

24 September 2020

Dear Mr Paul Givan,

We are writing to you, in your capacity as Chair of the Committee for Justice, to express our deep concern around the growing discussion of "Parental Alienation" in matters relating to the Domestic Abuse and Family Proceedings Bill. It is a topic that has been increasingly mentioned in relation to domestic abuse proceedings and has on occasion been spoken about as a form of domestic abuse itself. We feel prompted to write this letter as a matter of urgency after three members of the Justice Committee suggested that "Parental Alienation" be added to the Bill as an amendment and draft Departmental Guidance was released for comment referring to parental alienation as a form of domestic abuse. It is our position that "Parental Alienation" should not be included in the Domestic Abuse and Family Proceedings Bill, a position that is supported by international legal frameworks. Please read our evidence to support this position and our concerns around its inclusion.

Summary Points:

1. Parental Alienation is an under-researched and underdeveloped term, that is not robustly supported by scientific evidence. The World Health Organisation has removed Parental Alienation from its classification index.
2. Parental Alienation is utilized by abusive partners to undermine allegations of domestic abuse by their ex-partner. The nature of domestic abuse is gendered, meaning that statistically it is more like to be a male perpetrator undermining a female survivor.
3. There is consensus from International Human Rights legal frameworks against the inclusion of Parental Alienation mechanisms in formal legislation. Although this is legislation to be rolled out across Northern Ireland, the Westminster Government is responsible for ensuring that all four nations within the UK remain compliant with our international legal obligations.
4. Legislation already exists to ensure that non-abusive parents have access to their children. Resources would be better spent ensuring these mechanisms are operational.
5. Parental alienation needs to be viewed via a children's rights lens and does not give due attention to the voices, experiences and wishes of children.
6. The inclusion of Parental Alienation was not consulted on during the evidence gathering stage for the Domestic Abuse and Family Proceedings Bill and, as such, any inclusion within the Bill would require a comprehensive and transparent consultation process.

Women's Aid NI is the lead expert voluntary organisation challenging and addressing domestic abuse in Northern Ireland. Women's Aid Federation Northern Ireland is the umbrella body of eight Women's Aid groups across NI which provide refuge accommodation and floating support together with a range of practical and emotional support services, including outreach and aftercare to women and children suffering from domestic abuse. We share our position on Parental Alienation with our eight local

Women's Aid groups as well as Women's Aid Federations in England, Scotland and Wales and other organisations in Northern Ireland. Our sister Federations in Scotland and Wales have both successfully argued against the inclusion of parental alienation in legislation because of the harmful impact it has on women and children experiencing domestic abuse. The devolved Governments in Scotland and Wales heard their argument and agreed, we urge our Government in Northern Ireland to do the same.

## **Parental Alienation and Domestic Abuse**

Parental Alienation (PA) as a concept is a derivative of a much-contested theory of Parental Alienation Syndrome (PAS), first coined by child psychiatrist Richard Gardner to describe a child's rejection of one parent and a strong connection with the other parent<sup>1</sup>. Gardner posited that this rejection of the alienated parent by the child was due to "brainwashing" and "programming" of the child by the preferred parent, adding that in his experience the preferred parent was almost always the mother<sup>2</sup>. Gardner identified eight symptoms of PAS, asserting that children affected by PAS will exhibit all if not most of the symptoms<sup>3</sup>. One of these symptoms is known as the "independent thinker phenomenon", referring to a child who believes that their opinions on their alienated parent are their own when instead they have been placed there by their preferred parent. Pepton noted that this allows for the conclusion that 'there is nothing that a child could say that would not support a diagnosis of PAD (Parental Alienation Disorder or PAS)... if a clinician was inclined to conclude that a child was suffering from PAD, any argument from that child that his or her reasons for not liking the rejected parent were his or her own would be viewed as a symptom'<sup>4</sup>. PAS effectively ignores reasons why a child might become alienated through other causes in favour of a blanket acceptance that the cause of the alienation is because of the favoured parent, which Gardner clearly states is normally the mother. This model feeds into gender bias and invokes stereotypes of vengeful women, ignoring other factors that may have caused a child's rejection of a parent. PAS remains widely contested and, as of 15<sup>th</sup> February 2020, has been removed by the World Health Organisation from its classification index<sup>5</sup>.

