

A SELF-HELP GUIDE:

DEFENDING YOUR CHILD AND YOURSELF FROM UNWARRANTED SEPARATION

This is a working draft by mothers, grandmothers, other primary carers and campaigners determined to stop children in their thousands being unjustly taken away from their families, and to stop violent fathers having unsupervised contact with children when the child doesn't want it and/or the mother thinks it's not safe. It is based on collective self-help which brings together our combined first-hand experience.

We hope you find it useful and strengthening in your struggle to protect your children. We welcome your comments and suggestions.

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1. Introduction – what you are up against

By law children should only be removed from their family if they are at risk of 'significant harm'. But this is not how the law is applied much of the time. It is commonly abused by the professionals whose job it is to 'act in the best interests of children' – local authorities, Children & Family Court Advisory and Support Service (CAFCASS), even judges ... We spell this out here so it's clear what we are up against and we offer some useful tips based on many families' experiences.

The relationship between child and mother, or other primary carer, who is the first provider of physical and emotional security and protection, is crucial to a child's welfare. Without that protection, a child can be vulnerable to every abuse of power by state institutions, violent predators and profiteers. Every loving mother knows that. Yet that primary relationship is routinely dismissed and trampled on. **Laws are often applied in ways that disregard or undervalue the significant harm caused to children by separating them from their mother and families.** This is despite much evidence from children, mothers and attachment experts that separation is deeply painful and has lifelong consequences. Social workers have told us that they get little or no training in considering such trauma, yet they are the ones who decide when the children should be removed. They treat separation as a hiccup in children's lives.

While poverty should entitle families to additional support it is instead often used to allege 'neglect'. Coming to the attention of the authorities as being 'in need' can easily lead to a child protection order and the child being removed. Working class families,

especially single mothers', are 10 times more likely to be under scrutiny; families of colour are also disproportionately targeted.

While children should not be taken from their families unless they are at risk of 'significant harm', **allegations of 'future emotional harm' are also commonly used to remove children who have not been harmed and are doing well with their mother.** These allegations are often not based on evidence of actual harm but on speculative 'possible' harm which might happen in the future. But they are often given more weight in court than the harm and trauma inflicted on children by separation from their family.

Even breastfeeding, which national and [international authorities](#) agree is the best food, essential to the welfare of the child, and is her/his human right, **is often dismissed and even used against the mother.** We know mothers who were accused of being unreasonable or manipulative because they refused overnight contact while the child was still breastfeeding.

Reports on your child and her/his relationship with you can be written on the basis of short assessment visits by professionals who think they know best and have been given the power to intervene in your family life. Mothers often ask, 'How can they after a 15 minutes conversation know better than me about my child and me?' They can't. But their recommendations carry great weight in court.

Mothers often complain about social services and CAFCASS reports being 'full of lies' and inaccuracies, about social workers who are 'hostile from the beginning' or who are 'nice' only to elicit information and responses from you that they will then use against you in court. Sadly, we have seen many judges rubberstamp outrageous recommendations from social services and CAFCASS.

So, don't assume that the authorities will be 'understanding' or 'on your side'. They are often more concerned with keeping their jobs and exercising power over you than with the welfare of your child.

Bias against single mothers and working class families is common – in poorest communities 45% of children are referred to social services before they are five. In many areas, low income families are also families of colour and/or immigrant, and racism may also play its part. We see time and again that if you are disabled, have learning difficulties, are young or have been in care as a child you are more likely to have your children taken from you than to get the support you are entitled to.

We have questioned many social workers and CAFCASS child guardians about decisions which were blatantly unjust and ask why? Every time we are told us that local authorities are guided by the fear of another Victoria Climbié or Baby P tragedy occurring. Why should thousands of innocent families pay for the negligence of local authorities in these terrible cases? Why should children who are loved and cared for be removed because local authorities did not remove those who were being tortured and ultimately killed? It is a poor excuse and an attempt to justify the most harmful abuse of power.

There also seem to be financial incentives to taking children away: keeping up or increasing social service budgets, adoption incentives, rampant privatisation of children services ... We are trying to find out more about all of these.

Keep in mind that while thousands of children continue to be unjustly removed, there is now awareness that this happening and both the former and the present presidents of the Family Court have warn against it.

USEFUL TIPS: Be prepared to fight for your child's and your rights.

