



Staying Mum

Guidance following The Staying Mum project launch



This guidance follows on from The Staying Mum project launch, held online on the 20th of October 2022. It is based on questions asked by the attendees which we have collated and split into broader themes to follow on from the outcomes of this project which are detailed below.

Much of the information is provided by Rights of Women, thank you to them.

The Staying Mum project builds on AVA's previous work on the National Commission on Domestic and Sexual Violence and Multiple Disadvantage, which identified need for work in this area: women's role as mothers featured strongly in their ability to access help and support.

We are grateful to the John Ellerman Foundation for funding this important project.

[The Staying Mum Literature Review and Peer Research Report](#) highlight the experience and impact of child removal for mothers facing domestic and sexual violence and abuse. They make practical recommendations that stretch across the family courts, lawyers, and child protection officials (e.g. social services, Cafcass) to improve responses and outcomes for mothers and their children at risk of removal.

[The Staying Mum section on AVA's Breathing Space](#) provides information and support for mothers facing domestic abuse who are worried about their children being removed from their care. The online resource provides guidance on navigating the Family Court system and managing day to day, with tips, advice and stories from other mums who have had similar experiences.

[The Staying Mum e-learning](#) is for professionals working with mothers who are survivors of domestic abuse and have had children removed from their care, or are at risk of having children removed in future. This course was developed by AVA as part of the Staying Mum project and draws on evidence from our peer research and literature review.

What is included in this guidance?

- Frequency and reasons for child removal
- What should support look like
- Advice and legal information for mothers and professionals
- Details about what training is available for professionals
- Details about projects raising awareness of parental alienation.

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How common is child removal?

What are the main reasons children are removed from their mothers/parents?

In March 2022, there were 82,170 looked after children in local authority care in England. This was a 2% increase on the previous year and the highest level on record.

According to data from local authorities, over half of children in need in 2022 had abuse or neglect identified as their primary need at assessment by children's services. The most common additional factors identified by social workers were concerns about the child's parent or carer being the victim of domestic abuse, and the mental health of the child's parent or carer.

These figures for children removed into the care of local authorities do not include children separated from their mothers via private children law proceedings in the family court.

[AVA's Staying Mum peer research](#) with female survivors of domestic abuse found that the most common grounds given for the removal of children through public or private proceedings in the family courts were abuse or unfit parenting by mothers. Mothers were accused of emotional abuse through parental alienation, or 'coaching' children to disclose domestic or sexual violence. In some cases, mothers were subject to counter-allegations of physical violence against partners and children. Mothers were judged to be unfit parents most commonly on the grounds of their mental health.

These allegations of abuse, neglect and poor parenting made and accepted during family court proceedings contrasted greatly with mothers' own experience of domestic abuse and motherhood, and aligned with perpetrator narratives of events.

What should support for survivors of domestic abuse and child removal look like?

The expert by experience speakers at our launch event made the crucial points that support for survivors of domestic abuse and child removal must be trauma-informed and long-term. This would better support mothers through the severe effects of child removal, supporting them to be in the best possible position to have children returned to their care.

[AVA's Staying Mum peer research](#) with female survivors of domestic abuse found that support which recognised and focused on mother's strengths was recommended by mothers, as well as the necessity of support at an early stage to support survivors to be safe from domestic abuse and keep them and their children safe.

Unfortunately, there is a dearth of services that support mothers facing child removal, despite the impacts being incredibly severe. [AVA's Staying Mum section on Breathing Space](#) provides tailored information and resources to support mothers surviving domestic abuse and child removal.

What advice would you give to a mother who has had her child removed?

The impacts of child removal are profound for both mothers and children. The severe emotional, mental, and practical implications compounds the trauma of domestic abuse, and leaves mothers feeling helpless and hopeless. Feelings of isolation and loneliness are often profound for mothers who have experienced child removal.

AVA's [Staying Mum section on Breathing Space](#) provides 'mum-to-mum' peer audio advice and tips from mothers who have faced domestic abuse and child removal. Furthermore, the stories section of the tool allows mothers to read and listen to the stories of other mums who have faced child removal and have shared their stories to help others in their journey.

Where can professionals get training on this issue?

AVA has developed a [domestic abuse and child removal e-learning for professionals](#) working with mothers who are survivors of domestic abuse and have had children removed from their care, or are at risk of having children removed in the future.

The [e-learning](#) is split into three manageable modules. Module one provides an introduction to child removal, including detailed information on the family court system. AVA worked with Rights of Women to cover this crucial topic. Module two supports professionals to understand the experiences of domestic abuse survivors before, during and after they have children removed from their care. The final module covers supporting survivors of domestic abuse and child removal, with information on how mothers want to be supported, and professionals' role here.

The [e-learning](#) advocates for professionals to understand the dynamics of domestic abuse, VAWG and how perpetrators can manipulate situations and systems to their advantage. Throughout the training, professionals are asked to think carefully about how to expand women's space for action for the long term safety and benefit of children.

If clients feel a judge is biased, in what situations would you advise that the matter is heard by a different judge?

The only way to get a different judge to hear a case is to apply for the judge to 'recuse' themselves, called a recusal application.

Recusal applications are unusual, partly because they are often unsuccessful. The application will be that one of the parties believes they biased against them. For this reason, a lot of thought needs to be put into whether it is the right application to make.

The law in relation to recusal says:

- The right to a fair trial includes the right to a trial and decision conducted and made by a decision-maker free not only from actual bias but also from the appearance of bias. Justice must both be fair and be seen to be fair.
- The court must first look at all of the circumstances that has led to the allegation that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the judge was biased.

