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“Catastrophic”: a qualitative exploration of survivors experiences of expert instruction in private law child arrangements proceedings

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ABSTRACT

This article explores the lived experiences of female survivors of domestic abuse when an expert had been instructed in private law family court proceedings in England and Wales. It considered survivors' lived experiences from the moment that an expert was suggested to the expert report outcome. The study found that when the family court has made no findings of domestic abuse the court's focus shifts from the perpetrator to a survivors' behaviour. Survivors described that, despite their reservations, they considered the expert assessment to be the last opportunity for a professional to recognise the domestic abuse and change the court's opinion. Survivors found that their natural brain's response to trauma, due to abuse, was repackaged and (mis)diagnosed as disordered behaviour. Expert reports recommended psychological treatments that were often conditional to any future changes to child arrangements in their favour. Further, survivors' lived experiences described how perpetrators were able to harness the legal mechanism of child removal and use it as a form of post-separation coercive control, often supported by the expert. Overall, survivors' lived experiences raised serious professional and safeguarding concerns, as well as ethical issues about the role and impact of the expert in private law child arrangements proceedings.

KEYWORDS

Child removal; coercive control; domestic abuse; experts; family court; trauma

Introduction

This article explores the findings of doctoral research that was carried out between 2018 – 2022 which aimed to explore the experiences of female survivors of domestic abuse who had instructed an expert in private law child arrangements proceedings.

Private law child arrangements proceedings can be initiated, under section 8 of the Children Act 1989, when there is a disagreement as to where a child should reside, or how much time each parent should be allowed with a child. In 2020, 55, 645 private law cases started in the family courts. (Ministry of Justice, 2021). Estimates indicated that the prevalence of domestic abuse in private law 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% (Barnett 2014, 2020, Silberg and Dallam 2019,

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Hunter *et al.* 2020). In England and Wales, the Domestic Abuse Act 2021, provides a full definition of domestic abuse that includes physical, psychological and economic abuse, as well as recognising that children who witness domestic abuse are also victims.

Over the past two decades, concerns have been raised about the safety of the family courts which led to the Ministry of Justice publishing ‘Assessing harm to children and parents in private law children cases’ (Hunter *et al.* 2020) widely referred to as the ‘Harm Panel Report’. Overall, the report highlighted that Practice Direction 12J (PD12J) was not operating as intended, particularly when the domestic abuse was not properly understood. Consequently, the abuse was often not seen as a barrier to contact and resulted in potential harm to women and children (Hunter *et al.* 2020, p. 84).

Concerns have also been raised about the use of experts, the lack of information about experts and the expertise of experts (Coy *et al.* 2012, Birchall and Choudhry 2018, Hunter *et al.* 2020, p. 63). In 2019, the President of the Family Division, Sir Andrew Macfarlane, called for several working groups to be formed to evaluate the operation of the family courts. The Working Group of Medical Experts in the Family Court was established and has since published a report which has mainly focused on the use of experts in public law proceedings (Segal 2020). More recently, concerns have been raised about the regulation of experts instructed in the family court, the scope of their ‘expertise’ accepted by the court and the belief systems that guide their practice (*Re: C, Summers and Campbell* 2022, Summers 2022, 2023).

The definition of an expert is a person who provides expert evidence for use in family proceedings (Part 25(2)) of the Family Procedure Rules (FPR). Part 25(3) of the FPR’s explains that it is the duty of an expert to help the court on matters within their expertise and PD25B Para 3.1 states 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. 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 duty to the court (and being bound by the findings of the court). An expert can only be instructed if the court deems it to be ‘necessary’ to assist in determining child arrangements in the best interests of the child/ren.

Methodology

In 2020, 25 female survivors of domestic abuse, who had had an expert instructed within their private law child arrangements proceedings, were interviewed by telephone. Women were self-selecting, lived in England and Wales and recruited via a Twitter advert.

Essentially, the research set out to explore what happened ‘behind the scenes’ when an expert had been instructed in a survivor’s private law family court case, from the moment that an expert was suggested to the outcome of the expert report. This had never been attempted before and therefore the design needed to create a safe space for women to speak about their experiences with as little structure as possible.

A Grand Tour interview method was chosen. A Grand Tour interview is described as a verbally stimulating experience which asks the participant to go on a verbal tour of a particular moment or period of time (Spradley 2016). 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. The method also complemented the feminist post-structural lens that was applied to the overall research, as a common factor is language

which is used in the analysis of social organisation, social meanings, power, and individual consciousness (Weedon 1987).

