

# Domestic abuse tactics in the Family Court – how do we achieve cultural change in 2024?

**Shona Love, Barrister, Pump Court Chambers**

In November 2023, the government responded (link at the bottom) to the July 2023 report from the Domestic Abuse Commissioner ('the Commissioner') which examined the family courts' handling of domestic abuse. In her response to the government, also November 2023, the Commissioner, welcomed their 'clear shared vision' and the government's commitment to increasing the number of Pathfinder Courts in 2024 whilst also strengthening the voice of the child. However, the Commissioner expressed her disappointment and stated it was 'disheartening' that many of her other recommendations such as; implementing a stricter definition of the term 'psychologist', establishing multi-agency Domestic Abuse Best Practice Leads, removing the legal aid means test for survivors in private family law proceedings and providing better funding to train the judiciary, had all been rejected. The Commissioner concludes her response by stating she is worried that the failure to implement these recommendations would deepen 'the lack of domestic abuse expertise and consistency that exists within the Family Court system'.

This article considers new case law and revisits the Commissioner's July 2023 report, looking afresh at its recommendations. The Report highlighted how victims and survivors are being subjected to continued

abuse by perpetrators in private family law proceedings, resulting in re-traumatisation<sup>1</sup> and the need for urgent reform. (For more detail on the Commissioner's Report, also see the interview with the Domestic Abuse Commissioner in this issue of *Family Law* at p 96, along with the Commissioner's response to the government, referred to above).

As stated by the Commissioner, there has been a sea change in recent years in how domestic abuse is understood and treated by both the public and the state.<sup>2</sup> Such change has been positively implemented in law by way of the Domestic Abuse Act 2021 ('the Act') which strengthens the support for victims of abuse. Crucially, the Act provides a legal definition of domestic abuse, recognises children as victims in their own right,<sup>3</sup> imposes a legal duty on local authorities to fund support, and amongst many other forms of protection, ensures abusers are prohibited from cross-examining their victims in the family and civil courts. However, evidence shows that perpetrators are still able to carry out their abuse in the family courts<sup>4</sup> with the Commissioner acknowledging that 'too often victims and survivors do not feel understood or taken seriously'.<sup>5</sup>

1 Domestic Abuse Commissioner, (July 2023) *The Family Court and domestic abuse: achieving cultural change*, Foreword, page 6. Available at: [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf) (Accessed: 30 August 2023).

2 Ibid.

3 Domestic Abuse Act 2021, Section 1. Available at: <https://www.legislation.gov.uk/ukpga/2021/17/contents/enacted> Women's aid 'Domestic Abuse Act 2021' Available at: <https://www.womensaid.org.uk/get-involved/campaign/domestic-abuse-bill/> (Accessed: 30 August 2023).

4 Domestic Abuse Commissioner, (2023) *Accompanying Methodology Report to the Family court and Domestic abuse: achieving cultural change*, page 12. Available at: [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-court-report\\_Methodology\\_2023\\_Digital-1.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-court-report_Methodology_2023_Digital-1.pdf) (Accessed: 30 August 2023).

5 Ibid at 1 above, page 1.

## Abuse tactics used by perpetrators

Given perpetrators of domestic abuse often seek to portray themselves as victims, thereby distorting reality,<sup>6</sup> it is vitally important those hearing, deciding and/or contributing to family law cases are appropriately trained to be able to spot the tactics used by perpetrators in their efforts to gain control and dominance over victims, especially in the context of children proceedings.<sup>7</sup>

Practice Direction 12J ('PD 12J') of the Family Procedure Rules sets out the factors the court should consider when allegations of domestic abuse are raised in private children law proceedings. However, as exposed by Channel 4's *Dispatches* programme, the *Harm Panel Report* and various other sources cited by the Commissioner,<sup>8</sup> the reality is that many of these factors are overlooked due to deep-seated, systemic failings. This has meant that allegations of domestic abuse and related risks are minimised and/or not sufficiently considered, resulting in a failure to prevent harm.<sup>9</sup>

The Commissioner pointed to the recent decision of *Re K* [2022] EWCA Civ 468, [2022] 2 FLR 1064. She said the findings in this case raise fresh concerns around how senior members of the judiciary are minimising domestic abuse allegations. The Court of Appeal held that fact-finding is only needed if 'the alleged abuse is likely to be relevant to what the court is being asked to decide relating to the children's welfare.'<sup>10</sup> The Commissioner takes the view that this position compromises the protection offered within PD 12J because it requires the family courts to decide if abuse/alleged abuse is 'relevant' which in turn allows the court to dismiss the need to establish domestic abuse, thereby minimising it. The Commissioner is firm in her view

that all allegations of domestic abuse are relevant to the consideration of a child's welfare and if disputed by an alleged perpetrator, should be considered in detail, at a fact-finding hearing.<sup>11</sup>