- **Communicate in writing rather than on the phone.** Keep conversations with social services on the phone brief; tell them you would prefer for them to put their view/requests in writing. If you do speak to them in person send a short factual email afterwards confirming what was said by them and you.
- **Keep a written record of all interactions** with social services, CAFCASS and the child's father if he is involved, in the order in which the case develops. Don't rely on conversations which can be denied or distorted, unless they are recorded. Challenge all inaccuracies in writing. If you don't have email, ask a friend or supporter to set up an account for you. Keep your emails short and to the point so they can't accuse you of 'ranting'.
- **Keep a written record in date order** of all officials' names, job title/department, emails, phone numbers and postal addresses.
- **Keep all documents** from your case together safely in a file/box in date order. Make sure your lawyer gives you a copy of everything.
- **Do a short written summary of your case** – date the social worker came, when child was taken or threatened, child's age, what are the charges they are making against you and what the truth is, key injustices, upcoming court hearings, court orders, deadlines. This is useful for all kinds of situations where you have to explain yourself and to get support. (See questions on our LINK website.)
- **Social workers can go to your child's school** and speak to teachers or other staff and are allowed to interview your child without your permission.
- **Keep a list** of mandatory or voluntary classes, counselling or other court-ordered 'services', all dates/times you attended, costs to you and proof of completion. If you're not able to enrol or attend, document the date you tried, the reason you were not able and anything that can confirm that you had good reason.
- **Everything you say can be used against you.** If you lose your temper, or don't want to answer all their questions, this can be used to label you as 'aggressive' and/or 'un-co-operative'. That doesn't mean you should keep quiet. Speak up and be firm. Don't give in to provocation.
- **Recording conversations** can be helpful to prove that you were not abusive or threatening or that what is being said about you is untrue. There is nothing in the law that says you are not allowed to record, overtly or covertly, your interactions with social services. If you record without permission you may be accused of being underhand and the court may refuse permission to use the recording as evidence. On the other hand, they may allow the recording and that can be crucial to your case. Remember that you are recording yourself too so if you misbehave that will be used against you.

- **Always have someone you trust present** at every visit or meeting with children's services. Explain to them beforehand why you want them there. They can help take notes or record (if allowed) or help you make notes after the visit. You may want them to do a private statement on what they witnessed for your records which can help counteract any misunderstanding, lie or distortion.
- **Ask to see information held on you by Children's Services.** You can do this by making a [Subject Access Request](#). This involves writing to the Children's Services department which is holding the information about you or your child, either by letter, fax or email, stating clearly what information you want and that you are asking for it under the Data Protection Act (though your request is still valid even if you don't mention the law). You should provide some ID as you will be asked for it later and it may save time to send it in with your initial request. It is also a good idea to give any information you have that would help Children's Services to find the records you want (e.g. date, time and place of the relevant information). Also do say if you want to be sent photocopies, or if you would prefer to receive the data by email or inspect it in person. If you make your request by letter, make sure you keep a copy and it is a good idea to send it by recorded delivery. Keep a copy of any replies you receive in case you need to refer to them later.
- **Get statements from people who know you and your child** – relatives, friends, other professionals – to provide evidence of what you are saying.
- **If the father is violent or controlling**, get as much evidence of this as possible – reports to police, doctors, schools, etc., and any emails, texts, recordings he has sent you. Get as much confirmation from other people as possible. Ask them to do statements of anything they have witnessed.
- **Some basic rights for mothers** in family court proceedings are laid out in two documents: **Practice Direction 12J** [Child Arrangements & Contact Orders: Domestic Abuse & Harm](#), and **Practice Direction 3AA** [Vulnerable Persons: Participation in Proceedings and Giving Evidence](#). These spell out how women who have a violent ex-partner or who are vulnerable in other ways, ought to be treated. If you have a lawyer, point these documents out, they could make all the difference to your case.
- **If you are a victim of rape or domestic violence**, insist on being treated as a vulnerable witness in court. You have a right to get legal aid so you don't have to cross examine or be cross examined by your attacker in court.
- **If you are breastfeeding**, get a statement from a [lactation expert](#). They can highlight the essential benefits of breastfeeding for your child and the trauma caused by interrupting or disrupting breastfeeding and attachment. They will also know about useful national and international decisions you can refer to. Some judges are ignorant and dismissive of breastfeeding, but others are not, and in any case they should listen to the evidence.
- **If you have a disability or learning difficulty** you are entitled to extra support from Adult Social Care. Insist on getting it and challenge them if you are then labelled as being unable to cope just because you asked for help (see point 8).
- **If you have legal representation** make sure your solicitor collects the evidence, takes statements from witnesses and professionals who can corroborate what you are

saying. Make sure they call all your witnesses to give evidence in court and/or submit their statements in time. Make sure the barrister who will represent you in court is familiar with all the evidence and knows what you are fighting for.

- **Don't agree in court to anything you do not really agree with** – if you decide to appeal, your agreement will be used against you.
- **If you are representing yourself in court**, insist on having a [McKenzie friend](#). This can be a family member or a friend who can support and advise you in court so you are not facing this ordeal alone. If you don't feel able to speak for yourself, you can ask the judge for permission for your McKenzie friend to speak for you. Some organisations provide McKenzie friends who will charge a fee for attending court. But remember that any friend or family can act as a McKenzie friend.
- **Judges have huge discretionary powers** so it's important that you bring to their attention everything you consider important to your case. If your lawyer is not raising some crucial facts, ask them why. If you don't agree with their reasons consider raising the evidence yourself. You may upset your lawyer or even the court, but it may be better than the judge ruling without knowledge of the relevant facts.
- **Don't give up.** Inform yourself, get support, be patient, determined and ready for the long haul.

