abusers gaining custody in family courts: A case series of over turned decisions' (2019) 16(2) *Journal of Child custody* 140-169; Birchall and others (n 8); Hunter (n 8)

there was very little, or no, exploration of their parenting. Furthermore, most survivors reported that the expert had not observed them with their child/ren.²⁰ Some experts were keen to take a detailed history of their childhood, which appeared to try to identify factors which may have impacted current parenting practices.

7.6.2.1 Past Sexual History

Problematically, a number of survivors explained how the expert's focus shifted from their childhood to their past sexual history. As mentioned in 7.2, survivors described the expert becoming fixated on their past sexual history and asking questions about previous sexual partners, other than the father of the child/ren involved in their court proceedings. Experts asked questions that left survivors feeling confused as to their relevancy. As Emma said, she was left feeling 'violated', like 'she had been raped' following her first assessment with the expert. The study found that several survivors were told that the assessment content would be shared with the other party, and as Savitribai's experience highlighted, some of this information had not previously been shared with the father. Survivors suggested that rather than seeing this information sharing as a professional responsibility, as guidelines clearly state, it was relayed to them as if it were a threat.²¹ As previously detailed, many survivors described feeling coerced into being assessed and felt pressured into complying by answering all of the questions, even when they felt that their right to privacy had been violated. It was not always clear whether survivors knew how the information would be shared with the court, or if they had thought that intimate details were protected by the type of implicit confidentiality afforded to relationships such as a GP and patient. Phoebe was one of the only survivors who described making a conscious decision to refrain from answering any further questions because she felt that it would be detrimental to herself and her child/ren. However, it is important to recognise that the majority of women felt traumatised and frightened during the expert assessment and may have been anxious about not answering truthfully, in case the perpetrator found out, even if this may have also been potentially harmful.

²⁰ See table 2 at 7.6.4

²¹ Royal College of Psychiatrists (n 9) 19; *Health & Care Professions Council, Standards of conduct, performance and ethics* (Health & Care Professions Council 2016) (p.7 5.1 and 5.2); The British Psychological Society (n 9) 21

No literature was identified to support the practice of an expert taking a detailed past sexual history in the context of private law child arrangement proceedings, except in cases where a survivor has been accused of child abuse.²² Several survivors described how they had been abused as a child and were re-traumatised by answering the expert's questions. The experts involved in these cases appeared not to have been trauma-informed and did not check to see if the survivors had any support before or following the assessment. Significantly, experts seemed to lack an understanding of coercive control and how the sharing of intimate information disclosed within the assessment could be used as a mechanism for post-separation abuse. As Savitribai's experience revealed, her ex-partner used information about previous relationships to re-abuse her and placed her at further risk of harm.

Crucially, the focus on a survivor's past sexual history raised fundamental questions around the perception of mothers in the family court held by judges and other professionals such as Cafcass and social services. It is evident from survivors experiences, particularly Alice, Barbara, Emma, Kathleen, Phoebe and Savitribai, that the expert's assessment appeared to have been framed by a Freudian/psychoanalytical approach. The focus on a survivor's sexual history is problematic for feminist post-structuralist theorists as it suggests that 'gender identity is contained within fixed psycho-sexual structures', and there is a universal theory that reduces womanhood (or motherhood in this instance) to a set of patriarchal predetermined conditions.²³ It also sends a powerful message to survivors who attempt to challenge their abusers by speaking up about domestic abuse, as the abuser's behaviour is minimised/dismissed and the focus is then shifted to a survivors behaviour.

Arguably, the family court system is exercising its regulatory power to allow experts to continue to use this line of enquiry in assessments. The study did not find any one of the 26 survivors explaining that the relevance of the expert assessment, or the contents of the subsequent report, were ever challenged during cross-examination.²⁴ That is not to state that it did not happen, but this was not specifically raised by any

²² Van Rooyen and others (n1)

²³ Chris Weedon, *Feminist practice and poststructuralist theory* (Blackwell Publishers 1987)

²⁴ Although Betty's counsel cross examined the expert regarding the validity of the assessment and report, but it is not clear what questions were asked during the assessment, see Chapter 8.8.

of the interviewees. Therefore, it is reasonable to suggest that perhaps no one ever thought to query these questions as the family court is so deeply entrenched in accepting and perpetuating patriarchal and misogynist normative values of what it means to be a woman, survivor, and a mother. The possibility that experts were not challenged on this aspect of their assessment is deeply troubling as there appears to be very little rationale for the questions other than suggesting that a survivor with a sexual past cannot be a fit mother. Furthermore, this message feeds in to the wider victim blaming narrative that continues to be perpetuated by the family court.²⁵ Despite survivors describing how uncomfortable they felt answering the experts questions, it seems that the majority of the women felt that they had to comply, even when they felt it was harming them. Phoebe was the only survivor who said that she stopped answering the expert's questions: a red flag for her was being asked 'why did you leave?'

7.6.2.2 Survivors' Medical Records

Many survivors explained how parts of their medical records had been requested by the family court and were allowed to be put into the bundle which could consequently be used by the expert for the assessment. The court bundle is available to all parties and therefore if medical records are in there, they can be seen by a perpetrator too. Allowing medical records to be seen by all parties, including a perpetrator, leaves a survivor extremely vulnerable to post-separation abuse. There is a myriad of ways in which medical records could be used to re-abuse a survivor including, if GP records reveal that a survivor continues to seek support for domestic abuse, despite the court not making any findings. This could be seen as evidence that a survivor is not accepting of the family court's findings and further evidence that she needs to change, as was the case for several women in this study. This scenario is a potentially harmful situation as women are left with limited options for support and could become very isolated.

Generally, a request for a copy of GP records is not a discriminate process and the document will begin with a GP summary, followed by consultation notes made by the

²⁵ See *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448 for an example of a survivor being blamed for being raped because she did not push the perpetrator off herself.

doctor. Usually, there is no possibility of removing certain diagnoses or consultations to protect a survivor. As Alice described, the expert was focused on her childhood phobia which had been documented in her medical records, and they had deemed this to be the cause of her anxiety, rather than the domestic abuse. It is not clear if both parents had to submit their medical records, in this instance. It is not clear whether any professionals who were involved in the survivors' lived experiences ever stopped to consider how damaging and traumatic this can be for survivors. In instances where there is no parity between parties and the scrutiny is solely focused on the mother, the message is clear: that the family court and perpetrator are all-powerful.

7.6.2.3 Expert Independence During Assessments

Emma explained how the expert in her case began the assessment by stating 'that the abuse did not happen' which is reflective of other survivors' experiences. Despite this, survivors described how they continued to try to explain, or even educate, the expert when the questions attempted to minimise or dismiss the abuse. At times, survivors explained how they had tried to recount the abuse to the expert which had left them retraumatised following the assessment. As the literature review revealed, very little can be found relating to the family court assessment process. Along with Van Rooyen and Mahendra, parental alienation proponent Asen, suggests that during an assessment an expert should listen to parental narratives and be aware that both parents will attempt to influence the clinician. However, it is important to be mindful that the court may have not made findings of abuse and therefore, it is the practitioners role to listen to the parent who does not accept this while endorsing a different truth.²⁶ The expert's duty is to the court, and it is expected that the expert will abide by the findings of the court. However, the expert has been instructed on the basis that they would also practice within the scope of their own professional boundaries and would be governed by their professional body. Many of the survivors' lived experiences could be seen as posing a professional conundrum for an expert who has to balance two opposing sets of rules while remaining independent. This is discussed further in Chapter 8.8.

²⁶ Eia Asen and Emma Morris, '*High-conflict parenting post-separation: The making and breaking of family ties*' (Routledge 2020)

7.6.3 Psychological tests

The rationale for the use of psychometric testing within family court assessments is not clear, particularly when the focus is supposed to be on what is in the best interests of the child/ren. Van Rooyen and Mahendra suggest that 'psychological testing provides an opportunity to study a sample of behaviour under controlled conditions and standardised situations'.²⁷ They also suggest that the tests are used to assess behaviour 'of individuals who have some form of maladaptive experiences or disturbances which could prevent such a person from meeting his or her potential'.²⁸

The BPS states that tests fall broadly into two categories:

There are those designed to assess personal qualities such as personality, beliefs, learning styles, and interests; abnormal phenomena such as anxiety, depression, ADHD, etc., and to measure motivation and drive. These are known as measures of typical performance. These are usually administered without a time limit and the questions have no 'right' or 'wrong' answer.

Second, there are those designed to measure performance. These are called tests of ability, aptitude or attainment and are known as measures of maximum performance. Such tests either consist of questions with right answers, or tasks that can be performed more or less well. This distinction between typical and maximum performance can be applied to tests used in educational testing, for clinical assessment and diagnosis, and for testing in the workplace.²⁹

Psychological testing described in this study appears to fit into the first category. This is because survivors described how they thought that they would be attributed with a disorder following the assessment, or were diagnosed with a disorder, or mental health condition in the report.

Alexandria and Julie were both given a PIA. The BPS state that personality testing is useful to ascertain how a person behaves towards other people and situations and are

²⁷ Van Rooyen and others (n1) 13

²⁸ Van Rooyen and others (n 1) 22

²⁹ The British psychological Society (n 2a) 4

good examples of assessing disposition.³⁰ Alexandria described how she felt that professionals were trying to find a diagnosable abnormality to explain her behaviour that was impacted by abuse and trauma, which is a healthy response to abuse.

Concerns about the administration of the tests were also raised throughout the interviews. Alexandria explained that she had to complete the test in the presence of the expert. However her ex-partner was sent his test in the post. While ‘controlled administration’ (where an expert is not present) is possible, the BPS allude to these types of tests usually being carried out over the internet.³¹ It is not clear as to why there was a lack of parity in the test administration here, and as Alexandria said, ‘he could have distributed it to anybody’. Both the BPS and the ITC outline good practice when using the tests which includes the need for test takers not to be shown the test beforehand and used in controlled or standardised conditions, as well being kept secure.³²

Ruth was left alone to complete the tests while the expert met with her child/ren next door. It is suggested that completing any test under these conditions must have been incredibly difficult for Ruth. Relistening to the recording of Ruth’s interview reveals how painful it was for Ruth to recount what had happened to her. Arguably the conditions in which the expert conducted Ruth’s assessment were biased and lacked parity, as Ruth intimated that she was the only one who had to complete a psychological assessment.

Savitribai explained that after an initial discussion with the male psychologist, the student psychology student was left to carry out the psychological testing element of the assessment. While the BPS stipulate that an Assistant Test Taker can be awarded a Test Administration Certificate which means that they are competent in test administration and scoring, Savitribai described how the student did not know what to do.³³ Savitribai later discovered that an IQ test had been conducted in amongst the other tests that had ‘allegedly’ been carried out. The rationale for an IQ test may have

³⁰ The British psychological Society (n 2a) 5

³¹ The British psychological Society (n 2b) 6

³² The British psychological Society (n 2a)

³³ The British psychological Society (n 2b) 11

been to ascertain if Savitribai had any areas of 'weakness' that would require further work.³⁴

The study has had difficulty in determining the specific use of the Paulhus Deception Scale. Exploration of the literature suggests that this test is used in the Criminal Justice System and in prisons. However, Pearson Clinical the psychological test company, states that the Paulus Deception Scale is a 'self-report instrument that identifies individuals who when responding to assessments and rating scale, distort their responses'.³⁵ The test is supposed to take between 5 - 7 minutes to complete. It is unclear what the rationale was behind the expert conducting an IQ test on Savitribai, who had no intellectual or developmental difficulties. Arguably, the use of IQ tests within this context is problematic and raised concerns about how the court could interpret the results and why there were no comparative results from the father (he had not been assessed but had financed it). Furthermore, Savitribai described feeling stressed and uncomfortable throughout the assessment and this could have also impacted the assessment, as well as trauma. Although obvious, it is worth remembering that a person will perform differently each time they take the same test or are assessed. While a test user should be aware of this and make the correct allowances within the interpretation of the results, it is reasonable to assume that the experts involved in a number of survivor's experiences may not have done this (although the study must acknowledge that it is only a possibility).

The choice of tests and the lack of parity between the parents indicated that there was a bias present. It is suggested that this was underpinned by an assumption that Savitribai was lying about the domestic abuse that she has endured, as opposed to her ex-partner lying about not abusing her. The BPS states that tests are designed to discriminate between people, but they should not discriminate unfairly.³⁶ The study indicates that in most of the cases where a survivor had been the sole focus of assessment, the expert had shown unfair discrimination and, on this specific issue, had acted unethically. An example of good practice would have been for an expert to respond to the letter of instruction and explain to the court that all parties need to be

³⁴ Van Rooyen and others (n 1) 24

³⁵ Pearson Clinical, <https://www.pearsonclinical.com.au/products/view/373> [Last accessed 21/11/2021]

³⁶ The British psychological Society (n 2a) 10

assessed (as the judge indicated in Gloria's proceedings). The BPS states that an expert can 'negotiate a change to instruction if it is ethically appropriate to do so'.³⁷

Van Rooyen and Mahendra explain that emotional and psychological factors such as anxiety, depression and emotional deprivation could all interfere with the test performance.³⁸ Silberg and Dallam argue that psychological testing has no validity in custody evaluations (in the USA), their use is not scientifically valid and may favour a perpetrator over a protective parent.³⁹ Crucially, the authors point out that psychological tests such as personality tests are not designed to be 'normed' on women who have suffered domestic abuse and may produce misleading results on traumatised women.⁴⁰ The authors continue by citing work by Erickson who suggested that a psychological test could diagnose a disorder that may lead an expert to question a survivor's fitness to be a parent, but once a survivor has achieved safety the score would return to normal

7.6.4 The Assessment of Children

The following section of this chapter discusses the expert's positioning of children within the assessment.

Table 2

Expert assessment of children and the transfer of residence

Name	Threatened removal	Removal	Child/ren seen with F	Child/ren seen with M	Children seen alone
Alexandria	Yes	No	No	No	No
Alice	Yes	No	No	No	No
Barbara	Yes	Yes	? unclear	No	No
Bell	Yes	Yes	? unclear	Yes	No
Coretta	Yes (long term foster care)	No	No	Yes	No

³⁷ The British psychological Society (n 9) 17

³⁸ Celest Van Rooyen and others (n 1) 24

³⁹ Joyanna Silberg and Stephanie Dallam, 'Abusers gaining custody in family courts: A case series of over turned decisions' (2019) 16(2) *Journal of Child custody* 140-169

⁴⁰ The authors refer to the Minnesota Multiphasic Personality Inventory; Joyanna Silberg and others (n 18)

Doris	Yes (Foster care)	No	Yes	Yes	Yes
Emma	Yes	No	Yes	No	Yes
Emmeline	Yes	No	No	No	No
Gloria	Yes	No	No	No	Yes (at school)
Kathleen	Yes	No	No	No	Yes
Jacqueline	Yes (to foster care as F did not want to have residency but suggested foster care)	No	No	No	No
Maya	Yes	Yes	Yes	No	No
Michelle	Yes	Yes	No	No	No
Phoebe	Yes	Yes	No	?	Yes
Ruth	Yes	Yes (removed before expert assessment)	Yes	No	No
Simone	Yes	Yes	No	?	Yes
Tarana	Yes	No	No	No	No

Table 2 details how child/ren were assessed when a survivor had been threatened with a transfer of residence to the father or a transfer into foster care. As the table reflects, the study found that there was an inconsistency in whether children were assessed and whether they were seen alone, or with either of their parents. Although many children were not seen by an expert, a number of survivors did report that their children had been but very few children were seen or observed with both parents. There was also an inconsistency in how children were assessed if they with had been observed with both parents (but separately). The study found that there was a lack of parity in the way that the expert carried out the assessments with each parent. Crucially, it is important to recognise that in all of these cases survivors were either threatened with removal of their children, or had their children removed, while it was a rarity for children to be seen or their wishes/lived experience heard by an expert. Furthermore, survivors' lived experiences reveal that that the family court could consider the removal, or order the removal, of a child/ren who has not been seen by an expert.

The study found a variety of ways that experts assessed/observed children with their parents including observing supervised contact between the mother and child/ren, meeting child/ren unannounced at home with the mother as opposed to joining the father and child/ren on a fun day out, meeting the child/ren alone, meeting the child/ren with the father and sending child/ren to meet a father who had had no contact for several months. In all of these cases the child/ren had previously disclosed abuse of some form and yet the expert, guided by the proceedings in the family court, chose to assess the child/ren with the father and in some cases only saw the father and child/ren together.

The findings are not clear as to why the expert did not meet with the child/ren. This could have been because the expert was not instructed to meet with the child/ren as it was felt that the child/ren's wishes and feelings had already been ascertained by Cafcass/social services, or because the expert made a professional decision not to meet with them. Either way there is a risk that, depending on their age (as survivors in this study did have children under 2 years old) their wishes and feelings and disclosures of abuse were being filtered through professionals. The Harm Panel Report also raised a concern about the way that interviews with children are conducted and their wishes and feelings understood.⁴¹

Emma's lived experience highlighted how domestic abuse was erased from her assessment with the expert and how, as a result, her child/ren's experience was dismissed.

Barbara, Jess and Phoebe's lived experience all highlighted concerns surrounding the professional conduct of an expert with children, with an absence of a trauma-informed approach as well independent practice. All of the children in these specific cases had disclosed abuse, as well as witnessing domestic abuse and survivors described that they were traumatised. All three survivors described how the expert had re-traumatised their children and despite being framed as unfit mothers, were also expected to comfort, and care for their child/ren after the assessment. These particular

⁴¹ Hunter and others (n 8) 72

lived experiences are further examples of the failure by the expert to implement safeguarding measures.

7.6.5 Conclusions

This chapter has analysed and discussed the lived experiences of survivors during the expert assessments. Survivors' accounts have highlighted the different approaches taken by experts and the multitude of assessment tools which can be utilised. Once again, the study found that there was a lack of information provided by the expert and survivors were often unclear about the rationale behind the type of assessment chosen for them. As before, this chapter highlighted how vulnerable survivors felt during the expert assessment process and how they felt unable to express this at the time. One of the greatest areas of concerns was the inconsistency in children being assessed by the expert. Survivors did not understand why their children were not seen by the expert when their wishes and feelings were supposed to be at the centre of the court proceedings. However, survivors also spoke about the distress that children felt when an expert did meet with a child and the negative impact that this had on them.

The study revealed that there are a range of assessment methods used by experts in family court proceedings. Despite a child's best interests being at the centre of proceedings, survivors' accounts highlighted how the focus of the assessment was often on the mother's mental health and her behaviour. The lack of information provided by experts regarding the whole assessment process and the rationale for their choices left survivors feeling confused and vulnerable. This is despite professional guidelines outlining the importance of providing information to the client/service user/patient.

One of the concerning issues raised by survivors' lived experiences was safeguarding. Survivors described how they were placed in psychologically and physically vulnerable positions by the expert, whether that was because of the location of the assessment, or the probing and inappropriate line of questioning taken by the expert. Several survivors explained that they had been asked to discuss their past sexual history in graphic detail, often having to recount experiences that had occurred many years before meeting the father who was party to the child arrangements proceedings. Survivors also said that they were asked to detail the childhood sexual abuse that had been perpetrated against them. This situation raised serious concerns about the safety

of women, particularly when assessments were carried out in isolated locations by a male expert. Furthermore, issues related to psychological safeguarding also highlighted, once more, how critical it is that informed consent is obtained. Informed consent would provide a survivor with an understanding of the nature of the assessment and boundaries could be set against inappropriate questioning.

Barbara, Maya and Phoebe all described feeling unsafe and vulnerable because of the experts own explicit cultural and political views related to relationships and family. The women explained how they swiftly realised that they needed to monitor their responses in order to remain safe inside the assessment room as well as the courtroom. Arguably, it is important to consider how this type of professional conduct would be viewed, if it had been disclosed to the expert's professional body, and how that could have impacted the subsequent report and outcome of family court proceedings.

It is also important to acknowledge that there appeared to be a lack of after care provided to survivors following their assessments. Survivors did not mention that they had been signposted to other support services. While it is not clear what the reasons might be behind these omissions, it revealed another serious safeguarding concern. Once again, the position taken by the expert may have been that if there is no domestic abuse then there is no present trauma and there is not a need to signpost to other services. However, while this is arguably morally inexcusable professional conduct, it does not account for the lack of signposting by the experts who did question survivors about abuse.

Fundamentally, survivors' lived experiences cast doubt on whether it is ever ethical to assess traumatised women (and children) in the ways that have been described in this study, and how reliable these methods are in measuring parenting in the first instance. The survivors' lived experiences are further evidence for the need to implement trauma-informed practice throughout the legal system and correlate with the current literature cited in Chapter 1.

The penultimate chapter explores what happened after the assessments were completed, the expert report and the impact of the expert instruction.

Chapter 8

The Expert Report and Impact

8.1 Survivor Experiences - Introduction

Chapter 7 set out survivors' lived experiences of the expert assessment and their descriptions of what happened during this process. The assessment process highlighted the failure to safeguard survivors and their children, as well as raising concerns about expert professional conduct, consent, and the lack of a trauma informed approach throughout the family court process. The following chapter explores how the expert reported their findings to the family court, the report recommendations, expert cross-examination, and the impact of the report on survivors and their children. Survivors' lived experiences highlighted that there was an inconsistency in the quality of expert reports and a low prevalence of experts being challenged by legal professionals. This chapter continues by exploring one of the most crucial themes to have emerged from the research which related to the independence of the expert and how 'independence' was understood to have different meanings by each person, or party, involved in the proceedings.

