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Child Sexual Abuse and Family Court Proceedings

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Cases involving child sexual abuse (CSA) allegations are among the most sensitive that the family courts encounter. Yet there is an absence of research and discussion on how CSA is responded to in the family court system, especially in private law proceedings. Following media coverage which has highlighted that convicted sex offenders maintain parental responsibility of their own children and can apply for contact¹ and in the absence of concrete data and research on the issue, victim-survivor advocates, academics and politicians have begun to question if the family court's approach to CSA allegations is fit for purpose.²

This article will share insights from contemporary research on CSA relevant to private law in family court proceedings. It will highlight recent discussions held in parliament on legislative change to clarify the law regarding child sexual offenders' parental responsibility rights. It will raise concerns regarding the case law relied upon for dealing with CSA allegations against parents and the disconnect between this case law and contemporary understandings of and criminal approaches to CSA. It will also highlight how protective parents—typically mothers—may experience counter-allegations of so-called 'parental alienation' (PA) when they seek to prevent contact between their child and their alleged abusers. It will consider the implications of the European Convention on Human Rights and the Istanbul Convention for allegations of child sexual abuse raised in family

¹Berg, S., & Inman, B. (2023). 'I paid £30k to protect my child from her paedophile dad'. *BBC News*. Available from: <https://www.bbc.com/news/uk-67425080>; Humphries, J. (2024). Judge orders child to see mum accused of sex abuse. *BBC News*, Liverpool. Available from: <https://www.bbc.com/news/articles/c844xwk87wxo>; Hymas, C. (2023). Family courts allowed convicted paedophiles to have contact with their children. *The Telegraph*. Available from: <https://www.telegraph.co.uk/news/2023/09/04/paedophiles-allowed-contact-their-children-family-court/>; Oppenheim, M. (2024). How sex abusers who target their own children keep parental rights – and the mothers fighting back. *Independent*. Available from: <https://www.independent.co.uk/news/uk/crime/parental-responsibility-sex-abuse-children-b2512869.html>; Thornton, L. (2024). Nine dads accused of child sexual abuse given access to their alleged victims. *Mirror*. Available from: <https://www.mirror.co.uk/news/uk-news/nine-dads-accused-child-sex-33614740>

² Berg, S. (2024). Paedophiles could be stripped of parental rights under new law. *BBC News*. Available from: <https://www.bbc.com/news/uk-68830796>; Dalgarno, E., Bramwell, D., Verma, A., & Ayeb-Karlsson, S. (2024). 'Let's excuse abusive men from abusing and enable sexual abuse': child sexual abuse investigations in England's private family courts. *Journal of Social Welfare and Family Law*, 46(3) 1-21. <https://doi.org/10.1080/09649069.2024.2382501>; Thiara, R. (2020). Child Sexual Abuse Allegations And Response Of Family Courts Briefing. *University of Warwick, Sociology*. Available from: <https://caraessex.org.uk/userfiles/CSAandFCs-Briefing-DrRThiara-FINAL.pdf>; Waxman, C. (2024). Family Court Reform for Victims. *Napo*, 10 (1) 5-15. Available from: <https://www.napo.org.uk/sites/default/files/Family%20Court%20Journal%20-%20Summer%202024%20-%20Final%202.pdf>

court proceedings. It will end with recommendations for future research and areas for reform within the family justice system.

Child sexual abuse

CSA is a relatively common occurrence, with 15% of girls and 5% of boys estimated to have been sexually abused before the age of 16.³ Despite this, it remains largely under-reported. The Independent Inquiry into Childhood Sexual Abuse (IICSA) spoke with nearly 6,000 adult victim-survivors and found that 67% of participants did not tell anyone about the sexual abuse at the time of the abuse.⁴ In the 2019 Crime Survey for England and Wales, 64% of respondents who had experienced rape or penetrative sexual abuse by a parent, step-parent or guardian also said they had not told anyone at the time.⁵ Reasons for not disclosing at the time include not knowing it was wrong, not wanting to hurt family members, embarrassment and shame, fear of the perpetrator, fear of not being believed and not having the words to explain.⁶ When disclosed, sexual abuse is most commonly reported to family members, especially mothers.⁷

Although it remains underreported, police-recorded child sexual offences in England and Wales have increased dramatically over the past 15 years.⁸ An in-depth study of police-recorded child sexual abuse from 2022 in 42 police forces across England and Wales found that familial child sexual abuse accounted for 29% of all recorded child sexual abuse and exploitation (CSAE) and 33% of all contact CSAE.⁹ It is worth noting that there are wide regional differences in reporting,