2. The law

The [CHILDREN ACT 1989](#) says that the welfare of the child is paramount and sets out a 'welfare check list' of what must be taken into account. You can get the full list [here](#). The following are only some of the issues that must be considered:

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

CAFCASS was established as part of the 2000 [Criminal Justice & Court Services Act](#).¹

They are involved at the beginning of any court case where parents are in dispute with each other. CAFCASS is also involved when there is a court-appointed Guardian ad Litem² to represent the interests of the child in proceedings where the state is trying to remove children from their families.

¹ CAFCASS aims to "(a)safeguard and promote the welfare of the children,(b) give advice to the court about any application made to it in such proceedings,(c) make provision for children to be represented in such proceedings,(d) provide information, advice and other support for the children and their families."^[14]

² A CAFCASS officer appointed as an "independent" voice for the child.

CAFCASS is supposed to 'make sure that children's voices are heard and decisions are taken in their best interests'. It is supposed to be 'independent of the courts, social services, education and health authorities and all similar agencies.' In reality many are former social workers and it is not unusual for them to have worked for the same social services department now trying to take the child away. You are entitled to ask whether the allocated guardian has any connection with the social services department dealing with your case, and if so, you can challenge their potential 'conflict of interest'.

Reports provided by CAFCASS are often deferred to by the court on issues such as breastfeeding, attachment and psychological diagnosis for which they may have no relevant qualification. The Child Guardian has the last word in court proceedings and comments on all the other reports. A caring and conscientious Child Guardian can stand up against all the other authorities in defence of your child; some do but many just go along with their colleagues.

The [ADOPTION AND CHILDREN ACT 2002](#) extended the definition of significant harm to include '*impairment suffered from seeing or hearing the ill-treatment of another* so a child who witnesses domestic abuse is considered to be **at risk**. This gives the state the power to take the child from a mother whose partner is violent, (who may or may not be the child's father), regardless of the mother's efforts to protect herself and the child. It punishes mother and child for the crimes of violent men.

The [CHILDREN ACT 2004](#) further expanded the powers of the state, charging social services with having "*regard to the need to safeguard and promote the welfare of children*",³ not just those assumed to be at risk but *all* children and families. Not only social services but virtually *all* professionals who come into contact with children are under an obligation, and therefore have power, to intervene in private family life. They are expected to report any concerns which they might (rightly or wrongly) have, based on their own belief rather than any objective evidence.⁴

The [LEGAL AID SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012](#) abolished legal aid for private law family cases following a relationship break up (i.e. disputes between parents about children's residence and finances). Only victims of domestic violence are still eligible for legal aid (see point 6 how to apply).

The [CHILDREN AND FAMILIES ACT 2014](#) introduced a statutory requirement for separating parents to attend mediation unless exempted, and curtailed the use of independent experts except in exceptional circumstances. This has allowed the court to deny evidence from experts in attachment, breastfeeding and child development so social workers are often relied on to comment on issues they are not even trained for.

³ Sect 11 (2) a)

⁴ Everyone who works with children - including teachers, GPs, nurses, midwives, health visitors, early years' professionals, youth workers, police, Accident and Emergency staff, paediatricians, voluntary and community workers and social workers - has a responsibility for keeping them safe. Working Together to Safeguard Children, HM Government, March 2013

The 2014 Act also enshrined in law the presumption that both parents should continue to be involved with the child after separation even if he is uncaring or violent.⁵ Most mothers want the father to remain involved with the children, and often go the extra mile despite great obstacles to enable this. But the fact remains that in most families mothers continue to be the primary carer and protector, and fathers who are violent or abusive often use contact with the children as a way of continuing to exert control on their ex-partners.

The 2014 Act also imposed targets for faster adoptions and a 26 week turn around for family court cases. The UK already adopts more children against the wishes of their birth parents than any other European country.⁶ Adoption means the end of a child's contact with their biological family, at least until they reach 18. The courts have ruled that it should be the **"last resort"** but for many local authorities it is the 'gold standard' of child protection-.

4. PUBLIC LAW – when a local authority gets involved with your children

This usually happens when a professional (midwife, health visitor, teacher, counsellor, police...) or someone else has made a referral to social services and they begin to investigate you. But it can also happen if you ask social services for some help or you put your children in temporary care voluntarily (for respite for example) and they then refuse or delay giving your children back to you.

Once the Local Authority investigates they might put your child on:

- a **Child in Need Plan**, which means they consider the 'child is not at risk but is in need of social work services'; or
- a **Child Protection Plan**, which means they consider that the 'child is at risk of significant harm because they have suffered, or are likely to suffer physical abuse, emotional abuse or sexual abuse or neglect'.

If your child is 'in need' social services should, according to **Section 17 of the Children Act 1989**, help you with services and even cash:

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs ...