8.2 Mental Health Diagnosis, Therapy, and Support

Survivors described how their mental health became the focal point for some Cafcass Guardians, and they felt that this was the driving force behind the expert instruction. Several survivors felt that professionals wanted to find a mental health condition as a way of explaining a mother's behaviour, rather than wanting to recognise or understand the impact of domestic abuse. This is reflected in Alexandria's lived experience as she believed that professionals were initially pushing for a diagnosis of Munchausen's by Proxy and when this was not found she was sent for a psychological assessment. The psychologist initially reported that Alexandria was paranoid and delusional, as well as anxious. Alexandria said that the expert also reported that she would 'influence' and 'sabotage' the contact between her child/ren and the father. Many months later the Cafcass Guardian asked the psychologist further questions including, 'you said that she was going to do X, Y and Z, and she hasn't done it, what is your view now?' Alexandria said, 'And, basically, her response was...it came across quite angry, that I must have lied to her in the first assessment'.

Alexandria continued by saying:

It just, I feel that any reasonable person, looking at that scenario...for example, a judge, should be able to immediately see that. So, she diagnosed the mother as paranoid and delusional over her anxiety, and then [months] later, you're saying that she lied and that she doesn't have anxiety. Does that mean she is not paranoid and delusional anymore? And maybe, that's, that psychologist, you know, I don't know, has been misdiagnosing them, in the first place? (Alexandria)

Table 3**Expert psychiatrist/psychologist diagnosis and treatment recommendations¹**

Survivor	Expert diagnosis	Treatment recommended by expert	Treatment accessed	Outcome
Alexandria	Paranoid Delusional Anxiety			
Alice	Anxiety	CBT	CBT via NHS	NHS therapist called GP GP referred to specialist therapist
Barbara	Emotionally abusive	Transfer of residence		
Bell	Emotional harm	Transfer of residency		
Doris	Unconscious parental alienation			
Emma	Doesn't respect male authority Projective identification	Therapy for Emma Therapy for child/ren which will challenge memory/belief systems		
Julie	Generalised anxiety PTSD			
Kathleen	? Pollyanna Complex	Children required therapy for		

¹ The table includes all of the information provided by a survivor during the interview. Due to the nature of a grand tour interview, it was not possible to gather the same information from each survivor.

	Detachment disorder	detachment disorder		
Phoebe	Parental alienation	Short, temporary transfer of residence. Followed by permanent transfer of residence		
Savitribai	Narcissistic traits	'Therapy'		
Tarana	Histrionic traits	CAT	Tried to access therapy on NHS- had private therapy	Took out a loan to pay

Several survivors explained that one of the recommendations made in the expert report was for them to undergo a form of psychological therapy (or talking therapy) and Alice was recommended to have Cognitive Behavioural Therapy ("CBT") (see Table 3). Although it was only a recommendation, Alice's progress with therapy was monitored by Cafcass and through the continuing family court proceedings. Alice said her solicitor 'hounded' the therapist for updates which felt like a 'nightmare' and afforded her little 'privacy'. Alice expressed how concerned she had been about her ex-husband reading the report and any mental health diagnosis potentially being used by him to further re-abuse her.

Alice also described the difficulty in accessing the recommended therapy on the National Health Service (NHS)² because of the long waiting lists, and this had impacted the length of time that the court proceedings had continued. Remarkably, Alice persisted until she was seen by an NHS therapist. The expert report had recommended a set number of sessions that the expert considered appropriate to see a change in Alice's behaviour, and Alice was keen to follow the report's recommendations. However, after several sessions, Alice was alarmed to be told that the NHS therapist was discharging her. Alice explained that on hearing this news she

² The NHS is the Government administrated, State funded health service in the United Kingdom.

burst into tears because she was so afraid that she had done something wrong, and that this would damage the ongoing court proceedings. The NHS therapist told Alice that in her professional opinion she needed to receive help and support because of domestic abuse. Alice was referred to a therapist who specialised in trauma and personality disorders.

So, then they introduced her into the court proceedings where they wanted her to write a letter instead and that's the one I got a text from, she wrote, after that, and after seeing my psychiatrist's note, assessment notes and stuff. She wrote her, assessment...she does say now that maybe she should have phrased it differently because the court doesn't accept any criticism...and she said that she really doesn't agree with the fact there was no abuse, she said maybe I should have worded it differently. (Alice)

The specialist therapist did not find a personality disorder as Alice explained:

This is word for word, like, it's like kind of...what was it? She said, she said something about consistent signs that's she gone through an addictive abusive controlling relationship...it's not going to happen overnight with me that I'm gonna change my way of thinking and my anxieties, and everything, my thoughts and stuff, are normal for people that's been in a controlling relationship and coercive. (Alice)

Tarana was also recommended by the psychologist to have Cognitive Analytical Therapy ("CAT"), after the expert reported that she had histrionic traits as well as a 'narrative which the Guardian was trying to make me say that I've lied [about the domestic abuse], which I hadn't'. Tarana asked to have CAT on the NHS but because of the long waiting list, took out a loan and went to see a private therapist.

Very glad I did because I found an amazing therapist and she said to me, 'I can't see any histrionic traits...I can't see it, there's no parental alienation, you're doing, she basically called me a wise parental figure for my child/ren and myself. (Tarana)

Tarana also wondered how a psychologist 'can really read someone in three hours?'

Tarana continued by describing the assessment impact:

I found myself in between two worlds because I had left [many months] prior, I'd changed...part of me and I said to the psychologist at the time...'part of me wants to answer in one way but part of me wants to answer in the way that I feel now' And she said, well answer the questions like you are now because'...so I found that quite confusing because...with abuse you...get confused, you know. My, my ex is very good at, at confusing and gaslighting...so I didn't find the psychological assessment easy. (Tarana)

Kathleen was surprised by the final report because she had thought that certain elements had been omitted and the expert was mocking her for her professional understanding, as she explains:

And I found that to be bizarre and a lot of what we were talking about, what I thought was significant really, it wasn't in the report at all, which I found frustrating and...yeah, at one point he said to me, 'this isn't for you, here'. And I said, 'excuse me?' 'This whole system isn't for you.' And I said, 'what do you mean by that?' And...I said, 'you know, surely, it's designed when you come into situations like this and these things need to be resolved, that's exactly what it's for?' He said, 'no, it's not, it's not actually designed for that, it's designed to...' and basically he sort of hinted at control...'and you are too intelligent.' He wrote in his report that she's a very intelligent lady. (Kathleen)

Kathleen's lived experience was different insofar as, early on in proceedings she had found a therapist to work with the whole family, in a way that was trauma-informed, and which recognised the domestic abuse. Kathleen described this as a 'wonderful solution' that had the potential to work. However, Kathleen explained that Cafcass prevented this from continuing and a psychiatrist was instructed, which was then followed by a psychologist. Kathleen explained that the psychologist questioned her about the psychiatrist's diagnosis of detachment disorder for the child/ren. The expert

challenged Kathleen as to why she did not believe the psychiatrist's diagnosis and she responded by saying:

well so many reasons but it's just a theory, it hasn't been proven and, you know, these are, they are used out of context and it's unacceptable for a psychiatrist to use these...diagnosis out of context when she has only met my child/ren for 20 minutes, it's ridiculous. (Kathleen)

Kathleen said that she thought that the expert was having 'good fun playing a cat and mouse game' before saying:

'Cos he tried, he suggested that I had a mental disorder and he said, 'would you agree with that?' And I said, 'well no'. 'Have you heard of this mental disorder?' It was something like...Pollyanna Complex³, that's what he called it. (Kathleen)

Kathleen explained that the expert asked her, 'if I gave you a mental illness, would you accept that?' to which she responded by saying no. It is not clear whether the psychologist had had access to the previously written psychiatric report, but Kathleen explained that, in the report, she had been criticised for her use and understanding of medical terminology. As Kathleen points out, the psychiatrist had made a diagnosis of detachment disorder but had failed to consider the level of fear and trauma herself and her child/ren were enduring due to domestic abuse.

Emma described the report that was written by the male psychologist:

So we didn't get the report until two days...two days, it was less than 48 hours before the...before the next hearing...so obviously, I was, I was...what would have been really good...is if this report had said...no this mother is not neurotic...the child/ren has said X and we don't know, actually... we still haven't got to the bottom of why this child is saying that. But of course, the report didn't say that, it was just ...God, it's 38 pages of...it's like a piece of fiction. He literally just made stuff

³ Pollyanna complex, aka Pollyanna Principle or Positivity bias simply means that a person will have a tendency to remember positive experiences more accurately than negative ones, see Courtney E Ackerman (2018) <https://positivepsychology.com/pollyanna-principle/> [Last accessed 06/2022]

up...he, he, he said that ... yeah, that I, I, I can't even begin to tell you all the different things that he said, that I've got a problem with his authority, that I don't respect the father's authority over our [child/ren]...that I need to have therapy...that I should apologise to my [child/ren] for believing...He thinks that my [child/ren] should have therapy and that [deleted] should...the therapist should challenge my [child/ren] memories and beliefs, about what happened to [child/ren] and he laid, a sort of, road map for, he really did put in loads of things to say, that if I don't change, If I don't stop saying that I believe my [child/ren] [Emma sounds upset]...that, that...that this will cause my [child/ren], you know, all sorts of damage...and that my [child/ren], it's stopping my [child/ren] having a relationship with [the father]...

Emma continued:

He said we should stay in the court system, that, that contact be introduced very slowly, over the next [few] months, with me having therapy, with my [child/ren] having this, you know, this therapy to stop [deleted] from saying these things had happened...

Emma explained how the expert's report would impact her child/ren:

So...so basically, the effect of the report...is that [children] has completely...left my [child/ren]...completely unprotected. He's handed my [child/ren] back over to [the father] abusive, and he has completely, you know, made me...look, you know, painted me out to be something that I am not...put lots of false information in there [deleted] he's created, it's like a, like a Kafka, like Catch-22, because either way, he's basically fenced us in. [Emma]

Emma continued by saying that her solicitor was almost in tears as she advised Emma that she should not appeal the outcome of the FFH, following the expert report. Emma's barrister agreed and said that if she lost any subsequent appeal, the court would view the situation as 'intractable', and Emma could lose her child/ren. Emma hoped that, at the very least, the child arrangements would revert to how they used to be, before the proceedings began, because she could minimise the damage by still

being in her child/ren's lives. Emma's request for supervised contact between the father and her child/ren was denied. However, at one point the father argued that he wanted supervised contact until his child/ren had received therapy. The father had used the expert report to suggest that supervised contact would protect him from his child/ren making any further allegations of abuse until the therapy had changed their behaviour. Emma said that she felt that the father wanted to continue proceedings, as the expert had suggested, in order to get 'the expert on the stand and to change residence'.

Overall, many survivors described how they had received support and/or therapy because of the impact of domestic abuse. Survivors mentioned that they had medical records, that sometimes had been placed into the court bundle, showing that they had received support from their GP. Survivors discussed receiving therapy from local domestic abuse charities, which could have been accessed by self-referral or by a GP. Survivors described how the therapy that they had received, independent of the court (for example NHS therapy) was sometimes discredited by the court. As Alice explained in the quote below, the judge suggested that she had manipulated the therapist, because she had believed Alice's account of domestic abuse despite the court making no findings of domestic abuse.

The Judge, she, she just then had to ridicule me by remote hearing that...she understands that I have to have a working relationship with my therapist...and obviously they need to feel like I'm believed...So...it was, like, thanks. So, I'm basically paying my therapist. (Alice)

Throughout the study there is clear evidence of women trying to access support because of domestic abuse despite survivors explaining that professionals involved in their proceedings, such as Cafcass, refused to recognise the abuse. Survivors mentioned various domestic abuse agencies such as Bede House, Victim's Support and Woman's Trust in London where they were able to access mental health support and attend workshops, as well as participating in the Freedom Programme.

Jacqueline's lived experience is slightly different insofar as she had not been recommended a treatment by a family court expert. However, Jacqueline explained how she was suffering from Telogen Effluvium (hair loss caused by stress/trauma) and

PTSD, but the NHS refused to provide treatment. Although professionals recognised that Jacqueline was traumatised, they believed that the reasons for the trauma (i.e. the abuse and family court proceedings) needed to stop before treatment could commence as it would not be effective if it began at the time.

Survivors described contacting other agencies such as Rights of Women and Refuge for further support and advice. Survivors explained how they needed to try to support themselves through their family court proceedings and continuing domestic abuse by accessing online platforms or workshops. Survivors mentioned Stand Up to Domestic Abuse and The Court Said, as well as international professionals such as Lundy Bancroft in the USA.⁴ Amal, Alexandria, Doris and Tarana said that they had also had to educate themselves about domestic abuse and coercive control and mentioned books written by Dr Jane Monckton-Smith, Lundy Bancroft, and Dr Evan Stark.⁵ Amal considered how it was not only important to be educated but to use the knowledge to educate other women who needed support 'as a lot of women do not understand the system they're in and blame themselves'.

Alexandria described how she had started to educate herself and had read Dr Jane Monckton Smith's book which 'some parts of it, that, describes the severity of the perpetrators towards homicide and... it goes into absolute detail.'⁶ Alexandria continued by describing the impact that the first psychiatric report had on her ability to report abuse and access support:

I have then directly evidenced right, right directly to the evidence I have confirmed he is that person with every sentence that it says...screenshots and stuff, and I've given that to social services...I've given it to the police...the police when I...because he's been harassing me and stalking me, when I went over to give it to the

⁴ Stand Up To Domestic Abuse, founded by Rachel Williams, Rachel Williams, <https://sutda.org>. [Last accessed 01/06/2022]; The Court Said, founded by Natalie Page. Phoebe mentioned Ms Williams campaign in Chapter 7.4, Natalie Page, <https://thecourtsaid.org>. [Last accessed 01/06/2022]; Lundy Bancroft, <https://lundybancroft.com>. [Last accessed 01/06/2022]; Dr Evan Stark, <https://evanstark.weebly.com>. [Last accessed 01/06/2022]

⁵ Jane Monckton Smith, *In Control. Dangerous Relationships and How They End in Murder* (Bloomsbury 2021); Lundy Bancroft, *Why does he do that? Inside the minds of angry and controlling men* (Berkley 2002); Evan Stark, *Coercive Control. How Men Entrap Women in Personal Life* (Oxford University Press 2007)

⁶ Monckton Smith (n 5) 1

police, what they do...they phoned the social worker, the social worker tells the police, no, no the mother's paranoid and delusional, we've already investigated, when I haven't, they couldn't have because I haven't given them anything...and then the police officer then...tells me off, that I'm controlling, and I used my child to control the father, he was already on bail for assault...so then that doesn't get investigated (Alexandria)

However, Alexandria said that despite quietly educating herself she would now not seek help publicly:

Yeah, it's like when you said these help services, my immediate thing is not to contact them, no matter how I feel...I will not contact any help services because I know that, that is something that social services will now jump on, or the judge will jump on and then it will get twisted and...you know, it just gives him more weight. (Alexandria)

Survivors' accounts described how they felt that any support which was instigated by themselves, or professionals, outside of family court proceedings was considered to be an example of the continuation of the mother's behaviour. The only type of therapy that seemed to be acceptable was if it had been recommended by professionals involved in the proceedings, but particularly by an expert.

8.3 Survivors' Experiences of the Transfer of Residence (Removal of Children)

Although the initial research did not set out to explore the transfer of residence by the family court (more commonly described by survivors as child removal) when allegations of domestic abuse have been raised, this was a theme that emerged from the majority of survivors' accounts. While some survivors did have their child/ren removed, most survivors described how they either felt threatened or were explicitly threatened with a removal. The perceived threat of removal is a power mechanism used by the family court, and perpetrators, to coerce a survivor into whatever is being asked of her at the time. The perceived threat has a regulatory effect and can be identified in survivors' lived experiences as influencing their behaviour, particularly in the decisions that they must make in order to prevent their child/ren from being removed from their care. Therefore, it is important, at this point in the chapter, to

discuss survivors experiences of the transfer of residence because it did, in many cases, underpin the assessments and subsequent reports.

Table 4
Survivors' experiences of transfer of residence

Name	What happened?	Situation at time of interview
Alice	Threatened removal	
Amal	Child/ren removed	Trying to return to court
Angela	Threatened removal	
Alexandria	Threatened removal	
Bell	Child/ren removed	
Betty	Threatened removal	
Coretta	Local authority threatened to move to foster care	Father retained child/ren and was preventing contact
Doris	Threatened foster care	
Emma	Threatened removal	
Emmeline	Threatened removal	
Isabella	Child/ren removed	
Gloria	Threatened removal	
Julie		Father retained child/ren
Kathleen	Threatened removal	
Mary	Threatened removal	
Michelle	Child/ren removed	
Ruth	Child/ren removed	
Maya	Child/ren removed	
Savitribai	Voluntary transfer	Savitribai distressed
Simone	Child/ren removed	
Tarana	Threatened removal	

As Table 4 clearly illustrates, approximately 21 survivors had been threatened with child removal and/or had their child/ren removed as part of private law child arrangement proceedings. It was not clear if Ruth's children were initially removed in public or private law proceedings. Generally, the removal may have been due to an expert's explicit recommendation in their report or because the father was able to use the expert report to persuade the court to transfer residence. However, there were also cases, such as Julie's and Coretta's, where child/ren were living away from their

mother because the father had failed to return them, and this had been made easier by the Covid-19 lockdown restrictions in 2020.

The study revealed a wide variation in how survivors spoke about the expert report, whether the expert was cross examined in court and the impact of the report. Savitribai's lived experience reflected how the expert report could be used by a perpetrator to add further pressure for a transfer of residence. Savitribai explained that the psychological report was sent to her ex-husband's solicitors, in the first instance, as her ex-partner was privately funding the expert instruction:

Before then, my ex-partner, his solicitors wrote and said we've received the psychological report and it's so damning of the mother, and I might suggest that residency is transferred. (Savitribai)

Savitribai was surprised by the fast turnaround of the assessment and subsequent report:

For somebody who was very busy and very experienced, apparently that's a very quick turn-around. It was just, I know a lot of copy and pasting. I've seen his other cases that he's done in...the QC that I had, she said, 'oh yeah, he does a lot of copy and pasting'. But she was so cynical, 'it's just what all of them do' she said. It as if she's almost accepted part of, I don't know, the way it works, I guess. (Savitribai)

In Savitribai's report the psychologist suggested that she had narcissistic traits. Following the report, Savitribai's solicitors wrote to the expert to ask supplemental questions:

When the questions were put to him in writing, what are the, where in the assessment did you get that I had these traits from? He wasn't able to answer it and he just said, that I've got my own method of, you know, like, in my experience in personality disorders and you are definitely a person that has been...has traits on there...and obviously the next question was, okay, how, which at the time, my lawyers even asked him...how do you want to, what can we do about this? Can we get help? We'll do whatever and he eventually wrote back, and he said

that, well there is therapy, she can have therapy, and then he came back and said all on the basis of the therapy would be admitting I was a liar. (Savitribai)

Savitribai explained that the psychologist had reported that she had shown a complete lack of, 'or absence of, being able to reflect on my mental state'. During the assessment the psychologist had suggested that either Savitribai was lying about the domestic abuse, or the judge had lied. He told her that it had to be one or the other. The expert reported that Savitribai had made false allegations of domestic abuse despite there being evidence of abuse including police records related to assault. The expert also reported that Savitribai had traits of a personality disorder and after further questioning, suggested that Savitribai required therapy. Crucially, the expert suggested that she needed the therapy to accept the findings of the court, and essentially change her lived experience.

Following the report submission, the expert was not cross examined in court but as mentioned, answered questions in writing. At the end of Savitribai's interview, she explained that she had asked for a second opinion, but this request had been refused. Savitribai described how the report was used by her ex-partner as a way of further controlling and abusing her, as she was told that there would be a transfer of residence as soon as the judge had read the report. Due to the risk of jigsaw identification certain elements of Savitribai's lived experience cannot be documented in this chapter. However, it is important to mention that a judge ordered that the psychologist report be taken to the local police force. Savitribai was warned that if she did not continue to support the current contact arrangements, she would have her child/ren transferred to her ex-partner.

So they took the psychologist report to the police, the police basically said that it was so strange, and they went from telling me to that I had to do all of this stuff that I needed to do, they gave me a list of things the police said I needed to do, that I have a duty to safeguard myself and my child/ren, and then they were telling me even that morning that...and, then...they took, they went to the police, his solicitor and, and him, and he carried on with contact. (Savitribai)

Savitribai explained at the end of the interview that she no longer had her child/ren living with her. This had been a voluntary decision after her ex-partner had initiated a new set of proceedings with the intention of permanently transferring the child/ren's residence. At the time, it was proposed that her child/ren should have one-week cycles with each parent. Savitribai wanted her child/ren to have a stable home and said that she had always put her child/ren's needs first. Savitribai cried (it was harrowing to hear the pain that she was in) as she explained what had happened to her and her child/ren. Savitribai described how the post-separation abuse was continuing as her ex-partner now intended to regain every penny that he had spent on her and make sure that she now had to pay child maintenance. Savitribai said:

'And I thought you're ridiculous, why are you, that he is angry about anything that he has ever paid. It was never huge; you know what I mean? It was almost as if he wanted residency so that somehow miraculously, I have to disclose my, everything to him'. (Savitribai)

Speaking about the psychological report Maya said:

I found it odd that she commented in her, her report about, about the fact that...so when she saw me she said, 'oh you've got the same smile as your [child/ren]' and then in her report she wrote, 'Maya beamed when I said this to her', as if...I needed...someone to tell me outside of myself that I look like my own [child/ren] in order to get some kind of validation. I found that odd. That stood out for me, it was an odd thing to, to put in a report and I think also to say, in the sense that, well my [child/ren] came from my body, why would my [child/ren] not look like me? But I think, again, it exposes her own bias because also, because my [child/ren] are fairer, that exposes her own racial prejudice, in some way, because she's obviously, like, how can this black woman look like [deleted] very fair mixed-race child/ren. (Maya)

At the beginning of the interview Bell explained that she had met several other women who had been assessed by the same psychologist and there seemed to be a high percentage of reports that had recommended a transfer of residence from the mother to the father. Bell also thought that the psychologist was making similar

recommendations for each mother to have further therapy after he had made a diagnosis of a mental health condition. Bell also thought that the psychologist produced at least 50 reports per year, and after comparing her report with other mothers, thought that they were 'pretty much copy and paste'.