³ Jay, A., Evans, M., Frank, I., & Sharpling, D. (2022). The Report Of The Independent Inquiry Into Child Sexual Abuse. *The Independent Inquiry Into Child Sexual Abuse*. Available from: <https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/final-report.ht>; Vera-Grey, F. (2023). Key messages from research on the impacts of child sexual abuse. *Centre of expertise on child sexual abuse*. Available from: <https://www.csacentre.org.uk/app/uploads/2023/03/Key-messages-from-research-Impacts-of-child-sexual-abuse.pdf>

⁴ Jay, A., Evans, M., Frank, I., & Sharpling, D. (2022). The Report Of The Independent Inquiry Into Child Sexual Abuse. *The Independent Inquiry Into Child Sexual Abuse*. Available from: <https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/final-report.ht>

⁵ Scott, S. (2023). Key messages from research on intra-familial child sexual abuse: second edition. *Centre of expertise on child sexual abuse*. Available online at: <https://www.csacentre.org.uk/app/uploads/2023/09/Key-messages-from-research-on-intra-familial-child-sexual-abuse-2nd-edition.pdf>

⁶ *ibid.*

⁷ Allnock, D., Miller, P., & Baker, H. (2019). Key messages from research on identifying and responding to disclosures of child sexual abuse. *Centre of Expertise on Child Sexual Abuse*. Available from: <https://www.csacentre.org.uk/app/uploads/2019/09/Key-messages-CSA-disclosures.pdf>; Rakovec-Felser, Z., & Vidovič, L. (2016). Maternal perceptions of and responses to child sexual abuse. *Slovenian Journal of Public Health*, 55(2), 124-130. DOI: <https://doi.org/10.1515/sjph-2016-0017>

⁸ Karsna, K; & Bromley, P. (2024). Child Sexual Abuse in 2022 /2023: Trends in official data. *Centre of expertise on child sexual abuse*. p.26. Available from: <https://www.csacentre.org.uk/app/uploads/2024/02/Trends-in-Official-Data-2022-23-FINAL.pdf>

⁹ National Police Chiefs Council. (2024). National Analysis of Police-Recorded Child Sexual Abuse & Exploitation (CSAE) Crimes Report. *Vulnerability Knowledge and Practice Programme*. p.19. Available from: <https://www.vkpp.org.uk/assets/Files/Publications/National-Analysis-of-police-recorded-CSAE-Crimes-Report-2022-external.pdf>

which suggests professional identification of child sexual abuse is still impacting reporting levels.¹⁰ Of all the familial child sexual abuse and exploitation recorded by police in 2022, the most common perpetrator reported was a parent (including step or foster parents), making up 30.43% of all familial child sexual abuse offences.¹¹ The tactics used by sexual abuse perpetrators are complex in a family context and can include a long period of grooming, normalisation or manipulation to silence victims.¹² Furthermore, over half of the adults who reported sexual abuse before the age of 16 also experienced other forms of abuse, including witnessing domestic abuse.¹³

Public Concerns

A concerning lack of data on private law proceedings, including on allegations raised and findings made, makes it impossible to fully assess the family court's current response to CSA.¹⁴ However, the Ministry of Justice's consultation on 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases' highlighted ongoing concerns in the family court system regarding how allegations of domestic and child abuse are handled.¹⁵ Key concerns raised in the report include the dismissal of children's voices, unsafe child arrangements, and abusers maintaining

¹⁰ Karsna, K; & Bromley, P. (2024). Child Sexual Abuse in 2022 /2023: Trends in official data. Centre of expertise on child sexual abuse. p.26. Available from: <https://www.csacentre.org.uk/app/uploads/2024/02/Trends-in-Ofical-Data-2022-23-FINAL.pdf>

¹¹ National Police Chiefs Council. (2024). National Analysis of Police-Recorded Child Sexual Abuse & Exploitation (CSAE) Crimes Report. *Vulnerability Knowledge and Practice Programme*. p.20. Available from: <https://www.vkpp.org.uk/assets/Files/Publications/National-Analysis-of-police-recorded-CSAE-Crimes-Report-2022-external.pdf>

¹² Katz, C., & Field, N. (2022). Unspoken: Child–Perpetrator Dynamic in the Context of Intrafamilial Child Sexual Abuse. *Journal of Interpersonal Violence*, 37(5-6), NP3585-NP3604. <https://doi.org/10.1177/0886260520943723>; McAlinden, A. (2012) The Grooming of Children, Families, and Communities', *'Grooming' and the Sexual Abuse of Children: Institutional, Internet, and Familial Dimensions*. Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199583720.003.0004>