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, if necessary (Weedon 1987, Brenner 2006, Spradley 2016). Survivors were interviewed by phone to ensure anonymity, which began by discussing the consent and confidentiality forms previously sent to each participant by email. Interviews lasted for approximately an hour and were transcribed by the author. A thematic analysis was carried out using NVivo 12.

Despite the grand tour interview method providing a rich source of data, it also created a limitation in what data could be collected. While the information gathered was unique to the current literature, the design prevented the collection of elements that could be standardised including why an expert was initially deemed necessary. This information would have been helpful in providing further legal context to the survivors' lived experiences and could be considered beneficial to future studies.

Ethical approval was provided by the University of Worcester, and later on by Brunel University, London. Although the use of the term survivor was adopted throughout the study, the author recognised that women can also identify with other terms such as victim and victim-survivor. All survivor names were changed to notable female feminist names.

Domestic abuse in the England and Wales family court

The study was underpinned by a literature review which included topics chosen when considering a survivors' journey through the family court when a judge follows the Child Arrangements Flowchart. The literature clearly showed how survivor's experiences of the family court provided the impetus to the Harm Panel Report (Hunter *et al.* 2020). The report was closely followed by the high profile appeal case, *Re H-N*, which could be considered to be a distant echo of the landmark *Re L* appeal, two decades earlier.

Central to the study's research question, was the role of the expert and the subsequent expert report. The literature review revealed that, despite the increasingly important role experts had within private law proceedings, minimal research existed about their effectiveness and impact in England and Wales. Within the limited literature identified, concerns were raised about the use, and subsequent impact, of 'so-called parental alienation' utilised by experts to counter domestic abuse allegations (Hunter *et al.* 2020, Birchall and Choudhry 2021, Domestic Abuse Commissioner 2023). Further, the Harm Panel Report received submissions suggesting 'that it was almost impossible to get evidence of domestic abuse admitted into child arrangements proceedings, in contrast to willingness to admit expert evidence of parental alienation' (Hunter *et al.* 2020, Burton 2023).

Overall the literature emphasised, that despite the implementation and subsequent amendments of PD12J and over two decades of research calling for change, survivors continued to experience a cycle of failure in the family court. Crucially, women were at further risk of harm from a failure of systems when they alleged abuse (Hunter *et al.* 2020, Burton 2023).

Survivors' lived experiences of domestic abuse

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 being a criminal offence since 2015 (Hunter *et al.* 2020). However, recent case law following on from the Harm Panel Report has shown how complex and contradictory the law around domestic abuse can be, for examples see *Re H-N*, *Griffiths v Tickle* and *K v K*.

Survivors' lived experiences offered an insight into some of the abuse that had been perpetrated on them. Survivors courageously shared, often harrowing, descriptions of the domestic abuse that they endured which included rape, stalking, punching, stamping, financial abuse, verbal abuse, sleep rape, intimidation, non-fatal strangulation, online abuse, coercive reproduction, threats to take children away from their mothers, refusing to return children, and coercive and controlling behaviour. A number of survivors described how the physical abuse was minimised or ignored for reasons including that the abuse was not deemed bad enough to be a barrier to child contact.

But the judge didn't think that it was a big deal that he (her ex-partner) kept 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 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. (Alice)

Savitribai recounted in painful detail how her ex-partner would rape her in her sleep and had coerced her into becoming pregnant, only to find that she was then threatened with the transfer of her child's residence if she did not stay in the relationship.

Barbara described how her ex-partner not only had a history of abusing her and her child/ren but had been paying for sex-workers and grooming other women who had been sexually abused. Barbara recalled the judge's response, 'we all like a pretty girl'.

Betty's ex-partner told her that if she left the relationship he would claim that she was an unfit mother. However, Betty did leave the relationship:

So, basically what my partner would do is when, I terminated the relationship, he would email me, you know, X amount of days until you give birth, make the most of it while you are carrying [deleted] and then when [deleted] was born, he was saying, you know, you will be in court within a week and I became really quite traumatised by what he was saying and believed that it was a possibility. (Betty)

Survivors' lived experiences highlighted how normalised the domestic abuse they had endured had become, with a number of survivors minimising it during the interview. Angela explained, 'there wasn't much physical violence, he had got charged, and he knocked me over a few times and pushed me down the stairs'. Angela also felt that professionals minimised the abuse and was made to feel that 'there were women going through much worse'. Angela continued by saying:

Like, even my own solicitor who had been trying to help me, he told me, well he was trying to ... prepare me for the fact that no matter what I had been through, this father would still possibly have 50/50 access to the children. So he was trying to say to me that he had defended a woman who's ex went to prison, and one who's ex had bitten her face and left bite marks, and that these men still saw their children. So I just felt like mine was just petty'. (Angela)

Survivors described how they were continually retraumatised by having to retell their ‘story’ to a plethora of professionals, who often dismissed or minimised what had happened to them. However, there was always the hope that a professional would finally recognise the domestic abuse and the focus would ‘pivot to the perpetrator’ (Mandel and Reymundo 2022.) Crucially, if domestic abuse was not identified in the initial Cafcass safeguarding check, it was unlikely that findings would be made by the court. Survivors were frequently under the misapprehension that an expert would change this and they would finally be believed.

