**Accountability in the family courts**

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**This submission will focus on accountability in family courts, particularly with regard to how complaints against the judiciary are handled. This is informed by our work with the** [**SHERA Research Group**](https://www.shera-research.com/)**and The Survivor Family Network into the prevalence of the pseudoscience of so-called ‘parental alienation’ in family courts (in both England and Wales, and Brazil), and the health impact this has on those who are accused of ‘parental alienation’ – who are often mothers who have survived domestic abuse.**

**Court and Perpetrator Induced Trauma (CPIT)**

Our [research](https://www.manchester.ac.uk/discover/news/shocking-impact-of-family-courts-on-womens-health-exposed/) (peer reviewed article in press) included interviews with 45 mothers who were victims of abuse, and had engaged with private Family Court Proceedings. All involved an initial report by the mother and child of some form of abuse by the father. The mothers had all either been accused of or warned about parental alienation or alienating behaviours.

The courts subsequently ordered some form of contact between the child and their father in 43 out of the 45 cases, including fathers with child sexual abuse convictions:

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

Mothers self-reported numerous mental health and physiological conditions which they say were exacerbated by, or directly associated with, court proceedings. These included memory loss, depression and flashbacks, Crohn’s disease, cancer, psoriasis, heart palpitations, and miscarriage. Some reported suicidal ideations: and that mothers known to them had died by suicide following PA allegations.

*“There have been four times I’ve seriously considered killing myself.”* (mother)

The extent of the problem is tacitly acknowledged by the recent Family Justice Council (FJC) signposting guidance ‘*At Risk of Suicide: Information for professionals working within the court system*’. It highlights the absence of, and urgent need for, a comprehensive framework to prevent suicide and suicidal ideation related to court proceedings – one which tracks the impact through every stage of the process on domestic abuse survivors and understands exactly how they are re-traumatised through the proceedings ([Dalgarno et al, 2023](https://assets-global.website-files.com/6278ea240c19526063fea7fb/65940b09205cea974e0e170e_Family%20Court%20Journal%20-%20Winter%202023%20FINAL%20%5B5%5D.pdf)).

We have coined this conceptually as [Court and Perpetrator Induced Trauma](https://www.manchester.ac.uk/discover/news/shocking-impact-of-family-courts-on-womens-health-exposed/) (CPIT). Our work has already informed a major [BBC investigation](https://www.bbc.co.uk/news/uk-66531409) into family courts, including the stories of women who died during or following court proceedings where they were alleged to have been ‘alienators’. [Our research in Brazil](https://www.tandfonline.com/doi/full/10.1080/09649069.2023.2285136) demonstrates that CPIT is not unique to the UK, but arises wherever accusations of ‘alienation’ are made. A civil law in Brazil solidified the pseudo-concept of PA in legislation – efforts to do the same in the UK have so far been resisted, but it must be impressed upon the UK Government that PA has no place in the justice system.

**Accountability in family courts**

There is a lack of accountability attributed to fathers who perpetrate abuse, and the parallel, routine responsibilisation of mothers to protect children and/or ‘prove’ their victim status ([Wild, 2022](https://link.springer.com/article/10.1007/s10896-022-00431-4)).

Professional accountability is no less concerning. Concerns about the Children and Family Court Advisory and Support Service (Cafcass), judicial bias, and lack of accountability are frequently raised by survivors ([Dalgarno et al, 2023](https://assets-global.website-files.com/6278ea240c19526063fea7fb/65940b09205cea974e0e170e_Family%20Court%20Journal%20-%20Winter%202023%20FINAL%20%5B5%5D.pdf)), exacerbated by judges’ ability to edit the court transcript before publication.