¹³ Office for National Statistics. (2020, January 14). Child sexual abuse in England and Wales: year ending March 2019. Available from:

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/childsexualabuseinenglandandwales/yearendingmarch2019>; Vera-Grey, F. (2023). Key messages from research on the impacts of child sexual abuse. *Centre of expertise on child sexual abuse*. Available from: <https://www.csacentre.org.uk/app/uploads/2023/03/Key-messages-from-research-Impacts-of-child-sexual-abuse.pdf>

¹⁴ National Centre for Social Research. (2024). Data in the Family justice system: what is available and to whom. Available from: <https://www.judiciary.uk/wp-content/uploads/2024/08/Family-Justice-Data-Mapping-Final-Report-31.07.24.pdf>; Hunter, R., Burton, M., & Trinder, L. (2020). Assessing risk of harm to children and parents in private law children cases. *Ministry of Justice*. Available from: https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

¹⁵ Hunter, R., Burton, M., & Trinder, L. (2020). Assessing risk of harm to children and parents in private law children cases. *Ministry of Justice*. Available from: https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf; see also: Women's Aid. (2022). Two years, too long: Mapping action on the Harm Panel's findings. *Women's Aid*. Available from: <https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf>

control through repeat litigation.¹⁶ Children can be excluded from proceedings or inadequately consulted, leading to distrust in the court system.¹⁷ [Practice Direction 12J](#), which should guide courts in cases involving domestic abuse, is inconsistently applied. Despite evidence of abuse, direct contact with the non-resident parent is frequently ordered, resulting in harm.¹⁸ Overall, the report found that minimising abuse claims, a pro-contact culture, resource shortages, and siloed work between courts and agencies were all contributing to a system that put child and adult victims at risk of harm.¹⁹

Responses from protective parents of CSA victims and the organisations that support them noted that contact was almost always granted and mothers' allegations are easily dismissed as 'parental alienation.' It also raised concerns regarding practices such as halting therapy for child victims.²⁰

More recently, an in-depth qualitative study of the experiences of mothers in private law proceedings found that of the nine cases where CSA was reported or where there was a conviction for a child sexual offence (either against the child or another child), direct contact was granted. Four of the nine cases resulted in a transfer of residence.²¹ Mothers were framed as "alienators" or "emotional abusers" for raising and believing their children's disclosures.²² In a tenth case, the father had stalked and groomed the mother when she was a school child. He had been convicted of child sex offences unrelated to this, and yet, despite his convictions which the court was aware of, he was afforded overnight stays with the child, supervised by a paternal family member.

Individual cases seen in the media have also led to calls for action, including cases where fathers were convicted of sexually abusing their own children and are allowed to repeatedly apply for contact, prolonging the suffering of their victims and the protective mother.²³ Cases which highlight that a convicted sex offender maintains their parental responsibility after abusing a child outside of the immediate family have also raised concerns.²⁴ At sentencing, child sex offenders often have conditions placed upon them via a Sexual Harm Prevention Order (SHPO) intended

¹⁶ Hunter, R., Burton, M., & Trinder, L. (2020). Assessing risk of harm to children and parents in private law children cases. *Ministry of Justice*. p.4. Available from: https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

¹⁷ *Ibid.* p.82

¹⁸ *Ibid.* p.82, p.131

¹⁹ *Ibid.* pp.4-5, p.42

²⁰ *Ibid.* p.160

²¹ Dalgarno, E., Bramwell, D., Verma, A., & Ayebe-Karlsson, S. (2024). 'Let's excuse abusive men from abusing and enable sexual abuse': child sexual abuse investigations in England's private family courts. *Journal of Social Welfare and Family Law*, 46(3) 1-21. <https://doi.org/10.1080/09649069.2024.2382501>

²² *Ibid.* p.6

²³ Waxman, C. (2024). Family Court Reform for Victims. *Napo*, 10 (1) p.9. Available from: <https://www.napo.org.uk/sites/default/files/Family%20Court%20Journal%20-%20Summer%202024%20-%20Final%202.pdf>

²⁴ Berg, S., & Inman, B. (2023). 'I paid £30k to protect my child from her paedophile dad'. *BBC News*. Available from: <https://www.bbc.com/news/uk-67425080>

to protect the public.²⁵ However, their own children are exempt from these requirements, as they retain parental responsibility. In 2023, the BBC covered a case where a mother was forced to pay £30,000 to remove the parental responsibility of a convicted child sex offender after the child was made exempt from the SHPO at sentencing.²⁶ In response, Harriet Harman MP (now Baroness Harman) put forward an amendment to the Criminal Justice Bill, which gained considerable support, forcing the Government to concede to develop its own amendment to address the issue. The Bill did not pass owing to the 2024 election; however, the new government has committed to restricting the parental responsibility of sex offenders via a Victims, Courts and Public Protection Bill during the current parliament.²⁷

‘Parental Alienation’

As already noted, one of the core issues of concern regarding the response to child sexual abuse allegations in family court proceedings is that abusers can successfully reframe disclosures as the result of ‘parental alienation’ or manipulation and influence perpetrated by the other (non-abusing) parent.