Kelly and Johnston identify other factors which may explain how a child has come to reject a parent and resist visitation, these include but are not limited to normal developmental processes (separation anxiety in very young children), high-conflict marriage or divorce (inability to cope with high conflict situations) and parenting-style (rigidity, anger or insensitivity towards the child<sup>6</sup>. Another reason that would explain a child's reluctance to visit a parent is domestic abuse, with Gardner even noting that parental alienation should not be applied in domestic violence situations<sup>7</sup>. This poses issues where women have difficulty proving domestic abuse in courts, which is a common issue for women going through domestic abuse proceedings in Northern Ireland. Berg notes that Gardner's model for PAS does not account for this issue, yet mothers are still compelled to protect their children from their

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<sup>1</sup> J Teoh, C Meng Chu and GS Chng 'Parental Alienation Syndrome: Is it Valid?' [2018] SAclJ

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> MB Pepiton 'Is Parental Alienation Disorder a Valid Concept? Not According to Scientific Evidence. A Review of Parental Alienation, DSM-5 and ICD-11 by William Bernet' [2012] Journal of Child Sexual Abuse 244-253

<sup>5</sup> <https://reseauiml.wordpress.com/2020/02/23/world-health-organization-removes-parental-alienation-from-its-classification-index/>

<sup>6</sup> JB Kelly and J Johnston 'The Alienated Child: A Reformulation of Parental Alienation Syndrome' [2001] FCR 249-246

<sup>7</sup> R Berg 'Parental Alienation Analysis, Domestic Violence and Gender Bias in Minnesota Courts' [2011] Law & Ineq.

abusive parent<sup>8</sup>. The separation of criminal and family courts in Northern Ireland further complicates this issue as criminal proceedings concerning domestic abuse could be ongoing while decisions regarding child contact are being made in Family Courts without taking domestic abuse into consideration. The view that domestic abuse is not taken into consideration in child custody decisions was noted in a briefing paper by United Nations and regional independent mechanisms on violence against women and women's rights, who identified that 'women subjected to intimate partner violence are at higher risk of negative custody-visitation outcomes'<sup>9</sup>.

Women's Aid service users have repeatedly identified that abusive partners will use the term parental alienation to discredit the survivor's accusations of domestic abuse and to explain a child's reluctance to have visitation with the abusive parent. Women in our services have had their children removed from their custody completely and full-time residency given to the abusive parent because of accusations of parental alienation. This is an issue that has been echoed by Women's Aid Federations across the United Kingdom. Welsh Women's Aid has noted their concerns around parental alienation being used in Family courts, identifying their belief that more weight can be given to this than to domestic abuse itself due to the incorrect belief by some legal practitioners that once a relationship has ended, the abuse has ended<sup>10</sup>. Research carried out by Women's Aid Federation England and Queen Mary's University highlighted that some women who had reported domestic abuse which were countered with accusations of parental alienation lost residency of their children

*Real evidence was just turned away, time and time again [...] I was seen as an alienating mother, when in fact, he alienated me from the child, and that child ended up paying the price.*<sup>11</sup>

Research by Silberg and Dallam on 27 child custody cases in the USA, where abuse was alleged against a parent (in all cases the abusive parent was the father) with these reports at first being dismissed and later validated, 59% of perpetrators were given sole custody of the child. In 78% of those cases where sole custody was given to the abusive parent, the primary reason that the Judge had given the perpetrator custody was because the mother was not seen as credible<sup>12</sup>.