⁵ Section 11 (2A) of the Children and Families Act 2014 provides that a court is "to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare".

⁶ In the year ending 31 March 2014, 5,050 children were adopted from public care, an increase of 26% from 2013, and of 58% from 2010. Adoptions are now at their highest point since the start of complete collection of data. 96% of all adoptions take place without parental consent.
[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU\(2015\)519236_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/519236/IPOL_STU(2015)519236_EN.pdf)

(6) *The services provided by a local authority in the exercise of functions conferred on them by this section may include [F6 providing accommodation and] giving assistance in kind or F7... in cash.*

Mothers used to get help but, in our experience, this has become progressively less available in the last 20 years and little or no help is offered now. Mothers are increasingly wary of even asking for help from social workers, firstly because there is so little practical help which is actually available, and secondly because once a social worker starts digging around in your life, your children can be put on child protection or even taken away in response to negative assessments the social worker might make. Most people have no idea how much power social workers have to interfere with family life if they consider it inadequate in some way, which can have devastating consequences, first of all for the children involved. We have seen children taken away for the flimsiest of reasons despite the fact that by law the harm must be 'significant'.

Mothers with a disability or whose child has a disability are entitled to extra support. A number of laws touch on this, including the **CHILDREN AND FAMILIES ACT 2014** (see point 8).

Demand what you have a right to by law, whether you have a disability or not. If social services have decided that your children are 'in need', ask them what help you are entitled to and insist they provide it.

See below for some advice sheets from the [Family Rights Group](#), which also run a free daily helpline (keep trying if you don't get through, they are busy, but do answer!).

They are useful as a guide to what is supposed to happen, but the reality is often very different!

Some useful links:

- 1) [If your child is put on the Child Protection Register](#)
- 2) [If the local authority decide to go to court](#)
- 3) [What should Children's Services do if your children are in care](#)

Should you comply?

Mothers are often advised to comply with everything social services ask of them because if you don't it will be used against you. While this can be true, we know of mothers who complied with everything they were asked to do only to have their children removed in the end – they felt cheated and manipulated and came to regret not speaking out or defending themselves at an earlier stage.

It's about time we made demands on those who are legally instructed to provide services. Whatever you do or ask, **keep a written record of it and of the response you got.**

Section 20 (S20) and Interim Care Orders

If the children are taken away suddenly **you might be asked to sign a S20 form** agreeing for them to go with a relative or into foster care. **DO NOT SIGN.** Make social services go to court to get a court order. If you sign they will use the fact that you 'consented' to keep your children from you against your will.

If you have signed a S20 agreement, remember that this is a **voluntary agreement** and **you have the right to withdraw your consent to it at any time.** The danger is that if you

go to take your children out of wherever they have been placed, social services may involve the police in taking them back.

If Children's Services go to court to get an [Interim Care Order](#) for the children to be in foster care or with a family friend, and the court agrees, you will only be able to see the children when the court allows.

After an Interim Care Order there will be a number of **court cases about what should happen next** – either the children come back to you; or they go into long term foster care; or under a Special Guardianship Order; or they are placed for adoption.

Useful link: [Section 20 accommodation](#)

See useful ruling: [More councils using section 20 arrangements to keep children in care illegally](#)

See: [I had two children adopted without my permission](#)

See: [Babies at risk of adoption by Stealth](#)

ADOPTION PROCESS

Adoptions are done under the [Adoption and Children Act 2002](#).

Stage 1: Final care order but no placement order – it's possible to appeal against a care order or apply to discharge it.

Stage 2: Final care order and placement order – parents can apply for permission to revoke a placement order under s24 of the ACA 2002 but only if

(i) the child has not yet been placed for adoption, and

(ii) the parent(s) can show a 'change of circumstance' since the placement order was made.

The form you need is the A52 Application for Revocation of a Placement Order, s24 Adoption and Children Act 2002.

Stage 3: Potential adoptive parents have applied for an adoption order – you can apply for permission to contest the making of an adoption order under s47(7) of the ACA 2002 but only if you can show a change in circumstances (see below).

Time limits for appeal: you must tell the court you want to appeal and why within 21 days of the decision.

Since the **Children and Families Act 2014**, local authorities considering adoption have a duty to consider placing the children with foster carers who are also approved prospective adopters.

This effectively fast tracks adoptions as social services can then claim that the child has bonded with the foster/perspective adoptive parent and separation would be harmful. While the initial separation from the mother is often belittled, separation from a foster parent (i.e. a 'corporate parent') is often given weight.

Beware that **voluntarily agreeing for your baby to be looked after temporarily by the state can result in adoption 'by stealth'** – fostering may turn to adoption against your will. (Read [more](#))

5. DISPUTES BETWEEN PARENTS, INCLUDING DOMESTIC VIOLENCE

For parents who are separated or don't live together and can't agree whom the children should live with and how much contact the other parent should have.