The concept of ‘parental alienation’ can be traced back to the 1980’s and Dr Richard Gardner, a U.S. psychiatrist. It was originally termed “parental alienation syndrome” or ‘PAS’ and described as a condition resulting from the indoctrination of a child by a parent—usually the mother—to make false allegations of child sexual abuse in child contact disputes.²⁸ Recommendations for treatment included a transfer of residence away from the ‘alienating’ parent.²⁹ Although Gardner and PAS were discredited in the US in the 1990s,³⁰ his diagnostic ‘tests’ and recommendation for a transfer of residence continue to be applied, or in some cases threatened, when PA is raised, including after allegations of child sexual abuse (see *R (Parental alienation and suspended transfer of residence)*, [2019] EWFC B61 (30 January 2019) [43]). PA is widely criticised but has nevertheless gained traction in child contact disputes across the world.³¹ In England and Wales,

²⁵ Beard, J. (2023). Research Briefing: Registration and management of sex offenders. *House of Commons Library*. p.4. Available from: <https://researchbriefings.files.parliament.uk/documents/SN05267/SN05267.pdf>

²⁶ Berg, S., & Inman, B. (2023). ‘I paid £30k to protect my child from her paedophile dad’. BBC News. Available from: <https://www.bbc.com/news/uk-67425080>; Harman, H. (2024, May 24). ‘Child sex offenders to lose parental rights over their own children’, writes Harriet Harman. *Southwark News*. Available from: <https://southwarknews.co.uk/area/peckham/child-sex-offenders-to-lose-parental-rights-over-their-own-children-writes-harriet-harman/>

²⁷ Prime Minister’s Office. (2024). *The King’s Speech 2024*. Available from: https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf

²⁸ Gardner, R.A. (2001). ‘Parental Alienation Syndrome (PAS) Sixteen Years Later.’ In *Academy Forum*. 45(1) 10-12. Available from:

https://www.anthoniync.co.za/images/pdf/Parental_Alienation_Syndrome_PAS__Sixteen_Years_Later.pdf

²⁹ *Ibid.*

³⁰ Neilson, L. C. (2018). Parental alienation empirical analysis: child best interests or parental rights?. *The FREDA Centre for Research on Violence Against Women and Children: Vancouver*. Available from: <https://www.fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>

³¹ Alsalem, R. (2023). *Custody, violence against women and violence against children Report of the Special Rapporteur on violence against women and girls, its causes and consequences*. Geneva: United Nations General Assembly. Available from: <https://documents.un.org/doc/undoc/gen/g23/070/18/pdf/g2307018.pdf>; Barnett, A.

the President of the Family Division, Sir Andrew MacFarlane, stated there had been a “complete upsurge in the number of cases in which it is alleged”.³² The President established via *Re C* (‘Parental Alienation’; *Instruction of Expert*) [2023] EWHC 345 (Fam) [103] that ‘parental alienation’ cannot be considered a diagnosable syndrome. Nevertheless, the concept of ‘parental alienation’ as a psychological condition has persisted through expert testimony offered by so-called (un)regulated experts on ‘parental alienation’,³³ and their instruction in domestic abuse cases has raised concerns about professional standards and the safeguarding of vulnerable victims.³⁴

There have been concerns raised that ‘parental alienation’ is having a ‘chilling effect’ on the disclosing of abuse in family law proceedings for fear of mothers losing contact with their children.³⁵ Mothers often face impossible predicaments in court: their behaviours are scrutinised against entrenched stereotypes of victimhood, gender, and subjective biases,³⁶ and if they raise CSA, they risk being labelled as alienators, but if they don’t, they fail to protect their children in the eyes of safeguarding agencies such as police and children’s social care.³⁷ Although there is limited research in England and Wales, according to a U.S. study, fathers were more likely to win

(2014). Contact at All Costs: Domestic Violence and Children’s Welfare. *Child & Fam. LQ*, 26, 439; Barnett, A. (2024a). Domestic abuse, parental alienation and Family Court proceedings. In *Research Handbook on Domestic Violence and Abuse* (pp. 224-250). Edward Elgar Publishing.