Brunel University conducted further research on 40 family law judgements in the UK between 2000 and 2019 where parental alienation had been raised. The study found that courts typically rejected claims of parental alienation from fathers who perpetrated domestic abuse and presented as "irrational". However, abuse perpetrated by fathers who presented as "normal" was filtered out of

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<sup>8</sup> Ibid

<sup>9</sup> The Platform of United Nations and regional independent mechanisms on violence against women and women's rights [2019] 'Intimate Partner Violence against Women is an Essential Factor in the Determination of Child Custody, Say Women's Rights Experts' <[https://www.ohchr.org/Documents/Issues/Women/SR/StatementVAW\\_Custody.pdf](https://www.ohchr.org/Documents/Issues/Women/SR/StatementVAW_Custody.pdf) >

<sup>10</sup> Welsh Women's Aid [2018] Letter Regarding Petition P-05-751 Recognition of Parental Alienation

<sup>11</sup> Women's Aid Federation England 'What About my Right Not to be Abused?' [2018] <<https://www.womensaid.org.uk/wp-content/uploads/2018/05/Domestic-abuse-human-rights-and-the-family-courts-report.pdf> >

<sup>12</sup> J Silberg and S Dallam 'Abusers Gaining Custody in Family Courts: A Case series of Over Turned Decisions' [2019] Journal of Child Custody 140-169

proceedings and these claims of parental alienation were successful<sup>13</sup>. The study also identified that mothers who claimed parental alienation had 'little to no success' despite evidence that fathers were controlling and abusive. This parallels what Women's Aid service users are experiencing when they make claims of parental alienation. From research and what we know of the lived experiences of women, the concept of parental alienation in action in family courts is successful when claimed by fathers, but when invoked by mothers, especially where there has also been accusations of domestic abuse, it does not carry the same weight. This point was echoed by the Platform of United Nations and regional independent mechanisms on violence against women and women's rights, who discouraged the use of parental alienation in family proceedings as it 'denied child custody to the mother and granted it to a father accused of domestic violence in a manner that totally disregards the possible risks for the child'<sup>14</sup>.

### International Legal Frameworks

International legal Human Rights frameworks discuss child contact to varying degrees. Most legal mechanisms place the best interests of the child as paramount. The UN Convention on the Rights of the Child in article 18 identifies that

*States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern*<sup>15</sup>.

The UN Convention on the Elimination of Discrimination Against Women shares this view, noting in article 16 that in all matters relating to children, 'the interests of the children shall be paramount'<sup>16</sup>. CEDAW's General Recommendation No. 35 echoes this, noting 'The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to ... child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity and guided by the principle of the best interests of the child'<sup>17</sup>.

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<sup>13</sup> Brunel University 'Playing the Parental Alienation Card: Abusive Parents use the System to Gain Access to Children' [2020] < <https://www.brunel.ac.uk/news-and-events/news/articles/Playing-the-Parental-Alienation-card-Abusive-parents-use-the-system-to-gain-access-to-children> >

<sup>14</sup> The Platform of United Nations and regional independent mechanisms on violence against women and women's rights [2019] 'Intimate Partner Violence against Women is an Essential Factor in the Determination of Child Custody, Say Women's Rights Experts'

<sup>15</sup> UN Commission on Human Rights, *Convention on the Rights of the Child*, 7 March 1990, E/CN.4/RES/1990/74 art 18

<sup>16</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 art 16

<sup>17</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 14 July 2017, CEDAW/C/GC/35

The Istanbul Convention, which the UK has signed but not yet ratified, has the most explicit guidance regarding issues of child contact and domestic abuse. Article 31 of the Convention States:

*Custody, visitation rights and safety*

1. *Parties shall take the necessary legislative or other measures 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.*
2. *Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.*<sup>18</sup>

