

‘Voice of the Child’:

*Mothers managing court ordered custody and access
following domestic abuse*

A Research Report presented by:

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Genders and Sexualities Research Group (GSRG), Limerick Institute of
Technology, 10 December 2018,



The symbol for the court is a blindfolded woman with a weighing scales. Well I didn't want somebody with a blindfold. I wanted somebody who was going to be able to clearly see what was going on and be able to make a decision to keep my child safe (Research participant).

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We also wish to acknowledge the 19 women who gave of their time to take part in this research. They generously shared their stories which were moving, distressing and most importantly full of concern for the children who are 'caught in the crossfire' of processes relating to custody and access and who are impacted by decisions made by adults who influence their lives.

Researcher:

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Genders and
Sexualities
Research Group



**An Roinn Forbartha
Tuaithe agus Pobail**
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Contents

Acknowledgements	4
Foreword.....	7
1.0 Introduction.....	8
1.1 Executive Summary.....	9
2.0 Methodology	10
2.1 Research Design.....	10
2.2 Sampling and Recruitment	10
2.3 Procedure	10
2.3.1 Focus group procedure	10
2.3.2 Research Ethics	10
2.4 Data Analysis.....	11
2.5 Generalisability of findings	11
3.0 Findings	12
3.1 Custody, Access and the legal system	13
3.1.1 Legal struggles between parents	13
3.1.2 Varying decisions and changing needs.....	14
3.1.3 Children in the negotiations.....	15
3.2 Representation of children’s needs	15
3.2.1 Professionals representing children in court.....	16
3.2.2 Parental alienation	16
3.2.3 Other services for children	17
3.3 Custody and access in the context of domestic violence	18
3.3.1 Safety and fear	18
3.3.2 Keeping parents happy.....	19
3.3.3 Mothers’ accounts of impacts on children	20
4.0 Conclusions.....	21
4.1 Children caught in the crossfire.....	21
4.2 Parental alienation syndrome.....	21
4.3 Impacts of domestic violence on children	22
4.4 Appropriate supports for children	22
5.0 Recommendations	22
5.1 The legal system	22
5.2 Supports for children	22
5.3 Children’s voices	23
Concluding comments.....	23
6.0 References.....	24
7.0 Appendices	25

Foreword

Children First: National Guidance for the Protection and Welfare of Children 2017 states that there are a number of key principles of child protection and welfare that inform both Government policy and best practice for those dealing with children. These are:

- *The best interests of the child should be paramount*
- *Children have a right to be heard, listened to and taken seriously. Taking account of their age and understanding, they should be consulted and involved in all matters and decisions that may affect their lives*
- *A proper balance must be struck between protecting children and respecting the rights and needs of parents/guardians and families. Where there is conflict, the child's welfare must come first*
- *Child protection is a multiagency, multidisciplinary activity. Agencies and professionals must work together in the interests of children*

This project was born of all the times we went to court with women in North Tipperary trying to establish safe and fulfilling access and custody arrangements for their children. We saw the challenges families were facing in the judicial process and wanted to find out what could be done to make it easier.

Rather than us compiling lists of our own experiences in court, we felt that it was important to have an impartial voice. One that could channel the women's authentic experiences and present them in a language that could be understood by decision makers and independently reflect the reality of being in court. To this end, Ascend commissioned LIT to undertake this research.

I would like to thank the Rural Development Programme 2014-2020 for giving us this opportunity by funding the research, my colleagues for their contributions in making this happen, LIT for doing the research and most importantly the ladies who have engaged in the research. I know that for many of you it was challenging to re-live the difficulties that you had been through, but you did it because you knew how important it was for your story to be told.

This research is a small step in our role of supporting families experiencing domestic abuse. We intend to commission further research to engage with the children themselves.

Ascend will continue to advocate and lobby on this crucial issue.

Rabiya Ali

Coordinator, Ascend Domestic Abuse Service



1.0 Introduction

Ireland has experienced a huge rate of social and economic change in recent decades. Changing patterns of fertility; substantial numbers of women working outside the home; the introduction of divorce in 1996; and the recognition of parents who aren't married to one another as having a role in their children's lives (though the extent of this right as it extends to unmarried fathers remains unclear); all contribute to an ever-changing set of complexities in relation to family law.

Decisions about custody and access are also the subject of significant developments, not just in Ireland but around the world. Children's right to have a say in their own living arrangements were laid down in the Childcare Act of 1991. Most recently section 24 of The Children and Family Relationships Act (2015) reiterates that the views of children should be sought in relation to custody and access with due regard for the welfare of the child. These rights are also supported by the Children's Rights Amendment to the constitution (2015) which states that 'any child who is capable of forming his or her own views' should have those views taken into account whilst having regard for their age and maturity. However, to date these provisions have not been applied consistently and children are often not included at all (Roberts, 2013). It is a difficulty that has faced judicial systems in various countries and it adds additional complexity to what are already multi faceted family law issues.