Experts in private law child arrangements proceedings

Survivors’ lived experiences highlighted a lack of information about the entire process of instructing an expert including understanding the rationale behind the instruction, what would happen in the assessment and potential outcomes of the expert report. Crucially, this finding is reflective of the dearth of information available to parents about expert instruction and academic literature focusing on expert evidence in private law child arrangements proceedings.

An expert is instructed to assist the judge in determining child arrangements, usually between two parents, that are in the best interests of the child/ren. As explained in the introduction, experts are guided by Practice Directions, particularly PD25 and the Family Procedure Rules, particularly Part 25(2). Currently, experts are expected to be regulated by a professional body such as the Health and Care Professions Council (HCPC). Unregulated experts are accepted on the provision that they are able to provide evidence of their expertise but concerns have been raised about this practice (President of the Family Division 2021, Summers 2022, *Re: C*, 2023). However, findings of this study raised concerns, more broadly, about the role of regulated experts.

There is an extensive range of professionals who can be considered to be an expert including Independent Social Workers (ISW). The study found that the majority of survivors described instructing either a psychologist or psychiatrist. Pertinently, several survivors were initially unclear as to who could be considered an expert and were under the misapprehension that Cafcass officers were experts. Amal explained how she had felt that the court had treated the Cafcass officer as if they were an expert who made a ‘quasi-diagnosis of my mental health’. Sivitribai described the ‘Cafcass safeguarding person’ as the ‘first expert in my case’.

The study found that experts could be instructed at any point during the court proceedings, regardless of whether a fact-finding hearing had been held. Several survivors described how an expert instruction had been introduced early on in proceedings by Cafcass, after the domestic abuse had been dismissed or minimised enough to be considered a manageable risk. Alexandria said:

The Guardian, wanted the psychologist, this was the Guardian who said that she was concerned about my presentation, yet she had never met me. She had only come on the case two days earlier . . . that it was granted. (Alexandria)

Emma, Jess, Michelle and Ruth all described how Cafcass had introduced the idea of an expert, with the main focus to assess the mother’s behaviour. Consequently, the focus shifted from the perpetrators behaviour to the mother’s behaviour and the abuse was disregarded as the cause of the relationship breakdown between the father and child. Simply put, survivors’ experiences indicated that according to the family court, if domestic abuse had not been found, there must

be a different reason for a mothers behaviour (i.e. the presenting trauma) and this must signify that she was psychologically unwell. The trauma that mothers were exhibiting as a result of domestic abuse (and continuing family court proceedings) was re-packaged as potentially disordered behaviour which needed to be assessed to determine whether this would be harmful to her child/ren.

The expert assessment

Existing literature raises concerns about the use of experts in private law child arrangements proceedings, most recently from the Domestic Abuse Commissioner who highlighted the marketisation of expert reports, as well as the expert reliance and legitimacy of 'so-called parental alienation' (Domestic Abuse Commissioner 2023). For the first time, this study provided accounts of what can happen during an expert assessment.

Repeatedly, survivors described that there was a lack of information regarding why an expert was necessary, the choice of expert and the limited input to the Letter of Instruction. Barbara highlighted the chaos and intense pressure she was under to choose an expert, where availability outweighed expertise. The study found there were inconsistencies in who was assessed, with the majority of mothers becoming the sole focus. As a result, imbalances of power were further exacerbated, which were strengthened when a father was not assessed but fully funded a mothers expert assessment, leaving her more vulnerable to continued post-separation abuse.

Safety and safeguarding

The location of the assessment was a dominant theme to emerge from the interviews and revealed serious safeguarding concerns. The Harm Panel Report highlighted how initial safeguarding checks carried out by Cafcass often minimised or dismissed the domestic abuse which then set a dangerous trajectory for survivors continuing in the family court (Hunter *et al.* 2020). The study found that the impact of inadequate initial safeguarding checks extended to the expert assessment and revealed, for the first time, how vulnerable survivors were. As a result of the domestic abuse not being identified as a safeguarding concern, the risk of a survivor being placed in high risk situations increased, from managing harmful contact to unsafe expert assessments (Thiara and Harrison 2016, Hunter *et al.* 2020).