Legal aid is only available if there has been domestic violence (either in the past or if it is continuing by the father pressing for residence/contact). Domestic violence (DV) includes controlling, coercive, abusive behaviour and is NOT limited to rape, sexual and/or physical violence. If you want to [apply for legal aid under the DV rules](#) you need to go to your GP and ask them to **refer you to a DV organisation** (for example Women Against Rape or Women's Aid) and that organisation can then refer you to a lawyer for legal aid.

Steps to follow:

1. Apply for a **Child Arrangements Order** ([Form C100](#)) and say on it where you want the children to live and what contact they should have with their father. You can fill in the form yourself and take it or post it to the [nearest family court](#) to where you and the children live.
2. If you or the children are at risk of harm or abuse you need to fill in [Form C1A](#) and give brief details.
3. If you are on benefits you **do not** need to pay the court fee (normally £215). You will need to fill in a **Fee Waiver Form** ([EX160](#)) and get a letter confirming your benefit payments which should be dated within the last three months.
4. You should read the Guidance Notes for all these forms and take the required number of copies with you.
5. You will then get a court date for a Directions Hearing either in front of magistrates or a district judge.
6. Before the first hearing you will probably be contacted by a [CAFCASS](#) officer who will interview you and the father on the phone, and will produce a 'safeguarding letter' in time for the court hearing. If you have any concerns about domestic violence or other reasons why you dispute the father having contact with the children you need to tell the CAFCASS officer. Tell them if you have reported the father's violence to the police, if you have witnesses and how you got support to move away/keep the children and you safe.
7. At the first court hearing, CAFCASS will provide a 'safeguarding letter' to say if they think there are issues which need to be investigated further.
8. The first time you go to court **you need to be very clear what you are asking for in the long term and what you want the immediate arrangements to be**. There are likely to be at least two and sometimes more hearings before the arrangements are finalised and the process can take months, so the interim is important. You should specify what if any contact you think the father should have while the court hearings are going on; he will also say what he wants, and the judge will decide. **If you do not agree with the judge's decision be sure to object and say why.**
9. If the court orders CAFCASS to provide a more detailed report (called a Section 7 report), they will speak to you and the children, and the father, and then write their report with recommendations. This should be sent to you by the date specified in the court order. **If there are inaccuracies in the CAFCASS report you should correct these in writing as soon as possible.** Be sure to keep a copy of your

objections/corrections. If you disagree with their recommendations you will have to wait until the next court hearing, write your reasons down anyway so you or your lawyer can present them to the court later.

10. The next hearing will either be a [Dispute Resolution Hearing](#) or a [Final Hearing](#) and the CAFCASS report will be considered.
11. After each court hearing there will be a **Court Order** which will set out what has been agreed between the parties and what the court has decided. The order will say what the next steps are with deadlines for any documents (including your statement) to be submitted in time for the next hearing.
12. At the **Final Hearing** CAFCASS should be there to give evidence. **You and the father can give evidence and can challenge the other person's evidence.** The Final Hearing produces a Court Order stating where the children will live and how much contact the other parent will have.
13. Social services will only be involved if there has been a referral made (usually before these proceedings started).

If a parent ignores or changes the Court Order you can apply for an **Enforcement Order** ([Form C79](#)) and there will be a court hearing where you say what has happened and that you want the Court Order to be enforced.

If you are worried that the father might take the children out of the country or even away from your care **you can apply for a [Prohibited Steps Order](#)** (Form C100).

6. RAPE & DOMESTIC VIOLENCE

Violence by the father against the mother is now one of the most common pretexts to remove the child from the mother.

Family Rights Group released [evidence](#) in 2014 that domestic violence – not parental mental illness, drugs or alcohol – is now the main reason children are taken from their mothers.

This punishes the child and the mother, rather than the perpetrator.

Many women feel trapped and unable to ask for help. They are damned if they report violence as the authorities may take their child, and damned if they don't – if violence is found out the authorities may take their child anyway. Perpetrators are aware of this and have been known to taunt women 'call the police if you like, they'll take your children.'

The authorities blame the mother if the child witnesses violence, accuse the mother of 'emotional harm' to the child, or make the spurious and nebulous claim that there is 'risk of future emotional harm'. We have seen this used even when the violent man is no longer around. An important class action case brought by mothers in [New York](#) resulted in a Judge's ruling that: "*witnessing domestic violence is sometimes, but not always, harmful to children. And even when witnessing domestic violence does harm, removing the child from the non-offending parent is more harmful. Indeed, one expert testified that a removal under such circumstances "is tantamount to pouring salt on an open wound."* We should use this ruling as evidence until we can get something similar from the courts here!

There seems to be no consideration of the harm caused to the child by forced separation from the mother, with whom the child has the closest relationship.

Psychologists we work with tell us of the lifelong trauma of such separations on both the child and the mother, and the impact of unwanted contact with violent fathers which can be imposed by the court. There is little public acknowledgement of this trauma though there are signs that awareness is increasing. Legal appeals often reveal that alternatives to removal have been ignored or neglected, flouting the law.