An important review of best practice in psychological and legal interventions in a variety of countries (Kelly, 2002) concluded that participation of children in divorce education and their representation by a neutral adult with whom they have a therapeutic relationship is particularly beneficial in circumstances where there is substantial parental conflict and disagreement between parents about what their children need.

Family breakdown in the context of domestic violence raises specific issues in relation to children's welfare. The courts must decide if a child is safe with each parent and whether an ongoing relationship with each of them is in their best interests. The focus of this research is on women who have experienced domestic abuse from male partners. However domestic abuse can take place in any relationship, across all socio-economic groups, ages, sexual orientations and ethnicities. Women experience higher rates of domestic abuse than men. However, a significant number of men also suffer domestic abuse. Evidence suggests that men are less likely to report abusive incidents than women (NCCESI, 2015). Around one in seven women and one in sixteen men report domestic abuse in Ireland with 29% of women and 5% of men reporting it to the Gardaí (NCCESI, 2015). In 2015 there were 14,374 applications to the District Court under domestic violence legislation, an increase of 35 per cent over a five-year period. Although there are no clear figures on the number of children affected it seems likely that the numbers are substantial. It is these children that are of interest in this report.

This research was commissioned in the context of concerns about the process of custody and access that were identified by clients of the Ascend Domestic Abuse Service, North Tipperary. Ascend supports women in court on matters relating to domestic violence, maintenance, child access, separation and divorce. The service is based in Roscrea and is available throughout North Tipperary. Ascend's primary purpose is to ensure that women have support and information about the dynamics of domestic abuse and about relevant services available, so that they can make informed choices. Ascend Services work collectively and collaboratively with women, families, communities and agencies to promote a clearer societal acknowledgement of the unacceptability of domestic abuse. Its primary goal is ensuring the safety of women and children. The organisation had noted a growing number of women using its services who were concerned that their children were given no

voice in custody and access decisions and that this was causing significant distress to them and their children.

1.1 Executive Summary

In common with many other countries, Ireland 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, North Tipperary 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 of 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

The recommendations emerging from this research include the introduction of specialised court services with appropriately trained judges dealing only with family law issues; consistent ongoing therapeutic supports for children in the context of specialised court psychological services; availability of a guardian ad litem paid for by the state; and further research which asks the young people themselves how they experienced the custody and access process.

2.0 Methodology

The methodological approach that was chosen was designed to be sensitive to the nuance and variability of family circumstances, experiences and needs. A difficulty with the design of questionnaire research is that the questions asked can often say more about the preconceptions of the people writing the questions than they do about the people answering them. For this reason, a qualitative methodology was selected.

The research was also designed with an awareness of which participants were available and how they might best be accessed as well as the time and resources that were available.

2.1 Research Design

Data collection was carried out in three focus groups at which broad open-ended questions were posed. A fourth group was made up of people who completed a written submission in answer to the focus group questions. This allowed participation of people who were unable or unwilling to attend the focus groups and allowed for triangulation of data.

2.2 Sampling and Recruitment

Participants were recruited from the client group of Ascend Domestic Abuse Service, North Tipperary. Request letters and emails with an information sheet (see Appendix 1) were sent asking people if they would like to participate. They were also sent copies of the consent form and interview questions (Appendix 2, 3). In total 13 participants took part in the three focus groups. Between them the women had 20 children ranging in age from 1-16.

Six women replied saying that they would like to take part but were unable to attend the focus groups and these women treated the interview question sheets as qualitative surveys and filled them out and returned them to the offices of Ascend. The six women who filled out the written questionnaires had 16 children between them, ranging in age from 3-15. In all 19 women took part in this study.

2.3 Procedure

Focus groups took place in Ascend offices in Tipperary on three days in October 2018. The written submissions took place over a number of days and were collected by workers at Ascend.

2.3.1 Focus group procedure

At each focus group the researcher met with the participants and read through the information sheet with them, allowing time for questions before obtaining their consent to participate and to the recording of the interviews. Chairs were placed in a circle and the interview questions were used as informal prompts so that the participants had an opportunity to discuss matters that were of importance to them in relation to their children's access and custody.

The group who filled out the written versions of the questions were treated as a fourth focus group for the purposes of analysis and were allocated a private space in Ascend offices to complete to form or took it home and posted it back.

2.3.2 Research Ethics

Permission to collect data for this project was sought and obtained from the Standing Committee for Research Ethics at Limerick Institute of Technology.