Several survivors explained that assessments had been conducted in rooms next door to where their ex-partner had been placed. Jess had been reassured by Cafcass that she would be safe however, on arrival, she discovered that her ex-partner was in the building and the expert expected the children to meet him, despite months of no contact.

Ruth's assessment was carried out at Cafcass. Ruth's child/ren had previously 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 the 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)

Doris explained how one of the two experts involved in her case set a very different tone with each parent. The expert knew of Doris's ex-partners family due to a shared interest and therefore had an affiliation with her ex-partner. Doris explained that because of this connection, the expert decided to carry out the father's assessment with the child/ren while carrying out their shared passion that appeared to be 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 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 was actually coming back on 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 ... new to the legal system, okay, I didn't know that I had authority to say, 'no, go away'. I felt intimidated and he, he, pushed that he could 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, under the circumstances. (Doris)

Bell and Emma were assessed by the same male psychologist. Bell described how the assessment was carried out in his '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. (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 being filmed without their consent. Emma described how, during her second assessment with the same expert (this time on Zoom due to the COVID-19 restrictions) the psychologist appeared to fall asleep.

Coercion in the guise of consent

It is now recognised that perpetrators can use the Family Court to continue post-separation abuse (Hunter *et al.* 2020). How expert instruction can be used to continue post separation has yet to be fully explored. However, survivors' lived experiences revealed how power imbalances, already inexistence because of domestic abuse, were further aggravated by the pressure to agree to an expert assessment and resulted in the merging of consent and coercion.

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 to which there are three conditions: voluntariness, knowledge and rationality (O' Regan 2020). The first precondition to consent is voluntariness which O' Regan (2020) explains is broadly understood to be a legal recognition of free and unrestrained choice and suggests that this is a common ground upon which validity of consent is tested.

At no point during the study did a survivor mention that an expert had provided them with a consent form before the assessment. This does not mean that it did not happen but was not a finding of this study. Arguably, the expert may have assumed that consent had been obtained by the very fact that the assessment was deemed to be necessary by the court. Nevertheless, there is an expectation from professional bodies, such as the Royal College of Psychiatrists (RCP), that informed consent is obtained before an expert assessment (see The Royal College of Psychiatrists 2015). This raises wider issues about how consent is understood within child arrangements proceedings (by judges and court professionals) as well as how it intersects with the clinical understanding and the practice of obtaining informed consent.

Savitribai was one of several survivors who explained similar pressures from professionals:

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 this come from? What is this? He said, 'you know, if you don't do it, they'll say that, you know, why doesn't she want to do it? And the judge will make you do it'. (Savitribai)

Savitribai continued:

. . . so my own lawyers were telling me this, you know, if you don't do it the judge is going to make you do it. And I thought, well that's a bit . . . if he phrased it in that way, why would I disagree with something . . . They said, 'you would really be seen, pretty badly especially after the factfinding 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 have an option'. (Savitribai)

Survivors often described the high financial cost of an expert instruction, which many mothers were expected to pay and the challenging response from the court when they stated that they could not afford to pay. For example, despite her objections, Emma was forced to take money out of her own business and borrow from her friend to ensure that she could pay for the expert assessment. Phoebe said:

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. (Phoebe)

Crucially, survivors described feeling coerced into being assessed and believing that the assessment would be last opportunity for the domestic abuse to be identified by a professional. This is a critical finding, as many survivors did not understand that the expert had a duty to the court and not to the person that they were assessing.

Expert assessment types

Survivors' lived experiences revealed that a broad range of assessment tools were utilised by the expert including: psychometric tests (IQ and personality tests), questionnaires and face-to-face 'unstructured' discussions. Although guidelines on psychometric testing exist, survivors' lived experiences revealed an apparent lack of information on the experts chosen psychological approach and implementation, including the assessment length (see International Test Commission 2013, The British Psychological Society 2017).

Survivors indicated that assessments times generally ranged from approximately forty-five minutes to over five hours. Two survivors explained that they were assessed over a two-day period. Michelle and Alexandria were expected to be assessed for over five hours with breaks of 20 minutes and 5 minutes, respectively. 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 childcare.

Crucially, survivors' lived experiences emphasised how extensive expert assessments were carried out on highly traumatised women without any safeguarding measures in place because domestic abuse had been minimised or dismissed.