## So-called 'parental alienation'

As detailed in the Commissioner's report, there has been a significant rise in perpetrators relying on so-called 'parental alienation', a concept with no framework or foundation cemented in law but relied upon nonetheless to enable perpetrators to gain/re-establish contact with their child(ren) on the basis that the victim/survivor has 'alienated' the child(ren) from them. It is well established that turning family (including children) against a victim or survivor is a tactic used by some perpetrators as a pattern of abuse, whether during the relationship or as part of post-separation abuse.<sup>12</sup>

## 'Gaslighting'

Recent case law has for the first time, directly acknowledged 'gaslighting' as a form of domestic abuse. This tactic together with other abusive behaviour by a perpetrator was highlighted in great detail by Lord Justice Cobb in *Re B-B (Domestic Abuse: Fact-Finding)* [2022] EWHC 108 (Fam), [2022] 2 FLR 725:

'Assessment of the parties and the key witnesses: . . .

During his evidence, he was anxious to score forensic points about the mother's lack of credibility, and I was increasingly convinced that he did so in part to distract the court from assessing his own evidence and his account of himself . . . he showed minimal empathy in his evidence, for the mother who, on any view, was obviously very distressed; he was brazenly self-justificatory in his

6 Ibid at 1 above, page 26.

7 Ibid at 1 above, page 54.

8 Ibid at 4 above. Channel 4 *Dispatches* (2021), survey conducted for: Torn Apart: Family Courts Uncovered: *Dispatches*.

9 Ibid at 1, page 14.

10 *Re K* [2022] EWCA Civ 468, [2022] 2 FLR 1064, [8] ([www.bailii.org/ew/cases/EWCA/Civ/2022/468.html](http://www.bailii.org/ew/cases/EWCA/Civ/2022/468.html) (Accessed: 30 August 2023)).

11 Ibid at 1, page 22.

12 Ibid at 1, page 24.

explanations of his own behaviour. He showed little insight or contrition . . . ’

...

‘Emotional control/coercion: . . . the term ‘gaslighting’ in the hearing to describe this conduct was in my judgment apposite; the father’s conduct represented a form of insidious abuse designed to cause the mother to question her own mental well-being, indeed her sanity.’

‘Infidelity: . . . But this incident was illustrative of the father’s chauvinistic attitude to the mother and to their relationship which I find underpinned much of his attitude, and his lack of sensitivity, towards her . . . This also illustrates the father’s lack of moral code and his capacity to prey on those who he sees as vulnerable.’<sup>13</sup>

In the report, the Commissioner focused on achieving cultural change in response to tackling these behaviours and how the family courts should respond. Whilst the Commissioner acknowledges the progress made since the *Harm Panel Report* and the measures and initiatives taken by Cafcass, it is clear much more still needs to be done.

### Achieving cultural change

The Commissioner stated that ‘Cultural change requires a whole-systems approach’<sup>14</sup> and proposed many recommendations including further training and the removal of means testing for legal aid for all victims/survivors of domestic abuse going through private family proceedings. The Commissioner said the recommendations will lead to a significant shift in how cases involving domestic abuse are treated in the

family courts. The three key proposals were grouped into the following sections:

1. The creation of Family Court Domestic Abuse Best Practice Leads in every court area to bring about and sustain change (now rejected by the government);
2. An update on the Domestic Abuse Commissioner’s Family Court Monitoring and Reporting Mechanism (pilot scheme to begin in late 2023); and
3. Building on existing practice to ensure child centricity in the Family Court.

Whether more of these proposals/recommendations will be implemented in the fullness of time remains to be seen. For more details, the Commissioner’s report is available at the following link:

[https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf).

### Final thoughts

It is deeply troubling that despite such a positive legal and cultural shift in the way in which domestic abuse is now recognised, many victims still find themselves suffering at the hands of perpetrators, facilitated by ill-equipped decision-makers/a broken system. However, the progress identified since the *Harm Panel Report* provides some hope. It is a classic tale that only time will tell as to whether more of the Commissioner’s recommendations will come to fruition, but it is evident that wider urgent reform is needed, now.

The government’s response can be found at: [www.gov.uk/government/publications/government-response-domestic-abuse-and-the-family-court-achieving-cultural-change](https://www.gov.uk/government/publications/government-response-domestic-abuse-and-the-family-court-achieving-cultural-change).

<sup>13</sup> *Re B-B (Domestic Abuse: Fact-Finding)* [2022] EWHC 108 (Fam), [2022] 2 FLR 725, [51], [66], [70] and [72]. ([www.bailii.org/ew/cases/EWHC/Fam/2022/108.html](http://www.bailii.org/ew/cases/EWHC/Fam/2022/108.html) (Accessed: 30 August 2023)).

<sup>14</sup> *Ibid* at 1, page 33.