2.4 Data Analysis

The data was analysed thematically. This was accomplished by repeated listening to the audio of the three focus groups and several readings of the written submissions. Following this followed by themes across the data were identified. No observable differences were found between the themes addressed in the focus groups and in the written submissions.

2.5 Generalisability of findings

Qualitative research is designed to elicit richness and depth of experience rather than to generate general laws of behaviour. The size of the sample used for this project means that it is not possible to make statistical claims about what most children's mothers exiting domestic violence, might think about their children's experiences of court ordered custody and access arrangements. Participants were not a representative sample of women in this situation due to the limited availability of potential participants and the concentration of participants from the client group of a single service.

However, there is no reason to believe that the experiences related by these women differ radically from those of others who have exited domestic violence and managed custody and access through the courts.

3.0 Findings

The experiences and opinions discussed by the women who took part in this research were by no means uniform. Even in a relatively small qualitative sample there is an overriding sense of complexity, variability and change over time. At points during the focus groups the women told of their own experiences of physical and psychological violence and of attempting to keep themselves safe. These stories were at times moving and harrowing but they are not the focus of this report and therefore are not presented here. This report was commissioned to examine the needs of children in relation to custody and access, in as much as it is possible to do so by talking to their mothers. It should be noted, however that these findings about what mothers say about how custody and access have been managed are within the specific context of relationships which have broken down following domestic violence and that this adds an additional complication to a process of relationship breakdown which is already multifaceted. The following quotation illustrates some of the varied and conflicting issues that arose in the discussions:

A guy from Tusla came out and assessed her on one occasion for an hour and he said she was fine. She kind of was. She adapted well. My ex at the time didn't want to see his daughter. The court had ordered him to see her which didn't suit because he had no interest. So, meetings were arranged once a week inside in the restaurant in Dunnes Stores. My ex brought his new girlfriend along and spent all the time talking to the girlfriend. And my daughter had to sit there for the hour. And then when I went back to court to stop the access the judge said that we had to go ahead with it because it is the best thing for my daughter to keep contact with her Daddy. And then I stopped it again because she was getting too upset and the judge ordered access again. That went on for about twelve months and then eventually my ex decided that he wanted to spend time with her, which was grand. He broke up with the girlfriend and he copped on and he is quite good with my daughter at the moment. At one point he was arrested. There was a protection order taken out as well about a year and a half or two years ago. He broke the protection order and he was arrested and about three months later. I had stopped the access during that time, because he broke the protection order on me. But the judge ordered the access to still go ahead because my daughter apparently was safe with him. Three months after it was all going to be wound up in court. The custody, access and the protection order was all going to be wound up. I had applied for a safety order and I wasn't granted my safety order and the access was granted for my daughter to see her Dad on a Wednesday evening and overnight on a Friday. Like I said he had copped on at the time, so he was grand towards her. I had explained to the judge that there was a pattern, everything would be okay for two or three weeks and then there was like an explosion. While we were apart the two or three weeks gets longer and longer and everything is kind of good and then the explosion is he gets arrested for jumping me in the town, in front of people. So, I wasn't given my safety order and a week later he starts to shout and scream and whatever in front of my daughter. So, I stopped him from seeing my daughter and we were back in court again and I was still ordered that it was okay for my daughter to see him. My daughter is thirteen now, so she makes up her own mind whether she wants to see him or not. Usually, what it is, is he usually collects her every day from school and spends an hour with her and then drops her back to me.

The various demands of the people involved in this case illustrate some of the aspects that need to be taken into account. Children's needs, desires and opinions change over time, parental behaviour is influenced by changing relationships and life circumstances. Health professionals make assessments based on a specific time in these events which cannot foresee the future. And judges

have their own beliefs in relation to what is best for children. However, judges, like the researcher who collected these interviews, are for the most part 'reading between the lines' in relation to what a variety of other adults are telling them; social workers, psychologists, mothers, fathers, barristers and members of extended families. This research was confined to the voices of mothers and their views of their children's' needs and experiences and this report should thus be read with this in mind.

Thematic analysis of the focus groups and written accounts identified three broad themes that related to children's voices: Custody and access and the legal system, Representation of children's needs; and Custody and access in the context of domestic violence. These three broad areas are broken down further as follows:

Custody, Access and the legal system

- Legal struggles between parents
- Varying decisions and changing needs
- Children in the negotiations

Representation of children's needs

- Professionals representing children in court
- Parental alienation
- Other services for children

Custody and access in the context of domestic violence

- Safety and fear
- Keeping parents happy
- Mothers' accounts of impacts on children

3.1 Custody, Access and the legal system

This section addresses the ways in which the mothers talked about how the legal system manages custody and access and the extent to which children's voices are heard within a structure which is by its nature adversarial.