Bell cried as she explained that her child/ren were transferred to live with their father. Bell had been ordered to have supervised visits. Bell did not explain what diagnosis the psychologist had given her in his report but described how:

so many of us have got a diagnosis of mental health, emotional harm to the child/ren...he even says in one of his reports that one of us will commit suicide...things like that...(Bell)

Following the assessment and report, Bell decided to submit a complaint to the HCPC about the psychologist, and this was on-going at the time of the interview.

The ISW instructed in Simone's case was called to court to be cross examined. Simone explained that the expert was asked why she had omitted to include evidence that her ex-partner was continuing to be abusive with his new partner which was also causing behavioural problems for the child/ren witnessing the abuse. Simone said that the judge had ordered the expert to provide the court with the reports that the local authority had sent to her detailing the abuse, but the documents were only submitted a few minutes before delivery of the judgment. Simone described how the social worker had stated in her report that she was 'hostile' and unhelpful because Simone had told her how frightened her child/ren were of seeing their father. Simone had said that she would not be responsible for causing further harm to her child/ren and said that the social worker should be the person who informed her child/ren that they had to see their father. The expert reported that the child/ren were absolutely fine to see their father:

...and yet the school were reporting that [the child/ren] [deleted] crying and hiding behind the teachers legs, not wanting to go with [deleted] dad. When he picked up [the child/ren] from school, when I wasn't even there, I was at home, he went to collect [deleted] from school. So, I wasn't even there to influence [deleted] or [deleted] behaviour...but

she was still saying that I was influencing [the child/ren] yet, I was nowhere near. (Simone)

Simone described the impact of the expert report:

I'm now in a refuge because of his continued abuse...my [child/ren] is now under the mental health team because [child/ren] obviously suffering there...and the courts followed the social worker's advice and put a barring order on which says that I can't go back to court for the next [deleted] years. (Simone)

As previously outlined, Barbara described the impact of the expert instruction in her proceedings as 'catastrophic'. Although Barbara did not specifically refer to the report, she did describe how, despite clear evidence of domestic abuse, this was all obscured by being 'stuck with the label of... you're an alienating mother.' Barbara explained how many years later her child/ren were returned to her care, after they had been removed because of the expert's report. Barbara explained:

I've been picking up the pieces of my broken [child/ren]...I've, in the last few years I've been at the police station and seen with my own eyes, my child/ren said to me something about...'I don't trust experts because of what they did last time'...and I never pushed the child/ren on that point. [deleted] was always talking about last time, last time and I just presumed that [deleted] meant the family court process. One day, I had the courage to question [deleted] I said, 'what do you mean, what they did last time?' And within weeks of the child/ren being taken from me and given [to the father] he changed the school, [deleted] turned up at school bruised, [deleted] told the headmistress that dad had done it. I've spoken to the deputy head of the school too. So, I've had it confirmed by the deputy head and the police records. They called the police into the school...[deleted] told the police that dad had done it. [Deleted] He still had custody for [many years] and I wasn't even told'. (Barbara)

Barbara continued by saying that she has had to manage her child/ren's subsequent suicide attempts and an eating disorder. Barbara described how 'our lives have been destroyed'.

Kathleen described how she thought that the first expert, a psychiatrist, had been given Cafcass letters which had been reflected in the expert report. Kathleen said that she had been deemed hostile and this had 'flavoured' the report and continued by saying:

It was a horrendous report. It was 90 pages and...she just absolutely, tried to paint me as the Wicked Witch of the West. It was so awful. It was so bad. It didn't reflect, 'cos we'd been in court [for many years] by that point and I'd been assessed throughout and I, I...through the school, through CAMHS, every single time I came out as a good mother, but her report was, I was harmful to my child/ren and my child/ren should be removed from me. So, one of her recommendations was that I should be assessed by a psychologist, and she completely denied the domestic violence, it was like it didn't exist. Clearly, she had not read the court bundle...it was, there were masses of stuff that was taken out of context. So, she was saying that my [child/ren] was anxious and had detachment disorder. (Kathleen)

Kathleen continued by saying:

It was really, it was really, really unpleasant and horrible experience to go through, because, you know, to read 90 pages of complete dissection of you...completely taken out of context and there seemed to be...a bias, she was obviously wanting the [child/ren] removed. Which was really shocking 'cos up until that point no one had, ever had suggested that. So...complete denial of the domestic violence and, and the suggestion of agreeing with my ex-husband that I am a perpetrator, it was just ohhh, it was very unpleasant. Very painful. (Kathleen)

The second expert, a psychologist, produced a 15-page report. Kathleen said that despite an in-depth three-hour assessment which included taking a past sexual

history, she felt that he had 'cherry picked' information that 'had been taken out of context and didn't quite read the way it happened'. Kathleen continued by saying:

However, generally speaking he said I had no mental illness, no psychiatric problems at all. I was completely sane...he said if I went through, because it was never proven in court, 'cos I asked for a fact find and they refused to do it...if, if what she said she's lived through, she actually lived through, she's a protective mother. He did, sort of, at the end give me anxiety, which I said was relevant to what I've suffered, continuously being harassed and stalked, and online and in real life...I've been MARAC'ed several times by police...I had a police officer for domestic violence, I had emergency alarms, home alarms. This was all being ignored by the courts and Cafcass, social services, he said if you're living what she's living through its understandable why she's anxious, but he still tried to give me an anxiety disorder, which I disagreed with. (Kathleen)

Following the report, Kathleen's ex-partner has been allowed to have supervised contact with the child/ren but at the time of her interview, he had not taken up the opportunity to see his child/ren. Kathleen believed that he pursued applications in the family court so that he could continue to stalk her and attempt to collect the child/ren from her new home address. Kathleen described how she had spent many years telling professionals that her ex-partner was using child contact as a method of post-separation abuse and as soon as that contact was severed, he would no longer want to see the child/ren. Kathleen's lived experience highlighted how, for her and her child/ren to remain safe, it had taken over 25 family court hearings, multiple professional assessments, police involvement and the instruction of two experts over a period of approximately seven to ten years.

Phoebe explained how the psychiatrist involved in her proceedings was allowed to write supplementary reports without seeing her child/ren and said that he 'totally went off what my ex-husband said'. The psychiatrist had reported that parental alienation was the reason for the child/ren not wishing to see their father, and not the domestic abuse. The psychiatrist had initially recommended short periods where there would be no contact between Phoebe and her child/ren that, in essence, aimed to break the

mother/child bond. These periods would be increased incrementally if the child/ren continued to want to live with Phoebe. Despite the child/ren expressing their strong wishes not to have contact with their father, the expert eventually recommended a forced transfer of residence. This recommendation was enforced by the family court and was carried out by the family court Tipstaff, with police officers present, in the very early hours of the morning.

So, he recommended the Tipstaff, he recommended forced removal, he said that the shock would jolt them to realise how nice the dad was.
(Phoebe)

8.4 Cross Examination

Following the submission of the expert report, several survivors were in the position of either having to cross examine the expert about their findings, as a litigant in person, or having a barrister do so on their behalf. As previously mentioned in Chapter 7, the psychiatrist had written several reports which gradually recommended more draconian methods of treating the parental alienation. It began with the child/ren needing 'a short, sharp shock' which would only take two weeks and [the child/ren] 'would be righted'. As Phoebe said:

It was torture. I said, 'just stop being little shits, will you?' I said, he said two weeks, short, sharp, shock and they refused to, so right we'll do three months, we'll do six months, we'll do twelve months. And I wasn't allowed to see them. I wasn't allowed to text message. I wasn't allowed to do anything. I couldn't see them, couldn't do anything. (Phoebe)

The expert recommended that the child/ren were removed from Phoebe and transferred to the father. This was followed by the psychiatrist reporting that 'this was obviously a really, really severe case' and so the separation between Phoebe and her child/ren needed to last longer. During her interview for this study, Phoebe considered what the outcome may have been if she had not litigated for herself, challenged the expert during cross examination and just keep quiet about the domestic abuse.

Doris' proceedings involved two different experts. The first expert, a psychiatrist who was a proponent of the parental alienation belief system, produced two different

reports for two different sets of proceedings. In the first experts initial report, Doris explained that the recommendations had been for the father to have unsupervised contact and that he did not need to attend a Domestic Violence Perpetrator Programme.⁷ This was despite findings of domestic abuse from a previous FFH. Doris was considered to have issues with anger. The first expert was cross-examined over his second report and Doris explained that she succeeded in discrediting the report, as she was able to show how the expert had missed vital information.

Doris described how the second expert's psychological report was originally in favour of Doris and 'critical of the father'. Doris had seen a transcript of the expert meeting with the child/ren, whereby the child/ren described the distress they experienced when seeing their father. However, Doris explained that on the morning of the hearing, she found out that the expert had 'changed her testimony'. Doris said that within the process of cross-examination it was suggested that the child/ren need to be transferred into foster care, seemingly also supported by the father, 'to break the bond with me' as she was accused of unconscious alienation. On hearing this said in court, Doris described suddenly feeling 'really ill', she felt in a state of 'shock and panic' and had to 'go to the loo, as I almost throw up. I'm just a complete mess'. In the end, supervised contact was ordered for a period of time which also had a positive impact on the child/ren's mental health, but professionals soon reinstated unsupervised contact because the children were calmer.

Doris reflected on the expert assessment process that she had experienced and made two overall observations. Firstly, that she believed that 'they do not listen to the children' as 'children do not lie, the children say how it is for them. Although they superficially ask a few questions they don't really... listen to the children'. Secondly, Doris questioned the level of independence that an expert has when she asked, 'why wont a barrister cross-examine an expert?' Doris made this comment after she was told by her barrister that the judge liked the expert and so they could not be seen to be critical during cross-examination. Doris' lived experience also reflected a similar finding by Phoebe who said, 'you've got a psychiatrist who is supposedly meant to be

⁷ The term has since changed to Domestic Abuse Perpetrator Programme.

independent, absolutely not, chumming it with a barrister...and sitting on the lap of the Guardian'.

Betty had carried out initial research and had found a psychologist who was well known and respected by her legal counsel. Betty explained:

She made a psychological profile on me which wasn't so bad at all and so she did a huge psychological profile on my ex-partner which highlighted...narcissistic behaviour and things but he managed to gloss over as well and obviously, he's very good at what he does... So, she did dig out the things that, where she said, you know, he's more concerned with people's perception of him then actual, then the relationships with people. So, there were lots of things where obviously the report went into court, I felt, you know, God how can somebody get that within a couple of meetings, and this is great, you know...But what she did in my case is, I was trying to show her evidence of the things that were going on, and she was saying that they're not relevant...I did in my case, I purposely did not send [the expert] the paperwork for me...to do the psychological profile and she didn't chase me for it. So, I left it right up until the family court hearing and then she presented a psychological profile to the judge... (Betty)

Betty continued:

[the expert was] so well recommended had, how had they actually been able to submit a psychological profile on me, having not had my paperwork in. You know, all of the reports that they give you...psychology questionnaires, and you complete them? And then you, they [inaudible] into the computer and it obviously picks up trends, and behaviour, it would...it kind of gives you an analysis and that's what submitted to the court...so her actual meeting of me in person was very positive that went to the court but actually she submitted a psychological profile claiming things to do with me, not necessarily negatives or positives, and information that she has never received from me. So, my barrister, obviously kept that...under wraps and then

when the family psychologist took the stand, asked how she'd kind of come to her conclusions and... conclusions around, you know, me as a person and as a mother and stuff...and then when she sort of said, did you know she had obviously had the five different reports back from me. My barrister then, actually, held them up to the judge and said, you know, to the family psychologist, 'are these the reports you're talking about?' She said, 'yeah' and she said, 'where are the reports? Where are the master copies?' And she said, 'well I am not sure'. And she said, 'the reason that you're not sure is because these are the master copies. You know my client has been [deleted] and you have not actually received them, and yet you've managed to submit...psychological profile and other bits and pieces, in a case this big, when you've not even had the information to do so' and actually her findings on me were completely dismissed, as a result of that. (Betty)

Michelle's lived experience highlighted issues with reporting, cross examination, and the transfer of residence. Michelle was the only person assessed during her proceedings. Michelle had found out that the psychologist had decided to read three statements sent from her ex-partner, his new partner and lastly from an estranged friend of many years ago. However, she had refused to read anything written by Michelle. Michelle said, 'it was only when I got the report that I found out'.

So, she was given three pieces of information before I went in and I very much felt that due to the, I'm not blaming her because she obviously, she'd received these statements off these people, so she'd got a picture of me in her head before I'd even got into the room because that's natural, that's human, that's what we do, isn't it? And I do feel it was biased, very much on the information that she was given. I do think her responses were based on the information that she was given. However, I must point out that because it didn't, my barrister actually said, they said to me, when she put in the report, she said because it isn't damning enough, towards social services and Cafcass want, I very much doubt it will be used and it never was. (Michelle)

At the end of the interview Michelle said, 'I lost residency of my children [many months ago] and I'm in the process of trying to fathom a way of getting residency back.'

Ruth's lived experience was rare, insofar as the expert's report and cross-examination helped to provide a positive outcome for herself and her child/ren, as she explained:

She told me that if she was...she would come to court if they asked for her to come to court...that she would, you know, that it would take her sort of four weeks to write the report up and it would be sent to us...and...that was that. I didn't have any more contact with her. She then...wrote our report...and then there was the additional... they, they wanted to ask a few more questions, or the court did, at some point they decided that they wanted to ask all of these additional questions, so they put them to a, so we received another report from her, a shorter one...and...she attended court on the, the...the, the hearing, where the children were going to be removed from their dad's care. So, she gave evidence in court... her evidence was absolutely vital to everything, every, sort of thing, from the moment that we received her report, everything in there, everything changed, do you know what I mean? (Ruth)

8.5 Complaint Process

Although many survivors described feeling like they had to comply with the professionals involved in their proceedings, they also had a sense that there may have been elements of the process that didn't feel right at the time. As previously discussed, several survivors were told that it would not make a difference if they objected to an expert instruction, or that they should not criticise the expert because they were highly respected by the judiciary. As a result of some of the concerns that survivors had regarding the experts and Cafcass, particularly related to professional conduct, formal complaints were submitted to the HCPC and Cafcass. This appeared to be a difficult decision for survivors to make, particularly because mothers had been positioned as being 'hostile' during the family court proceedings. However, survivors described how their own value systems gave them impetus to continue to protect their child/ren from further harm as well as making family court proceedings a safer environment for future survivors.

Bell explained the challenges she encountered when trying to make a complaint:

You can't complain because...you get told that you're not working with professionals...Cafcass now won't accept any more complaints from me. They said that in my latest SAR, that they refused to take complaints from me because I've complained about the Guardian three times already, in one year. But she's not, in my eyes, she's not fit...to work with kids...I have an ongoing HCPC complaint with this professional...Guardian...and the expert...the, the [the expert] he's just a...I don't think the words are acceptable, that I'd like to say about him...(Bell)

Bell continued by saying that she had submitted a complaint to the HCPC regarding the expert instructed in her proceedings, along with a group of other mothers who had similar experiences with the same expert.

Bell, Jacqueline, and Mary said that they had submitted Subject Access Requests (SAR), an application to view all of their data from organisations such as Children's Services, so that they could identify and evidence any unprofessional practice and understand what had been written about them, with a view to making a complaint depending on what was found. Bell submitted a SAR request to the psychologist who refused it and informed the court that she was trying to complain.

Survivors also spoke about their intention to make complaints to Cafcass regarding unprofessional conduct. Bell explained that she had found documentation, in her last SAR to Cafcass, that stated that they would not accept any further complaints from her, as she had made three complaints in one year regarding the same Guardian.

8.6 Discussion

8.6.1 Introduction

Survivors' lived experiences revealed the lack of consistency within the expert reporting process and whether the expert was asked to attend the family court to be cross-examined. Survivors' accounts also exposed the impact that the report had on themselves, and their children, particularly when the expert did not identify the abuse as they had hoped and instead the emphasis was placed on a mother's capacity to

change her behaviour. The following discussion explores the content of the expert report, the family court's own expectations of an expert report and how these impact on a survivor and their children.

8.7 Quality of the Expert Report

The BPS states:

2.19 The academic quality of expert or professional evidence must be informed by up-to-date and current evidence in the field. This will include the use of relevant assessments and tests, based on accepted academic and clinical opinion. Basing an 'expert' opinion on dated or inappropriate assessment evidence may lead to a formal complaint being made in relation to the work as an expert or professional witness.⁸

The quality of the expert report was a theme that repeatedly emerged from survivors' lived experiences, in particular how this was noticed by survivors but never really challenged by legal professionals before or during a hearing. However, it appeared that legal professionals were conscious of the poor quality of some reports, as if it was an open secret, and was an accepted practice. Without implementing a peer review process of expert reports, it is difficult to ascertain what information is cut and pasted, and if it is a widespread practice. It is also difficult for a legal professional to raise concerns to the judge about poor quality reports, if they are unable to compare them to other reports written by the same expert. Some survivors who participated in this study did compare expert reports although this is not a practice which the law currently allows. This study was unable to determine what information survivors suggested was being cut and pasted, and whether this is endemic within the system. However, survivors' lived experiences indicated that there were concerns about the quality of an expert's report and how difficult it may be for a survivor to contest it in court. It is possible to see why poor-quality reports are not challenged for reasons such as the lack of time, professionals possibly feeling that it would be pointless because the court

⁸ The British Psychological Society, Psychologists as expert witnesses (British Psychological Society 2021)

would probably uphold the report, and the barriers faced when attempting to try to instruct another expert within family court proceedings.

Survivors' accounts have revealed that serious consequences can occur when poor quality reports are not challenged, and these speak to a wider systemic problem namely the lack of understanding of the role and the power of the expert within family court proceedings. Survivors' lived experiences outline how poor reports impact their own lives as well as their children and appear to favour perpetrators by supporting the contact at all costs ethos. Whilst the study acknowledges the systemic constraints placed upon legal professionals, an expert report that is suspected to have been cut and pasted or contains information that is inaccurate or untrue but not challenged, potentially leaves a survivor misrepresented. There is also the risk that poor-quality expert reports which remain uncontested perpetuate the practice. Crucially, a judge will not know that the report has been cut and pasted, or that there are issues with the quality of the report, unless they are raised by counsel. However, there are examples of expert reports being challenged within court,⁹ but it is impossible to understand how many reports are challenged due to most cases not being published or made available for research purposes.

Savitribai's account highlighted two other key areas regarding the quality of the expert report. Firstly, there appears to be an inconsistency in what is expected in relation to the length of each report. Survivors described reports ranging from 30 to over 90 pages. Kathleen described how there was a difference of approximately 75 pages between two different experts, with the shortest report appearing to 'cherry pick' information. This study did not allow reports to be disclosed but given the impact that the quality of reports has had, further research focusing on the quality of expert reports could help towards improving their quality. Secondly, Savitribai described how the report had claimed that certain tests had been carried out when she felt that they had not. It was not clear whether Savitribai had discussed this with her solicitor but this highlighted another area where reports can be inaccurate and would be a reason for the expert to be cross examined. Generally, survivors' accounts also suggested that sometimes the report does not provide a true representation of how the assessments were conducted or what happened in the background. This is evidenced by Kathleen's

⁹ *B v C v A (acting through his Children's Guardian Charley Hampshire)* [2021] (WL 04993311)

description of the expert arriving, one evening, unannounced at her home and the language used by the expert during Phoebe's assessment.¹⁰

8.8 Cross-Examination

The BPS guidelines state that there is an expectation for experts to attend court for cross examination, and guidance on professional conduct during their evidence is provided.¹¹

Survivors' lived experiences revealed an inconsistency in experts being cross examined about their report within proceedings. Sometimes the expert reports were considered without an expert being asked to attend court, and instead supplemental questions were put forward. While PD25 outlines that an expert can give evidence and/or answer supplemental questions, survivors' accounts suggested that there was a strong expectation for an expert to be cross examined. As previously highlighted, Betty's lived experience was a rarity but was successful predominately because her solicitor had challenged the report. The majority of survivors' lived experiences suggested that there is perhaps a tendency for expert reports to be indisputably accepted.

PD25B 10.2 outlines that an expert needs to understand the potential time commitments needed for the case which includes an estimated time for cross examination. Survivor's lived experiences indicated that there is a tendency for expert reports to remain uncontested because the expert is well known to professionals considered to be eminent. Although the expert is 'not on trial' they do have an overriding duty to the court to present accurate and truthful work and it becomes problematic when experts are protected from being challenged but their report is known to be inadequate.

8.9 Experts and their Duty to the Court

The information that an expert may have been provided with in order to begin the assessment process could possibly include the court bundle, letter of instruction, any

¹⁰ See Kathleen's lived experience in Chapter 6.3 and Phoebe's Chapter 7.4

¹¹ The British Psychological Society and Family Justice Council, *Psychologists as expert witnesses in the family Courts in England and Wales: Standards, competencies and expectations* (The British Psychological Society and Family Justice Council 2016) 11 and 23

medical reports including letters and GP summaries. All of this information could be used in conjunction with the findings of any assessments conducted by the expert to write the final report. Survivors' lived experiences indicated that more often than not, the domestic abuse was either minimised or completely erased from the expert report, despite a number of survivors making attempts to disclose the abuse during the assessment. This is a crucial finding because it identifies a key area of concern within the expert process that is not highlighted within the current literature.

