



Rape Crisis Network Ireland (RCNI)

Submission to the Consultation
on Parental Alienation

June 24 2022

Rape Crisis Network Ireland welcome the opportunity to make a submission to this research into Parental Alienation. From the outset RCNI make no claim to expertise in the concept of Parental Alienation, what we set out here is how we have become aware of it and our efforts to understand its functioning and impact around allegations of sexual violence against children in particular within the family.

Our submission takes the point of view of the child about whom concerns have been raised and secondly, sets out our mapping of the systems to seek to understand the processes of decision-making and action and any patterns arising concerning same.

The Child and Family Agency (CFA) receives well over 3,000 referrals on sexual violence against children per annum (Covid caused variation in the past few years). International in-depth studies of disclosures, from whatever source, of sexual violence committed against children¹ allows us to say that we can expect some false allegations to form part of this 3000, at a rate of approximately 2% – 8% with the lowest rate of false allegations being detected for the child who discloses themselves and the highest being where adults around the children draw mistaken conclusions around the child's behaviours.

In accordance with the law and protocols all cases are notified to An Garda Síochána.

Difficulties with the information sharing protocols and practices between An Garda Síochána and CFA are well known² and detailed publicly in various specialist reports. They are also currently under review. We don't propose to dwell on those matters here.

According to the Garda Inspectorate's estimates (2017), for these Sexual Violence against Children cases there is a 4% prosecution rate, with less than 2% resulting in a criminal conviction.

1 Garda Inspectorate Report Responding to Child Sexual Abuse in 2012: 'Thankfully, false complaints of child sexual abuse represent only a small proportion of all such complaints. A US study of 576 child sexual abuse investigations found that 6% of allegations made by parents and 2% of the allegations made by children could be classified as having been intentionally false.' Most recent meta-analysis of the literature on false allegations on child sexual abuse, William O'Donohue, Caroline Cummings & Brendan Willis (2018) The Frequency of False Allegations of Child Sexual Abuse: A Critical Review, *Journal of Child Sexual Abuse*, 27:5, 459-475

Sources include an Australian study of 551 reports of child sexual abuse documented a 2.5% rate of false allegations. A Canadian study, which reviewed 798 child sexual abuse investigations, found that 6% of them were intentionally false. The highest rate of malicious and false reports – 8.5% – was reported in a study of 350 child sexual abuse investigations in the UK. The report cites this source: Trocme, N. and Bala, N., (2004) [False Allegations of Abuse and Neglect when Parents Separate](#) p.1336, (Accessed on 15 June, 2010). See also (Jones, D. P. H., and J. M. McGraw: Reliable and Fictitious Accounts of Sexual Abuse to Children. *Journal of Interpersonal Violence*, 2, 27-45, 1987; Oates, R. K., D.P. Jones, D. Denson, A. Sirotnak, N. Gary, and R.D. Krugman: Erroneous Concerns about Child Sexual Abuse. *Child Abuse & Neglect* 24:149-57, 2000; Everson, M.D., and B.W. Boat: False Allegations of Sexual Abuse by Children and Adolescents. *Journal of the American Academy of Child and Adolescent Psychiatry*, 28, 230-5, 1989

2 Successive reports from the [Garda Inspectorate 2012 & 2017](#), the Child Care Law Reporting Project, HIQA and the Child Rapporteur.

Another way of saying this is that our criminal justice failure rate in securing justice in reported sexual violence against children, is between 90% and 96%.

For the children where a conviction is secured, there remains challenges in the child protection and family law spaces. It is not guaranteed, for example, that a parent convicted of sexual abuse will not gain access to that child through court orders.

However, it is the children whose cases do not secure a criminal conviction that concern us most and where we believe concepts such as PA begin to have potentially profound impact.

For these children (the 90 - 96%) the risk needs to be managed and they need protection regardless of the absence of a criminal conviction. The protection of these children is one of the complex tasks we expect families and communities to undertake informally and which the legislature have mandated CFA to undertake formally on all our behalf. In the course of this work, CFA relies on the Family Law Courts for some of its actions such as applications for care orders. In addition, these cases arise in private family law because for many child victims, the family is not a safe place, it *is* the location of the harm.

The Inspectorate Report (December 2017) found that, in 44% of child sexual violence cases processed by the state, the alleged perpetrator was a family member. When we look at the survivors accessing rape crisis centres, the RCNI National Rape Crisis Statistics 2020 found that 60% of all under 13s' cases of sexual violence against children, were reported as perpetrated by family members.³

For many of these families, where a child discloses incest, some but not all, will result in the family breaking up. This can be expected to be a highly acrimonious situation which are likely to escalate into the private family courts. This means that we can expect that a significant proportion of family separation and child custody cases going through our family courts, involve the rape and sexual abuse of children by family members in the absence of a parallel criminal conviction.

The Family Court Services process on average 11,600 cases involving guardianship, custody and access matters. Both the Child Care Law Reporting Project and the Legal Aid Board have tried to estimate how many of these involve child sexual violence. RCNI believe this figure should not be a matter of a guesstimate. It would be possible (if novel) for court services to gather and release statistics on how many private family law cases involve allegations of child sexual violence. The Joint Oireachtas Committee on Justice and Equality report 2019 recommended that the Courts Services should gather and publish family law data regularly 'in order for the Courts to provide consistency

3 [RCNI National Rape Crisis Statistics 2020](#)



and balance in decision making;⁴ We believe the forthcoming 3rd National Strategy on Domestic Sexual and Gender Based Violence will progress this urgent matter.

The fact is our family courts are handling highly criminal matters of the most sensitive and urgent child protection nature in unknown numbers, without criminal authority, without the appropriate tools and in the absence of appropriate specialisation.⁵ Many reports and recommendations have now advocated for specialist Family Law courts and child welfare courts systems which we don't propose to rehearse here.⁶ The question for this research is what role does PA play in this process?