3.1.2 Legal struggles between parents

There was a general consensus among all who participated in the focus groups and qualitative survey that child custody and access were generally managed as part of larger disputes about property, maintenance and accountability. This they argued, meant that there was little space for the assessment of the needs of children as separate parties to the dispute, as illustrated by the following quotation:

So what they say then in court is it's two parents that have a dispute with each other and the children have no rights in between.

A further complication that was noted is that in this context there is a tendency to look at the rights of parents in relation to access sometimes, in the opinion of mothers, to the exclusion of the expressed wishes of children:

The judge tries to force a relationship between the father and kids when they have made their wishes clear

The participants also noted that this has been addressed through various legislative initiatives but that these have not necessarily been fully tested. For example, in the following quotation:

The potential for damage to children in this situation is not even entertained. It's about the father's rights and the mother's rights but the legislation has changed, and the child now is considered to be an equal party in these proceedings and that needs to be challenged. Somebody needs to test that, that new system because the children didn't get a look in traditionally, but they will now.

An added complication in this mix of adversarial battles is the issue of property and of money. These matters are interlinked. The following two quotations give a sample of the issues that arose:

He knew if he'd have the children he'd get everything and wouldn't have to pay maintenance. So, he got, I was told in court I would get one third, I only got one fourth.

Yeah, oh it's all about money, and do you know what, my ex took my older girl, I know to this day why he took her, because once he had one, the family was broken, and he was really trained well because once he had one, the family was broken, the house had to be sold.

Regardless of what the rights and wrongs of these cases are, it is clear that custody and access decisions impact on financial arrangements that are made and that this in turn has the potential to influence the ways in which separating couples orient to matters relating to their children. Both parents in this case will have their needs represented but the child may be inadvertently regarded more as an asset than as a person with individual needs. Take the following quotation:

My son says that he feels like he is treated like a suitcase, carted around from one place to another, and that nobody cares what he wants or gives. My son does not have a voice in all of this.

3.1.2 Varying decisions and changing needs

As was illustrated by the quotation at the beginning of the chapter court decisions often result in procedures which do not respond to the changing needs of children and their parents over time. This in turn can lead to protracted legal proceedings over many years. Added to this is a lack of consistency in the stances taken by judges. As one participant put it:

So, I saw how different three judges can be as well which is really interesting because there is the law and then there is the interpretation and the choice of how the judge goes about it. My kids are nearly 9 and 10 and it's chopped and changed a lot over the past three years.

One particularly stark example of completely different decisions was as follows:

After seven months into court in 2007 they were removed from me and after that I have been in court for seven years, there's been no reason they were removed. I had a child psychologist that was pro men, she seemed to know [my ex]. I had a psychologist in 2011 in court and I was told they should have never been removed and he should have never had them. The judge apologised for that, my ex was told he was a bad father and beating them. The children came up to me in 2014. My child was suicidal, she was climbing walls. She spent two years with CAMHS and she has been in a very, very bad state, very traumatised, they're both seeing a psychologist still now today.

As the latter part of this quote illustrates these variable results can have profound impacts on the wellbeing and mental health of children. This also points to a lack of consistency in the decision-making process which adds to lack of stability for children

3.1.3 Children in the negotiations

Participants in the study repeatedly expressed the conviction that many judges make rulings to accommodate the needs of parents rather than of children. Take the following two quotations:

I think courts make it worse. Where a court ordered situation is that both parents, they're both trying to win, you know what I mean. There's manipulation... There is no winning. There is no winning. The child is in the middle there.

It's not about the adult. It's about the child's wishes yeah. I have court orders at home where it said, it says in it, the child has to go to access regardless of how he feels or his wishes and both parents are to enable this. And I just feel like where are my son's rights in that?

From the perspective of the women, children's voices and needs are not being heard in court because the needs of adults take precedence. Another difficulty is that often children don't get an opportunity to speak in court or to the judge. For example:

Solicitors will not take them into court. My daughter says she was upset that they said she was too young and wasn't allowed to go. She asked the social workers, they told her she could go but she's never been into court. Now they say she is too old to go. She says now she's very upset because her voice has never been heard and she wanted her voice to be heard. Her voice needed to be heard. It's not for me or him, it's to say how she has felt in this whole situation.

On the other hand, some mothers took the view that a courtroom was not a suitable place for a child, for example:

I hate the idea of my children being in a courtroom. It usually where you end up when you have done something wrong and I just don't want him exposed to it. It's formal and intimidating and you feel like you have done something wrong when you are walking up the steps.

Another issue that arose was in relation to the ways in which courts are organised. In the following quotation the participant argues that this is a reason for the variable decisions made by judges:

They could be dealing with a criminal case one minute and then they are expected to rule on a family law matter the next day. They can't possibly keep on top of all of it.