³² Justice Committee. (2024). Oral evidence: Work of the President of the Family Division. Available from: <https://committees.parliament.uk/oralevidence/14675/pdf/>

³³ Summers, H. (2024). Family Court Files: Psychologist’s evidence used to ‘ramp up’ allegations of parental alienation. *The Bureau of Investigative Journalism*. Available from: <https://www.thebureauinvestigates.com/stories/2024-04-19/family-court-files-psychologists-evidence-used-to-ramp-up-allegations-of-parental-alienation/>

³⁴ Grey, R. (2023). “Catastrophic”: A qualitative exploration of survivors experiences of expert instruction in private law child arrangements proceedings. *Journal of Social Welfare and Family Law*, 45(4), 344–362.

³⁵ Domestic Abuse Commissioner. (2023) The Family Court and Domestic Abuse: Achieving Cultural Change. *The Domestic Abuse Commissioner for England and Wales*. Available from: https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf; Hunter, R., Burton, M., & Trinder, L. (2020). Assessing risk of harm to children and parents in private law children cases. *Ministry of Justice*. Available from: https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf; Barnett, A. (2024b). Domestic violence, parental alienation, and perpetrator tactics in court proceedings. *Hague Domestic Violence Forum, Expert Paper 4*. Available from: <https://www.hague-mothers.org.uk/wp-content/uploads/2024/06/Expert-paper-4.pdf>; Women’s Aid. (2016). *Nineteen Child Homicides. Women’s Aid: Bristol*. Available from: <https://www.womensaid.org.uk/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>

³⁶ Birchall, J., & Choudhry, S. (2022). ‘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. *Journal of gender-based violence*, 6(1), 115-131. 10.1332/239868021X16287966471815; McInnes, E. (2014). Madness in family law: Mothers’ mental health in the Australian family law system. *Psychiatry, Psychology and Law*, 21(1), 78-91. DOI:10.1080/13218719.2013.774688; Taylor, J. (2020). *Why women are blamed for everything: exposing the culture of victim-blaming*. Hachette, UK.

³⁷ Azzopardi, C. (2022). Gendered attributions of blame and failure to protect in child welfare responses to sexual abuse: A feminist critical discourse analysis. *Violence against women*, 28(6-7), 1631-1658. <https://doi.org/10.1177/10778012211024263>; Dalgarno, E., Bramwell, D., Verma, A., & Ayebe-Karlsson, S. (2024). ‘Let’s excuse abusive men from abusing and enable sexual abuse’: child sexual abuse investigations in England’s private family courts. *Journal of Social Welfare and Family Law*, 46(3) 1-21. <https://doi.org/10.1080/09649069.2024.2382501>

in court cases when mothers alleged CSA against them, and fathers were more likely to take custody after CSA allegations, particularly when the fathers accused the mother of ‘alienation.’³⁸

Family court’s approach to child sexual abuse

Although more in-depth systematic research is required to understand the approach to CSA allegations in private law family court proceedings, initial analysis suggests that they are treated with suspicion. *W (Children), Re (Rev 2)* [2010] UKSC 12 (03 March 2010) cautions judges to carefully evaluate allegations, suggesting that children may misinterpret or fabricate incidents of abuse [29]. Disclosures of child sexual abuse may also not be considered to be valid disclosures unless they are repeated to police or child protection professionals (see *D (A Child) (Appeal Out of Time), Re* [2020] EWHC 1167 (Fam) (14 May 2020) [60]. Similarly, *K (Children), Re* [2019] EWCA Civ 184 (19 February 2019) undermines children’s disclosures, referring to them as “poor historians” [22 (3) b]. *C, Re* [2022] EWFC 138 (B) (28 September 2022) could be interpreted as narrowing the definition of CSA by tying it to the intent of the abuser to seek sexual gratification [41], which is almost impossible to glean and is not contained in the legal definition of sexual assault or rape in the Sexual Offences Act 2003. The notion of proving intent for sexual gratification and the absurdity of utilising a perpetrator gaze to establish harm (as opposed to via a victim-lens) is discussed in detail in Dalgarno et al. (2024). Judgments also refer to the Report of the Inquiry into Child Abuse in Cleveland 1987 as some of the authoritative guidance on how CSA cases should be responded to (see *AS v TH (False Allegations of Abuse) (Rev 1)* [2016] EWHC 532 (11 March 2016) [32] *Re P (Sexual abuse: Finding of Fact Hearing)* [2019] EWFC 27 (01 May 2019) [1240] and *W (Children), Re (Rev 2)* [2010] UKSC 12 (03 March 2010) [10]. The Cleveland Report questioned the decisions and practice of professionals in the Cleveland area in England in 1987 who had diagnosed 121 children as having experienced sexual abuse.³⁹ In coming to its conclusions, the inquiry utilised “false memory syndrome experts,”⁴⁰ and the validity of the findings have been the subject of scathing criticism following recent archival work,⁴¹ and the resulting public understanding and impact of the inquiry has been critically analysed.⁴² Other concerning practices in private law family proceedings regarding child sexual abuse allegations, include judges cautioning against children undertaking therapy following disclosures of sexual abuse, as reported in submissions to the Harm Panel in 2020.⁴³ This is contrary to the [CPS Pre-](#)

