



Right to Equality is a non-profit organisation dedicated to making tangible change in the UK's legal system. Our core objective is to advance gender equality through the law and support the rights of women and girls. Using research, events, training, collaborations, and active involvement in social media, we defend the rights of those facing discrimination. Our team is composed of experts from diverse demographic backgrounds in policy advocacy, activism, legal analysis, research and more. This broad spectrum of skills and experience equips us to tackle the complex challenges concerning violence against women and girls in both societal and legal contexts.

Submission to report for HRC 56

Judicial Immunity and Judicial Bias

The role of judges holds significant power, positioning them as the arbiters responsible for the construction of legal frameworks within the matrix of societal norms. The imperative of impartiality, foundational to the judiciary's mandate, demands an unambiguous commitment to equitable decision-making. However, in England and Wales, the issue of ['judicial immunity'](#) undercuts the concepts of accountability, which are necessary to meet the high standards we must hold our decision-makers to. Judges, as custodians of legality, bear the responsibility of adjudicating matters with an unwavering dedication to fairness. In the absence of accountability frameworks, the susceptibility to biases emerges as a pressing concern, compromising principles of justice. The legal community must proactively institute comprehensive bias training protocols, reinforcing the judiciary against latent partialities.

Currently, the judiciary faces obstacles and challenges to fulfilling their roles due to a persistent adherence to rape and sexual violence myths and ensuing victim-blaming responses, which serve as a barrier to their ability to fulfil their role of just decision-making. Judges have referred to sex offenders as ["Jack the Lad"](#), normalising sexual violence. Family court judges have struggled to grasp that an ["intelligent lady"](#) or an ["educated English teacher"](#) could be victims of rape. A family court judge told one mother bringing abuse allegations that if she continued, her child would be ['taken into care and adopted'](#) as the mother wept; another judge criticised a woman for taking ['no physical steps'](#) to fight off her rapist and therefore her experience ['did not constitute rape'](#); one judge dismissed a

survivor, saying she had the '[capacity to feel victimised](#)' when she was recounting her abuse; one judge referred to abuse as '[highly situational](#)' and demeaned a victim of abuse. These decisions are recognised as harmful not only by the public but also by other judges, with these last four judges being criticised for their behaviour in other judgements, including by the President of the Family Division. Nevertheless, they remain in their positions with little more than a slap on the wrist, while the survivors of these traumatic court experiences are left to contend with trauma caused not only by their abuse but also by their judges. These issues connect with the aforementioned issue of the lack of judicial accountability, as there are no means of accountability when actions in court result in harm to victims, either emotionally or physically.

In the family court, unfortunately, the lack of understanding of issues like domestic abuse, the impacts on victims, and the strategies of abusers during litigation have led to judges and legal professionals' marginalisation of abuse and [reframing abusive situations](#) as 'mutually abusive' or 'high conflict'. This reframing has also led to a negative impact on child arrangements. Often, mothers are coerced into agreeing to [unsafe contact](#) arrangements or mediations without child welfare concerns being addressed or children's views obtained. This serves as an obstacle to the judge's role in promoting justice, as it circumvents the realities of abuse in preventable ways. Mandatory bias training and accessible means for holding judges accountable would take steps in the correct direction to remove this obstacle.

Use of Unregulated Experts by Judges

Of pressing concern is the allowance of unregulated experts by judges to be utilised in proceedings. By unregulated experts, this document refers to individuals without appropriate qualifications and no regulation by external supervisory or regulatory bodies. Despite the clear [guidance](#) of the Family Justice Council (FJC) and the British Psychological Society (BPS) clarifying the difference between qualified and unqualified experts and recommending [only qualified professionals](#) be utilised, there have been worrying incidents of unregulated experts appointed and even praised by judges, for their work in the family courts. Unfortunately, the guidance is not a requirement, and as a result, unregulated expert use continues.

As an example, in *A and B (Children: 'Parental Alienation') (No. 5), Re* [\[2023\] EWHC 1864](#) (Fam), the family court judge, Mr Justice Keehan, accepted the recommendation of an unregulated expert in informing the decision on living arrangements for a child, placing her in the father's custody. The mother in the case raised complaints and concerns about the unregulated expert, and according to the MacKenzie friend, this was immediately followed by the unregulated expert '[almost instantly](#)' [changing](#) her position on where the child should live. The judge went on to praise the unregulated expert for her professionalism.

The Association of Clinical Psychologists [warned](#) instruction of psychological experts without necessary qualification 'can result in harm to the public', which includes recommendations for children to be removed from their mothers based on unscientific

diagnoses. An increasingly common diagnosis in this category is of so-called 'parental alienation'- a concept unrecognised scientifically by the [World Health Organization](#), the [American Psychological Association](#), and recently reported on as a harmful pseudo concept by the [United Nations](#) Special Rapporteur on Violence Against Women and Girls, Reem Alsalem.

The UN report notes, "Concerns have also been raised about evidence provided by unqualified and unregulated experts, some of whom appear to "abuse their position for profits or political agenda" continuing, "Such experts subject both adults and children to intrusive, inappropriate and retraumatizing psychological assessments and employ judgmental and dismissive attitudes towards victims of domestic violence"(p15).

The UN report makes special notice of the way so-called 'parental alienation' claims are often used to circumvent domestic abuse allegations, as does the [Harm Report](#), published by the Ministry of Justice (MOJ) in the UK. This phenomenon has been [showcased in published judgments](#). Further [research](#) shows the appearance of a 'parental alienation' 'industry' of experts, therapists, and lawyers pushing for the removal of children from 'alienating' mothers to the care of fathers and encouraging so-called 'parental alienation' therapy for both the children and parents. Within the same research, case law studies showed high numbers of domestic abuse perpetrated by fathers who claimed the resident parent (generally mothers) were alienating children against the father.

So-called 'parental alienation' has also been addressed in the family court, with additional guidance being set out. It is established that expert witnesses should be [appointed only where necessary](#) to assist the court in reaching a resolution. The [President of the Family](#) division emphasised that so-called 'parental alienation' is not a diagnosable issue but is a [question of fact](#) for the court to determine. Despite the abundance of information on the harms of unregulated experts, the guidance on which experts should be used and the clarity that experts should not even be diagnosing certain issues, such as so-called 'parental alienation', a term which is often used to obscure domestic abuse allegations, there is still ongoing harmful use of this in the courts. We consider this to be an obstacle to judges fulfilling their roles as it undermines the very standard of justice they are required to uphold in their duties.

Judges must remain vigilant against the incorporation of unregulated expert instruction within the courtroom, as it poses a formidable challenge to the fulfilment of their judicial duties. The judiciary's role hinges upon the discernment of credible and admissible evidence, and unbridled expert testimony can introduce variables that compromise the integrity of legal proceedings. A lack of regulation in expert instruction opens the door to potential bias, unreliability, and distortion of factual realities. Courts must hold to the highest possible standards; this should not be relaxed for any 'expert'. To maintain the sanctity of the judicial process and ensure the equitable administration of justice, judges

must adhere to rigorous standards in admitting and evaluating expert testimony, thereby fortifying their pivotal role as guardians of fairness and impartiality in the legal arena.

Please contact info@righttoequality.org with any questions or concerns in regard to this submission.

Sincerely,

Right to Equality