If this assessment is correct, and it was a view that was expressed repeatedly in the interviews, it would suggest that there should be separation and specialisation in relation to family law.

3.2 Representation of children's needs

Whilst some judges do speak with children, not all do. Clearly judges are aware of the complexities of bringing children into court and in order to assess the needs of children, psychologists and social workers are asked to report on the needs of children. However, for many of the mothers, the adversarial nature of the process has resulted in a style of assessment which is used to support the cases of parents rather than being a facility that gives children a voice. Those services provide assessments over short time periods and are privately commissioned.

3.2.1 Professionals representing children in court

In some cases, mothers claimed that judges chose not to agree with the findings of psychological reports. For example:

There were psychological reports done, he made it very clear why he didn't want to be in the company of his dad and it was just, it fell on deaf ears. He wrote to the judge.

In other cases mothers raised concerns about how psychologists responded to children who did not want to see their father. The following is an example:

He was very clear and very rational about why he didn't want to see his father and what the psychologist recommended was that, his father wanted to hear it from him. So, he wouldn't believe it if it came on paper in a document, in a report, he wanted to hear it from as he said himself, 'The horse's mouth'. So, my child, there was a court order made that a ten-year old boy would sit in the company of a man that is afraid of and explain to him why he didn't want to see him.

If this procedure is common, and it was common among the sample who participated in this study, it raises concerns about the kinds of pressure children are subjected to in such circumstances and how they might best be facilitated to communicate their needs to parents.

3.2.2 Parental alienation

An important and recurring theme that arose in the discussions was that of parental alienation. Parental alienation syndrome. This concept was coined by Gardner (1987) and he characterised it as a child's campaign of denigration against a parent that has no justification. He argued that it was the result of two contributing factors: the programming or brainwashing by one parent and the child's own contributions to the vilification of the target parent. He notes that the indoctrinating parent is usually the mother and that false allegations of sexual abuse are common in such cases. Within the interviews mothers claimed that this concept had been used in the custody and access battles to support forcing access that their children did not want. Take the following two examples:

Handover was fine when the child was going but since she is refusing it's a nightmare. I have been blamed for it regardless of my efforts to get her to go. She's afraid to go.

The children's voices were completely ignored. They were supposed to get professional help to overcome the violence but at the same time they were ordered to see their father at all costs. The focus was on parental alienation by me. My ex told me before the psychologist came that he had the ear of the psychologist and that I was walking into a trap.

In several cases the mothers express concern about the neutrality of the psychologist doing the assessment. For example:

I said my son told me that you asked him that in front of his father did he want to spend more time with him, and straightaway she looked at my ex. Then when she realised she'd been caught out, she goes, she leaned over the table to me and she went you need to ask yourself why your son is telling you these kinds of things. And I said no, no, no, no, I said I'm a good mother, I said I'm not a perfect mother, I said nobody is, I said but I am a good mother, I said, and I know that. And I said I know what my son told me, and I said my son is not a liar, I said I believe him. And she said you still need to ask yourself why he's telling you these things. She was trying to make out that he was telling me stuff because he felt he had to.

In other cases, the women felt that their children had been alienated against them by the children's father or his family. For example:

I only get to see them one day a week which is cruel. They were coached into saying things by a family member.

Others concurred and were concerned that allegations of parental alienation by them had been supported by professionals. For example,

Social workers were involved, the social workers were a load of crap, I've never seen such, I felt abused by the social workers, I felt manipulated by the social workers, I felt like I was the one doing everything wrong. And I felt they gave my daughter who was, the poor girl was only 14, 15, they gave her so much control and they let somebody manipulate her so badly. They never sat me, the three of us in the room together. If the three of us were in the room together and listened to but it was just control.

Two important difficulties here are the firstly the limitations of the concept of parental alienation (Gardner, 1987) which has not been accepted as a diagnostic criteria, and has been argued to be extremely limited in its applicability (Kelly & Johnston, 2001). The second is that the kinds of assessment carried out by social workers and psychologists in this context are designed to detect abuse and neglect. In order for children to be able to work through ongoing emotional issues resulting from substantial upheaval in the context of family breakdown and domestic abuse, a much more therapeutic relationship which unfolds over time is necessary.

3.2.3 Other services for children

One example of an intervention which the mothers believed helped their children was TLC Kidz, a multi-agency initiative, chaired by Ascend which includes a variety of agencies across North Tipperary. It involves ongoing support in a therapeutic environment which is facilitated by staff dedicated to the programme. In all cases the participants in this research were happy with the services their child had received. The programme lasts for 12 weeks and allows children the space to explore and express their feelings about their parents' breakup following domestic violence.