In our experience family courts are even more backward than criminal courts. Some family judges seem unwilling to accept that rape and domestic violence are serious crimes.

We have seen rulings conveying deeply sexist presumptions that women can't be believed because they aren't upset. Others say that even if women had sex against their will, they should put up and shut up and stop making a fuss. Others consider domestic violence less likely to have happened if many incidents were reported. Some of these are quoted in LAW's *Dossier* [link]. Similar rulings are reported in Mothers Unite UK's report '[Domestic Abuse, Family Courts and Routine Failure to Protect Children](#)'. See also other materials on www.mothersuniteuk.co.uk

While this has gone on for years hidden by the secrecy of the family court, mothers are challenging it and publicising it as injustice in their hundreds.

If a mother has been in care herself as a child, was raped and/or is a young vulnerable person, she often faces suspicion rather than help.

In some cases the authorities believe the man's counter allegations that *he* was the victim of domestic abuse.

In the age of 'equality' it is no longer assumed that courts should place the child with the mother as the main carer. It seems that any father who wants contact or even residence is assumed to be a 'good father' whose 'right' to see the child is more important than the child's wishes or safety, or the mother's wishes or safety. The myth that violent men can be good fathers must be challenged.

We have seen many children placed with fathers, even when they are known to have been violent to mother and/or child. Women's reports of domestic violence and rape are often disbelieved or considered irrelevant to parenting ability.

Fathers who are uncaring and violent may use the children and the family court to get back at you and control you; they can be very manipulative. Yet social services and CAFCASS often believe these fathers and write reports which are more favourable to them than to you.

Even men's criminal convictions for domestic violence and non-molestation orders are often concealed. This is being addressed in the **Abuse of Family Courts Bill 2018**.

Children's reports of violence or grounded fear of fathers are sometimes disbelieved. Mothers are accused of coaching their child.

As a result, children can be placed with violent and volatile fathers and even their expressed wishes can be dismissed.

In 2016, Women's Aid published [Nineteen Child Homicides](#), a report documenting the murder of 19 children most of whom had been forced into contact by a family court. (It followed their 2004 report, [Twenty-nine Child Homicides](#), focused on family court cases.)

A men's lobby claims that most mothers who contest men's contact are lying about domestic violence to get legal aid. They also claim that mothers try to alienate the father (using a discredited but widely used US psychologist's theory claiming mums aim to turn kids against their dad). What's most outrageous is that CAFCASS gives credence to these claims showing how biased they are in favour of men. In October 2017 we picketed a conference on 'parental alienation' which CAFCASS and National Society for the Prevention of Cruelty to Children (NSPCC) were having with [Families Need Fathers](#) – an organisation that has repeatedly denied domestic violence.

Women Against Rape ([WAR](#)) has campaigned for decades to show that false allegations of rape and domestic violence are minuscule in comparison to the widespread occurrence of violence against women and children, mostly committed by men.

Official figures show that:

1 in 6 women are raped, while 1 in 4 suffer domestic violence and 1 in 7 suffer marital rape. Two women every week are murdered by a partner or ex-partner.

The CPS (not known as a progressive body) acknowledges that malicious false allegations are minute (see [CPS 2012 report](#)], In an 18-month period, the authorities only prosecuted six cases of false reports of domestic violence out of 111,891 reported.

Your rights and what you can do:

- **If the father is violent or controlling**, collect evidence of this – reports you made to police, doctors, schools, etc., and any emails, texts, recordings he sent you...Get as much confirmation from other people as possible. Ask them to do statements of anything they have witnessed.
- If you are unable to cope, try to get help from family or friends before you ask social services. **Never sign a Section 20** – the form that puts your child into the hands of the State temporarily. These forms are being abused to keep children in care indefinitely, sometimes without even going to court for permission. (see above and [here](#))
- **You have a right to legal aid** so you don't have to cross examine or be cross examined by your attacker in court. Get your GP to formally refer you to a women's organisation like Rape Crisis, Women's Aid, or WAR, which can write to confirm you suffered DV and need legal aid. As long as you qualify under the [legal aid financial levels](#), you should get legal aid for a lawyer to represent you.
- **You have a right to be treated as a vulnerable witness in court.** Two useful legal documents are **Practice Direction 12J**, and **Practice Direction 3AA**. (see links in Useful Tips). These spell out how women with a violent ex-partner ought to be treated in family proceedings. If you have a lawyer, point these documents out and ask them to insist that the judge follows them as this could make all the difference to your case.
- **Always take someone to court with you, especially if you don't have a lawyer.** A friend or relative can be your McKenzie friend (link) and judges are supposed to be a bit more considerate towards anyone representing themselves. We know that fathers are more likely to

have a lawyer than mums so it's important to know your rights and stick up for yourself in court!