GREVIO is the expert monitoring body overseeing the implementation of the Istanbul Convention. In 2019, at a meeting of the International and Regional Women's Rights Mechanisms on Violence Against Women and Women's Rights, Feride Acar, the President of GREVIO, voiced concerns on the use of parental alienation in child custody cases. Acar explained that the concept is often used 'to further discriminate against women who were subjected to domestic violence and were seeking a divorce'<sup>19</sup>. In a joint statement by those in attendance of the meeting, members noted that 'accusations of parental alienation by abusive fathers against mothers must be considered as a continuum of power and control by state agencies and actors, including those deciding on child custody'<sup>20</sup>. Speaking on the Pillon Decree, a potential piece of legislation being considered in Italy, the Special Rapporteur on Violence Against Women, Dubravka Simonovic stated that the assumption of parental alienation syndrome would contravene article 31 of the Istanbul Convention, as well as articles 15 and 16 of CEDAW, requiring women to have equal rights to men in legal processes<sup>21</sup>. From this we can ascertain that the international community monitoring the application of women's human rights frameworks actively discourages the use of the term "parental alienation" in child custody cases, especially in relation to cases where there has been domestic abuse, as it compounds already existing gender bias held by courts and re-victimises survivors.

### **Child Custody Provisions within Domestic Legislation**

WAFNI believes that legislation already exists within our jurisdiction to deal with child contact and the withholding of visitation. The Children (Northern Ireland) Order 1995 is the overarching legislation governing the care of children in Northern Ireland, with Part III of the legislation outlining orders with respect to children in family proceedings. This legislation led to the publishing of Co-operating to Safeguard Children (2003, revised March 2016 and refreshed August 2017), policy guidance for child protection. Various other legislative provisions and policies already exist to support and safeguard children. The Children's Services Co-Operation Act (Northern Ireland) 2015 aims to improve

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<sup>18</sup> Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, November 2014, ISBN 978-92-871-7990-6 art 31

<sup>19</sup> Meeting of the International and Regional Women's Rights Mechanisms on Violence Against Women and Women's Rights, 23 May 2019, Council of Europe, Strasbourg

<sup>20</sup> The Platform of United Nations and regional independent mechanisms on violence against women and women's rights [2019] 'Intimate Partner Violence against Women is an Essential Factor in the Determination of Child Custody, Say Women's Rights Experts'

<sup>21</sup> Mandates of the Special Rapporteur on violence against women, its causes and consequences and the Working Group on the issue of discrimination against women in law and in practice, 22 October 2018, OL ITA 5/2018

<[https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Women/WG/Communications/OL\\_ITA\\_5\\_2018.pdf&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Women/WG/Communications/OL_ITA_5_2018.pdf&action=default&DefaultItemOpen=1)>

cooperation amongst departments and agencies and places a duty on children's authorities as defined by the act to cooperate to deliver services aimed at improving the wellbeing of children and young people. The Act required the NI Executive to develop and deliver a strategy to improve the wellbeing of children and young people in NI. This strategy, The Children and Young People's Strategy 2019-2029 sets out eight parameters of wellbeing. Domestic abuse cuts across all of these and in particular "living in safety and with stability". The Safeguarding Board for Northern Ireland Procedures Manual sets out clear direction in relation to safeguarding children and young people. Other government strategies, include the new Family and Parenting Support Strategy, which will seek to build on the strengths of the existing 'Families Matter' strategy and to respond to the Draft Programme for Government commitment to give every child the best start in life. This is being developed by the Department of Health, with the support of other Government Departments.