As previously outlined in Part 25¹² the expert has an overriding duty to the court, which means that they are bound by the court's findings. Simply put, an expert is expected to not factor in evidence of domestic abuse within their assessment, if that evidence has already been tested within a FFH and no findings were made. A number of survivors attempted to show evidence of domestic abuse within the assessment, which was dismissed by the expert along with the explanation that 'they could not go behind the judge's back'. Despite survivors expressing their shock at this, the expert had an overriding duty to the court and arguably, was carrying out their duty correctly. However, survivors also described how their disclosures of abuse within the assessment, when a FFH had not been held, were still dismissed or completely erased. Nevertheless, both scenarios call to attention the ethical dilemma that exists when an expert is bound by findings of the court but is also presented with evidence of domestic abuse by a survivor.

The BPS guidelines¹³ make reference, in two different paragraphs, to experts' responsibilities to the court and to the individuals that they engage with, i.e. assess.

5.8 Psychologists should be clear about their relationships, roles, and responsibilities, and fully consider all relevant professional, regulatory and ethical issues which affect their instruction. In this, they need to remain mindful that although their core responsibility as a expert or professional witness is the court, they also have overarching professional responsibilities to any individual(s) they engage with, a

¹² Part 25 [3]

¹³ The British Psychological Society (n 12)

psychologist, as well as their regulatory and/or professional body (e.g., the HCPC and the society's *Code of ethics and conduct*).¹⁴

4.5 Working with individuals in the Family Courts who are vulnerable and/or experiencing difficulties highlights psychologists' professional obligation to provide ethical and client focused services. The Family Court context, where work is commissioned by the Court as a client, may lead to a range of professional conflicts for the psychologists, including confidentiality, consent and vulnerability and the consequences of an adverse opinion. The psychologist maintains a duty of care to the individual being assessed, whether child or adult, in terms of attempting to ensure all individuals' needs are being respected, recognised and whenever possible met by facilitating future action.¹⁵

Paragraph 5.8¹⁶ asks that an expert be mindful of any ethical dilemma that they encounter when they have a duty to the court and to an individual. This particular paragraph speaks to the survivors' lived experiences of an expert dismissing the domestic abuse during an assessment either because no findings had been made in a FFH, or a FFH had not been held. Crucially, the BPS recognise that an ethical dilemma exists and asks that the expert is cognisant of this during an assessment, as well as implicitly suggesting that it is for the expert to determine what their ethical obligation is, and to whom.

Paragraph 4.5¹⁷ is in a similar vein but expands upon the issue of an ethical conflict of interests by recognising that individuals who are being assessed can be vulnerable and maybe impacted by an adverse opinion. It is clear from survivors' accounts that an adverse opinion could be the dismissal of abuse, removal of children, or the recommendation of therapy which a survivor does not need. Survivors described feeling suicidal, hopeless and broken because of the experts opinion.

¹⁴ The British Psychological Society (n 12) 20

¹⁵ The British Psychological Society (n 12) 7

¹⁶ The British Psychological Society (n 12) 20

¹⁷ The British Psychological Society (n 12) 7

Both paragraphs recognise that an expert may face an ethical dilemma, particularly in cases where domestic abuse has not been found but may be presented with overwhelming evidence contrary to the court. Unfortunately, there is currently no easy or quick solution, primarily because FFHs are infrequently and inconsistently held (although, as previously mentioned, a FFH will not always find domestic abuse despite clear evidence). Furthermore, a protected feedback mechanism does not exist whereby an expert would be able to advise the court that they disagreed with the court's findings but recognised domestic abuse, while maintaining their professional reputation. Several survivors' accounts did reveal how an expert may have been challenged by the evidence of domestic abuse before them at the assessment but were reluctant to go behind the court's findings. Survivors' accounts also highlighted how, even when an expert recommended therapeutic support for domestic abuse, this was deliberately removed by their legal professionals from documents before submission to court.

While there is no immediate solution to this ethical dilemma it is an area that needs urgent attention because survivors will continue to be harmed if an expert is unable to carefully balance their duty to the court with their duty to an individual when they can see that domestic abuse is clearly present.

Lastly, paragraph 4.5¹⁸ makes reference to confidentiality (and consent which has already been discussed). Savitribai's account specifically revealed how an expert's duty to the court means that information gathered during an assessment is expected to be provided to the court. Arguably, an expert should be able to use their professional discretion to determine whether it is appropriate to include potentially harmful information to the court when the audience also includes an (alleged) perpetrator. Savitribai's account, as well as several other examples, raised concerns that an expert had not been alive to these guidelines, or the potential harm caused by withholding some confidential and intimate details from her perpetrator.

8.10 The Different Types of Expert Diagnosis

Survivors' accounts revealed that there was an inconsistency in how experts carried out assessments, the information available to them and the abuse being filtered out

¹⁸ The British Psychological Society (n 12) 7

by professionals in the family court proceedings. Survivors explained how they believed very early on in proceedings that professionals, with the support of perpetrators, began to shift the focus from the perpetrators behaviour and what was in the best interests of the child to the mothers behaviour. Although the court has a legitimate need to identify reasons behind child contact issues, survivors' lived experiences have revealed how, because domestic abuse had either been dismissed or minimised, the court's focus became centred on a mother's mental health. As a result, the courts priority was to ascertain whether a) a survivor was mentally unwell and b) if so, whether this would be a barrier to parenting. Survivors felt that professionals, such as Cafcass, planted a seed of doubt over their mental health and this helped to shape the focus of the experts assessment and report.¹⁹

As outlined in Table 3, survivors were diagnosed with a range of conditions including histrionic traits, anxiety, paranoia, delusional behaviour, low self-esteem, as well as determining that some mothers presented with alienating behaviours, or caused parental alienation. The diagnoses that survivors disclosed tended to be similar in nature and were characteristic of the way in which women's mental health has been used to control and silence women for centuries.²⁰ Histrionic traits, anxiety and low self-esteem all point to conditions that are commonly considered to be female ailments or diseases of the mind. The pathologising of female oppression has been happening for centuries but the early 18th Century saw the beginnings of male dominated psychiatry and the foundations of psychological theories that are still in use today. It became common for women to be diagnosed with conditions of the 'nerves' such as 'hysteria' rather than symptoms being seen as the direct impact of being confined to cultural, social and political patriarch norms.²¹ Feminist debate has long highlighted that psychiatry and mental health services use normal symptoms that stem from abuse and trauma to diagnose women as being mentally ill or disordered.²² It is suggested

¹⁹ Alexandria's lived experience is one example of this, see Chapter 8.2.

²⁰ For further reading on this subject see, Charlotte Gilman-Perkins, *The Yellow Wallpaper*, Charlotte Gilman-Perkins, *The Yellow Wallpaper & Herland* (Macmillan Collector's Library 2021); Phyllis Chesler, *Women and Madness*, (Reprint, Lawrence Hill Books 2018); Elaine Showalter, *The Female Malady: Women, Madness and English Culture, 1830-1980* (Virago 1987); Lisa Appignanesi, *Mad, Bad and Sad: A History of Women and the Mind Doctors from 1800 to the Present* (Virago 2009); Jacqueline Rose, *On Violence and Violence Against Women* (Faber 2021)

²¹ Jessica Taylor, *Why women are blamed for everything. Exploring victim blaming of women subjected to violence and trauma* (Victim Focus 2020) 163

²² *ibid*

that there is much misogyny within psychiatry, and this has been used to victim blame rather than attend to male violence.²³ As discussed in Chapter 2.5, the legal system has sought to repress women's social and political mobility and utilises other systems, such as medicine, to reinforce dominant discourses. Emma, Kathleen, Phoebe and Savitribai's lived experiences are examples of how the expert's diagnosis reinforced the narrative of no abuse and placed the reason for familial discord on the mothers hostile and/or emotionally abusive behaviour. Survivors' lived experiences highlighted (and Emma herself explained during this study) the political implications of psychological theory and how many of the experts' chosen psychological approaches were rooted in founding theories of psychoanalysis, such as Freud.²⁴

Survivors were diagnosed with serious, potentially life-long conditions that could result in pharmaceutical support being prescribed, such as beta-blockers, anti-depressants, and benzodiazepines. These treatments all have side effects, are stigmatising and will be indelibly marked on a survivors medical record, which could become part of the evidence in future family court proceedings.

8.11 The Therapeutic Interventions Recommended by Experts

Survivors' lived experiences indicated that the focus for many experts was to reinforce the family courts disciplinary power²⁵ which suggested 'for a woman to be healthy she needs to adjust her behaviour²⁶ and to be seen as less hostile to a perpetrators (abusive) behaviour. Survivors described how they felt challenged by the recommendations made by the expert because they were not as simplistic as they first appeared on paper, or as the judge may have understood them to be.²⁷ This section will discuss the types of therapy recommended by the expert before exploring the various ways that survivors felt that the report impacted their lives.

²³ *ibid* 172

²⁴ Chris Weedon, *Feminist Practice and Post-Structuralist Theory* (Blackwell Publishers 1987) 13; For further reading see, Richard A. Skues, *Sigmund Freud and the History of Anna O.: Reopening a Closed Case* (Palgrave Macmillan 2006)

²⁵ Lois McNay, *Foucault and Feminism* (Polity Press 1992)

²⁶ Chesler (n 20) 129

²⁷ Survivors described how the expert recommended psychological therapy, which was usually expected to be carried out by the NHS. However, the NHS therapist recognised the domestic abuse which was in direct contradiction to the court's findings.

8.11.1 The Types of Therapy

Survivors accounts revealed that a few experts recommended commencing a type of talking therapy, or psychotherapy, either Cognitive Analytic Therapy (CAT) or Cognitive Behavioural Therapy (CBT). Van Rooyen describes CBT as:

an action-orientated form of psychosocial therapy that assumes maladaptive, or faulty, thinking patterns cause maladaptive behaviour and 'negative' emotions. The treatment focuses on changing an individual's thoughts (cognitive patterns) in order to change his or her behaviour and emotional state.²⁸

Van Rooyen describes CAT as:

An approach of psychological treatment that incorporates understanding from cognitive psychotherapies and from the psychodynamic approaches into one integrated and effective therapy...²⁹

CAT differs from CBT, as this approach is rooted in cultural and social process rather than using a standard information-processing model that characterises the CBT approach.³⁰

The aim underpinning both approaches is to create a change to behaviour that is considered to be negative, or abnormal. The narrative of no abuse prevents a therapist from being able to understand that a survivor's behaviour is not abnormal, but the brain's normal response to abuse and trauma. This means that the therapy will not be successful as it is not able to confront the ongoing abuse, the continuing impact on the survivor and the potential for future abuse.

Talking therapies are expected to take months rather than weeks to complete. It is suggested that CBT can last for approximately 3 months and, although CAT is supposed to have more of a time limited approach from 16 to 24 sessions, it can take up to one year to complete.³¹ Generally, the expectation was for survivors to initiate

²⁸ Celeste L Van Rooyen, *Psychology in Family and Child Law* (Family Law 2014) 112

²⁹ *ibid* 114

³⁰ *ibid* 114

³¹ *ibid* 114

the talking therapy themselves, and survivors felt under pressure to access services as soon as possible. Psychological therapy is considered to be an ‘active, collaborative effort’³² which is based on building up trust and a rapport between the therapist and client and should not be a coercive process. Survivors’ accounts clearly show that recommended therapy by the family court expert is often a coercive process, and this is evident by survivors feeling pressured to access therapy because of the risk of losing contact with their children. This places survivors in a vulnerable and harmful position as they are compelled to continue with a therapeutic process which may not be clinically right for them.

8.11.2 NHS ‘Talking Therapies’

This study indicated that mothers are expected to unquestioningly jump through hoops in order to fulfil the family courts expectations because there is always the risk that a transfer of residence will be ordered if they do not comply. Survivors’ accounts exposed how reliant the family court appears to be on the NHS and its ability to carry out the expert’s recommended therapy, as well as how they felt pressured into trying to obtain an immediate referral by their GP. Family court professionals involved in proceedings offered little, or no, acknowledgement of the condition of NHS services, the long waiting lists and the inability to ask for a specific service.³³ Currently, the main route to NHS mental health support is through Talking therapies, which has a long waiting list and is usually limited to a set number of treatment sessions. Survivor’s described the difficulties in trying to get mental health support via the NHS but it is not clear whether professionals also appreciated the barriers when making recommendations.

8.11.3 Privately Funded Therapy

Tarana expressed feeling scared of being placed on a waiting list in case she was blamed for not accessing the service quickly enough, and so felt pressured into taking out a substantial loan to pay for private therapy. As well as easier access, private therapy does have another advantage over the NHS, as a patient can choose the expert’s recommended psychological approach, rather than be required to follow NHS

³² *ibid* 109

³³ At the time of writing 02/2022 West London NHS Trust state that the current waiting time for an initial assessment is between 2-5 months, as an example of waiting times versus the family court’s expectation.

recommendations which may contradict the expert. However, therapy can be very expensive and can take months, rather than weeks, to get to a point where it starts to feel like it is beneficial for the client. It should not be the case that survivors are so frightened that they take on debt to satisfy the demands of the family court, which could be seen as another form of economic abuse.

8.11.4 Consent

A number of survivors' accounts indicated that they felt that they were being coerced into therapy and this places a therapist in a precarious position when obtaining informed consent at the beginning of treatment. Essentially, a therapist is under no obligation to carry out a family court expert's recommendations and should be adhering to their professional guidelines. Survivors' lived experiences have also raised concerns about how any subsequent therapist manages the expert diagnosis and recommendations, particularly when the domestic abuse has been minimised or erased.

8.11.5 Sharing Documentation

Another impact of expert recommendations emerged in the way that information could be shared between the court and the therapist, particularly when proceedings had not concluded. Survivors did not detail how, or if, the family court expected the expert report to be read by the therapist, but any sharing of documents would need the express permission of the judge before being disclosed outside of proceedings. This area needs further exploration as it raises questions about how the court controls the narrative outside of the courtroom and whether the court expects a survivor to take the expert's report to the therapist. Alice and Maya suggested that the therapist was aware of the expert's findings, but it is not clear how they were conveyed. Simone was the only survivor to explicitly explain that the therapist had seen family court documents.

8.11.6 Confidentiality

Another issue that is connected to the sharing of documentation is the confidentiality of the therapy sessions. Alice described how solicitors and Cafcass continually sent letters to the therapist, asking for updates which prevented her from having any privacy and a situation that she said was 'just a nightmare'. This is also reminiscent of Savitribai's experience during her assessment when the expert stated that he would

be sharing everything she said with her ex-partner (who was also funding the assessment), as well as the expert report being taken to her local police station.

Arguably, therapeutic relationships are severely challenged when a survivor is aware that some form of information sharing may occur with the court. Using Alice's experience as an example, a therapist's duty to their client becomes blurred by the expectations of the family court and/or professionals to report to the court. Survivors may not be able to receive effective therapy if they know the content of the sessions may be shared. Survivors are also at risk if they feel confident enough to share, with the therapist, details about the abuse when the narrative of no abuse has been propagated by the family courts. This information could also be shared with court related professionals and seen as further evidence of the mothers continued hostile behaviour. Therapists do not have an overriding duty to the court and are not expected to follow PD25, as experts are. Due to the collaborative nature of a therapeutic relationship, it would be good clinical practice for a therapist and survivor to decide together what information is going to be shared with the family court.

8.11.7 The Economic Impact

Overall, survivors' lived experiences have shown how expensive private law child arrangement proceedings are when legal aid is not available and when hidden costs such as childcare, unpaid leave, travel and transcription fees are calculated. The expert process is no exception and survivor accounts have revealed how it can often disadvantage women. As mentioned earlier, there are issues related to who pays for the expert, how influential a paying party may be on the expert and how survivors who do not meet the threshold for legal aid are able to afford to fund an expert, particularly against a backdrop of economic abuse. Tarana and Alice's accounts also exposed how women can be further economically disadvantaged by the family court's expectation to access any recommended therapy, as quickly as possible. Or, as in Phoebe's case, continue to pay for an expert to be involved with the family as the treating therapist. As discussed in Chapter 5, available literature highlights the economic impact of family court proceedings on survivors but does not identify expert instruction as either a further financial burden or as a potential route for economic

abuse.³⁴ While the Oliver *et al* report captures costs related to the impact of domestic abuse on the NHS and private law proceedings, there is no data to show costs associated with family court recommended therapy.³⁵

8.11.8 The Overall Impact

Survivors' experiences revealed that the family court expect a survivor to accept the expert report and as a result comply with the following: accept a misdiagnosis based upon inaccurate and incomplete information; identify and possibly pay for therapy that she does not want or agree with; consent to a psychological treatment that she may not believe in; consent to confidential therapy with the expectation, or concern, that information will be shared with the court and the perpetrator. The family court also expects that the therapist will accept the family court experts report without contention and will not make an independent assessment. Consequently, the therapist may be required to try to adjust behaviour that, outside of the family court, is considered to be a normal response to trauma. A survivor also is aware that in the event that the therapy is unsuccessful, the family court is likely to transfer residence of her children to the perpetrator. This creates a stark choice for a survivor: to refuse the therapy and risk losing her child/ren or access the therapy regardless of the impact, and still be at risk of a transfer of residence. As Alice and Taranas' experiences emphasised, a survivor may view the latter option as the safest choice for her child/ren despite it not being the best one for her.

8.12 Challenging a Diagnosis

Good clinical practice encourages a patient to seek a second opinion if they are unsure, and this is another area where the family court seems to exert their unqualified authority. Currently, a survivor's only two options in obtaining a second opinion within private law proceedings would be to ask the judge for permission to instruct another expert, or to submit an appeal after the expert report has been presented to the court. The former could potentially be obstructed by the perpetrator, and the latter is

³⁴ Jenny Birchall and Shazia Choudhry, "*What about my right not to be abused?*" *Domestic abuse, human rights and the family courts*' (Women's Aid 2018) 43; Rhys Oliver, Barnaby Alexander, Stephen Roe and Miriam Wlansy, *The economic and social costs of domestic abuse* (Home Office 2019); Rosemary Hunter, Mandy Burton and Liz Trinder, *Assessing Risk of Harm to Children and parents in Private Law Children Cases* (Ministry of Justice 2020)

³⁵ Oliver and others (n 35)

contingent on appealable points, a limited time to appeal and resources. Any second opinion obtained outside of these two routes is highly likely to be refused as evidence.

However, problems also emerge if a survivor's new therapist (accessed because of the expert's recommendations) does reach a different conclusion because, currently, family law has no mechanism to manage this. As Alice's case highlighted, her therapist was cognisant of not wishing to go against the judge's findings but stood firmly beside her clinical opinion. Hypothetically as Alice's proceedings were still ongoing, there was an opportunity for the therapist's opinion to be brought before the court. However, in practice the perpetrator could argue that the therapist was not a court instructed expert and could suggest bias, which could result in the new therapist's more 'independent' report being discounted. Therapists who offer a different opinion, when proceedings have concluded present another problem for survivors, as the only option is to submit a fresh application to court, and initiate a new set of proceedings, which could result in the instruction of new experts (as the therapist could again be seen as biased).

8.13 Safeguarding

Several survivors highlighted how good NHS professionals such as nurses, midwives and therapists are at recognising domestic abuse as opposed to the professionals involved in family court proceedings. However, it seems that the family court fails to recognise that any therapist chosen to provide the recommended therapy (including private practitioners), or professionals involved in a survivor's general healthcare, have a duty of care to their patient/client, as well a duty to safeguard. This presents a problem when a survivor discloses abuse during a session and a therapist feels the need to document it and/or report it to another agency such as social services or the police. Several survivors, including Alice and Savitribai, explained how professionals who recognised the abuse did not wish to challenge the judge, and yet they had formed their own professional opinion. Savitribai's account highlighted how the family court can prevent survivors from making any further disclosures by giving permission for perpetrators to show final orders to various agencies such as the police. This could leave survivors feeling isolated and alone and could place her in the dangerous position of having to manage any further abuse alone. However, these agencies are expected to carry out a new investigation every time a new disclosure/complaint is

made. In this situation, it is suggested that agencies should raise the matter with the family court and ask for the order to be changed.

8.14 Transfer of Residence

Table 2 identifies the survivors who were threatened with a transfer of residence, or where an order for the transfer of residence was made. Twenty-one survivors described how child removal was part of their lived experience, either by constituting a prevailing threat that was intended to encourage a mother's compliance and is reminiscent of Gardner's theory or if the court proceeded to make an order in favour of removal.³⁶ Seven survivors explained that they had had their child/ren removed but Phoebe was the only survivor to describe having the expert becoming a treating clinician through a protracted process of child removal.

Phoebe outlined how the expert continued to be involved in their proceedings and his role fluctuated between an expert and a treating clinician. Mr Justice Williams, within the context of PD25, described this as a 'blurring of the boundary between their function'.³⁷ The expert's recommendations consisted of temporary removals, which he described as 'short, sharp shocks' to achieve ultimately the permanent removal of the child/ren.