The court battle can make it worse. Because if children were in a safe space like that with the likes of TLC where she brings in the parents and says it to the parents right and the child eventually has the courage that can sit there and talk to both, while both parents are there and say how he feels and there's no punishment, there's no, there's that every child gets a voice and the parents have to listen but the manipulation stops.

Mothers felt that the programme was important so that domestic violence was not considered normal by their children:

we did the TLC for kids which was absolutely fantastic, you know? But it has made me realise more that it's wrong, you know, which is good I think because now she's not as confused by it maybe that she realises that it is actually wrong what he's doing, it's not normal. You know, and I never want my kids to normalise their dad's behaviour and that's, you have your kids, when you have your kids you don't honestly think, this is not the life you planned for them. You plan that they're going to be loved and have a great life and you're going to do your best for them and you didn't plan to be in and out of court to make their father see them and be a proper father. Because that's, you're not only worn out minding yourself you're worn out minding your kids, you're worn out minding your home. You're worn out with any other

*mental or whatever things that are going on with you, but you're also worn out trying to get their father to be a f***ing father and that is just constant like.*

Some were aware of the service but had not yet accessed it for their children:

I think my eldest now might start benefitting from something like that, she only just benefitted from TLC for Kids, so now she should be learning to talk about it and not just be like clamming up. You know? Keeping it inside and then it just bursts or... Yeah because they don't know how to talk to you about it, they don't want to upset you.

Implicit in the provision of the TLC Kidz service, which is specifically designed for situations following domestic violence, is an understanding that in situations of domestic violence, there can be additional issues to those that arise in other family breakdown situations. It is these additional pressures that are addressed in the next section of findings.

The guardian ad litem service was mentioned by some mothers as a service which provides a person who independently represents the needs of a child in court. However, none of these women's children had been provided one. For example,

They had no rights through the courts, absolutely none. A guardian ad litem was granted by the court and nobody would pay for it so he didn't get one.

The costs associated with separation and divorce, particularly in the context of parents who have the expenses associated with long and protracted legal battles are a significant barrier to the provision of services for children in this situation. Guardian ad litem private costs are large. They tend to be paid for by the state in childcare cases and not in private custody/access disputes.

3.3 Custody and access in the context of domestic violence

Whilst custody and access matters can be contentious in any family situation, the prospect of sending children to spend time with a person that had assaulted them (in many cases following separation and during handover) raised specific concern on the part of mothers for the safety of their children.

3.3.1 Safety and fear

There was a great deal of talk about physical and psychological injuries that the women had sustained during their relationships. Threaded through these conversations were references to safety orders and barring orders from the court. In some cases, the women argued that the men were good fathers but in other cases they feared for the safety and wellbeing of their children. The following four quotes illustrate a range of these issues:

My children were too young to say that their dad was abusing them as well as me so their voice will never be heard. The law is strange because even when there is proof that you as a mother have been hit they still send your children back there.

My 11-year-old hates that he is forced against his will to spend time with someone who scares him. His friends are afraid of his father after what they have witnessed him do.

I tried to get it across how upset and afraid she was to go but I was told just to encourage her and access had been given. She used to go okay but then she had one bad night and now she won't even hug he dad let alone go on access.

My son has been hung up and beaten, I had him constantly with black and blue eyes and a neck completely that you could see that was hung up. Social workers, nobody did anything. So, I have them just say for the last four and a half years but they had no rights through the courts, absolutely none.

In some cases, mothers were prepared to face imprisonment rather than force a child to attend access.

I actually think, like [son] is 16 now so I can look back now and say because I was never jailed and I was actually prepared to go if they were going to do it to me because it would have been worth a night in jail as opposed to terrorising my child any more than he was traumatised. And looking back, if I could change the system I certainly wouldn't have any of the cases heard in court. Because I didn't do anything wrong.

3.3.2 Keeping parents happy

A central dynamic in families where violence and anger are present is that often family members will go to great lengths to avoid conflict with and appease an angry or volatile family member. In relating their stories, the women talked about how they tried to ameliorate difficulties for their children. For example, the following quotations:

Kids are really astute in that they pick up when we are happy or we're sad, they know like as soon as they come from school oh what's up or Jesus you're happy, they pick it up. So like also they pick up other people's behaviour and, just in my case, the kids are doing their utmost best what they can do at the age of nine and 14 to manage their father. They are walking on eggshells, they have been beaten up and they have been reported to Tusla by Camhs, as in he has for what he's done to them physically and mentally. And he's still got this amount of access and now this access is used as his power, power, if that makes any sense. So what he did to me, he was forced to stop physically through the courts and the Guards but he has continued to do the same thing to the kids. And when you feel completely helpless you're just trying to equip them to have the tools to see things, to deal with things, to make sure they have the numbers for people to ring.