Identification of domestic abuse

A number of survivors described feeling shocked on discovering that their lived experiences were 'shut down' and they were challenged by hostile experts about the concepts of domestic abuse which increased their vulnerability. The study found that survivors had not understood that the expert had a duty to the court. Emma explained:

and then he came back again, and he just looked at me and said, 'so . . . your, your child/ren were not sexually abused, the judge said it didn't happen, so . . . you understand that, so why, why are you here?' (Emma)

During Phoebe's assessment with a 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 Williams' 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 him for the 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 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. (Phoebe)

Phoebe explained that she felt too frightened to continue to speak and decided it was safer to stop talking. Phoebe described how she had never stopped her ex-partner from seeing her child/ren but she was blamed for influencing them. Phoebe was a litigant in person and at one point in proceedings had tried to explain to the judge that the psychiatrist had 'physically dragged [the child/ren] out of the car' to talk to the judge and threatened them with arrest if they did not comply. The expert psychiatrist became the treating clinician and subjected Phoebe's child/ren to 'shock treatment' which aimed to break the bond between mother and child, and finally child removal.

Survivor sexual history

Problematically, a number of survivors explained how the expert became fixated on their past sexual history during the assessment. It is extremely difficult to understand the rationale for this line of questioning particularly within the context of child arrangements proceedings where the central issue is the best interests of the child. Once again these findings fill the gap in current literature.

The study found that sexual history related questions were often posed by male experts. Survivors described feeling distressed about this line of questioning and concerned that this intimate information would be made publicly available, particularly to the perpetrator.

Barbara was in her forties when she was assessed by a male psychologist alone in her home over a two-hour period. Barbara said:

He wanted my sexual history, in great detail, from teens through to my twenties, very interested, in 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 was not alone in observing that:

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, where he fixated on my sexual history, in great depth. (Barbara)

Alice explained that the expert in her proceedings 'went through every relationship' that she ever had and asked who she had lost her virginity to. Savitribai was assessed by a male psychologist who was assisted by a female psychology student. Savitribai said:

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 is he asking me . . . how is this relevant and when he got to the point when he was asking what is, what is your first partner's name, I refused because I said, I know what partner's first name is. He doesn't need to know the name of my first ever 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 that'.

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 was supposed to view all of this. It's just horrible, that it has nothing to do with anything. (Savitribai)

Kathleen described a similar experience:

It was just under a three 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 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 dissected what this, what that, what the other, and I just don't understand the, it doesn't make sense, you're meant to be asking questions about what, am I a fit mother . . . (Kathleen)

Survivors' accounts clearly showed how vulnerable they felt and how the experts approach felt like an extension of the abuse they were already traumatised by. As Emma explained:

I feel like I've been violated', I basically am feeling like, I've been, it sounds really extreme, but I felt like I had been raped. (Emma)

The impact of expert assessments

Although the quality of an expert report has been the subject of research, albeit limited, the study provided unique insight into expert recommendations and their impact (Ireland 2012).

A survivors' mental health frequently became the focus of the court, early on in proceedings. This obfuscated post-separation abuse that often continued in plain sight of the court and could be attributed to the trauma that a survivor was enduring. As Alexandria explained, professionals needed to find another reason for her trauma, other than domestic abuse and, in her case, pushed for a diagnosis of Munchausen's by Proxy.¹ When a diagnosis was not made, Alexandria was sent for a psychological assessment. The psychologist initially reported that Alexandria was paranoid, delusional and anxious, as well as reporting that she would 'influence' and 'sabotage' the contact between her children and their father. Many months later, the Cafcass Guardian asked the psychologist supplementary questions including:

'you said that she [Alexandria] was going to do X, Y and Z, and she hasn't done it, what is your view now?. And basically, her response was . . . it came across quite angry, that I must have lied in my first assessment'. (Emma)

Survivors were diagnosed with a range of conditions including histrionic traits, anxiety, paranoia, delusional behaviour, low self-esteem, as well as determining that the 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. Histrionic traits, anxiety and low self-esteem all point to conditions commonly considered to be female ailments or diseases of the mind (Chesler 2018, Rose 2021).

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) aimed at changing negative or abnormal behaviour, such as Cognitive Behavioural Therapy (CBT) or Cognitive Analytical Therapy (CAT). Van Rooyen (2014) describes CBT as:

An action-orientated form of psychosocial therapy that assumes maladaptive, or faulty, thinking patterns cause maladaptive behaviour and 'negative' emotions (cognitive patterns). The treatment focuses on changing an individual's thoughts (cognitive patterns) in order to change his or her behaviour and emotional state.

Van Rooyen (2014) describes CAT as:

An approach of psychological treatment that incorporates understanding from cognitive psychotherapies and from psychodynamic approaches into one integrated and effective therapy . . . 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.

Survivors' accounts revealed that experts were unable to recognise natural responses to trauma as the result of domestic abuse and consequently misdiagnosed mental health conditions, often recommending therapy that could be harmful if inappropriately recommended.

