



LIT
APPLIED SOCIAL
SCIENCES



Ireland, like many other countries has passed various pieces of legislation designed to allow children to have a voice in custody and access decisions when their parents separate. In practice, implementation has been patchy and there is a sense that children are not being fully consulted (Roberts, 2013). This problem is particularly acute in the context of relationship breakdown following domestic violence. This research was commissioned by Ascend Domestic Abuse Service to investigate the extent to which mothers exiting situations of male partner violence believe that their children's voices were heard in relation to issues of custody and access.

Nineteen women took part in the study either as part of one of three focus groups or by submitting qualitative written pieces in answer to the same questions. Between them the participants had 36 children ranging in age between 1 and 17.

Analysis of the collected data identified several key themes. The women believed that their children:

- Experienced changing and variable decisions from different judges in relation to custody and access
- Had their needs conflated and superseded by the needs of parents engaged in conflict
- Were assessed by professionals as part as a broader adversarial process rather than in relation to their own needs
- Were made to spend time with their fathers when they had expressed strong objections to doing so
- Had their objections to spending time with their fathers dismissed as Parental Alienation Syndrome
- Were supported and heard in the context of Barnardo's TLC Kids programme but that this did not feed into the court process
- Had no access to a guardian ad litem
- Were at times endangered by being exposed to fathers who were potentially violent
- Felt pressured to keep their parents happy by appeasing or protecting them
- Experienced ongoing mental health and behavioural problems because of the difficulties relating to custody and access

This report was specifically concerned with the voices of children and how these are heard in the context of custody and access cases following domestic violence. Several issues are particularly noteworthy.

Whilst in theory it is possible for children to have a voice in the court system, it appears from what these mothers say that at times their children's voices are not being heard. Children are frequently not involved in court proceedings, as whilst it would seem that some children would like to speak with the judge, others may be too young or find the court environment intimidating. Furthermore, it is likely that judges are wary of causing additional distress and trauma to children in these circumstances. In addition judges may not all feel equipped to speak directly with children. At

present their expertise seems to be required across a whole range of areas including criminal, civil and family matters.

When psychological assessments are ordered by the court, they appear to take on the same adversarial quality that permeates the legal process. The perception of the mothers in this study is that assessments 'take a side' of one of the parents, rather than representing the child. Custody reports are perceived as giving rights to parents, rather than to children, as is evidenced by incidents in which children have been asked to justify, to an adult of whom they are afraid, their desire not to see them.

Recommendations

In an ideal world intervention would be targeted at ending gender-based violence altogether, but in the meantime, we need to ensure that children have a voice in decisions which impact on them and that this voice is valued.

The legal system

Given the complexity and variability of needs that emerge within the context of domestic violence, it is recommended that family law courts are managed by judges who are dedicated to that specific field of law. Judges in this role should be provided training in family systems theories, domestic violence awareness, parental alienation syndrome and in interviewing children. This would facilitate legal provisions which will allow children a voice in their own outcomes in a way that is sensitive to the nuances of family situations where domestic violence is a factor.

Supports for children

Aligned to dedicated family court judges, therapeutic supports which allow children the time and space to consider and discuss their feelings with an adult and peers in whom they have developed trust over time, should be made available in the context of a specialised court psychological service. Such supports would be much more suited to preparing children to communicate to make their own wishes known in relation to custody, access and living arrangements. It is also important that children are independently represented in court. As this is an independent service provided for the children, rather than for parents in conflict, it is preferable that the service is provided free of charge by the state. The Childcare Act of 1991 provides that the HSE (Tusla) is responsible for any cost incurred by a person acting as a guardian ad litem. The Act specifically refers to the importance of a child's wishes and his/her welfare and in certain circumstances. In circumstances where there is domestic violence and ongoing conflict between parents this is of particular importance.

Children's voices

For practical and ethical reasons this piece of research was designed to be carried out with mothers. This means that children's voices are once again silent in this report except in so far as their mothers have interpreted them correctly. The women who took part in this study undoubtedly had the best needs and interests of their children at heart. However, it is important that the children themselves have an opportunity to discuss their needs in relation to custody and access following domestic violence.



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