8.14.1 The Impact of a Transfer of Residence

Literature has yet to focus solely on the impact that a transfer of residence has on a mother and her child/ren. The AVA (Against Violence and Abuse) project undertook the first piece of peer research³⁸ to address how to support mothers who have had children removed due to multiple disadvantages.³⁹ Case law on transfers of residence shows that the courts balance what they see as the short-term impact of a transfer balanced against the long-term gain of a child having a lifelong, meaningful relationship with the alienated parent (usually the father).⁴⁰ Occasionally, the reported cases acknowledge that a change of residence can cause long-term scarring and a

³⁶ See Chapter 1.11

³⁷ *In the matter of H (Children)* [2019] EWHC 237 (Fam)

³⁸ Peer research is research which is conducted by people who have experienced the research focus

³⁹ AVA Project, 'Staying Mum' <https://avaproject.org.uk/wp-content/uploads/2022/03/Staying-Mum-Final.pdf>. [Last accessed 01/06/2022]

⁴⁰ For example see: *FA v MA, (a child by their Children's Guardian of CAFCASS)* [2021] Case No: KH17P10765 [55]

sense of fear and loss in the child which they cannot come to terms with, and that some children's reactions are so strong that the change in residence has had to be reviewed and changed.⁴¹

Survivors' accounts revealed that there seemed to be very little, if any, support for mothers or children after the transfer of residence. A few mothers, like Maya, mentioned continued involvement of social services after the transfer of residence had taken place but at no point did a survivor describe her or her child/ren being offered therapeutic support. That is not to say that it did not happen, but this was not raised by the survivors interviewed. Barbara's lived experience indicated how unsupported her child/ren were after the transfer of residence and how, on return to her care, she was left having to manage her child/ren's suicide attempts and eating disorders which she directly blamed on the transfer and the father's continued abuse.

Transfers of residence appear to happen quickly, and as in Phoebe's case, are arguably as violent as the abuse that has already been perpetrated. Although many of the survivors who had experienced child removal did not explicitly describe the impact on themselves or their child/ren in detail, their interviews revealed unmistakeable and unimaginable, persistent pain. Barbara and Phoebe expressed how they had no idea what the future would hold for their children and how their lives would be impacted.

8.15 The Complaint Process

The HCPC states:

8.2 You (a registered professional) must support service users and carers who want to raise concerns about their care, treatment or other services they have received.

8.3 You must give a helpful and honest response to anyone who complains about the care, treatment or other services they have received.⁴²

The BPS does not mention complaints against professionals within its guidelines.

⁴¹ *PA v TT, H (A Child by way of 16.4 Children's Guardian)* [2019] EWHC 2723 (Fam)

⁴² Health and Care Professionals Council, *Standards of conduct, performance and ethics* (Health and Care Professionals Council 2016) 9

Survivors described how difficult it was to make a complaint about professionals, such as Cafcass Guardians and experts. Many survivors had already been positioned within the family court proceedings as hostile, and submitting complaints was seen as an extension of this hostility. Complaints made about professionals during or after family court proceedings are sometimes referred to as satellite litigation and can have a negative impact on survivors, as highlighted by Bell's experience. Asen & Morris describe parents complaining within family court proceedings as 'chronic litigation' and suggest that it is usually carried out by the 'closer parent'.⁴³ The authors suggest that complaints are usually unfounded but if the case is still in the court arena, the complaint is probably most appropriately dealt with by the court.⁴⁴

The study found that one survivor submitted a complaint to the HCPC which raised concerns about serious professional misconduct.⁴⁵ Despite the severity of her complaint, the survivor (and several other mothers) were frightened that this would negatively impact their case and the future safety of their child/ren. However, survivors clearly wanted to obtain some sort of justice for themselves and their child/ren as well as wanting to ensure the safety of other mothers, even if they may suffer consequences from making their complaint.

An element of the complaint process that did not directly emerge from survivor accounts but is important to raise here, is the difficulty in making complaints about professionals who are involved in family court proceedings. It is not known what happened to the aforementioned survivors complaint to the HCPC, as it was still in progress at the time of the interview. Family Procedure Rules 2.1 stipulate that proceedings under the Children Act 1989 are private and information relating to those proceedings should not be published or shared, without the court's permission. In the event that a complaint is upheld, the HCPC, or any other professional body, would need to seek permission from the family court to be allowed access to any document relevant to the complaint. This is a costly and a time-consuming process, which given the family courts perceived lack of understanding about the role and impact of an

⁴³ Eia Asen and Emma Morris, 'High-conflict parenting post-separation: The making and breaking of family ties' (Routledge 2020)

⁴⁴ *ibid*

⁴⁵ To prevent jigsaw identification further details cannot be provided.

expert, may prove to be largely unsuccessful. The HCPC states that a professional must: support service users and carers who want to raise concerns about their care.⁴⁶

Complaining about an expert who has been involved in family court proceedings is an under researched area and survivors' lived experiences have highlighted how it is not straightforward because of the court's authority and potentially can have harmful consequences for a survivor and her children. Survivors, and parents in general, should be able to make a complaint and have access to the relevant documents, including permission to have the experts clinical notes, if necessary.

8.16 Conclusions

This chapter has explored the experiences of survivors when presented with the expert's report, the report content, challenging expert evidence, and the impact of the report on survivors and their child/ren. Survivors felt that expert reports were often inaccurate and/or provided them with a misdiagnosis. Predominantly, this was because the domestic abuse had been erased from the expert assessment and therefore the expert's attention was focused on trying to determine a cause for a mother's behaviour, other than trauma caused by domestic abuse. As mentioned in chapter 7, survivors' accounts revealed how vulnerable they felt during the assessments particularly because of the type of questions that they were expected to answer. It is reasonable to assume that survivors 'behaviour' during the assessment may have also contributed to any diagnosis that an expert made.

Survivors described being diagnosed with a myriad of conditions that potentially could have led to being prescribed pharmaceutical treatments such as anti-depressants. Pertinently, a mis-diagnosis and unnecessary treatment, is serious and harmful, and can have life-altering consequences for a person. Survivors were also diagnosed conditions which required them to have talking therapies, such as CBT. Although talking therapies are available on the NHS, resources are limited, waiting lists are long and survivors may find that the therapy recommended by the expert isn't deemed suitable by the NHS clinician. Survivors' accounts highlighted the pressure that they

⁴⁶ Health and Care Professionals Council, *Standards of conduct and ethics* (Health and Care Professionals Council 2016)

felt to access the recommended therapy as quickly as possible even if this resulted in borrowing money to fund private therapy. Furthermore, the study found that the types of conditions diagnosed by experts, where highly stigmatising and could cause a survivor further psychological harm if they had been misdiagnosed but continued with a recommended treatment. There is also a high probability that a diagnosis would be recorded in GP records, particularly when a survivor seeks treatment on the NHS. Mental health conditions are taken into consideration in a multitude of scenarios, for example insurance companies, and can have a life-long impact on survivors' lives.

Survivors' accounts revealed how little protection had been afforded them throughout the process. Survivors described how they had been made aware that the contents of the expert assessment would be shared with the other party, i.e. the perpetrator, too. However, problematically, this appeared to extend further to any therapy that a survivor felt obligated to undertake, as in Alice's case, and raises serious concerns about the family court's wide ranging power, or at least its perception of power. It also calls into question the effectiveness of any 'strongly recommended' therapy that a survivor undertakes, as it is reasonable to assume that survivors might feel the need to self-censor their responses during any therapeutic intervention if there is a risk that information will be shared within court proceedings.

Survivors' accounts highlighted how difficult it is to challenge an expert report, even when a therapist who is unrelated to the family court proceedings has recognised domestic abuse and trauma. Survivors revealed that contesting an expert report could have left them more vulnerable to the punitive actions taken by the court and/or by professionals such as Cafcass. By not accepting the findings of the court and/or the expert report, survivors were seen as hostile and incapable of change. It appeared that because of the risk of this happening, legal representatives would often recommend that the report was left unchallenged. Instead, survivors were expected to show a willingness to conform to the expert recommendations, even if that resulted in further economic abuse and personal debt incurred by survivors, in order to pay for private therapy.

Survivors' accounts also emphasised the difficulties that they encountered when they were expected to cross-examine an expert as a litigant in person. The impact of trying to cross-examine an expert who is suggesting a transfer of residence cannot be

underestimated, particularly when it is in front of the perpetrator. Survivors' experiences also raise concerns about the power imbalance created when a survivor has to cross-examine an expert and whether this is ever ethical.

Overall, expert reports carried great weight in the court, and sometimes this was merely by virtue of the expert's eminence within family court circles. Survivors felt that they had very little agency after the assessment had been carried out and the report had been written. Complaints regarding the expert were rare, but in these incidences, had the potential to cause further harm and increase the risks to mothers and children.

Survivors described how expert reports could be weaponised by perpetrators as mechanism for silencing any further abuse and/or coercive control of child/ren. Two survivors described how the legal representatives acting for the father had ensured that the expert reports were circulated to local police stations in order to act as a deterrent for further allegations of domestic abuse being made by a survivor.

Another silencing mechanism used by perpetrators was the threat of child removal. Strikingly, 21 survivors' lived experiences detailed how the family courts threatened to transfer the residence of their child/ren to the perpetrator, which was mostly used as a compliance mechanism, and seven survivors explained that their child/ren had been removed from their care. The threat of child removal can be seen as a mechanism deployed by the family court to modify the behaviour of mothers and was also recommended by Gardner in his treatment of parental alienation.⁴⁷ Survivors' accounts starkly revealed, how the threat of removal acts as an effective behaviour modifying mechanism, as survivors would have to capitulate to the court's demands, such as 'coerced' therapy, to ensure the safety of their child/ren, and reduce the risk of removal.

Survivors who had endured the removal of their child/ren described the catastrophic impact that this decision had had on their lives and the damage it had caused their child/ren. Their experiences also highlighted the lack of support and the challenges they encountered if and when their children returned.

⁴⁷ See chapter 1.10.1

The proceeding, and final chapter of this thesis will draw together the findings of this study with the existing underpinning research, before making recommendations for change and further research.

Chapter 9

Conclusions and Recommendations

9.1 Introduction

The final chapter of this thesis draws upon the findings set out in the preceding chapters to make final conclusions and recommendations.

9.2 Survivors' Experiences as Credible Evidence

Over the course of 8 chapters, this thesis has focused on the experiences of female survivors of domestic abuse when an expert has been instructed in private law child arrangements proceedings. A review of the literature revealed that survivor experiences of the family court have largely been ignored by the systems which are integral to their journey. However, there had been increasing pressure for a review of how the family courts understand, recognise, and manage allegations of domestic abuse from survivors, domestic abuse organisations and academics, and this propelled the government to open an inquiry into risks of harm and the family court with the Ministry of Justice reporting its findings and recommendations in June 2020. Several pieces of research which have conveyed survivor experiences, including the Harm Panel Report, have raised concerns about the way that experts are instructed in private law cases when allegations of domestic abuse have been made.⁶⁷¹ These concerns related to abusers being able to manipulate experts, expert evidence not always being examined or challenged and the court allowing expert testimony regarding parental alienation but not domestic abuse.⁶⁷² However, little attention has been given to these concerns so far, except for the Family Court Working Group on medical experts, which failed to review the relationship between the court and

⁶⁷¹ Ravi Thiara and Christine Harrison, *Safe not sorry, Supporting the campaign for safer child contact and domestic violence. Key Issues raised by research on child contact and domestic violence*, (Women's Aid 2016); Jenny Birchall and Shazia Choudhry, "What about my right not to be abused?": *Domestic abuse, human rights and the family courts* (Women's Aid 2018); Rosemary Hunter, Mandy Burton and Liz Trinder, 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' (Ministry of Justice 2020); Sharon Segal, The President of the Family Division Working Group on Medical Experts in the Family Courts Final Report (Judiciary UK 2020) <https://www.judiciary.uk/wp-content/uploads/2020/11/Working-Group-on-Medical-Experts-Final-Report-v.7.pdf> [Last accessed 01/06/2022]

⁶⁷² Hunter and others (n 1) 60 and 63

psychologists/psychiatrists; nor has it yet involved the participation of a survivor/court service user within the group.

While concerns exist regarding the expert process and the increase in the reliance on psychological/psychiatric experts, problematically there is very little data to understand the extent of expert instruction, as well as the outcome of cases where domestic abuse is a factor, and an expert is instructed. Consequently, the research question was derived from identifying a gap in knowledge and the need to understand survivors' experiences, who make up the main group of people raising concerns about the use of experts within private law child arrangements proceedings.

Overall, the findings of the study correlated with what is known already about the way in which domestic abuse is recognised, understood, and responded to by the family court, and the negative and, frequently, harmful impacts on survivors and children.⁶⁷³ Furthermore, survivors' accounts have highlighted how the family court was able to create and perpetuate a narrative of no abuse by using other systems, such as social work and the police, to uphold and reinforce its authority.⁶⁷⁴ Survivors' accounts have provided, for the first time, insights into how the expert process, which is in theory is guided by the Family Procedure Rules 2010, is in practice is coercive and frightening, and negatively impacts survivors and children. Survivors' lived experiences have also revealed how inconsistent and chaotic the process can be, and how an expert's report can have repercussions on how other systems will behave towards a survivor after proceedings have concluded. Lastly, survivors' accounts have shown how transfers of residence can be used as a mechanism to coerce survivors into conforming to the contact at all costs ethos. This can be seen in survivors describing how they recognised the threat of a transfer of residence from the outset of proceedings, which in some cases resulted in the later removal of child/ren from their mothers.

Survivors have clearly outlined how they felt that their lived experiences of domestic abuse have generally been discredited in the family court. Crucially, survivors' lived experiences were not considered to be credible (or credible evidence) and so, with the assistance of an expert, their narratives were reconstructed into more palatable

⁶⁷³ See Chapter 2

⁶⁷⁴ Vanessa Munro, *Law and Politics at the Perimeter. Re-Evaluating Key Debates in Feminist Theory* (Hart Publishing 2007)

versions, which mostly dismissed, minimised, or erased the domestic abuse. However, the findings of this research contradicted this perspective by showing how survivors' lived experiences are important evidence that has exposed harmful and unprofessional conduct, and how experts are instructed to uphold and reinforce the power of the family court and perpetrators.

9.3 Best Interests of the Child v's best Interests of the Perpetrator

Overall, survivor accounts highlighted the low prevalence of FFHs, which correlates with current research⁶⁷⁵ and primarily because of this, how an expert could be instructed at any stage of child arrangements proceedings. This appeared to have a bearing on what evidence was eventually available to the expert, whether there had been findings of domestic abuse, and if (or how) domestic abuse was presented to the expert before assessments were carried out (i.e. in the expert's court bundle or the letter of instruction). Survivors' experiences also suggested that there was a propensity for professionals, such as Cafcass, to suggest or introduce the idea that expert instruction was necessary at the very early stages of proceedings. Many survivors explained that the Cafcass initial safeguarding assessment had concluded that there were no safeguarding concerns, and this propelled professionals to find other reasons for child contact issues and the need for their continuing input.

Although the study design did not allow for access to court documents, a number of survivors described how Cafcass became the gatekeeper and curator of the letter of instruction which often minimised and/or removed the domestic abuse.⁶⁷⁶ Undoubtedly, this contributed to the reconstructed narrative of no abuse shaping, or even at times directly influencing, the early stages of the expert process. One of the effects of abuse being minimised or dismissed at the very beginning of proceedings is that it can change the reasons why an expert is deemed necessary. Survivors' accounts have shown how when a Cafcass safeguarding inquiry indicates that there are no safeguarding concerns, the focus of expert instruction is shifted from the best interest of the child to the mother's behaviour. This was caused by a combination of factors including Cafcass having no safeguarding concerns, inconsistency in FFHs

⁶⁷⁵ Rosemary Hunter and Adrienne Barnett, *Fact-Finding Hearings and the Implementation of the Presidents Practice Direction: Residence and Contact Orders: Domestic Violence and Harm* (Family Justice Council, 2013); Birchall and others (n 1) 24; Hunter (n 1)

⁶⁷⁶ See Chapter 5.7

being held and the difficulties in evidence being deemed credible. As the narrative of no abuse became cemented within proceedings, courts and professionals were unable to see any reasonable explanation for issues related to child contact other than the mother's behaviour. Consequently, her behaviour was constructed as contrary to the best interests of the child. This shift in focus was evidenced by the number of survivors who were the sole focus of the expert assessment, compared with the number of assessments carried out on both parents and children, as well as the low number of fathers who were assessed.

Many survivors revealed how quickly the best interests of the child became obscured by the focus on a mother's behaviour,⁶⁷⁷ and how this change in focus also served the family court and perpetrator by reinforcing the contact at all costs ethos as well as a dominant narrative of no abuse. This was evidenced by survivors describing how experts would not meet with children directly⁶⁷⁸ and consequently based their report on second-hand information. The study found that children's lived experiences were often not directly documented and therefore were filtered out by professionals. Consequently, this had the potential to filter out the domestic abuse and led to professionals suggesting that children's views were manipulated by mothers.⁶⁷⁹ Survivors' accounts also suggested that there was very little judicial enquiry or

⁶⁷⁷ Adrienne Barnett, "'Like Gold Dust These Day's': Domestic Violence Fact-Finding Hearings in Child Contact Cases' (2015) 23(10) *Feminist Legal Studies* 47-78; Adrienne Barnett, 'Greater than the mere sum of its parts': coercive control and the question of proof' (2017) 29 *Child and Family Law Quarterly* 79-400; Maddy Coy, Katherine Perks, Emma Scott and Ruth Tweeddale, *Picking up the pieces: domestic abuse and child contact* (Rights of Women and CWASU 2012); Christine Harrison, 'Implacably Hostile or Appropriately Protective? Women Managing Child Contact in the Context of Domestic Violence' (2008) 14(4) *Violence Against Women* 381-405 ; Jo Harwood, *Child Arrangements Orders (contact) and Domestic Abuse - an Exploration of the Law and Practice* (DPhil Thesis, University of Warwick 2019); Hunter and others (n 5); Ravi K. Thiara and Christine Harrison, *Safe not sorry. Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence* (University of Warwick Centre for the Study of Safety and Wellbeing 2016)

⁶⁷⁸ Or met with them when a child felt compromised to speak openly because they were in front of a perpetrator.

⁶⁷⁹ Gillian MacDonald 'Hearing children's voices? Including children's perspectives on their experiences of domestic violence in welfare reports prepared for the English courts in private family law proceedings' (2017) 65 *Child Abuse and Neglect* 1-13; Stephanie Holt, 'A voice or a choice? Children's views on participating in decisions about post-separation contact with domestically abusive fathers' (2018) 40(4) *Journal of Social Welfare and Family Law* 459-476; Liz Trinder, Joan Hunt, Alison Macleod, Julia Pearce and Hilary Woodward, 'Enforcing contact orders: problem-solving or punishment?' (Exeter Law School 2013); Maebh Harding and Annika Newnham, *How do County Courts Share the Care of children Between Parents? Full Report* (University of Warwick 2015); Hunter and others (n 1); Adrienne Barnett, *Domestic abuse and private law cases. A literature review* (Ministry of Justice 2020)

discussion regarding decisions related to the expert instruction and it appeared that, in some cases, professionals/judges indiscriminately relied on the expert's reputation.

9.4 Illusion is Power

One major theme threaded throughout most of the survivors' lived experiences was in relation to perception, and how the expectations of the court, as well as poor professional practice, obfuscated what was really happening to survivors and their children. The court has expectations of the expert instruction process, set out in the Family Procedure Rules, and there is currently no evidence from the Family Justice System to suggest that this process is not effective.⁶⁸⁰

Case law provides evidence that experts' reports have, on occasions, been challenged in the family court but the study is unable to determine how frequently this occurs because the majority of cases are unreported but organisations continue to raise concerns about the role of the expert.⁶⁸¹ However, survivors' lived experiences indicated that an expert report was rarely challenged, either because this was too difficult to do as a litigant in person, or their legal counsel had advised against contesting the report, and/or complaining about the experts professional conduct. Arguably, it is precisely because professionals do not speak up, and survivors are silenced, that the judiciary has very few other reasons to be alerted to a failing process. Overall, survivors' accounts have revealed that there is an existing and persistent perception that the expert process is working effectively and that within that process survivors still have agency and autonomy. Furthermore, this illusion has never been challenged in a way that has created lasting, positive changes for survivors, which means that the power of the family court is reinforced, as it has no new knowledge which tries to resist its authority.⁶⁸² The illusion propagated by the family court is that parties are free to choose an expert on whom they must both agree and that, importantly, a survivor can refuse to be assessed. However, survivors' lived experiences have shown how in practice they were unable to choose an expert, felt compelled to agree to an expert put forward by Cafcass and/or the other party and felt coerced into being assessed. Despite the impression that they had agency and

⁶⁸⁰ Although Jill Ireland's report was commissioned because of concerns regarding experts, this was largely discredited- and was subsequently endorsed. It was 'discredited' on spurious reasons.

⁶⁸¹ Birchall and others (n 1); Hunter and others (n 1)

⁶⁸² Munro (n 4) 104

autonomy, they were advised that they could not challenge the process because this could be viewed as non-compliant and hostile behaviour. Survivors' accounts clearly identify that there is a difference between what the court expects to have happened because of procedural rules and what can happen.

Survivors' lived experiences suggest that legal professionals can often perpetuate harmful beliefs or dangerous ideology, about the role and the impact of the expert in their proceedings. Survivors have been told that the expert assessment is harmless, that it is always better to defer to the judge's wishes and they have nothing to worry about if there is nothing wrong with them.⁶⁸³ Subsequently, these messages were reinforced by the court which also viewed the expert process as safe and, for a number of reasons, failed to recognise the potentially life changing impact it could have on a survivor and her child/ren.

Survivors' accounts indicated that there is an impression that mothers have the autonomy to challenge an expert instruction if they disagreed with it. However, survivor's felt that their agency was undermined by the court's proliferation of a narrative of no abuse and/or contact at all costs approach.⁶⁸⁴ This exemplifies Foucault's theory of power/knowledge because it clearly exposes a mechanism whereby a system is using coercive control to maintain its own power and also unequivocally mirrors the abuse that survivors were trying to escape from.

Survivors' lived experiences have revealed how complex this is for survivors because frequently, whatever choice they make will result in a negative outcome for them but positive reinforcement for the family court, and therefore the perpetrator.