Further, survivors explained how they felt coerced into agreeing to the recommended therapy which sometimes became a condition of the court. For example, Alice's progress with therapy was monitored by Cafcass. Alice said that 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-partner reading her therapy report and any mental health diagnosis potentially being used by him to further re-abuse her.

Alice's lived experience raised another common issue relating to the conditional nature of the recommended therapy and its accessibility. Alice described the difficulty in accessing the therapy on the NHS not only because of the long waiting lists, which could have an impact on the progress of court proceedings but also the type of therapy available. Pertinently, an NHS patient is unable to specifically request therapy recommended by the expert but is expected to be initially assessed by an NHS psychologist. Remarkably, Alice persisted until she was seen by an NHS therapist, as she was keen to follow the experts recommendations as it had a bearing on the contact that she had with her child/ren. After several sessions, Alice was alarmed to be told by the NHS therapist that she was being discharged. Alice explained that on hearing the news she burst into tears because she was so afraid that she had done something wrong, and 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. The specialist therapist did not find a personality disorder:

This is word for word, like, it's kind of . . . what was it? She said, she said something about consistent signs that she's 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 relationships, and coercive. (Alice)

Many survivors described how they felt under pressure to immediately access a service and, sometimes, find alternative private services. Tarana was recommended CAT, after she was diagnosed with histrionic traits and promoting a 'narrative which the Guardian was trying to make me say that I've lied [about the domestic abuse], which I hadn't'. Tarana took out a loan to fund the private therapy:

Very glad that I did because I found an amazing therapist and she said to me, 'I can't see any histrionic traits . . . I can 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)

Early on in proceedings, Kathleen had found a trauma-informed therapist to work with the entire, separated family and described it as a 'wonderful solution that had the potential to work'. However, Kathleen explained that Cafcass prevented her from continuing and an expert psychiatrist was instructed, followed by a psychologist. Kathleen said that the psychologist questioned her about the psychiatrist's diagnosis of detachment disorder for the child/ren and asked her why she did not believe the psychiatrist's diagnosis. Kathleen 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 . . . diagnoses out of context when she has only met my child/ren for 20 minutes. (Kathleen)

Kathleen thought that the expert was having 'good fun playing a cat and mouse game', and continued by 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 complex. (Kathleen)

Kathleen's expert asked her, 'if I gave you a mental illness, would you accept that?' to which she responded by saying no. It was not clear whether the psychologist had access to the psychiatric report, but Kathleen explained that, in the report, she had been criticised for her use and understanding of medical terminology. As Kathleen pointed out, the psychiatrist had made a diagnosis of detachment disorder but had failed to consider the level of fear and trauma that she and her child/ren were enduring as a result of domestic abuse.

Transfer of residence ('child removal')

We are now facing having a child removed, on the [deleted], this will be the third time around and the judge's biased so . . . what he said to us at the last final hearing in [deleted] . . . was, if he sees our faces in that court again . . . he is going to seriously be considering removal and residency handed to the father and he will award costs, which the dad is going for costs of six and half thousand from us. (Gloria)

The study found that 84% of mothers had been threatened with or had had their child/ren removed during family court proceedings. Currently, no data exists on the prevalence of child removal in England and Wales private law proceedings and there is minimal research about the outcome and impact of such measures exists (Monk and Bowen 2020, Against Violence and Abuse (AVA) 2022, Van Zyl 2022).

However, there is growing research and data related to child removal from public law proceedings which suggests that the UK has one of the highest rates of involuntary adoption in Europe (Fenton-Glynn 2015). 'Every year, more than 13,000 women are involved in care proceedings in England alone, and many women will lose children permanently from their care' (Broadhurst and Mason 2020). Domestic abuse has been identified as the most common factor within cases where child protection intervention is needed (Butler 2014, Against Violence and Abuse (AVA) 2022).

Significantly, survivors described how they felt that the threat of child removal was present before separation and this heightened post-separation and on engagement with the family court. As Betty described earlier, she was being threatened with the removal of her unborn child and said:

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)

Child removal is considered to be the last resort by the family court to try to maintain 'contact at all costs' (Barnett 2014). However, mothers' lived experiences indicated that it can be

positioned as an option, perhaps discreetly, from the early stages of legal proceedings. The effect of the threat of child removal is dynamic as it can instantly change the focus of proceedings from what is in the best interests of the child to the behaviour modification and regulation of mothers. Survivors' accounts highlighted how this legal regulation of mothers was also being harnessed by perpetrators to continue their pattern of coercive control and was enabled by professionals who continued to legitimise this practice with impunity. The threat of child removal increased a survivors risk of further harm and as Isabella said, left her 'feeling continually under threat, unable to sleep because of worrying what was happening to her and her child/ren', leaving her vulnerable and 'not in the best place to make decisions'. Critically, many survivors were not refusing their child/ren contact with their father but were asking the court to ensure that the contact was safe (see Thiara and Harrison 2016).