³⁸ Meier, J. S., & Dickson, S. (2017). Mapping gender: Shedding empirical light on family courts' treatment of cases involving abuse and alienation. *Law & Ineq.*, 35, 311.

³⁹ Butler-Sloss, E. (1988). Report of the Inquiry into Child Abuse in Cleveland 1987. London: HMSO.

⁴⁰ Campbell, B. (2023). *Secrets and Silence: Uncovering the Legacy of the Cleveland Child Sexual Abuse Case*. Policy Press. p 32; 92

⁴¹ *Ibid.*

⁴² Lovett, J., Coy, M., & Kelly, L. (2018). Deflection, denial and disbelief: social and political discourses about child sexual abuse and their influence on institutional responses: a rapid evidence assessment. *Independent Inquiry Into Child Sexual Abuse*. p.36. Available from: <https://repository.londonmet.ac.uk/1498/>

⁴³ Hunter, R., Burton, M., & Trinder, L. (2020). Assessing risk of harm to children and parents in private law children cases. *Ministry of Justice*. p.160. Available from:

[trial Therapy Guidance](#),⁴⁴ which makes clear that there is “no substantive evidence that therapy will generate false memories” (See “False memory”). Moreover, the ‘false memory’ evidence base is widely arraigned and should not be relied upon by courts in making such orders.⁴⁵ It is particularly concerning that it is used in CSA cases, as the premise of false memory syndrome is an adult with a false memory from childhood, not a child reporting CSA contemporaneously.⁴⁶ There have also been reports of judges allegedly ‘shutting down’ criminal cases of child sexual abuse on the basis that the mother was an ‘alienator.’⁴⁷ In *M v F* [2024] EWFC 82 (B) (21 March 2024), a mother alleged her child had experienced sustained sexual abuse by the father, notably during contact periods [2; 8-33]. The judgment found the allegations not proven on the balance of probabilities and commented on the mother’s hostility towards the father [52-53], ultimately upholding the father’s allegations that the mother manipulated the child to allege abuse [36-38; 55]. The judge also determined that the judgment should be shared with the mother’s workplace (she was a teacher at the time) [56, c].

Recent research has indicated that since the Domestic Abuse Act 2021, [section 91\(14\)](#) orders are being more frequently granted in domestic abuse cases.⁴⁸ These orders provide protection from continued unmerited applications by ensuring that any future private law family proceedings applied for within a given timeframe cannot be made without permission from a court. A lack of available data and research on family court proceedings⁴⁹ means it is unknown how far this increase in use applies to cases of CSA, but it can offer important safeguards for children and non-abusing parents, particularly when they are the victims of the abuse. For example, in *M-D (A Child)* [2014] EWCA Civ 1363, the court imposed a section 91(14) order to prevent a father from making further applications regarding his 8-year-old daughter until she turned 16, following findings that he had sexually abused her [12]. His appeal to shorten the duration was dismissed. In *Z (A Child) (Order for no contact)*, *Re* [2023] EWFC 61 (B), the judge issued a section 91(14) order restricting the father’s further applications following findings of grooming behaviour and

https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

⁴⁴ Crown Prosecution Service. (2022) Pre-Trial Therapy- Legal Guidance. Available from:

<https://www.cps.gov.uk/legal-guidance/pre-trial-therapy>

⁴⁵ Dalgarno, E., Katz, E., Ayeb-Karlsson, S., Barnett, A., Motosi, P., & Verma, A. (2023). ‘Swim, swim and die at the beach’: family court and perpetrator induced trauma (CPIT) experiences of mothers in Brazil. *Journal of Social Welfare and Family Law*, 46(1), 11–38. <https://doi.org/10.1080/09649069.2023.2285136>; Dalgarno, E., Bramwell, D., Verma, A., & Ayeb-Karlsson, S. (2024). ‘Let’s excuse abusive men from abusing and enable sexual abuse’: child sexual abuse investigations in England’s private family courts. *Journal of Social Welfare and Family Law*, 46(3) 1-21. <https://doi.org/10.1080/09649069.2024.2382501>