This potentially influences the outcome of any appeal, positively or negatively. The 'culture of fear' experienced by many mothers also affects a victim's willingness to complain, posing a risk to these women. They may end up with the same judge they've complained about remaining on their case. Victims must hold judges accountable, given the principle of judicial continuity, which can trap victims in a dynamic that won't achieve a safe or just outcome for them or their child. Should they wish to appeal against a judge, they must first seek permission from that specific judge. Appeals are often refused, leaving the mother in a significantly worse situation.

Complaints processes for state agencies involved in domestic abuse [focus on procedural adherence](https://www.shera-research.com/latest-news/complaints-in-the-family-courts-and-beyond) rather than the quality of decision-making analysis. This shields senior management, government, and the judiciary from accountability for the implementation of domestic abuse laws or best practices. Initial complaint stages are handled by the accused or their manager, while higher-level complaints go to senior management/commissioners who claim they can't intervene in operational decisions or individual cases. Thus, higher-level professionals are redundant in the process, despite their inclusion. The final stage, judicial review, is [financially inaccessible to 99% of the population](https://publiclawproject.org.uk/content/uploads/2019/02/Intro-to-JR-Guide-1.pdf), rendering it ineffective for redress. Judicial decisions can only be pursued through appeals or new court applications, requiring payment for the privilege of investigating potential harm caused by the state. Current state agency complaints processes gaslight victims, serving as self-protective mechanisms for services, ultimately undermining victim-survivors and their families.

Linked to this, both transparency and broader accountability within the courts remain as urgent concerns. As one journalist at the [Financial Times](https://www.ft.com/content/12174950-8729-4ec0-95b0-693b76bce175) has noted: “*The UK landscape is littered with similar [to the post office] hybrid bodies which are fundamentally unaccountable... This is how the system operates. Individuals may occasionally be caught out, but the machine just rolls on*”.

Family court judges have judicial immunity. They have no statutory duty to protect, and there is no follow up of children within the family court (unless initiated by a parent, which requires substantial finances as detailed above).

**Judicial bias**

Judicial office holders (JOHs) are required to adhere to [several core principles](https://www.judiciary.uk/about-the-judiciary/our-justice-system/three-is/#:~:text=Propriety%2C%20and%20the%20appearance%20of,due%20performance%20of%20judicial%20office.) “both inside and outside the courtroom […] Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office”. Given that the judiciary and Cafcass are regular attendees at conferences supporting fathers, the same engagement is required with groups supporting women, to uphold the core value of equality of treatment for all before the courts.

Transparency orders allowing press and legal bloggers to report on cases have recently been [expanded across the courts in England and Wales](https://www.judiciary.uk/groundbreaking-family-court-reporting-pilot-rolled-out-to-sixteen-more-courts-across-england/). This is an important change, and we look forward to the positive impact this will have. However, the expansion is currently limited to public law cases, and there remain ongoing reports of harm caused to victim-survivors within private law cases.

There is a lack of data availability/difficulty in accessing for scrutiny. There is no publicly available data on long term outcomes of court proceedings on children, and there is likely no data available, because the courts are not following up with these cases. If cases are to be followed up, this will require input from stakeholders to ensure this is done respectfully, sensitively, and carefully balanced with human rights to a private family life and freedom from harm/safety. Similarly, there is no available data on transfers of residence and how children are faring following these decisions.

Accessing data sets is a lengthy and expensive process: data on harm to the health of children and mothers is urgently needed and should be made available to researchers for evaluation/analysis.

Numerous studies show the long-term detrimental impact on [mothers](https://journals.sagepub.com/doi/full/10.1177/1473325019893412) and children of [child and mother separation](https://heinonline.org/HOL/Page?handle=hein.journals/nyuls43&div=21&g_sent=1&casa_token=_K5_jchQE5QAAAAA:WnMH8hmlol0DUq366s4nGR8pbZkTuH-RkAIInWS3m6QW4R5vD7bBCldc6rNmcvYNcyLPkxdYRw4&collection=journals). While there are laws protecting animal mothers and their offspring in relation to mother and child separation (e.g. [Lucy’s law](https://www.gov.uk/government/news/lucys-law-spells-the-beginning-of-the-end-for-puppy-farming)), there are no such laws in family courts protecting mothers and babies. We would argue this form of separation is another form of CPIT.