While we understand children and young people have a right to preserve their family relations and maintain direct contact with both parents on a regular basis, this must be balanced with the safety and welfare of the child, viewed through a children's right lens and must be proven to be in their best interest. Contact with a perpetrator of domestic violence can present significant levels of risk and can be used by the perpetrator to further the abuse of the mother and children and can be used as a means of continued exercise of power and control over all family members. This can be evidenced by the Child First campaign launched by Women's Aid Federation England and the accompanying report, Nineteen Child Homicides<sup>22</sup> which reported 19 child homicides between 2005 – 2015 across 12 families, additionally two children who were seriously harmed through attempted murder. Nineteen Child Homicides tells the stories of 19 children who were killed by a parent who was also a perpetrator of domestic abuse, in circumstances relating to child contact (formally or informally arranged). What was seriously concerning in this study was that for 7 of the 12 families, contact was ordered through court. We believe contact should never be presumed to be in the best interests of the child. Over the years we have witnessed the physical and emotional distress of children before, during and after contact visits with many demonstrating behaviours such as bed-wetting, crying and other stress symptoms. Many children and young people have told us they do not want to have contact and do not feel safe attending contact visits but have been forced to do so through court proceedings. While we agree children have a right to preserve family relations and maintain direct contact with both parents, we also believe they have a right not to and their voices need to be heard in all court proceedings. We strongly believe that parental alienation is not a concept best placed to solve these contact issues, given its proven monopolisation by perpetrators of abuse. We strongly oppose its inclusion in the Domestic Abuse and Family Proceedings Bill and believe resources would be better utilised, employing the legislation and guidance already in place to ensure child contact is maintained for both parents where it is safe to do so and demonstrated to be in the child's best interests.

### **Parental Alienation and the Consultation Process**

We would be remiss not to identify that at no point during the consultation process or the evidence gathering stage for the Domestic Abuse and Family Proceedings Bill was parental alienation mentioned. As such, the wider community has had no input into this guidance nor will they have input into any proposed amendment which may be tacked onto the Bill. As we have explained above, parental alienation causes huge issues for survivors of domestic abuse, namely women, who have experienced this term being used against them to discredit domestic abuse allegations and in some instances women have lost custody in favour of an abusive parent. Had Women's Aid been made

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<sup>22</sup> Women's Aid, Nineteen Child Homicides, Bristol: Women's Aid, 2016

aware of the potential for parental alienation to be attached to legislation governing coercive control and domestic abuse, we would have addressed this in our evidence in a significant way. By not consulting on this formally, the Department of Justice has ignored the lived experience of women affected by domestic abuse, the very people that this legislation is supposed to protect.

To conclude this correspondence, we strongly oppose the inclusion of parental alienation in relation to the Domestic Abuse and Family Proceedings Bill in any capacity. We have highlighted our key concerns at the beginning of this letter. This is a highly contested term with extremely negative consequences for women and children who have experienced domestic abuse which has been discredited by the World Health Organisation. International legal mechanisms on violence against women agree the term exacerbates gender bias and is utilised by perpetrators of abuse to further control survivors who are disproportionately female. Existing provisions for child contact could be better harnessed to ensure child contact for both parents where it is safe to do so. We are extremely concerned that the inclusion of this term was not formally consulted on and as such the full impact of its inclusion has not been conveyed. The Platform of United Nations and regional independent mechanisms on violence against women and women's rights stressed that 'a holistic and coordinated approach based on existing international and regional standards must be applied at the national level ... not only to uphold the best interests of the child but also the principle of equality between women and men'<sup>23</sup>. Women's Aid agree that this is the best way forward for both parents, but particularly those impacted by abuse.

A copy of this letter has been sent to the Justice Minister, Naomi Long MLA. Thank you for your time, if you require any further information or evidence on this matter or anything in addition please do get in touch.

Yours sincerely,

Sarah Mason, CEO of Women's Aid Federation Northern Ireland,

Eileen Murphy, CEO of Armaghdown Women's Aid,

Rosemary Magill, CEO of ABCLN Women's Aid,

Kelly Andrews, CEO of Belfast and Lisburn Women's Aid,

Sharon Burnett, CEO of Causeway and Mid-Ulster Women's Aid,

Mary McCann, CEO of Fermanagh Women's Aid,

Marie Brown, CEO of Foyle Women's Aid,

Beth Scott, CEO of Northdown and Ards Women's Aid,

Edel Fox, CEO of Omagh Women's Aid

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<sup>23</sup> The Platform of United Nations and regional independent mechanisms on violence against women and women's rights [2019] 'Intimate Partner Violence against Women is an Essential Factor in the Determination of Child Custody, Say Women's Rights Experts'