⁴⁶ Salter, M. & Blizard, R. (2022). False Memories and the Science of Credibility: Who Gets to Be Heard? *Journal of Trauma & Dissociation*, 23, 141–147. doi: 10.1080/15299732.2022.2028219

⁴⁷ Dalgarno, E., Bramwell, D., Verma, A., & Ayeb-Karlsson, S. (2024). ‘Let’s excuse abusive men from abusing and enable sexual abuse’: child sexual abuse investigations in England’s private family courts. *Journal of Social Welfare and Family Law*, 46(3) 1-21. <https://doi.org/10.1080/09649069.2024.2382501>

⁴⁸ Barnett, A. (2024c). When is ‘the end of the road’ reached? Observing the presumption of parental involvement through systems theory. *Journal of Social Welfare and Family Law*, 1–21. <https://doi.org/10.1080/09649069.2024.2414620>

⁴⁹ Saied-Tessier, A. (2024). Improving families’ lives through better data. Briefing. *Nuffield Family Justice Observatory*. Available from: <https://www.nuffieldfjo.org.uk/wp-content/uploads/2024/10/Improving-lives-%E2%80%93-the-power-of-better-data-in-the-family-justice-system.pdf>

sexual interest in children [1; 49], prioritising the child's welfare and safety by confirming residence with the mother [50; 53-54].

The Istanbul Convention and the European Convention on Human Rights

A greater focus is needed on the UK's obligations under the European Convention on Human Rights ([ECHR](#)) and, since its ratification in July 2022, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the [Istanbul Convention](#)) when considering the family court response to CSA. 'Violence against women' is defined in the Istanbul Convention to include sexual violence "whether occurring in public or in private life," and 'women' is defined to include "girls under the age of 18" (Article 3). Article 31(1) requires state parties to ensure that "in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account" and "to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children" (2). These provisions should be read in the context of the European Court of Human Rights (ECtHR) case law since the preamble to the Istanbul Convention notes that the Convention takes into account "the growing body of case law of the European Court of Human Rights which sets important standards in the field of violence against women."

[Article 3](#) of the ECHR – the prohibition on torture and inhuman or degrading treatment – imposes on state parties a positive obligation to protect against ill-treatment from third parties. Where the conduct complained of is that of private parties, the ECtHR made clear in *Z and others v the United Kingdom* (App. No. 29392/95) (2002) [34 EHRR 97](#) (10 May 2001) that the positive obligation on States is to take measures: "to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals ... These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge" [73]. Sexual violence by private parties has been confirmed to be capable of giving rise to a breach of Article 3 ([Tănase v Romania](#) (App. 4172/13) (25 June 2019) [119]. Article 3 rights are absolute and cannot be restricted or infringed in any circumstances.

Greater consideration also needs to be given to [Article 14](#) ECHR, through which the ECtHR has, in recent years, sought to tackle discrimination through an anti-stereotyping approach "which seeks to dispel deeply engrained, harmful attitudes and beliefs towards people with protected characteristics and that limit or annul the enjoyment of human rights."⁵⁰ In [Carvalho Pinto de Sousa Morais v Portugal](#) (App. No. 17484/15) (25 July 2017), the Court found the use of gender stereotypes in judicial decisions to be a breach of Article 14 ECHR, together with [Article 8](#) ECHR [56]. The court expressed the view that the traditional three-step discrimination test used to assess harmful gender stereotypes, in particular the need for a comparator between persons in

⁵⁰ Renzulli, I. (2023). Discrimination and gender stereotypes in judicial decisions: The jurisprudence of the European Court of Human Rights in light of *JL V Italy* – A retreat into the shadows? *Netherlands Quarterly of Human Rights*, 41(3), p. 156.

analogous situations, was not necessary. Judge Yudkivska argued that the comparative exercise is not necessary where “prejudicial stereotypes have affected the judicial assessment of evidence, which is perfectly sufficient to find a violation of Article 14”. Judge Motoc opined that “[f]or the disadvantage test it is enough to prove that the stereotypes are harmful to the group to which the applicant belongs and that the rule or practice applied by the State is based on such stereotypes.” [C 18] If we apply this to the family courts’ approach to child sexual abuse, we can see examples of harmful and discriminatory stereotyping.