Survivors' accounts have highlighted how they were conditioned to believe that the court would protect them and act in the best interests of the child/ren. Survivors doubted this frequently, had the court's message reinforced by their legal team, just as abusers use others such as family members, to implicitly reinforce their message. As a result, survivors were left in a powerless and submissive position, hoping that

⁶⁸³ As previously discussed, survivors have been told to not discuss domestic abuse as the court will not like it, see Charlotte Bishop and Vanessa Bettison, 'Evidencing domestic violence*', including behaviour that falls under the new offence of 'controlling or coercive behaviour' (2018) 22(1) *The Interpersonal Journal of Evidence & Proof* 3-2

⁶⁸⁴ Munro (n 4) 104

the expert would ‘independently’ recognise the abuse. As mentioned earlier, there is a high probability that even judges who had received domestic abuse training would have failed to recognise what was happening to a survivor in the background. This is because of the mechanisms in place to silence dissenting voices and reduce the likelihood of a successful complaint to a professional body.

Foucault’s theoretical framework of power/knowledge describes how resistance derived from insider knowledge has a higher probability of successfully becoming the dominant discourse because it can draw open the weaker networks of capillary power. The court’s power is maintained in three separate but complementary ways; resisting listening to and/or believing survivors’ voices, continuing to promulgate a narrative of no abuse when allegations of abuse are made and lastly, reinforcing the message that the court is a safe place for survivors to seek protection from harm. The survivors who participated in this study rejected these dominant discourses and, despite any impact on their own lives, believed that there was power in collective voices resisting the dominant discourses that oppress and silence.

9.5 Weaponising a Survivor’s Response to Trauma

Throughout this study, survivors described how the expert process, and the family court process in general, forced their lived experiences to be challenged, often disbelieved, and regularly altered beyond recognition.⁶⁸⁵ As previously discussed, survivors’ accounts suggested that the letter of instruction was another way of reinforcing the message that there was no abuse and shifting the focus from the perpetrator’s behaviour to the mother. Despite this, survivors still hoped that the assessment would be an opportunity to be believed and to be heard properly for the first time, by an expert. What many survivors had not realised was that they were being positioned into another coercive process, which limited their autonomy and, as Maya described, professionally gaslighted them. As the domestic abuse was minimised or erased from the court’s focus, so were the reasons for a survivor’s behaviour. Without

⁶⁸⁵ Hunter and others (1); Barnett (n 10); All-Party Parliamentary Group (APPG) on Domestic Violence Parliamentary Briefing), *Domestic Abuse, Child Contact and the Family Courts*, (APPG Women’s Aid 2016); Birchall and others (n 1); Maddy Coy, Katherine Perks, Emma Scott and Ruth Tweedale, *Picking up the pieces: domestic abuse and child contact* (Rights of Women and CWASU 2012); Ravi K Thiara and Aisha K Gill, *Domestic Violence, Child contact and Post-Separation Violence. Issues for South Asian and African-Caribbean Women and Children. A Report of Findings* (NSPCC 2012); Lorraine Radford and Marianne Hester, *Mothering through Domestic Violence* (Jessica Kingsley Publishers 2006); Thiara and others (n 8)

domestic abuse remaining a factor, the family court sought to find other reasons for a survivor's normal response to abuse, trauma and living in a perpetual fight/flight mode, and so recalibrated this 'normal' behaviour as mental health disorders/illness.

The family court system and medicine share the same top-down approach which aims to remind service users that they are the subject of the expert's observation and the expert will now be in charge of their lived experience.⁶⁸⁶ Survivors' accounts described how this paternalistic approach helped the expert to reconstruct their lived experience of abuse, as evidenced by survivors being told that they were not allowed to discuss the abuse because the court had found that it did not happen. Despite this regulatory message, some survivors attempted to continue to share their lived experiences, but this often resulted in more harm, leaving them re-traumatised and without support or aftercare.

Survivors' accounts exposed how the family court system, like all systems, is vulnerable to manipulation and how the increasing reliance on psychological/psychiatric experts has been reinforced by perpetrators being able to weaponise a survivor's mental health. This was demonstrated by survivors explaining how the perpetrator (and those in support of him) seemed to be able to control the narrative by initially suggesting or supporting a professional such as Cafcass to do so, choosing the expert and generally agreeing with the expert report. Survivors' accounts described how they felt that perpetrators carefully packaged an image to the court that they were the better parent by supporting and funding an expert instruction. This continued to shift the court's focus from his abusive behaviour and further increased the court's scrutiny of a survivor, which further limited the survivor's sense of autonomy.

The sheer scale of the domestic abuse and child abuse disclosed by survivors in this study is shocking on every level, not least of all because of the way that it was dismissed and further enabled by the systems that, on the face of it, also support prevention and offer protection from harm. Many of the women painfully recounted persistent post-separation abuse in the form of physical and economic abuse as well

⁶⁸⁶ Ruth Stearns Mandel and David Mandel, *Partnered with a Survivor Podcast*, 'Perpetrators' Weaponization of Mental Health and Addiction Against Survivors' (Season 3 Episode 2) 17 January 2022

as coercive control which extended to controlling them with the threat of the transfer of residence of their child/ren. Survivors were also continually placed in highly vulnerable positions whereby they were forced to continually re-tell their lived experiences (the most intimate parts of their lives) to an infinite number of professionals/strangers. Survivors described this happening to them against a backdrop of managing childcare, trying to remain employed and/or solvent, and the colossal physical and psychological demands of the family court process.⁶⁸⁷

Survivors explained how they suffered anxiety, depression, PTSD and at times suicidal ideation caused by domestic abuse when they were still in a relationship with their ex-partner, all of which could be exacerbated by post-separation abuse, concerns for their child/ren's safety and the family court proceedings.⁶⁸⁸ However, these appropriate responses to abuse and re-trauma were seen as 'disordered' behaviour by the family court, professionals, and subsequent experts, because the reason for the behaviour had been gradually erased from a survivor's lived experience (almost from the moment an application had been lodged in the family court). As explained in the previous chapter, this resulted in normal trauma responses being pathologized by the expert, documented in a report, and subsequently upheld by the court. For many survivors in this study, the court's acceptance of the expert report is also an acceptance of certain psychological theories that were introduced over a century ago and continue to be used with very little understanding of their aetiology or impact.⁶⁸⁹ This was evidenced by survivors explaining how they were expected to attend therapy aimed at changing their behaviour, following a (mis)diagnosis/label provided by the expert. Survivors' lived experiences have also shown how a (mis)diagnosis had an impact on the other systems that they were expected to continue to engage with. Professionals such as social workers were monitoring a survivor's capacity to remain compliant with the expert's recommendations, with the tacit understanding that if she was not, this could impact future contact arrangements with her child/ren. Undoubtedly, survivors' lived experiences have shown that a (mis)diagnosis can influence the way in which they were able to live once the proceedings have concluded as the expert's diagnosis ultimately isolated them from seeking further help for

⁶⁸⁷ Birchall and others (n 1); Hunter and others (n 1)

⁶⁸⁸ Birchall and others (n 1); Hunter and others (n 1)

⁶⁸⁹ For more on this subject see, Jessica Taylor, *Sexy but Psycho. How the patriarchy Uses Women's Trauma Against Them* (Constable 2022)

domestic abuse, because they were not expected to challenge the diagnosis outside of the courtroom. This meant that the survivor carried that (mis)diagnosis with her for the rest of her life.

Lastly, it is essential to consider the message that is being conveyed by the family court when experts are deemed necessary and instructed to conduct the assessments of survivors. Survivors' accounts have shown how the family court process has reinforced women's mental health being seen as the cause of contact issues and their normal responses to abuse and trauma have been deemed abnormal and disordered. Some survivors (who had lost residence of their children) explained how contact arrangements between a mother and their child/ren could be contingent on their capacity to change their behaviour. The message from the court is clear, that mental illness and normal responses to trauma are impediments to mothering. Furthermore, it suggests that mental 'illness' eclipses findings (if any) of domestic abuse and as such constitutes a reason for the court to consider reducing or ceasing the contact between a survivor and her child/ren until she is able to provide acceptable evidence to the court that she has changed.⁶⁹⁰

9.6 Consent

Survivors' accounts have revealed, for the first time, how the family court's illusion of autonomy created the additional mis-impression that a survivor had given their (informed) consent. It also appeared that a survivor had been afforded the opportunity to challenge elements of the process that they may have felt were unethical.⁶⁹¹ One of the most crucial themes that emerged from survivors' lived experiences was the issue of consent, and how the issue of consent appeared to be absent within judicial thinking, and generally within the family court expert process. This can be viewed as a direct juxtaposition to the clinical understanding of consent (i.e. clinical practitioners' use of consent outside of the family court) and has the potential to significantly challenge the validity and reliability of expert assessments and reports. At the very

⁶⁹⁰ Adrienne Barnett also highlighted in 2014, how once domestic abuse disappears the problem of contact is laid at the door of the mother see, Adrienne Barnett, *Contact at all costs? Domestic Violence, Child Contact and the Practices of the Family Courts and Professionals* (DPhil thesis, Brunel University, London 2014) 323; Adrienne Barnett, 'Contact at all cost? Domestic violence and children's welfare' (2014) 26 *Child and Family Law Quarterly* 439-462

⁶⁹¹ The term informed has been placed in brackets because very often survivors lived experiences have shown that consent is expected to be provided without a survivor receiving accurate and complete information.

core of the consent issue, is the fact that consent is being coerced from a vulnerable and possibly traumatised woman, who may, or may not, be threatened with the removal of her child/ren if she does not concede to whatever the court and other court-involved professionals, demand. Outside of the family court, any consent that has been coerced rather than obtained through a process of information giving, is invalid and could be challenged in law, for example in the Court of Protection.⁶⁹² Despite this, survivors' accounts have revealed how the family court's power can coerce survivors into participating in the expert process and therefore potentially invalidate any expert assessment and subsequent report, which a final order may have been based upon. It is important to acknowledge that while some experts may find it problematic to have to accept the court's findings of domestic abuse (or lack thereof),⁶⁹³ many may not have been so analytical and unquestioningly rely on the court's ability to find truth and carry out justice. It could be argued that this is a lack of professional interrogation and compromises an expert's ability to independently assess survivors. Survivors' lived experiences have raised concerns about experts not consistently obtaining informed consent and the lack of professional and judicial oversight of this important part of the process.

9.7 Professional Oversight and Accountability

Survivors' lived experiences have highlighted that there is a lack of oversight in the family courts for survivors, particularly as the narrative of no abuse begins to dominate the process and become reinforced by the court's capillary networks of power. This was evident in *Re H N*, as the cases revealed how domestic abuse, and therefore the need for special measures, was dismissed and ignored, resulting in there being no barriers to child contact.⁶⁹⁴ The appeal prompted discussions about survivor experiences in the family court and how domestic abuse can be better identified. This role would be independent of all parties including the court, and would provide oversight in cases where allegations of domestic abuse are made, to ensure the court

⁶⁹² This would only apply if the person lacked mental capacity.

⁶⁹³ See *Mr V in Adrienne Barnett* (n 21) 252

⁶⁹⁴ See Chapter 1.5; In *Re H-N*, it was found that HHJ Tolson (QC) had refused special measures despite allegations of domestic abuse, *Re H-N and Others (children) (domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448; Regarding survivor's not being believed also see *Hunter and others* (n 1); *Barnett* (n 10); *All Party Parliamentary Group* (n 16); *Birchall and others* (n 1); *Coy* (n 16); *Thiara and Gill* (n 16); *Radford and others* (n 16); *Thiara and others* (n 8)

follows PD12J and PD3AA, as well as raising any concerns about survivor safety. While this role, if successfully implemented, is a positive and welcome change, it does not tackle the seismic need for a cultural and political shift in how the family court system, and its allies, treat women in general, and more specifically survivors of domestic abuse.

Problematically, survivors' accounts have suggested that challenging expert reports or making formal complaints to a professional body can increase the likelihood of further harm to themselves and their children. Child arrangements proceedings are essentially exercises in problem-solving, which are made complicated by the complex nature of people's lives including, frequently, domestic abuse. The family court system can only be reinforced by its success rate and this, of course, is dependent on how success is defined, who is making that determination and if the problem is solved in a particular way.

Nevertheless, several survivors have explained how mental health diagnoses and/or treatment recommendations have been challenged by professionals, usually from the NHS, but there have been barriers preventing their, arguably more independent, opinion from being heard or accepted by the family court. This is also evident in the way in which the current system, maybe inadvertently, makes it more complicated to complain about a psychological/psychiatric clinician acting as an expert within family court proceedings. Professional bodies, such as the HCPC, may not fully understand that there is a lack of oversight when a clinician becomes a family court expert because both the family court and the professional body believe that the other one is providing oversight.

9.8 Conclusions

Ultimately, this study has called into question the role of psychological/psychiatric experts, and the family courts' reliance on a 'scientific' explanation for issues of child contact, when domestic abuse is a factor. Survivors' accounts have revealed how unreliable and potentially inaccurate expert assessments have been considered authoritative evidence in court, primarily because a culture has developed which has conflated theory into scientific certainty that often remains unchallenged. Survivors have themselves pointed out how theories, such as parental alienation or attachment theory, have been presented to the court as fact rather than a theory, concept or

approach. Despite the court identifying the need for psychological expertise, as in *Re L*, and the growing reliance on experts, so far there has been no research carried out to evaluate the outcomes of cases where experts have been instructed.⁶⁹⁵ However, survivors' accounts have revealed the harm that has been inflicted on themselves and their children, following the court's support for psychological expert assessments and subsequent recommended psychological interventions. Furthermore, survivors' lived experiences have highlighted how the authority of psychological/psychiatric expertise has often occluded children's voices being heard, or children being seen by the expert, despite the best interests of the child being at the core of child arrangements proceedings.

Although the family court has been reliant on expert intervention for many years, the perception is that there is an increasing reliance on experts. Survivors' accounts indicated that an expert's report is extremely powerful and, at times because of the expert's own eminence, the expert may act as the final arbiter, rather than a judge.⁶⁹⁶ Survivors' lived experiences suggested that an expert's position within private law proceedings has been strengthened. This was evidenced by perpetrators making successful counterclaims of parental alienation when allegations of domestic abuse were made, which were often upheld by the expert, as well as the possibility that a survivor may be (mis)diagnosed with a mental health disorder. Survivors' lived experiences suggested that there are problems with expert instruction and the family justice system needs to be more receptive to concerns that have already been raised and continue to be raised in this research.⁶⁹⁷ The study also found that survivors were not always clear about why an expert was deemed necessary by the court and described a process whereby an expert was suggested without a conscious unpacking of the rationale by professionals. Arguably, this set the trajectory for unnecessary expert instructions and/or inappropriate expert instructions. It is not suggested that experts are never necessary; rather, survivors' lived experiences suggest that it is the

⁶⁹⁵ *Re L (Contact: Domestic Violence); Re V (Contact: Domestic Violence); Re M (Contact: Domestic Violence); Re H (Contact Violence)* [2000] 2 FLR 334; This has not changed since Michael King, 'An Autopoietic approach to 'Parental Alienation Syndrome' (2000) 13(3) *The Journal of Forensic Psychiatry* 609-635

⁶⁹⁶ See Michael King, 'An Autopoietic approach to 'Parental Alienation Syndrome' (2000) *The Journal of Forensic Psychiatry* 13(3) 609-635

⁶⁹⁷ Thiara and Gill (n 16); Birchall and others (n 1); Hunter and others (n 1)

type of expert, the way in which they are chosen and instructed, and the subsequent assessment that needs further exploration by the Family Court.

The Harm Panel Report was hailed by survivors and domestic abuse professionals as a watershed moment as it was one of the first times that an inquiry into safety and the family court had been conducted. However, two years on from the report's publication, organisations such as Women's Aid continue to raise concerns and suggest that there has been very little change for survivors in the family court.⁶⁹⁸ Survivors' lived experiences have provided a unique insight into the process and specific concerns regarding the expert process. Crucially, they have also reflected the issues that have been consistently raised, particularly over the past decade by domestic abuse organisations⁶⁹⁹ and more recently by the Harm Panel Report. The literature that has underpinned this research consistently revealed how survivors persist in speaking up about their experiences of engaging and navigating powerful and contradictory systems whose responses can often resemble the abuse that they are trying to leave. The majority of survivors wanted to participate in this study because they hoped that this would contribute to change.. However, they acknowledged the challenges that women encountered when trying to have their voices heard as the court often views women's lives as less important than men's lives, with the gendered nature of 'insider' evidence being less likely to succeed in creating a shift in power.⁷⁰⁰ Within this context it is not difficult to understand why powerful systems, such as the family court, do not feel the impetus to make changes which will benefit, protect and provide justice for women and children. Furthermore, this speaks to a wider patriarchal legal system which can use its determinative power to accept or reject whether evidence is credible, such as disclosures of abuse within child arrangements proceedings.

⁶⁹⁸ Women's Aid, *'Two years, too long: Mapping action on the Harm Panel's findings'* (Women's Aid 2022)

⁶⁹⁹ For examples see, Hilary Saunders, *Twenty-nine Child Homicides: Lessons still to be learnt on domestic violence and child protection* (Women's Aid 2004) https://www.judiciary.uk/wp-content/uploads/JCO/Documents/FJC/Publications/twenty_nine_child_homicides.pdf [Last accessed 06/2022]; Thiara and others (n 8); Women's Aid, *Nineteen Child Homicides* (Women's Aid 2016); Birchall and others (n 1)

⁷⁰⁰ Foucault's theory of power/knowledge did not really extend to the power imbalances caused by gender or domestic abuse; See, Vanessa E Munro *Law and Politics at the Perimeter. Re-Evaluating Key Debates in Feminist Theory* (Hart Publishing 2007)

This study shows that the way that systems work in general, and more specifically, the family court/legal system, has clearly caused harm to survivors, and this is evidenced by survivors' lived experiences and the literature. Survivors strove to understand what had happened to them and were attempting to make some sense of the chaos that domestic abuse had inflicted upon their lives, the lives of their children and the people who loved and supported them. Survivors' lived experiences emphasised how difficult it is to make sense of a system when challenged by inconsistencies, contradictions and vast imbalances of power which all created chaos.⁷⁰¹ This research demonstrates that the issues survivors encountered are due to a systemic relationship between power/knowledge and aims to provide further insight and hope for survivor's. It is only by acknowledging that the current family court system, including the instruction of experts, is structured in a way that will continue to fail survivors, that lasting changes can be found.

9.9 Recommendations

The final part of this chapter sets out recommendations which have been derived from the completed research. However, it is crucial to acknowledge long lasting and sustainable change can only be achieved if there is a cultural change in the family justice system. Furthermore, recommendations for change should not be fragmented but be implemented within the wider framework of systemic change. This would prevent silo working and improve communication between professionals and the Family Court.

The recommendations are divided into sections. Part one outlines recommendations which require a complete overhaul of the current expert instruction process. Part two recommends changes that can be implemented within the current system.

9.9.1 Recommendations - Part one

9.9.2 Domestic Abuse Expert

⁷⁰¹ Marianne Hester, 'Three Planet Model: Towards an Understanding of Contradictions in Approaches to Women and Children's Safety in Contexts of Domestic Violence' (2011) 41(5) *British Journal of Social Work* 873-853

In 2022, the Family Court launched the Pathfinder pilot which set out to improve the family court's response to domestic abuse.⁷⁰² The Pathway pilot is trialling the use of an investigative approach in North Wales and Dorset which will assist the judge in reviewing gathered information before a hearing begins, may include domestic abuse risk assessments and crucially will be an inquisitorial, rather than an adversarial approach.⁷⁰³ At the time of writing (May 2022) the pilot is still in progress and so there is little information available about its structure, effectiveness and whether it can be rolled out in England and Wales. However, it is important to recognise that this is underway because a fundamental recommendation of this research is the design and implementation of a Domestic Abuse Expert ("DAE").

A DAE's practice would be underpinned by trauma-informed practice. This idea would follow in the examples of Australian models of trauma-informed practice and integrated services models.⁷⁰⁴ Ideally, a DAE should be funded by legal aid and would have an overriding duty to the court to provide independent evidence. The study recognises that given the current economic climate and the restrictions introduced by the Legal Aid Sentencing, Punishment of Offenders Act⁷⁰⁵ this may prove to be challenging. However, it is important to be mindful of the current estimated costs that domestic abuse has on the economy. It is envisaged that a DAE would also help to have a wider impact on parents and in particular survivors, who need to access government-funded resources such as mental health services, the NHS and Children's Services, due to factors including re-trauma through family court, exacerbation of chronic illness and post-separation abuse.

9.9.3 DAE Key Points

A DAE would be a trauma-informed practitioner who would screen for domestic abuse, as well as carry out risk and needs assessments.

A DAE should have access to all available court documentation including parallel or previous criminal proceedings, police records, civil court orders such as non-

⁷⁰² Gov.UK, <https://www.gov.uk/government/news/pioneering-approach-in-family-courts-to-support-domestic-abuse-victims-better> [Accessed 01/05/2022]

⁷⁰³ *ibid*

⁷⁰⁴ Rosemary Hunter and Shazia Choudhry, 'Conclusion: International best practices' (2018) (40)4 *Journal of Social Welfare and Family Law* 548-562

⁷⁰⁵ See Chapter 1.5

molestation orders and occupations orders, children's services records and any necessary medical records. It would be the DAE's responsibility to ensure that all evidence remains confidential, any communication is handled sensitively, and medical/therapeutic records are not shared with the court. Crucially, both parties and child/ren would be assessed, including screening for domestic abuse, before a report is submitted to both parties and to the court.

Parents and children would be provided with assessment information as well as appropriate signposting to other services. The safety of the assessments should be imperative and should be carried out in safe and neutral locations but would need careful consideration by a DAE.