Survivors' lived experiences revealed how they considered the role of the expert to be critical within the practice of child removal. A number of survivors described how Cafcass officers recommended a specific expert who they thought would achieve the right result. On hearing who the expert was, Bell said 'people have said, "you might as well pack your kids bags" . . . as it is a done deal'.

Simone, speaking from a refuge, described how she was expected to support contact with her ex-partner despite having to flee from harm. The ISW involved in her case, contacted her ex-partner to notify him that Simone had moved to a refuge. While not disclosing Simone's location, the ISW expected Simone to meet her ex-partner:

She [ISW] text him (sic) and said, 'okay, you can't . . . you can't go to her door anymore. You two are going to have to find a mutual meeting point. He turned around and said, 'if she moves and doesn't give me her address, I'm not going to hand over our child'. And she turned around and said, 'okay, if that's what you want to do, you can do that'. (Simone)

Simone eventually endured child removal and at the end of the interview stated:

I'm now in a refuge because of his continued abuse . . . my [child/ren] are now under the mental health team because [they] are 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 for the next [deleted] years. (Simone)

At the end of the interview, Simone started to cry and said, 'So, there is no light at the end of the tunnel, I don't think. There might be . . . I could be very wrong but, it doesn't feel like there is'.

If the court considers the domestic abuse to be a manageable risk, the onus can often be placed upon the mother to make the contact work (Harrison 2008, Hunter *et al.* 2020). Doris discussed how impactful trying to manage contact was on herself and her child/ren but was being threatened to do 'what he wanted'. Doris explained how her child/ren returned from seeing her ex-husband 'in a mess' and would 'literally hold [their] hands around the sink and just vomit'. The impact became worse as her child started to self-harm by banging their head. Doris' lived experience highlighted the similarities to Gardner's schedule of sanctions on mothers for unsuccessful contact as the threat of removal seeped into court hearings (Gardner 1998):

They [court professionals] talk about taking my child/ren away and putting them into foster care, to break the bond with me . . . but it gets surreal 'cos they say, 'well she obviously

doesn't like him [the father] and so that might be affecting the child/ren. It's not conscious alienation but this could be alienation unconsciously.

Doris continued:

So . . . I'm then a mess. I'm absolutely panicked that, you know, I can't conceive why they would want to take my child/ren away and put them in foster care. I mean what father would want that? Especially when they have been self-harming, you know? (Doris)

Several survivors described how their ex-partners had instigated court proceedings to seek more contact and/or a transfer of residency (either to themselves or to foster care) but in reality this was being utilised as part of a wider pattern of coercive and controlling behaviour. Coretta explained:

he actually used the system to continue [coercive control and emotional abuse], especially the control side of it . . . he is actually the resident parent under a full care order . . . this is going to sound really weird, he didn't set out to have the children . . . I think he thought I haven't been a resident parent for a long time . . . our child/ren will want to be with me . . . I honestly think he thought it wasn't going to happen, but it did'. (Coretta)

Bell simply explained, 'dad's got the control of the child/ren now'.

As previously highlighted, the expert in Phoebe's case became the treating psychiatrist and was allowed to write supplementary reports without seeing her child/ren. Phoebe said that 'he totally went off what my ex-husband said'. The psychiatrist had reported that parental alienation was the reason for the children not wishing to see their father, and not the domestic abuse. The psychiatrist had initially recommended flooding treatment, describing it as 'short, sharp shocks' of separation between Phoebe and her child/ren which increased incrementally as the child/ren continued to express their wishes not to see their father. Despite this, the psychiatrist eventually recommended a forced transfer of residence, on the basis that this was a very 'severe case' and the separation needed to last longer. The recommendation was enforced by the family court and 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 dad was. (Phoebe)

Barbara described how the expert instructed, who incidentally had a specialism unrelated to child arrangements proceedings,² said that her child/ren 'were best placed living with the abusive father' and she continued by saying 'and I lost my child/ren . . . in, on the report of an expert . . . [in an unrelated field]'. The separation lasted for eight years. Following the return of her child/ren Barbara later discovered that within weeks of the removal occurring, the father had changed the school and the child/ren had:

turned up to school bruised. [child/ren] told the headmistress that their dad had done it . . . So I've had it confirmed by the school and the police records. They called the police too into the school . . . he still had custody for [many years] and I wasn't informed. (Barbara)

Barbara's child/ren were returned to her, broken, following several suicide attempts. Barbara chillingly described the impact of the expert's report as 'catastrophic' and concluded by saying, 'So I'm picking up the pieces of [the expert] to this day, our lives have been destroyed'.