They're very sensitive I think to, in my opinion just because mine are young, they are very sensitive to me. If they know straight away when I get scared. I mean, I know, I suffer for the last since we broke up with very strong PTSD and anxiety. And they are very sensitive, especially my daughter once [their father] changes his tone they ... once he changes into that. It could be very subtle, but I feel it straight away and my daughter picks up on it like that. And she is straight away beside Mammy, you know. And she would like, she wouldn't care if he walked out the door at that stage, you know I mean like she wouldn't care if he went off. She would stay beside me, she wouldn't say goodbye to him or nothing. She would stop talking to him.

In these quotations the mothers present their children as managing their behaviour in ways which keep the peace at home; protecting themselves and their mothers and appeasing anger. For older children there was discussion of children asking mothers for help with managing their fathers. For example:

She asks me to ring him and ask him can she stay here with me. She doesn't want to go because like he'll ask her to help minding her little sister or just like tidying up. Like she's not allowed watching TV, she's not allowed eats what she wants like, you know, and like really, she is very crying. And like I try to ring him, talk to him, he is ignoring me, he says like I'm

lying, she really wants to go. Like then I ask my daughter to talk to him, she is really in very bad tears, she asks him please dad, I don't want to go this weekend, maybe next time. He says - you don't miss me, oh you don't love me, okay then, next time I will not come to collect you, that's it.

3.3.3 Mothers' accounts of impacts on children

In any situation of conflict and marital breakdown parents are likely to be concerned about the impact on their children. When there is protracted legal conflict and domestic violence, such concerns are particularly acute. All women were concerned at the impacts of their situation on children and many talked of depression. For example:

My middle girl actually didn't want to see her dad, one girl wouldn't come near me and then the middle girl, and then there was a court order put in place and everything and she was going there every second weekend. Then she didn't want to see her dad and she became very, she got actually very depressed.

It is clear from this quotation that the needs that children express can vary within a family and that mothers are observing psychological impacts resulting from the situation. Some mothers wanted their children to have a relationship with their fathers and believed they would be safe doing so. For example:

Each person needs a mam and dad, no matter how much apart we are, and none of us are perfect, growing up, we all need two parents in our life and whatever relationship you develop you develop with the person. So by me not encouraging a relationship, no matter what I think of their dad, they don't love him the way I do, they love him totally different, love him as a parent so they have to see him. But I don't aggravate the situation anymore, I don't play into the games, I keep my mouth shut. No matter what they tell me, I don't say, my son has come home and thrown the couch upside down with anger and frustration, he's often upset after, you know what I mean?

In this quotation the mother identifies the conflicts that arise between a child's need for a parent and the difficulties that can nevertheless arise within relationships. On the other hand, deeper concerns were expressed by some mothers. For example:

I think you have to take into consideration, if you give children to an abusive person, these children will have abusive behaviour. My children had extremely abusive behaviour to other children. They will grow up as extremely abusive children, adults, because this is the only things they've seen. So, I would not agree, in my case, that they would be with the father because their behaviour was out of, absolutely unbelievable.

This mother clearly expresses her concern that her children will learn abusive patterns of interactions from their father.

4.0 Conclusions

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.

4.1 Children caught in the crossfire

The division of assets following the end of a relationship is of necessity carried out in a legal context. This means that children's needs in matters of relationships with their parents are bundled together with the needs of the separating partners engaged in a dispute; with issues relating to property as well as the power struggles that arise when couples split acrimoniously.

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.

4.2 Parental alienation syndrome

The concept of parental alienation syndrome (PAS) is a useful one (Gardner, 1987). However, it is a disputed concept which has been the subject of some critique for a variety of reasons (Kelly & Johnston, 2001). Firstly, alienation is said to be present when children *unjustifiably* reject a parent following a divorce. In addition, whilst the acrimony following a divorce can cause parents to exhibit alienating behaviour this is only successful in a very small proportion of cases when the parent manages to exert unusual levels of control over the child. This can be very difficult to identify, particularly in a small number of one to one meetings. As Kelly and Johnston (2001) put it, 'the indiscriminate use of PAS terminology has led to widespread confusion and misunderstanding in judicial, legal, and psychological circles (p 250).' It is therefore more useful to consider the possibility of PAS in the context of an assessment of the entire family dynamic and in an ongoing therapeutic context and in the context of someone who has extensive training in working with family systems and therefore understands how to allow space for family members to communicate their needs and feelings. This is a particularly skilled activity where domestic violence is present.