A DAE would be expected to attend court to be cross examined if this was necessary. The study envisages that if an inquisitorial approach were to be adopted in the future that an element of fact-finding might still need to be retained, and a DAE may be expected to attend as an expert.

9.9.4 Expert Registers

With the possibility of the Pathfinder pilot being rolled out, or any future changes to the court's response to domestic abuse, it is hoped that the court's focus may shift to the perpetrator's behaviour. The implementation of a DAE should result in the court becoming less reliant on the instruction of experts and more willing to move towards parenting assessments and perpetrator programmes. That is not to say that experts may not be necessary in other cases involving children in the family court, or at times in child arrangements proceedings. However, it is suggested that there needs to be a critical unpacking of the reasons why an expert is deemed necessary in child arrangements proceedings, before an instruction is agreed. Crucially, any expert instruction should include assessments of all members of the separated family, which are trauma-informed and safe.

If DAEs were introduced into the family court, this should reduce the court's reliance on psychological experts. However, experts may still be needed for private law cases where domestic abuse is not a factor, as well as in public law cases. Furthermore, systemic change can be slow and so a register of experts would be beneficial to regulate experts who are being instructed in the current system.

A Family Court Expert Register (“FCER”) was suggested within the Expert Working Party Final Report which stated that ‘careful consideration needs to be given as to how the register is funded’.⁷⁰⁶ The FCER could charge a registration fee as well as charging for the required training, such as domestic abuse. There is a risk that these charges will disincentivise experts from joining the register, but the hope is that professionals will move towards using the register as the sole means of identifying and instructing an expert.

The FCER would expect its members to maintain their Continuing Professional Development (“CPD”) and expert reports should be peer-reviewed to maintain quality.

Survivors’ lived experiences raised concerns about the fees that experts can charge in private law cases where the parties are not funded by legal aid. This is a difficult issue to address particularly as an FCER and a standard pay rate for all experts, funded through Legal Aid changes, would deter professionals from becoming experts, despite a minority wishing to become an expert for altruistic reasons.⁷⁰⁷ Standardising expert fees may also disincentivise clinicians from wishing to become experts. A solution might be to have a tiered payment structure which reflects their qualifications and clinical experience.

9.10 Recommendations - Part two

As previously mentioned, there is currently no guarantee that changes will be made to the expert process in the family court, or how long any changes may take to implement. Therefore, it is important to include recommendations that can be implemented within the current system which address the concerns that arose from survivors’ lived experiences.

One of the most crucial recommendations is for there to be an increase in FFHs when disputed allegations of domestic abuse are raised. This is supported by the literature outlined in Chapter 1.

⁷⁰⁶ Sharon Segal, The President of the Family Division Working Group on Medical Experts in the Family Courts Final Report, (Judiciary UK 2020) <https://www.judiciary.uk/wp-content/uploads/2020/11/Working-Group-on-Medical-Experts-Final-Report-v.7.pdf>. [Last accessed 01/06/2022] 12

⁷⁰⁷ *ibid* 10

9.10.1 Safety

The safety of expert assessments should be paramount. Protocols should stipulate that both parents and children should be assessed, assessment locations should be safe and neutral, the safety of survivors and children should be paramount and therefore parents should not be assessed in the same location at the same time.

(Alleged) perpetrators should not be assessed before survivors and child/ren. Children should not be assessed at school and should have a chaperone (other than Cafcass) present, if appropriate.

In any event, the duration of an expert assessment should not exceed one day (maximum) as they are traumatic for survivors.

9.10.2 Confidentiality

Medical notes and psychological therapy notes should not be shared with other parties or submitted into the court bundle, without judicial permission. Any recordings of assessments (film/audio) should require prior permission from the service user, with an explanation of how the information will be used and confirmation that the making and sharing of recordings adhere to General Data Protection Regulation ("GDPR"). A transcript of the assessment must be available, for the benefit of any appeal cases or complaints.

9.10.3 Consent

Informed consent must be obtained from all service users, including Gillick-competent children. Service users should be given the opportunity to read information about the proposed assessments (including psychometric testing), the rationale for the assessments and how the results will be documented. Survivors should be given the opportunity to refuse assessments without prejudice. Signposting other services should be included.

9.10.4 Transparency

All communication between the expert and parents should be documented. Instructing experts who have had prior communication or involvement with either party should be discouraged.

9.10.5 Training

Family court judges and court professionals should move towards a trauma-informed model of practice. All experts instructed in the family court should undertake domestic abuse and trauma-informed practice training which should be kept up to date.

9.10.6 Expert Independence

The role of the expert should be clarified. This could be implemented by an amendment to PD25 3.1 which currently states:

An expert in family proceedings has an overriding duty to the court that takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

It is recommended that this be replaced with:

An expert in family proceedings has an overriding duty to report to the court their independent assessment of all parties and this takes precedence over any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

9.10.7 Complaints to a Professional Body and the Sharing of Documentation

Practice Direction 12G-Communication of Information 2.1 should be amended as follows:

A party may share relevant information which relates to family court proceedings and the professional conduct of an expert when submitting a complaint, with the appropriate organisation/professional body, without the risk of being held in contempt of court during private proceedings.

9.10.8 Parental Alienation

There is a need for the family courts to reject the use of the parental alienation belief system, as well as flooding treatments and reunification therapies.

9.10.9 Transfer of Residence

Child/ren should not be transferred to the care of a father who has previous convictions for domestic abuse, or where allegations of domestic abuse are a factor. Mental health support services should be put into place for survivors and child/ren before any transfer can occur. The study recognises that child removal may be deemed to be the correct decision in extremely rare cases, which can overlap into Public law proceedings, and in these circumstances it is important that the wider family network are there to support both the mother and child. Ensuring that mothers and children remain together, but are supported, is paramount.

Tables

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**THE COLLEGE OF BUSINESS, PSYCHOLOGY & SPORT RESEARCH ETHICS PANEL (CBPS
REP)**

CONFIRMATION OF APPROVAL

11 June 2020

Chapter 10 [REP CODE: CBPS19200028-R](#)

**WHAT ARE THE EXPERIENCES OF FEMALE SURVIVORS OF DOMESTIC VIOLENCE
AND/OR COERCIVE CONTROL WHEN AN EXPERT IS APPOINTED IN FAMILY COURT
PRIVATE LAW CHILD ARRANGEMENT PROCEEDINGS?**

Dear Rachael

Thank you for your revised application for full review ethical approval to the College of Business, Psychology and Sport Research Ethics Panel on the 10 June 2020.

Your application has been reviewed in accordance with the University of Worcester Ethics Policy and in compliance with the Standard Operating Procedures for full ethical review.

The outcome of the review is that the Panel is now happy to grant this project ethical approval to proceed.

Your research must be undertaken as set out in the approved application for the approval to be valid. You must review your answers to the checklist on an ongoing basis and resubmit for approval where you intend to deviate from the approved research. Any major deviation from the approved application will require a new application for approval.

As part of the University Ethics Policy, the University undertakes an audit of a random sample of approved research. You may be required to complete a questionnaire about your research.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dr. Gyoza Molnar', is positioned above the chapter heading.

Chapter 11 DR GYOZO MOLNAR

Chair – Full Review Panel, College of Business, Psychology and Sport Research Ethics

Panel Chair - College of Business, Psychology and Sport Research Ethics Panel

Ethics@worc.ac.uk

Student ID 2056582

Vimal Shah (Staff)
on behalf of
Cbass-ethics

To:

- Rachael Grey (Doctoral Researcher)

Fri 29/01/2021 15:43

Dear Rachael

Thank you for sending us a copy of your letter of approval from Worcester. This is in line with our practice of not requiring new ethical approval from Brunel for past work. However please note that any new data collection involving participants will require approval. Supporting information and the application link are available here: <https://intra.brunel.ac.uk/cbass/Research/CRO/Pages/Ethics.aspx>.

Best wishes

Vimal

Vimal Shah BEng MSc MA
Research Manager

T +44 (0) 1895 267636 E vimal.shah@brunel.ac.uk

I am currently working from home. You can contact me by email or Teams.

For general information about Brunel's response to the Coronavirus, advice or support, please visit our [portal](#)

Staff in the CBASS Research Office are carrying on with most operations off-campus and can be contacted by email:

Administration of research grants and awards	cbass-research-office@brunel.ac.uk
Research ethics	cbass-ethics@brunel.ac.uk
Research impact and REF Impact Cases	victoria.schuppert@brunel.ac.uk
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Rachael Grey CPBS19200028-R

PARTICIPANT INFORMATION SHEET AND PRIVACY NOTICE

TITLE OF PROJECT: What are the experiences of female survivors of domestic violence and/or coercive control when an expert is appointed in family court private law child arrangement proceedings?

11.1.1.1.1.1 Invitation

The University of Worcester engages in a wide range of research which seeks to provide greater understanding of the world around us, to contribute to improved human health and well-being and to provide answers to social, economic and environmental problems.

We would like to invite you to take part in one of our research projects. Before you decide whether to take part, it is important that you understand why the research is being done, what it will involve for you, what information we will ask from you, and what we will do with that information.

We will in the course of this project be collecting personal information. Under General Data Protection Regulation 2016, we are required to provide a justification (what is called a “legal basis”) in order to collect such information. The legal basis for this project is “**task carried out in the public interest**”.

You can find out more about our approach to dealing with your personal information at <https://www.worcester.ac.uk/informationassurance/visitor-privacy-notice.html>.

Please take time to read this document carefully. Feel free to ask the researcher any questions you may have and to talk to others about it if you wish. You will have at least 7 days to decide if you want to take part.

What is the purpose of the research?

This study aims to understand the experiences of female survivors who have instructed an expert during Family Court child private law child arrangement proceedings. An expert may be a psychologist, psychiatrist, independent social worker or anyone who has been asked to offer their professional opinion or evidence based upon their assessments.

Who is undertaking the research?

Ms Rachael Grey BSc (Hons), RN, MA
PhD Researcher
Lead Researcher
r.grey@worc.ac.uk

Who is funding the research?

The researcher is self-funded and works within the University of Worcester

Who has oversight of the research?

The research has been approved by the Research Ethics Panel for the College of Business, Psychology and Sport in line with the University's Research Ethics Policy. The University of Worcester acts as the "Data Controller" for personal data collected through its research projects & is subject to the General Data Protection Regulation 2016. We are registered with the Information Commissioner's Office and our Data Protection Officer is Helen Johnstone (infoassurance@worc.ac.uk). For more on our approach to Information Assurance and Security visit: <https://www.worcester.ac.uk/informationassurance/index.html>.

Why have I been invited to take part?

You have received this invitation because you responded to an advert calling for survivors of domestic violence and/or coercive control who have been involved in Family Court private law child arrangements proceedings where an expert has been instructed. I am hoping to recruit 25-30 female survivors, aged 18 years and over, for this study.

Do I have to take part?

No. It is up to you to decide whether or not you want to take part in this study. Please take your time to decide; we will wait for at least 7 days before asking for your decision. You can decide not to take part or to withdraw from the study until 7 days after the telephone interview (the data collection) has taken place. If you wish to have your data withdrawn please contact the researcher with your participant number and your data will then not be used. If you do decide to take part you will be asked to sign a consent form.

What will happen if I agree to take part?

If you agree to take part:

- You will be asked to provide an email address and a telephone number that is safe for you to use and to communicate with the researcher.
- You will be asked to arrange a suitable day and time for the telephone interview.
- The researcher will contact you on the agreed phone number.
- The interview will take between 45-60 mins.
- The interview will be recorded by the researcher and then transcribed. The transcription will be anonymised to protect you from being identified. The transcription will be sent to you so that you are able to check that you are happy that all identifying features have been removed. It should be returned to the researcher within 14 days.

What are the benefits for me in taking part?

There is currently no research to understand the experiences of female survivors who have had to instruct an expert within Family Court proceedings. This will be the first study of its kind and will hopefully become a platform for further, larger scale research focusing on domestic violence and/or coercive control and the way that this is understood and managed within the realms of the Family Courts and family law. By participating in this research project you will be contributing to a expanding body of knowledge about the Family Courts and domestic violence and/or coercive control.

Are there any risks for me if I take part?

- The research may cause you feel upset or distressed as you begin to retell your story to the researcher. The researcher is mindful of this and wishes to reassure you that you can stop the telephone interview at any time. The interview can be stopped altogether, or arrangements can be made to continue the interview on another suitable date.
- Below are support agencies that you may wish to access following on from our telephone interview:

Galop - National LGBT & Domestic Abuse Helpline

<https://helplines.org/helplines/galop>

0300 999 5428 or 0800 999 5428

Email: help@galop.org.uk

National Domestic Violence Helpline (Refuge) 24hrs

<https://www.nationaldahelpline.org.uk>

0808 2000 247

National Stalking Helpline (The Suzy Lamplugh Trust)

<https://www.suzylamplugh.org/contact-the-helpline>

0800 802 0300

Rape Crisis - <https://rapecrisis.org.uk>

Rights of Women - <https://rightsofwomen.org.uk>

National family Law advice line – 020 751 6577 (Tues – Thurs 1900 – 2100h / Friday 1200 – 1400h)

London family law advice line – 020 7608 1137 (Mon 1100 -1300h / Tues 1400 – 1600h / Wed & Thurs 1000 - 1200h, 1400h -1600h)

Samaritans – www.samaritans.org

24 hrs 116 123

Welsh speaking line (1900 – 2300hr daily) 0808 164 0123

Women's Aid - <https://www.womensaid.org.uk>

Live Chat 1000 – 1200h - <https://chat.womensaid.org.uk>

If you think that you are immediate danger please call: 999

11.1.1.1.1.2 *What will you do with my information?*

Your personal data / information will be treated confidentially at all times; that is, it will not be shared with anyone outside the research team or any third parties specified in the consent form unless it has been fully anonymised. The exception to this is where you tell us something that indicates that you or someone else is at risk of harm. In this instance, we may need to share this information with a relevant authority; however, we would inform you of this before doing so.

During the project, all data / information will be kept securely in line with the University's Policy for the Effective Management of Research Data and its [Information Security Policy](#).

We will process your personal information for a range of purposes associated with the project primary of which are:

- To use your information along with information gathered from other participants in the research project to seek new knowledge and understanding that can be derived from the information we have gathered.
- To summarise this information in written form for the purposes of dissemination (through research reports, a thesis, conference papers, journal articles or other publications). Any information disseminated / published will be at a summary level

and will be fully anonymised and there will be no way of identifying your individual personal information within the published results.

- To use the summary and conclusions arising from the research project for teaching and further research purposes. Any information used in this way will be at a summary level and will be fully anonymised. There will be no way of identifying your individual personal information from the summary information used in this way.

If you wish to receive a summary of the research findings or to be given access to any of the publications arising from the research, please contact the researcher.

How long will you keep my data for?

Your personal data will be retained until the project (including the dissemination period) has been completed. On completion of the project all data will be destroyed.

How can I find out what information you hold about me?

You have certain rights in respect of the personal information the University holds about you. For more information about Individual Rights under GDPR and how you exercise them please visit:
<https://www.worcester.ac.uk/informationassurance/requests-for-personal-data.html>.

What happens next?

Please keep this information sheet. If you do decide to take part, please either contact the researcher using the details below.

Thank you for taking the time to read this information.

If you decide you want to take part in our project, and we hope you do, or if you have any further questions then please contact: Ms Rachael Grey, University of Worcester, r.grey@worc.ac.uk

If you have any concerns about the project at this point or at any later date you may contact the researcher (contact as above) or you may contact the Supervisor : Dr Holly Taylor- Dunn, University of Worcester, Holly.Taylor@worc.ac.uk

If you would like to speak to an independent person who is not a member of the research team, please contact Research & Knowledge Exchange Facilitator (CBPS) at the University of Worcester, using the following details:

Research & Knowledge Exchange Facilitator (CBPS)
Secretary to Research Ethics Panel for College of Business, Psychology and Sport
University of Worcester
Henwick Grove
Worcester WR2 6AJ
ethics@worc.ac.uk

Rachael Grey CPBS19200028-R



INFORMED CONSENT FORM (NON-NHS RESEARCH)

Title of Project What are the experiences of female survivors of domestic violence and/or coercive control when an expert is appointed in family court private law child arrangement proceedings?

Participant identification number for this study:

Name of Researcher Ms Rachael Grey

I, the undersigned, confirm that (**please initial boxes as appropriate**):

1.	I have read and understood the information about the project, as provided in the Information Sheet dated _____ or it has been read to me.	
2.	I have been able to ask questions about the project and my participation and my questions have been answered to my satisfaction.	
3.	I understand that taking part in this study involves one telephone interview, between myself and the researcher. The telephone interview will be recorded by the researcher and transcribed as text. I understand that I am able to read the transcript to check that all identifying features	

	have been removed. I am aware that all recordings will be destroyed on completion of the project (including the dissemination stage).	
4.	I understand that taking part in the study may cause me to feel upset as potential risk(s).	
5.	I understand I can withdraw at any time before, and up to 7 days after the telephone interview, without giving reasons and that I will not be penalised for withdrawing nor will I be questioned on why I have withdrawn.	
6.	I understand that the information I provide will be used for: A PhD thesis and possible conferences, education and publications	
7.	I agree that my information can be quoted in research outputs	
8.	The procedures regarding confidentiality have been clearly explained (e.g. use of names, pseudonyms, anonymisation of data, etc.) to me.	
8.	I understand that personal information collected about me that can identify me, such as my name, or where I live, will not be shared beyond the study team.	
9.	I consent to the audio recording (to be used to transcribe the interview into a written format)	
10.	I understand that research data maybe uploaded to Open Access databases	
11.	I understand that other researchers will have access to this data only if they agree to preserve the confidentiality of the data and if they agree to the terms I have specified in this form.	
12.	I voluntarily agree to participate in the project.	
13.	I confirm that I am over 18 years old.	
14.	I have been given a Participant Information Sheet (PIS) that signposts me to various organisations should I need support following the telephone interview.	
15.	I know who to contact if I have any concerns about this research.	

Name of Participant

Signature

Date

Name of Researcher

Signature

Date

Grand tour question

Can you describe the process through which the expert (or experts) were instructed in your case, and how you think the expert influenced your experience of the Family Courts?

Just to clarify, an expert may be a psychologist, psychiatrist, independent social worker or anyone who has been asked to offer their professional opinion or evidence based upon their assessments.

Mini Grand Tour questions

Can you tell me about any interactions you had with the expert?

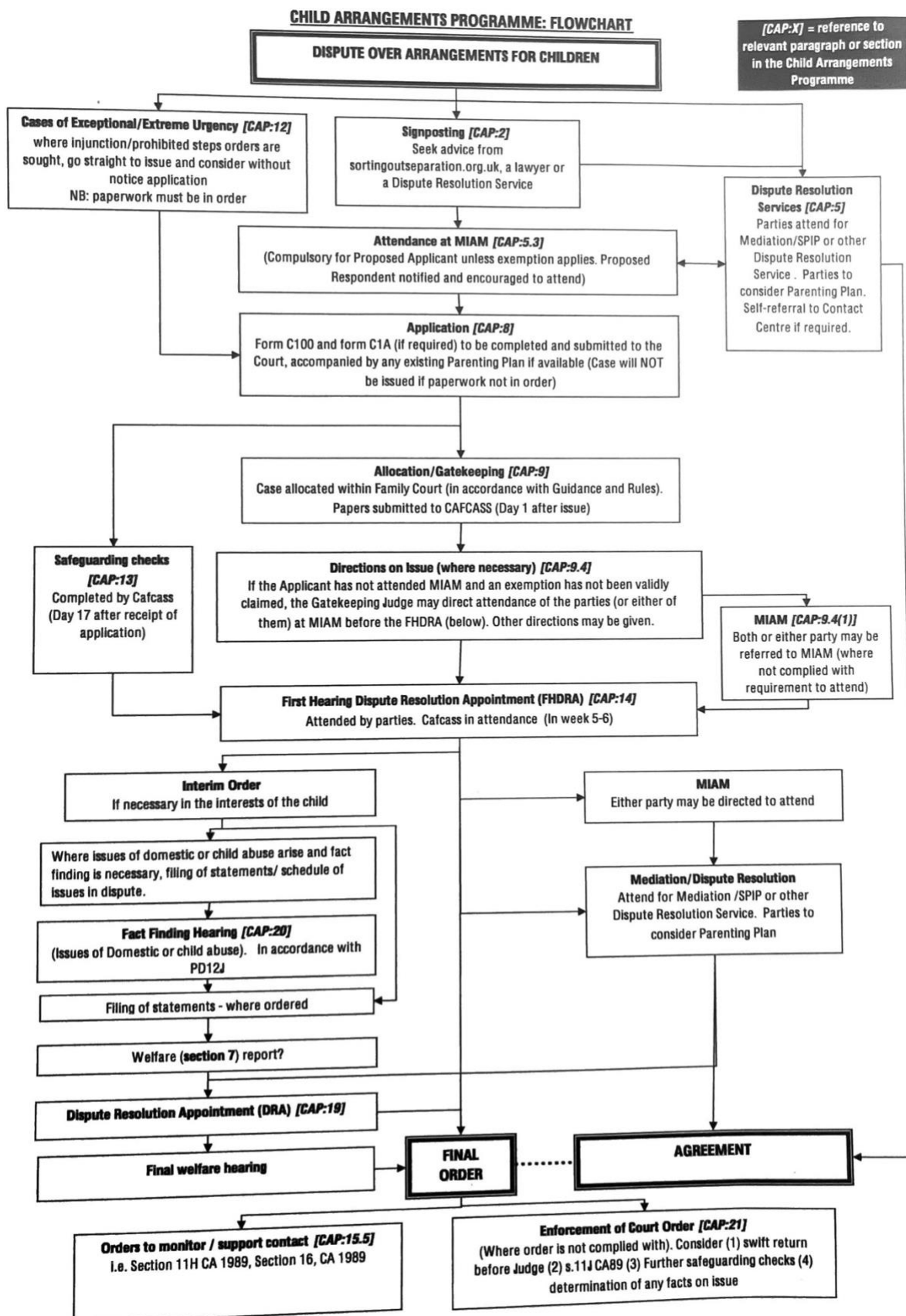
Can you tell me about your experiences of talking about domestic violence/coercive control within the Family Court proceedings?

