

Family Separation Clinic – UK. Response to Special Rapporteur on Violence Against Women and Girls’ call for inputs – Custody cases, violence against women and violence against children

1. The Family Separation Clinic provides therapeutic interventions in cases of emotional harm to children in the context of divorce or family separation, which often come to light through children rejecting a relationship with one of their parents. The Clinic has worked in cases at every level of the judicial system in England and Wales for over 10 years and is widely recognised as having expertise in both the understanding and treatment of such cases.

2. The Clinic accepts referrals to carry out assessment for treatment where complex or fractured attachment dynamics appear to be present and delivers therapeutic interventions that focus on healing the underlying defences in the child. Cases are assessed using a differentiation framework. In cases where emotional harm has been assessed to have caused the child’s rejection of an attachment figure, combined treatment routes are employed to free the child from the splitting defence that underpins the dynamic. The Clinic also delivers psychotherapy and therapeutic coaching to parents and provides training and consultancy services to professionals including psychologists, psychiatrists, psychotherapists and social workers. The Family Separation Clinic is based in London, UK, but delivers services to clients around the world.

3. Regular gender audit of our service delivery with parents around the world demonstrates that both men and women are as likely to lose a relationship with a child in such circumstances and it is our experience that both mothers and fathers are equally likely to refer to this as ‘parental alienation.’

4. We consider that all children, women and men have the right to live free from the perpetuation, threat or fear of violence.

5. We are not aware of any reliable evidence, and our experience does not support the proposition. that not enough attention is given to the interconnections between domestic violence and abuse and issues of child custody and parental relations in the courts of England and Wales. As well as the primary legislation that covers domestic violence, the courts of England and Wales are required to adhere to Practice Direction 12j – Child Arrangements & Contact Orders: Domestic Abuse And Harm. This Practice Direction applies to any family proceedings in the Family Court or the High Court under the relevant parts of the Children Act 1989 or the relevant parts of the Adoption and Children Act 2002 in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made. The purpose of this Practice Direction is to set out what the Family Court or the High Court is required to do in any case in which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic abuse perpetrated by another party or that there is a risk of such abuse.

6. Whilst accepting that there may be individual cases where there may have been failure, our extensive experience of working in the courts of England and Wales is that there is no evidence allegations of

domestic violence (including, but not limited to, coercive control – any pattern of intimidation, degradation, isolation and control with the use or threat of physical or sexual violence, psychological and/or emotional abuse, physical or sexual abuse, financial or economic abuse, harassment and stalking, and online or digital abuse) are not thoroughly examined by the courts and the agencies that provide information in supporting the courts' decisions in custody and guardianship cases (local authority social services, Guardians ad Litem, police etc), and that there is no evidence of systemic failure to ignore, downplay or otherwise minimise allegations of domestic violence and abuse.

7. The Children Act 1989, the primary legislation governing matters of custody and guardianship, requires that when a court determines any question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration (s.1(1)). In circumstances where the court is considering whether to make, vary or discharge a section 8 order (that being the making of an order regulating arrangements relating to with whom a child is to live, spend time or otherwise have contact, and when a child is to live, spend time or otherwise have contact with any person), the court has a duty to consider any harm that the child has suffered or is at risk of suffering (s. 1(3e)). There is no evidence, and it is not our experience, that the courts of England and Wales systematically fail in that duty.

8. Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances (s. 37). There is no evidence, and it is not our experience, that the courts of England and Wales or the appropriate authorities are systematically failing in that duty.

9. Allegations of domestic violence and allegations of 'parental alienation' are present in some contested child custody cases. Such allegations may be true, false or fabricated. Where courts are faced with claims and/or counter-claims of domestic violence and/or 'parental alienation' by one or both parties, it is the duty of the courts and the professionals that support the courts to determine the facts of the matter and make rulings that are based on the best interests of the child. There is no evidence, and it is not our experience, that the courts of England and Wales systematically fail in that duty.

10. Whilst we are aware of reports from aggrieved parents and campaign groups that the courts systematically ignore allegations of domestic violence, there is no evidence, and it is not our experience, that the family courts of England and Wales systematically ignore allegations of domestic violence, or that mothers have been penalised for making allegations by law enforcement and/or the judiciary responsible for determining custody cases.

11. There is no evidence, and it is not our experience, that there is any tendency in the courts of England and Wales to dismiss the history of domestic violence and abuse in custody cases nor that the courts of England and Wales tend to judge such allegations as deliberate efforts by the mothers to manipulate their child and pull them away from their father.

12. There is no verifiable evidence to support the claim that mothers and children are systematically being exposed to ongoing violence by abusive fathers as a result of orders made by the courts of England and Wales.

13. There is no evidence, and we strongly disagree, that mothers are pressured by the courts of England and Wales to withdraw their allegations of abuse or to agree to a specific custody arrangement except where, upon investigation, those allegations have been found to be untrue.

14. There is no evidence, and we strongly disagree, that the courts of England and Wales consider, or make orders based upon an assumption or belief that the right of a father to maintain contact with his children should override any other consideration.

15. We do not disagree that the family courts are immune from the gender stereotypes that are present within the societies they serve and we recognise that both women and men may be subjected to negative stereotypes when they encounter the courts and the systems that support them. However, there is no evidence, and it is not our experience, that women experience negative stereotypes disproportionately or more negatively than men in matters of child custody.

16. We believe all children should be protected from all forms of physical or mental violence, injury, abuse, or maltreatment, including sexual abuse, while in the care of parents. We consider that any cases in which parents, deliberately or unconsciously, cause psychological and emotional harm by: interfering with the child's attachment bonds; causing fear; inducing maladaptive psychological defences; threatening or enacting violence; parentifying, spousifying or otherwise causing role corruption; and any behaviours that draw children in a parent's intra or inter-personal conflicts at the expense of their own physical, psychological and emotional wellbeing fall within these parameters, and it is the responsibility of the courts, child protection services and others to protect children from such harm.

17. There is no evidence, and it is not our experience, that the family courts of England and Wales ignore the history and existence of domestic and family violence and abuse in the context of custody cases, or their consequences for mothers and their children.

18. There is no evidence, and it is not our experience, that the family courts of England and Wales remove children from the care of a parent unless there is significant, verifiable evidence of harm or risk of harm – and that being after all options to protect the child without recourse to removal of the child have failed.

19. There is no evidence, and it is not our experience, that the family courts of England and Wales remove children from the care of a parent without significant evidence of the harm being perpetrated by that parent being provided by professionals including social workers, Guardian's ad Litem, child and adolescent psychiatrists, psychologists, police, teachers and other professionals charged with working to meet the child's best interests.

20. We are aware of no cases in England and Wales where a court has removed a child from a parent (mother or father) based solely on an allegation of 'parental alienation' by the other parent and no child removed without significant, evidence-based investigation by the relevant authorities.

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