- **If they allege that there is 'risk of future emotional harm'** based on your child witnessing your partner's violence to you or on something you did, **insist early on that they provide concrete evidence of such harm caused to the child and ask them to state their qualifications for making such judgements.** This is really important because it could make the difference between your child being separated or staying with you. It is much harder to challenge flimsy evidence, prejudice and damning judgements later in the process if you didn't at the time, and especially once your child has been removed.
- **A "Finding of Fact" hearing considers and decides on the mother's allegations.** The single judge then rules on whether the woman is believed, and that ruling becomes a "fact" for all future judgements. It is very important to appeal if you disagree with the judge's finding. It's better to lose an appeal than not appeal at all because if you don't appeal, it looks like you accepted the judge's ruling. Getting a finding of fact that you were not the victim of rape or DV is very damaging – the judge can then say that you lied not only about the particular allegations, but about other things as well, or that you're just being vindictive against the father. If you lose a Finding of Fact hearing, judges can then give residence to the father, even they know his history of violence!
- **Rape Trauma Syndrome** or other forms of **Post-Traumatic Stress Disorder.** If you are very distressed and/or traumatised after events you may have suffered, such as domestic violence, rape, war or the death of a loved one, ask your lawyer to help you find a medical expert who can give evidence to the court about PTSD to explain your behaviour.
- **Challenge psychiatrist or psychologist reports that are biased.** The court may appoint a psychiatrist to assess your mental health and write a report. We have seen reports use discredited assumptions, myths and stereotypes about women. If you think a report has made assumptions about you or shows a sexist or racist bias, make sure you or your lawyers challenge it in court.

7. CONTACT

- **It is vital that you go to every contact appointment, arrive on time and stay focused on your children.** When contact is supervised, the supervisor will look out for how focused you are on the children's needs during the visit. Respond to what your children need and want at all times, even though it's a very artificial and uncomfortable setting. It's important not to take phone calls during the visit and not to get into disagreements with the person supervising. (If you want to raise anything with them, wait until the contact has finished.) The supervisor will take notes and send them to you, read them carefully every time. **Check the notes are accurate and challenge in writing anything that is inaccurate and ask that the notes be corrected.**
- **Make notes on every contact visit the father has** e.g. if he arrived on time, and how the child was when she/he returned e.g. clean, fed, happy, distressed, crying, scared. Note how the child/ren behaved before and after and what they said about the visit.

- **Ask other witnesses to do a statement.** If anyone sees children before and/or after the contact with the father and notices how the child is, ask them to put it in writing. Any observation from a witness can be helpful.
- **If you want more contact or unsupervised contact,** you will have to apply to the court to change the contact arrangements.
- **Unsupervised contact is a crucial step towards getting your children back.** If your contact is supervised ask for it to be unsupervised as soon as possible and increase how much contact you have.

8. SOCIAL CARE SUPPORT FOR WOMEN WITH DISABILITIES OR LONG-TERM ILL HEALTH

Mothers with a disability or whose child has a disability are entitled to extra support. A number of laws touch on this, including the [CHILDREN AND FAMILIES ACT 2014](#).

However, disabled mothers rarely get the extra support. For those assessed with a 'borderline' learning disability, there is a further catch: social workers may say the disability is not 'bad enough' to qualify for support, but it is bad enough to decide that the mother/parents won't or can't look after their children properly.

The fact is that social services don't prioritise putting resources into enabling people with learning or other disabilities to keep their children – they rather take children away and put them up for adoption as early as possible. This amounts to blatant disability discrimination and must be challenged.

You have a right to support from the Adult Social Care department under the [Care Act 2014](#) if you need it to look after your child/ren because you have a physical or learning disability or long-term illness. The Care Act deals with social care services for disabled people. The rules for getting care and support are based on what they call 'needs' and 'outcomes': what the disabled person is unable to do by themselves but enabled to do as a result of getting the support service. These 'outcomes' include maintaining a habitable home environment, developing and maintaining family or other personal relationships, and **carrying out any caring responsibilities the adult has for a child.**

You can apply to Adult Social Care, who have a duty to assess your needs. They decide what they will provide, but you can challenge under-assessment of your needs with back-up from a supporter, advocacy or disability group, and/or a community care solicitor. There is legal aid for community care challenges. If providing Adult Social Care support services, most Councils require disabled people to pay a contribution for this from disability benefits or savings and carry out a financial assessment of your income and savings.

Care Act [rules](#) and more info on the process and [your rights](#).

9. PROBLEMS WITH LAWYERS

Lawyers have told us that family law work has less status and kudos and pays less than other forms of law, for example corporate law, and that a good family lawyer is very hard to find! In our experience many lawyers represent mothers badly – they don't 'take instruction' from you as they are supposed to, shut you up, tell you they are in charge of the case and you should do as they say, prevent you from getting corroborating statements or telling your side of the story in court... They seem at times to be working for the other side. This may be because they are incompetent, biased, or because they in fact often act for the other side and may get better paid when they represent them than when they represent you on legal aid. Whatever the reasons, evidence is often not presented or not highlighted to the detriment of your case.