Is there anything else that you feel that you would like to tell me about your experiences in the Family Court?

The prompts will only be used if the participant feels overwhelmed by trying to answer one question or asks me to be more specific. I wish to maintain a broad set of prompts in order to capture the participants real experience.

The mini tour questions will be determined by the content of the participants answer.

Child arrangements program flowchart



Child arrangements program flowchart on page 27¹

¹ Justice.gov, <https://www.justice.gov.uk/downloads/family-justice-reform/cap-flowchart.pdf> [Last accessed 03/2022]

C1A

Allegations of harm and domestic violence
(Supplemental information form)

This form cannot be used to make an application for a court order. It must be sent to the court **together with** the relevant application form.

[Click here to reset form](#)
[Click here to print form](#)

To be completed by the court

The Family Court sitting at _____

Date issued _____

Case number _____

Order(s) applied for _____

Please read the notes at the end of this form before completing it.

If completing this form by hand, please use **black ink** and **BLOCK CAPITAL LETTERS**.

You are completing this form because there are allegations that the child(ren) listed in this form may have suffered or be at risk of suffering domestic abuse, violence/abuse.

"Domestic violence/abuse" means any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members regardless of gender or sexuality.

The Children Act 1989 defines the following terms as:

"Harm" means ill treatment or damage to health and development, including, for example, damage suffered from seeing or hearing the ill treatment of another.

"Development" means physical, intellectual, emotional, social or behavioural development.

"Health" means physical or mental health.

"Ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical.

Section 1 - About you (the person completing this form)

Your full name

Gender ☐ Male ☐ Female

Are you the ☐ Applicant ☐ Respondent

Contact telephone number

Have you completed the form C8
(Confidential contact details)?
See Section 1 of the guidance notes.

☐ Yes ☐ No ☐ Not applicable

Name of child(ren)	Date of birth	Gender	Relationship to you
		☐ Male ☐ Female	
		☐ Male ☐ Female	
		☐ Male ☐ Female	

Do you have a solicitor acting for you? ☐ Yes ☐ No

If Yes, please give the following details

Your solicitor's details

Your solicitor's name

Name of firm

Address

Postcode

Telephone number

Fax number

DX number

Email address

Solicitor's Reference

Section 2 - Details of domestic violence/abuse

In this section outline the nature and frequency of the abuse experienced by you or the child(ren) and if this has led to any involvement with the police, social services, children's services, your doctor (GP) or any other outside agency(ies). (Provide the details in the table on the page 3).

Tick any of the following kinds of abuse that you or the child(ren) have experienced:

You

Child(ren)

Physical	Emotional	Psychological	Sexual	Financial
☐	☐	☐	☐	☐
☐	☐	☐	☐	☐

Have you had or do you currently have any of the following orders and are they current?

Non-molestation order
Occupation order
Forced marriage protection order
Restraining order
Other injunctive order
Undertaking in place of order

Date issued	Length of order	Current Yes/No	Name of court

If you have any copies of the above orders please attached them to this form

Give a short description of what happened and any relevant information so the court can decide what needs to be done.
There will be further opportunities to make a detailed statement

1.	When did the behaviour start and how long did it continue? (Does not need to be exact date and indicate if abuse is ongoing)	Nature of behaviour/what happened	If you have sought help, please say who from	Did they do anything? If Yes, what did they do?
2.				
3.				
4.				
5.				

Section 3 - Abduction

Do you believe that the children are at risk of being abducted?

- ☐ Yes If Yes, please complete this Section
☐ No If No, go to Section 4

Why do you believe the child(ren) may be abducted?

Have there been any previous threats, attempts to abduct or actual abduction of the child(ren)?

- ☐ Yes ☐ No

If Yes, please give details

Where is/are the child(ren) now?

Has the passport office been notified?

- ☐ Yes ☐ No

Do(es) the child(ren) have more than one passport?

- ☐ Yes ☐ No

Who is in possession of the child(ren)'s passport(s)?

- ☐ Mother ☐ Father
☐ Other (please give details below)

Were the police in this and/or another country or any organisation or agency including any private investigators involved in any previous incident of attempted abduction or abduction.

- ☐ Yes ☐ No
If Yes, please give details below

Section 4 - Other concerns about your child(ren)

Do you have any other concerns about your child(ren)'s safety and wellbeing?

☐ Yes

☐ No

If Yes, please give details

(Do not give full statement, please provide a summary of your concerns. You may be asked to provide a full statement later.)

Section 5 - Steps or orders required to protect the safety and wellbeing

What steps or orders do you want the court to take or make to protect the safety of the child(ren) and/or yourself?

Non-molestation order: The court may decide to make a non-molestation order under Part IV of the Family Law Act 1996. A non-molestation order requires that the person against whom the order has been made may not be violent or threaten violence, harass, pester or annoy the person who applied for the order, by any means, including social media (text messages, Facebook etc.).

The different types of orders that can be applied for under section 8 of the Children Act 1989 are as follows:

Prohibited Steps: this prevents a parent from taking a particular action as set out in the order without the permission of the court. This also applies to actions by any other person named in the order.

Specific issue: this decides specific questions e.g. about education, medical treatment or a foreign holiday or visit where parents or those with parental responsibility cannot agree.

Do you agree to the child(ren) spending **unsupervised** time with the other person in receipt of this form?

☐ Yes

☐ No

Do you agree to the child(ren) spending **supervised** time with the other person in receipt of this form?

☐ Yes

☐ No

Do you agree to the child having other forms of contact with the other person in receipt of this form? (by telephone, text, email, social media)

☐ Yes

☐ No

Section 6 - Statement of truth

*(I believe) [The applicant/respondent believes] that the facts stated in this application are true.

*delete as appropriate

*I am duly authorised by the applicant/respondent to sign this statement.

Print full name

Name of solicitors firm

Signed

Dated

(Applicant) (Respondent) ('s Solicitor)

Position or office held
(If signing on behalf of firm or company)

Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth.

Section 7 - Attending court

Please indicate whether you intend to request any special arrangements to be made for you to attend court. The court will make every effort to meet these needs, subject to facilities available. Please telephone the court in advance of the hearing to clarify what arrangements can be made.

- ☐ Separate waiting rooms
- ☐ Separate exits and entrances
- ☐ Screens
- ☐ Video links
- ☐ Separate toilets
- ☐ Advance viewing of the Court
- ☐ Interpreter
- ☐ a disability for which you require special assistance or special facilities
- ☐ a sign language signer
- ☐ Other _____

Checklist

Before sending your forms to the court, please complete this checklist to confirm that you have enclosed the following items:

- ☐ If you are the applicant - for a child arrangements or other section 8 order under the Children Act 1989 C100 or if you are the respondent – C7 (Response to an application under the Children Act 1989).
- ☐ If you are the applicant for a non-section 8 order under the Children Act 1989 - C1, or if you are the respondent - C7 (Response to an application under the Children Act 1989).
- ☐ C8 (Confidential contact details)
Note: Only attach this form if you want to withhold your contact details from the other party.
- ☐ Copies of any orders made by the court for your protection — see section 2.
- ☐ Any other written evidence which you are able to provide at this stage to support your allegations made in the table on page 3.

If you have any concerns about your safety and that of your children you can call the **National Domestic Violence Helpline** on **freephone 0808 2000 247** or you get more information from **www.nationaldomesticviolencehelpline.org.uk**

If you are a man and have concerns for your safety and that of your children you can call the **Men's Advice Line and Enquiry** on **freephone 0808 801 0327** or you get more information from **www.mensadviceline.org.uk**

Other organisations that may be able to provide advice for children or young people are:
Childline on freephone 0800 1111 and **NSPCC Child Protection Helpline on freephone 0808 800 5000**

Response to allegations of harm - To be completed by the person in receipt of this form

You do not have to complete this section unless you wish to comment on any of the information given in this form.

Please give brief comments on the information provided on the table on page 3 of this form. You will have an opportunity to make a more detailed statement later in the proceedings.

1.	
2.	
3.	
4.	
5.	

Any other comments you have on the information provided in this form

Statement of truth

*(I believe) [The applicant/respondent believes] that the facts stated in this form are true.

*delete as appropriate

*I am duly authorised by the applicant/respondent to sign this statement.

Print full name

Name of solicitors firm

Signed

Dated

(Applicant) (Respondent) ('s Solicitor)

Position or office held
(If signing on behalf of firm or company)

Proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth.

Notes for Guidance and Checklist For Supplemental Information Form C1A

About these notes:

- They explain some of the terms used in this form that may be unfamiliar to you and will help you to complete the form.
- You should read all these notes and the checklist before beginning to complete this form.
- These notes are only a guide to help you complete this form. If you need further help you could speak to a solicitor, Citizen's Advice Bureau, legal advice centre or law centre. Legal aid may be available. You can get further information at www.gov.uk/check-legal-aid or by phoning 0345 345 4345.

Please note that while court staff will help on procedural matters, they cannot offer any legal advice

Section 1

About You

If you do not wish your contact details to be made known to the respondent, leave the space on the form blank and complete Confidential contact details (form C8). You can get a copy of this form from any family court office or from our website at hmctsformfinder.justice.gov.uk. It should be sent to the court at the same time as you submit this form.

Section 2 – Further Information

1. Incidents of domestic violence/abuse and their outcomes

The definitions of harm and domestic violence/abuse are set out on page one of the form

This section is to outline the nature and frequency of the abuse experienced by you or the child(ren) and any action that may have taken place as a consequence.

The first part asks what type of abuse that you or the child(ren) may have experienced.

The second part asks if you have any of the following court orders, when they were issued, how long they are for, and which court they were made in.

Non-molestation order – requires that the person against whom the order has been made may not be violent or threaten violence, harass, pester or annoy the person who applied for the order

Occupation order – sets out who can live in a property and can exclude a person totally from the property or prohibit a person from entering certain rooms within the property.

Forced Marriage Protection Order – can require that a person's passport is surrendered, prohibit intimidation and violence, order a person to reveal the whereabouts of a person and stop someone from being taken abroad for the purpose of being forced into marriage.

Restraining order – prohibits the convicted person from further conduct which causes harassment or will cause a fear of violence.

Other injunctive order – any other injunction you may have obtained against the person whom you are alleging harm.

If you have been granted any of the above orders please attach copies of the orders with the form.

2. Information about incidents

The table is intended to give a short description of what happened and relevant information. The following is a brief description of what is required in each column:

Approximate date/when/how long did the behaviour continue – this can be either specific/ approximate dates of individual incidents, or a timeframe over which multiple incidents occurred.

Nature of behaviour/what happened – a brief description on the incidents, please note that you can describe the same type of behaviour that happened over a period of time in one entry.

Have you ever sought help? If so, from who?

– This could be the police, social services, your doctor, a medical professional, a voluntary sector worker, the Citizen's Advice Bureau or any agency you may have approached for help. It could also be a friend or family member.

Did they do anything? – What help did they give you? Were you referred to anyone else? Is there any ongoing contact with them?

Section 3 – Abduction

This section asks about any concerns you may have about a child being abducted from your care.

'Child abduction' is the wrongful removal of a child from any person having, or entitled to, lawful control of that child.

'International child abduction' is the wrongful removal or wrongful retention away from the country where the child usually lives.

If the child has a passport it is important that you fill in the section about who is in possession of the child's passport.

Section 4

Are there any other concerns you would like to raise regarding your Child(ren)?

This section is for any concerns not already raised in the form regarding the child's safety and wellbeing.

Section 5

Attending the Court

This section asks if you require any special measures put in place when you attend court. The court will try to supply you and your witnesses with a separate waiting area and the other measures listed. However, this is not always possible and can depend on the court facilities as to whether these measures are available.

Response to allegations of harm (page 9)

This section should only be filled in if the other party (the applicant) has served a completed form C1A and has sent it to the respondent.

If no form C1A is sent in with the application for an order the respondent themselves will need to complete the form C1A to be returned with form C7 Response to an application under the Children Act 1989.

IN THE CHELMSFORD COUNTY COURT AND FAMILY COURT

CASE

NO:

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF ... (D.O.B.....)

BETWEEN:

... (Applicant) And ... (Respondent)

RESPONDENT'S SCOTT SCHEDULE

Dated:

Date	Respondent's allegation	Applicant's response	Judge's finding
05/06/2018	1. Applicant pushed Respondent down the stairs after an argument. Reference: Police report dated 06/06/2018. Bundle F2. GP letter dated 07/06/2018. Bundle F3.	Allegation denied. Respondent fell down the stairs of her own accord after assaulting applicant. See counter schedule.	
02/04/2018	2. Applicant locked Respondent outside of the house overnight after an argument. Reference: A's statement dated 05/07/2018. Bundle C5.	Admitted.	

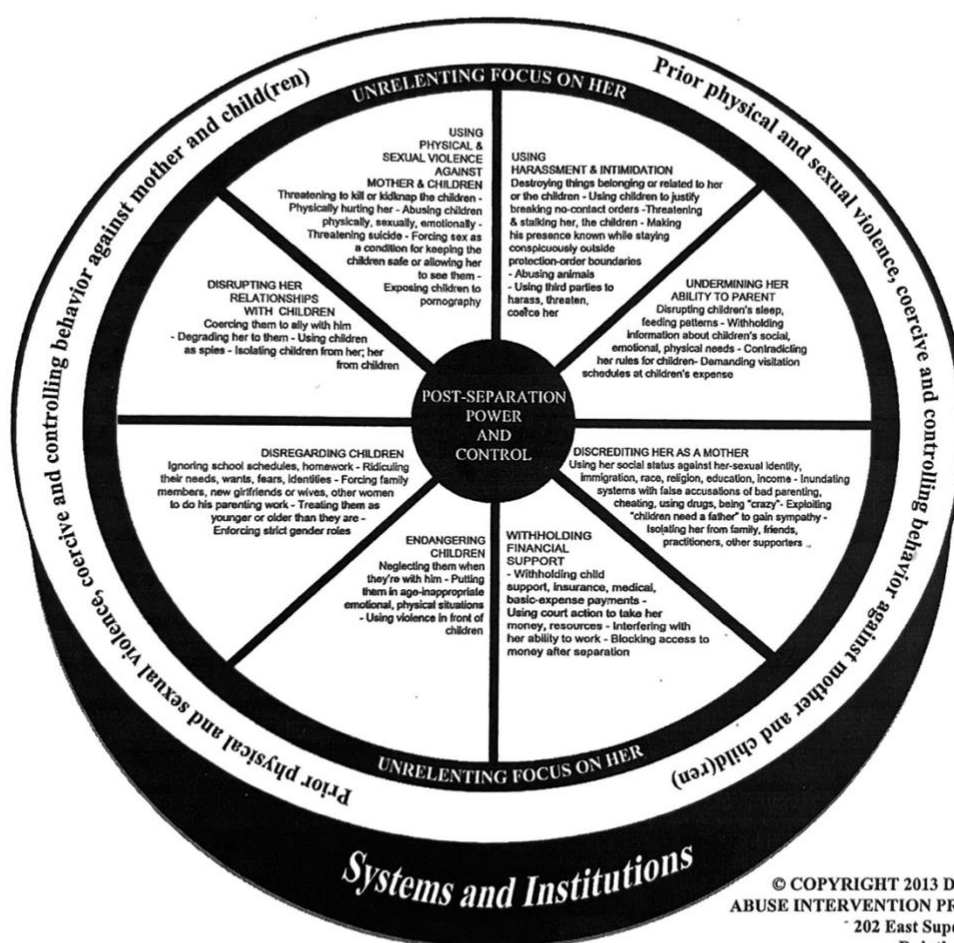
² Child law advice (part of the Coram group, <https://childlawadvice.org.uk/scott-schedule/> [Last accessed 03/07/2022])



³ Duluth wheels, <https://www.theduluthmodel.org/wheels/> [Last accessed 03/07/2022]

Duluth wheel of post-separation control⁴

Post Separation Power and Control Wheel



© COPYRIGHT 2013 DOMESTIC ABUSE INTERVENTION PROGRAMS
202 East Superior Street
Duluth, MN 55802
218-722-2781
www.theduluthmodel.org

⁴ Duluth wheels, <https://www.theduluthmodel.org/wheels/> [Last accessed 03/07/2022]

L Legal Aid Agency Guidance of the remuneration of Expert Witnesses in Family Cases



Guidance on the Remuneration of Expert Witnesses in Family Cases

Version:	Issue date:	Last review date:	Owned by:
6	September 2020	April 2019	Service Development

- 4.2 You are not able to apply for prior authority in relation to a cancellation charge, this should be justified on assessment.

5 Specific expert remuneration arrangements

Expert activity time guidelines

- 5.1 The tables below provide an indication of typical hours generally allowed by LAA caseworkers, broken down by activity, for some of the expert types in Table 1 above. These are provided simply as a guideline to assist providers when completing applications for prior authority. This does not mean that hours in excess of these will be refused, and nor should it be taken that these hours will be allowed in every case. Decisions will continue to be made on the individual circumstances of the case. The observation of contact refers observation of a single adult. Where for example both parents are being assessed separately then there would be 2 separate observations.

Table 2 – Benchmark work breakdown for psychological services	
Activity	Typical time spent
Reading	5 hours
Attending adult	5 hours
Attending child	3 hours
Psychological adult testing	3 hours
Psychological child testing	1.5 hours
Observing contact (where appropriate) per parent	3 hours
Reporting	10 hours (basic, increasing with number of parties)
Addendum report (inc expert meetings, answering questions from judge, and considering transcripts)	5 hours

Table 3 – Benchmark work breakdown for adult psychiatric services	
Activity	Typical time spent
Reading	5 hours
Attending Adult	5 hours
Report	10 hours
Addendum report (inc expert meetings, answering questions from judge, and considering transcripts)	5 hours

Table 4 – Benchmark work breakdown for child psychiatric services	
Activity	Typical time spent
Reading	5 hours
Attending Child	3 hours
Report	10 hours

Addendum report (inc expert meetings, answering questions from judge, and considering transcripts)	5 hours

Table 5 – Benchmark work breakdown for ISW services	
Activity	Typical time spent
Reading	5 hours
Attending per adult	5 hours
Attending per child	3 hours
Observing contact	3 hours
Attending professionals	2 hours
Attending others	1 hours
Reporting	10 hours

Independent social workers

- 5.2 The current rate for independent social workers (ISWs) is based on the rates paid by CAF/CASS. ISWs are not listed in the Remuneration Regulations, and they are instead paid in accordance with paragraphs 7.180 and 7.181 of the Standard Civil Contract in line with the rates payable by CAF/CASS for the work.
- 5.3 In 2014 Cafcass introduced a national rate of £33 per hour. Accordingly, the LAA will allow claims for this rate in relation to ISW instructions that take place on/after 1 April 2014 regardless of the date that the certificate was issued. Those instructions that took place prior to 1 April 2014 will continue to be remunerated at the previous rates, namely £30 p/h outside of London and £33 inside of London depending on where the case takes place.
- 5.4 Paragraph 7.180 sets out that the costs of and expenses relating to independent social work enquiries or expertise, whether provided by Cafcass, CAF/CASS Cymru, a guardian ad litem or any other person, is not an allowable disbursement where such work is provided outside England and Wales.
- 5.5 ISW travel will be paid on the same basis as other experts i.e. at 2/3rds of the ISW hourly rate. Mileage will be paid at 45p per mile as per section 5 above. Alternatively, reasonable public transport fares may be claimed.

Risk assessment experts

- 5.6 The Ministry of Justice (MoJ) and the LAA have published guidance on how expert services identified as specialist risk assessments will be paid. The guidance highlights the factors that may arise in a case which would point to it being appropriate to pay the risk assessment rate.
- 5.7 Factors that may typically point to the expert service being that of a specialist risk assessment expert include where:
- The court order specifies that a risk assessment is required; and

Neonatologist (clinical negligence-cerebral palsy case)	£180	£180
Neurologist (non-clinical negligence-cerebral palsy case)]	£122.40	£72
Neurologist (clinical negligence-cerebral palsy case)	£200	£200
Neuropsychiatrist	£126.40	£72
Neuroradiologist (non-clinical negligence-cerebral palsy cases)	£136.80	£136.80
Neuroradiologist (clinical negligence-cerebral palsy case)	£180	£180
Neurosurgeon	£136.80	£72
Nursing expert	£64.80	£64.80
Obstetrician	£108	£108
Occupational therapist	£54.40	£54.40
Oncologist	£112	£112
Orthopaedic surgeon	£115.20	£115.20
Paediatrician	£108	£72
Pathologist	£122.40	£432 fixed fee
Pharmacologist	£97.60	£97.60
Photographer	£25.60	£18.40
Physiotherapist	£64.80	£64.80
Plastic surgeon	£108	£108
Process server	£25.60	£18.40
Psychiatrist	£108	£108
Psychologist	£93.60	£93.60
Radiologist	£108	£108
Rheumatologist	£108	£108
Risk assessment expert	£50.40	£50.40
Speech therapist	£79.20	£79.20
Surveyor (housing disrepair)	£85	£115
Surveyor (non-housing disrepair)	£40	£40
Telecoms expert	£72	£72
Toxicologist	£108	£108
Urologist	£108	£108
Vet	£72	£72
Voice recognition	£93.60	£72