The following need to be considered:

- Family Court judges have a lot of case management power. Case management decisions are the types of decisions judges make about how the case is going to be dealt with, for example, who is allowed to provide evidence, when it has to be provided, what issues are relevant and what issues are not relevant. The judge is expected to make case management decisions for the case to be able to move on to the next step.
- Delay in making decisions is not good for the children involved in the case.
- The allegation of bias has to be considered in relation to the specific facts and context of the case.
- The 'fair-minded and informed observer' will be balanced in their approach. They will not be complacent nor overly critical.
- The proceedings have to be considered as a whole including considering the judge's behaviour at other times during the hearing or over the course of the proceedings as a whole.
- Bias means a prejudice against one party or its case for reasons unconnected with the merits of the case.
- The fact that judge found a party was an unreliable witness, had lied or made a decision they disagreed with earlier in the case is not a reason to suggest the judge was biased by itself.
- Judges are allowed to give an indication of their thinking about a case. This means telling the parties, before having heard all of the evidence or heard from the parties, what they are thinking about the case. This is usually based on reading the papers. An indication they are thinking one way or the other about a party's case is not suggestive of bias unless the judge conveys an unwillingness to be persuaded otherwise whatever the evidence may be.

- If the decision is that a fair-minded and informed observer, having considered the facts, would not conclude that there is a real possibility that the tribunal will be biased, then the application will be dismissed. Even though the applicant is likely to be left feeling the same way about the judge, a judge will not recuse themselves on the sole basis that a party feels they are biased, there must be a more objective reason to do so.
- Managing a trial can be challenging, even for an experienced judge, and it is sometimes necessary to react without much time for refined consideration. Generous allowance is made for judges who may not always express themselves perfectly.

Why are there delays in legal aid funding?

Unfortunately, Legal Aid Agency is not sufficiently staffed for the amount of work it is required to do. The Legal Aid Agency doesn't only process applications, they also deal with amendments to funding certificates, appeals, the assessment of solicitors' and barristers' claims for payment and the allocation and management of legal aid contracts. They are simply not resourced well enough to do all of that quickly. If an application is a more complex legal aid application, it will take even longer. It doesn't help that they are extremely picky about every requirement being met to the letter and that it must all be fully evidenced. As a result, they will often send applications back to solicitors because they have not provided enough evidence or information. These types of delays can be avoided by solicitors making sure they have absolutely everything they need before they make the application but the knock on effect is that sometimes solicitors can be very demanding of clients in relation to the documents they need to provide.

What is the status of the public enquiry on unregulated experts?

There is currently no public enquiry in relation to unregulated experts although some organisations have called for one. The outcome of a case in relation to an unregulated expert is currently awaited. The President of the Family Division is hearing the case and will give some form of guidance. We do not know what this will be. In the meantime, if anyone is facing an application for an expert assessment in Family Court proceedings and a party is putting forward an unregulated expert, here are some pointers:

- The legal test for whether an expert assessment should be conducted is 'necessity', i.e. is it necessary for the court to obtain the opinion of the expert to be able to come to a decision. If you do not want any assessment at all, you should base your arguments on whether the assessment is necessary, for example, is there another professional involved in the case who can give sufficient evidence like the guardian or Cafcass officer?

- Find your own expert who is regulated, contact them and ask for a CV and estimate of costs. Provide these to the court so they have an alternative option. You should do this even if you want to oppose the application for an expert because if the court disagrees with you, they will appoint an expert from the options available. They cannot appoint a different expert if you have not provided them with one.
- The court is allowed to appoint unregulated experts in some circumstances. In our experience at Rights of Women, this is mostly a problem with psychologists and, if it is a psychological assessment the court is seeking, you can point out the following:
 - 'Psychologist' is not a protected title. This means anyone can call themselves a psychologist but there are some types of psychologists who have to have statutory regulation. The purpose of regulation is to protect the public.
 - Exactly what type of assessment does the court believe is necessary? If the court is appointing a psychologist, presumably this is for a psychological assessment. If the court requires a psychological assessment, this should be conducted by a regulated psychologist because the purpose of regulation is to provide some form of safeguard for both the adult and child parties to the proceedings. If it is not a psychological assessment that the court requires, then why is a psychologist being asked to conduct the assessment.
 - Para 3.8 and Appendix 5 of Psychologists as Expert Witnesses in the family courts in England and Wales: Standards, competencies and expectations – Guidance from the Family Justice Council and the British Psychological Society.
 - Reference to the President's Memorandum: Experts in the Family Court.
 - The Annexes to Practice Direction 25B.

What measure are being taken to raise awareness of the use of parental alienation and its implications?

- The United Nations Special Rapporteur on violence against women and girls recently put out a call for evidence in relation to parental alienation. See [here](#).
- There is an international research project ongoing which is currently calling for international experiences including from women in the UK. See [here](#).
- SHERA Research Group is regularly researching and discussing parental alienation on their Twitter and has resources on their website. See [here](#).

To what extent might the 'no blame' divorce arrangements and escalation of VAWG to Serious Violence help to alleviate some of the major issues?

'No fault' divorce was introduced for divorce applications issued after 6th April 2022. It removes some of the areas of the divorce process that were previously used to trap survivors in marriages. It also makes the process a little less risky because survivors are not required to set out behaviour in the application which will be sent to the perpetrator of the violence. To this extent, it alleviates some of the issues. There is still a legal process to go through and because it requires various legal steps to be taken, some survivors still struggle. However, anyone who thinks they are stuck in the divorce process can contact Rights of Women to work out the next step they need to take.