Disruption of breastfeeding can be considered a [breach of a human right](https://laleche.org.uk/breastfeeding-contact-cases/) of infants and mothers (Article 8) and yet case law examples of mother and babies who are being breastfed being separated to enforce [contact with the father](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWFC/HCJ/2023/42.html&query=(breast)+AND+(feeding)) are available publicly.

The family court – currently absent of a [trauma informed lens](https://www.judiciary.uk/wp-content/uploads/2023/04/References-Bridget-Lindley-Lecture.pdf) – can and should consider intersectional, cyclical, and systemic processes of gendered and ageist (towards children) oppression, discussed in our model which we anticipate developing further. One area which requires further attention is the treatment of mothers and children who are neurodiverse or have other needs. Allowances, such as including [intermediaries](https://resolution.org.uk/the-review/archive/the-review-issue-221/neurodiversity-and-proceedings-in-the-family-court/#:~:text=The%20neurodivergent%20community%20can%20experience,and%20foreign%20experience%20for%20them.) to assist these families, are reported to us as an under-utilised facility. Additionally, mothers report neurodivergent children being branded as ‘alienated’ and neurodivergent mothers as ‘alienators’. Mothers with disabilities consistently report [unfair treatment](https://supportnotseparation.blog/2023/11/28/tracey-norton-speaks-out-against-fii-fabricated-induced-illness/), and as more likely to have their children removed. Mothers in our study also report being mis-labelled with ‘[fabricated induced illness](https://cerebra.org.uk/wp-content/uploads/2023/11/FII-Final-report-2023-Nov-01.pdf)’, despite researchers at Leeds University reporting a “devastating and often life-long impact on children and families” following such allegations, with 80% of such allegations later being dismissed.

The review into the [presumption of parental involvement](https://www.gov.uk/government/news/child-protection-at-heart-of-courts-review) has concluded, yet the release of the review findings keeps being delayed – these delays result in continued harm to [mothers and children](https://www.herbar.co.uk/post/right-to-equalitys-presumption-of-contact-campaign#:~:text=Unfortunately%2C%20this%20means%20that%20courts,to%20the%20abusive%20parent1.).

Child Sexual Abuse (CSA) cases are underexplored – our research in England (paper in progress) and [Brazil](https://www.tandfonline.com/doi/full/10.1080/09649069.2023.2285136) has discovered CSA criminal investigations are being closed due to family court findings. Thorough investigation of cross-jurisdiction malfeasance requires urgent attention. We welcomed the amendment put forward in the [Criminal Justice Bill](https://publications.parliament.uk/pa/bills/cbill/58-04/0010/amend/criminal_rm_pbc_0129.pdf) [p6] regarding the suspension of parental rights for convicted sex offenders, but this was [rejected in parliament on 30th Jan](https://www.mirror.co.uk/news/politics/letting-paedophile-dads-keep-custody-32001149) as a ‘punishment’ to these offender parents. The safeguarding minister Laura Farris urged these victims to seek prohibited steps orders instead. We ask, why is it acceptable to punish and responsiblise victims to seek their own protection? Why are these offenders prohibited from contact with others’ children but not their own? Recidivism in sex offenders is a serious concern, with studies citing younger males (18-24) demonstrating recidivism at a [rate of 80% (with age 25-39 at a rate of 43%](https://dev.cjcenter.org/_files/apcj/16-1-2Smethurst.pdf_1615503001.pdf)). Children and protective parents must be kept safe within the family court.

Legislation should be implemented to ensure that the family court does not hold greater powers than that of the police. Too often, police and social workers report their hands being tied by family court orders. Abuse is a crime, and family court orders should not be enabled to continue to subvert the rule of criminal law, investigation, and justice.