For example, in *AS v TH*, Mr Justice MacDonald said, in reviewing the relevant legal principles, that “it has long been recognised that care must be taken not to focus attention on statements made by the child at the expense of other evidence, particularly where allegations of abuse arise in the context of private law disputes” [29]. MacDonald J referred to the Best Practice Guidance contained in the *Handbook of Best Practice in Children Act Cases* (1997), Section 4, Annex para (k), which cautions that: “Any investigation which focuses attention on the statements of the child runs the risk of producing a false result if what the child says is unreliable or if the child’s primary care taker is unreliable, particularly where the allegation emerges in bitterly contested section 8 proceedings” [29]. It is suggested that applying this guidance to allegations of CSA in private law children proceedings indirectly discriminates against mothers since, in most cases, it is mothers who raise allegations of CSA against fathers (rather than vice versa) on behalf of their children. In other words, the guidance reviewed and applied in *AS v TH* could give rise to a prejudicial gender stereotype, namely, that courts should be alert to mothers raising false or misguided allegations of CSA.

Conclusions and Recommendations

The data and research on the approach to child sexual abuse in family court proceedings, particularly in private law proceedings, is limited. The concerns raised by victim-survivors, the media and qualitative research that family courts may be systematically dismissing child sexual abuse allegations in family court proceedings cannot currently be substantiated or refuted. However, the cases cited in this article suggest that some family court proceedings rely on out-of-date guidance and a sceptical view of children’s disclosures. It is proposed that the guidance reviewed and applied in some cases gives rise to a prejudicial gender stereotype and that this is contrary to the UK’s obligations under the European Convention on Human Rights (ECHR) and the Istanbul Convention.

The cases cited above also suggest there is a need for consistent training for family court professionals, including judges, on the contemporary evidence of how children respond to sexual abuse and how they are most likely to relay their accounts. This is crucial because family courts are likely to be making decisions prior to the conclusion of CSA criminal proceedings when both are pursued simultaneously.⁵¹ Furthermore, most criminal CSA cases involving contact sexual

⁵¹ The average period of time between a police report and a charging decision in child rape cases has now reached 421 days (Karsna & Bromley, 2024 p. 7)

abuse allegations will end with the police deciding to pursue no further action.⁵² Cafcass recently clarified in their updated domestic abuse and safeguarding policies that when there is a police investigation into CSA, there should be a starting point of advising no direct contact with the reported perpetrator.⁵³ However, it also states that when an investigation leads to a ‘no further action’ decision by police, there must be a fact-finding to determine contact decisions. This means family courts are likely to be the first court where allegations are tested for many parent-to-child sexual abuse allegations, and so it is imperative that professionals have up to date training and guidance to support their work. A lack of training overall for the judiciary on rape myths and sexual offences has been highlighted in judgments as an omission (see *A v B & Anor* [2023] EWCA Civ 360 (07 March 2023) [11] and *JH v MF* [2020] EWHC 86 [59]), and training on child sexual abuse was also a recommendation of the Harm Panel Report.⁵⁴

Finally, more data is required to understand the scale of child sexual abuse allegations and the resulting findings in private law family court proceedings. Whilst there is a national monitoring mechanism in progress to improve the data available on domestic abuse cases in private law proceedings,⁵⁵ there is no such initiative planned for child sexual abuse cases. Steps should be taken by the Government to address this gap, given the child protection implications of children being forced into contact with their sexual abuser or known child sex offenders. Further academic research and coverage on the response to child sexual abuse allegations in private law proceedings is also needed, and the expansion of the transparency pilot to nineteen family courts across England and Wales offers this opportunity.

⁵²At the end of 2023 child victims faced an average wait of 423 days between charge and trial. See: NSPCC (2023, December, 15). ‘We’re urging the Government to take action on sexual abuse trial delays’. *NSPCC*. Available from: <https://www.nspcc.org.uk/about-us/news-opinion/2023/urging-government-action-sexual-abuse-trial-delays/>

⁵³ CAFCASS. (2024, October 9). Cafcass publishes new Domestic Abuse Practice Policy. *CAFCASS*. Available from: <https://www.cafcass.gov.uk/cafcass-publishes-new-domestic-abuse-practice-policy>; CAFCASS. (2024b). Child safeguarding policy. *CAFCASS*. Available from: <https://www.cafcass.gov.uk/sites/default/files/2024-10/Child%20Safeguarding%20Policy%20%281%29.pdf>

⁵⁴ Hunter, R., Burton, M., & Trinder, L. (2020). Assessing risk of harm to children and parents in private law children cases. *Ministry of Justice*. p.184. Available from: https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

⁵⁵ Ministry of Justice. (2023). Domestic Abuse Commissioner’s Report - The ‘Family Court and domestic abuse: achieving cultural change’: Government Response. p.3. Available from: <https://assets.publishing.service.gov.uk/media/654b827cb9068c00130e7573/domestic-abuse-commissioners-report-response.pdf>