Several mothers explained how despite the removal, the court had ordered that they have limited contact with their child/ren with a mixture of supervised and unsupervised contact. In the cases where it wasn't supervised, mothers described how the father was able to control access to their children.

Maya described how as a volunteer she was able to accompany her child/ren on a school trip but the father said to the school, 'if you allow the mother to come on the trip, I won't allow my child/ren to go on the trip'. Subsequently, Maya received a call from social services senior management who attempted to discourage her from going on the school trip. Maya continued by saying:

20 minutes in, I said, something doesn't smell right to me. Why is there a member of senior management ringing me and spending so much time trying to convince me not to come on the trip? So I said to her, 'are you calling because he asked you to? . . . she eventually disclosed that he said that he would not allow my child/ren [if Maya was to join the school trip]. (Maya)

Coretta explained how her ex-partner had continued perpetrating post-separation abuse and had created barriers to seeing her child/ren. This had placed the onus on Coretta to return the matter to court because there is currently no provision for a review of a Final Order. The COVID-19 pandemic provided an opportunity to continue the post-separation abuse by preventing Coretta from seeing her child/ren. At the time of the interview, she had not been able to see her child/ren for 21 weeks.

Maya and Coretta's lived experiences offered an insight into how post separation abuse can be perpetrated following child removal and clearly showed how child removal is very rarely the solution to the issues before a court, when allegations of domestic abuse have been raised. In cases where domestic abuse is a factor, the bond between a mother and a child will always be the most vulnerable point for a perpetrator to manipulate and threaten. Currently, family court professionals are not recognising how child removal (particularly when transferred to the perpetrator) creates an even greater shift in power towards the perpetrator and can place him in a position whereby even professionals become deferent to his wishes.

Conclusion

Survivors' accounts suggested that expert instruction in private law child arrangements proceedings can be problematic, when domestic abuse is a factor. The study identified that domestic abuse and coercive and controlling behaviour continues to be poorly understood and recognised. Domestic abuse is often dismissed, minimised and/or considered to be a manageable risk and not a barrier to contact. As a result, the court's focus shifts from the perpetrator to the mother, and time and money is expended in determining the cause for her 'abnormal' presentation which is seen as impacting child contact arrangements. An expert can be instructed to assist the judge who remains independent of the parents and is bound by the court's findings.

Survivors' lived experiences clearly indicated that expert instruction was often introduced by professionals early on in court proceedings, regardless of a fact-finding hearing, and was usually focused on a mothers' mental health. Survivors were concerned that they were the sole focus of the expert assessment but despite this, felt compelled to go ahead as they believed that

it would be the last opportunity for a professional to recognise the abuse and change the mind of the court. However, survivors were shocked to learn that the expert also dismissed the abuse. As a result, natural responses to trauma were (mis)diagnosed and repackaged as disordered behaviour requiring psychological treatments, often conditional to any future contact arrangements, in their favour.

The study found that survivors' lived experiences of experts raised serious professional conduct and safeguarding issues, as well as calling for further research related to consent and expert independence when domestic abuse is a factor. Survivors' accounts revealed how the expert process often left them more vulnerable to systems abuse and subjected to continued post-separation abuse. Further, it provided fertile ground for perpetrators to harness legal tools, such as child removal, to use as a mechanism of coercive control which was often supported and enabled by experts.

Throughout women's history, mothers have been legally regulated. Women have been aware that challenging oppressive and abusive behaviour can come at the cost of being stripped of their motherhood. As Mary stated, 'the minute you claim domestic abuse you are at high risk of losing residency of your children in the UK'. A considerable body of work has focused on the way in which the law operates to continue to construct and uphold concepts of parenthood and what it means to be a father or a mother (See Fineman and Karpin 1995). While society outside of the family court arena is undertaking a re-examination of the nuclear family and gendered normative behaviours, survivors' lived experience within the family court continues to feel as if they have stepped back in time.

Overall, survivors' lived experiences raised serious ethical questions about the practice of assessing vulnerable, traumatised women as part of private law child arrangements proceedings and whether a clinician's duty to care extends to their role as an expert. This study will provide a platform for further research into the role of experts and a general unpacking of their necessity when allegations of domestic abuse is a factor.

Notes

1. Currently known as Fabricated-Induced Illnesses or Factitious disorder.
2. This information is not included to prevent jigsaw identification.

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