If this is happening to you, change lawyers ASAP and hopefully find a better one. **We recommend that you get a lawyer who does not represent local authorities.** You need to tell the legal aid board why you're not happy with the way you're being represented and it helps if you've also complained to the lawyer concerned in writing, so that your reasons are clear. If it is too late to change lawyers (e.g. you have a court hearing which is imminent), speak up in court. It is your life and your child's life so be prepared to raise evidence you think is relevant. Try to keep calm but tell the judge that there is evidence s/he should know about. Hopefully the judge will be minded to hear you rather than shut you up. Be prepared to sack your lawyer on the spot too; bad representation can be worse than no representation.

10. FAMILY COURT HEARINGS ARE NOT PUBLIC

Controversially family court hearings are not held in public, unlike criminal court hearings. It is claimed that this is intended to protect children and their families from undue media attention. Yet the press can attend, though they can't report in detail.

The main problem is that supporters and members of the public are not allowed in court. You are isolated in a frightening and intimidating court room facing social workers who want to take your children away and the father who may be violent and manipulative – all this often without even a lawyer on your side or not one you trust who is prepared to fight for you.

Many of the injustices perpetrated in the family court have to do with this court secrecy as people are not allowed to know what goes on behind closed doors. Mothers don't know what they are walking into. In addition, gagging orders can be imposed on mothers not to discuss the case with anyone. These can be successfully challenged.

Protests outside the family court

Court secrecy is also being challenged outside the court. We hold a protest outside the central family court in Holborn, London, on the first Wednesday of every month. We hope that other cities will start their own. Watch this space for news of other venues.

The protests enable mothers and other primary carers to have some of the public voice they have been denied inside and to make injustices visible to the outside world. They also contribute to changing the climate in which legal arguments will be heard.

Important court rulings

Baroness Hale of Richmond (now president of the Supreme Court) said in [In re B](#), para 198:

'the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do.'

She also said (para 143):

'We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs.'

<http://www.dailymail.co.uk/news/article-5840243/Judge-blasts-social-worker-said-boy-not-returned-mother.html>

Mr Justice Mostyn said in a recent very significant ruling EWFC/HCJ/2018/36 which returned a boy who had been in foster care for four years to his mother:

When I awarded the contact on 10 November 2017 I was fully aware that it might prove difficult for all concerned given that the mother had been confined to the most limited supervised contact since the child was taken into care in August 2015. I expected both the local authority and the guardian to appraise the quality of the mother's parenting in a neutral and dispassionate way. Yet they have continued to oppose the mother's application at this final hearing in a trenchant manner. For example, the local authority's evidence in opposition to the mother's application was contained in an extremely long, 44-page, witness statement made by the social worker Lowri Tommason-James dated 15 May 2018. This witness statement was very long on rhetoric and generalised criticism but very short indeed on any concrete examples of where and how the mother's parenting had been deficient. Indeed, it was very hard to pin down within the swathes of text what exactly was being said against the mother. Therefore, I required Ms Tommason-James to identify in the witness box her top four criticisms of, or concerns about, the mother. These were given as follows:

- i) The mother's questionable ability to meet L's emotional needs.*
- ii) The dynamics of M's relationship with L.*
- iii) The dynamics of the relationship between L and his siblings.*
- iv) The mother's questionable ability or willingness to work with the local authority.*

*Ms Tommason-James was asked to identify her best example of the mother failing to meet L's emotional needs. Her response was that until prompted by the local authority mother had not spent sufficient one-to-one time with L and had failed on one occasion to take him out for an **ice cream**. This struck me as utterly insubstantial criticism, and indeed it must have struck the legal representatives of both the local authority and the guardian in the same way because this was not put to the mother in cross-examination by either of*

them. A further criticism in this vein was that the mother had failed to arrange for L's hair to be cut in the way that he liked. Again, this is obviously inconsequential, and again it was not put to the mother in cross-examination. A yet further criticism was that on one occasion the mother allowed L into the house of Mr S, the father of A and K. The local authority's case is that Mr S represents a risk to L, although this has not prevented them approving the placement of A and K with him. On the occasion in question the mother had gone up to Mr S's house to get some money for A, and L was allowed to visit the downstairs lavatory while the mother was talking to Mr S outside the front door. How this is supposed to represent a failure by the mother to meet the physical or moral needs of L is completely beyond me. It does seem to suggest that objectivity and disinterested fairness is not being applied to the mother.

Useful rulings from the European Court of Human Rights

- i) The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by article 8 of the Convention ([Johansen v Norway \(1996\) 23 EHRR 33](#), among many others).
- ii) Measures which deprive biological parents of the parental responsibilities should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests (*R and H v United Kingdom* [\(2012\) 54 EHRR 2](#)).
- iii) A care order should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K and T v Finland* [\(2001\) 36 EHRR 18](#)).