In the circumstances where allegations of sexual abuse have been levelled against a parent but no criminal prosecution has arisen as a result (the 96%), and family and custody matters are before the Family Law courts, it is reasonable to expect that parental alienation, if it is a concept that is readily accepted by the courts and part of the tool kit of assessors, will be invoked by a parent who has been accused of sexually abusing their child. No data from the Courts allows us to quantify how often this

4 [Joint Oireachtas Committee on Justice and Equality report on the family Law System 2019](#), recommendation 14 and 15 '

14. A corollary of the in camera rule is that there is little by way of gathering and collating of data in private family law proceedings. In particular, the Committee noted the absence of data regarding the outcomes of private family law proceedings in relation to the rights of fathers, access rights and custody. It was agreed that in order for the Courts to provide consistency and balance in decision making, there must be better transparency within the process. The necessary resources should be made available to the Courts Service to gather and provide essential data regarding outcomes of private family law proceedings in order to assist future policy making.

15. Presently, it is not possible for the Courts Service to gather and release statistics regarding the precise number of cases heard that involve allegations of sexual abuse or domestic violence. The Committee believes it is desirable that the Courts Service, in conjunction with the Central Statistics Office, would gather and publish data regarding the number of cases that include allegations of sexual abuse or domestic violence in private law proceedings, and coordinate such information with An Garda Síochána and Tusla to ensure the necessary supports and services are provided.'

5 Child Care Law Reporting Project March 2018

6 - [Law Reform Commission Family Courts Working Group \(1996\)](#)

- [Address by the Minister for Justice, Equality and Defence Alan Shatter, T.D. A New Structure for Family Courts Consultative Seminar in Law Society, Blackhall Place Saturday 6 July 2013](#)

- [Law Society of Ireland, Submission to the Department of Justice, Equality and Defence Family Law – The Future \(2014\)](#)

- [Geoffrey Shannon, 11th Report of the Special Rapporteur on Child Protection](#)

- [Child Care Law Reporting Project Final Report](#)

- [Children Living with Domestic and Sexual Abuse NGO coalition submission to the Family Justice review Oversight Group Feb 2021](#) and the [Submission to the 3rd National Strategy on Domestic, Sexual and Gender- based violence June 2021](#)



scenario arises in Family Law but anecdotal evidence from parents and adult survivors of child sexual abuse, suggest to us that it is indeed, commonly invoked.

We cannot speak to the assessment tools used in exploring or determining PA but we can speak to risks and patterns that arise in survivors' experiences. These risks, we believe raise serious questions in and of themselves as to the safety of a reliance on this concept.

The questions we would ask this research to consider carefully in terms of assessing the risks of PA is how the system, with its set of procedures and practice, responds to PA being invoked:

- where violence from one party to another and the children in a relationship is present/alleged a parent that seeks to protect their child from an abusive parent may seek to limit the abuser's contact and opportunity to harm the child. Is PA a process whereby 'alienation' replaces the word 'protection'? If a parent protects, are they de facto guilty of Parental Alienation? How are the assessment tools which seek out PA able to discern where coercive control, domestic violence and sexual violence are present? Is this possible?
- It should be noted that if a parent fails to protect, they may have their child removed from their custody under the Child Care Act. PA puts the child victim and protective parent in a catch 22 position, which cannot be conducive to child protection.
- If the facts are that a criminal investigation 'went nowhere' and CFA marked the file 'unfounded' and the child protection assessors found the child's disclosures to be 'not credible' does the fact of the disclosure now make the case for PA?
- Are we confident that all parties understand the thresholds and definitions of the various agency findings. Eg a child's case may not progress to trial primarily because the Gardai did not have the resources to conduct a specialist interview until six months after the child's initial disclosure at which point the young child had stopped disclosing and therefore the DPP lacked evidence to progress the case. In these circumstances no inference should be taken as to whether or not the abuse happened from non-prosecution. Yet non-prosecution is often cited as evidence of PA. Likewise, is it understood that the 'not credible' finding is not a finding of fact.⁷
- Non - prosecution etc may result in the focus being turned to the source of the disclosure rather than the fact of it, in order to explain and understand the concerns

⁷ St Clare's unit of the CHI in response to a PQ (39561/20) 10 Dec 2020 stated the following: 'regarding an outcome of credible account of CSA, this refers to an opinion reached by the assessment team rather than a statement of fact. It is not possible to quantify reliability of credibility findings as the conclusions reached by SCU are professional opinions based on the account of the child/young person.' Between the years 2016 and 2020 the unit findings of credibility varied between 30 and 43% of all cases they assessed.



that were raised, recorded, noted and acted upon. This potentially applies to 96% of cases being processed by CFA. PA provides a ready and perhaps convenient explanation. What is the vested interest of the various parts of the system in accepting the explanation of PA when the alternative may be to leave a file open indefinitely, failing to conclude a case, acknowledging the many capacity issues in the system that mean the responses were less than best practice, mitigating against achieving justice and indeed protection for the child?

- Protective parents are routinely subjected to or pressurised to subject themselves to mental health assessment as they are accused of PA. The parent against whom an allegation is made is rarely subjected to same. Eg Once PA is invoked does it have the effect of the non-abusing parent becoming the focus of investigation and suspicion, not the alleged abuser? Indeed, does an allegation of PA act to protect the alleged abuser from further scrutiny?

Ultimately, the RCNI concern that we hope this research can shed some light upon, is does the concept of PA result in the child victim being silenced and the protective parent being punished by the State for supporting their child's disclosure and safety?

RCNI June 2022