4.3 Impacts of domestic violence on children

There is a body of evidence which suggests that in families where there is domestic violence among intimate partners there is a much greater likelihood that children will also be subject to emotional and / or physical violence. They are also at risk of impairments in social, emotional and cognitive development as well as experiencing poorer general health than children who do not live in households where domestic violence is present (for a meta analysis of studies see Wolfe et al 2003). In addition the experience for a of child witnessing domestic violence against a parent can be regarded as a form of emotional abuse and can also contribute to a perpetuation of the cycle of abuse by the children themselves, either as victims or perpetrators (Stover, 2005).

4.4 Appropriate supports for children

Pepler, Catallo, & Moore (2000) conducted a review of interventions for children exposed to domestic violence and found that due to the complexity of relationships in families and communities, that interventions should be targeted at different levels depending on the needs of the child. As a minimum, they argue, children should have access to ongoing therapeutic support which will allow them to process experiences and make plans for their own future behaviour. They also recommend parent child support sessions in cases where violence against the child is not a risk factor. In addition, they found that the inclusion of peer counselling was a significant support. Combinations of these interventions they report, result in improvements in children's self-reports of anxiety and depression and improvements in mothers' assessments of hyperactive and emotional behaviour.

5.0 Recommendations

Following on from the findings of this research several possible supports are recommended. 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.

5.1 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, and in interviewing children. They should be informed on the limits of the concept of Parental Alienation Syndrome in particular in the context of family dynamics in which power and control are problematic features. 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.

5.2 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. As has been discussed, the assessment procedures currently used are better suited to identifying neglect and abuse than they are to developing an understanding of the wishes of children in custody and access situations following domestic violence. Therapeutic style supports, in a similar format to that provided by TLC Kidz would be much more suited to preparing children to communicate to make their own wishes known in relation to custody, access and living arrangements.

The Children and Family Relationships Act 2015 includes in the schedule V involving consideration of best interests of the child the presence of domestic violence. This is a relatively new act and will take time for judges and practitioners to get accustomed to the schedule. However, evidence of domestic violence under that act needs to be considered in assessing what is in the best interests of the child.

It is also important that children are independently represented in court by a guardian ad litem. As this is an independent service provided for 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. The HSE (Tusla) resources for guardian ad litem tend to be focused on children in care. However, there is provision in this act also for children to be a party to the proceedings where they are old enough.

5.3 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.

It is recommended therefore that a longer and more substantial piece of research be carried out with children in this context. In keeping with the previous recommendations of the report, these should be children who have already engaged with some kind of therapeutic service, such as TLC Kidz, and have therefore become accustomed to talking about their experiences and have identified their emotional needs in relation to the issue.

Concluding comments

Family breakdown and the issues that emerge from it are complex and require the needs, rights and wishes of family members to be taken into account. This activity takes place against a backdrop of changing social, cultural and legal changes as well as the changing needs of family members within the cycle. It is hoped that this report will add some understanding to the nuance of this task in the context of domestic violence. The needs that have been identified have been presented as broad recommendations, but in order to manage such needs, it will be necessary to determine the exact format that such changes will take. International best practice, together with consideration of the specific cultural context of Ireland must be considered further in order for these recommendations to be implemented.

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7.0 Appendices

Appendix 1 Information sheet sent to participants

INFORMATION SHEET

Mothers managing court ordered custody and access following domestic abuse

Thank you for your interest in taking part in research for commissioned by ASCEND, North Tipperary Domestic Abuse Service. My name is Lisa O'Rourke Scott and I am a lecturer and researcher at Limerick Institute of Technology.

The aim of the research is to find out about how women who have experienced domestic abuse manage their children's needs in relation to court ordered custody and access. In particular we are interested in the extent to which children's voices are being heard in the process and what might help make this process easier for them. This is a preliminary piece of research and, depending what you tell us, we may do a follow up interview with children who have experienced the process. This will be an entirely separate piece of research for which separate information and consent will be sought from parents and their children.

I intend to carry out four focus groups with women who have worked with ASCEND and are currently managing court ordered custody or access arrangements. I am attaching a copy of the proposed questions to give you an idea of the kind of things we will be talking about in the focus groups. If you agree to take part, you will be invited to participate in one of four focus groups during October 2018. Each of the groups will have around six women involved who will also have worked with ASCEND. The focus groups should take no more than an hour and a half. They will be digitally recorded and afterwards they will be transcribed.

You are not obliged to take part in this research. If you change your mind at any stage, including during the interview, you are free to withdraw and there will be no negative consequences. You are guaranteed confidentiality in this research and any names or places that might be used to identify you will be changed. The results will contribute to a research report that will be launched by ASCEND in December. Results may also be featured in conference papers or academic journals following the research. I will keep the transcripts for one year after the research is published and the digital recordings of the interviews will be kept in a password digital format for 7 years.

Having read this, if you would still like to take part in the research, ASCEND will pass on your name and contact details and will contact you to arrange a time for you to take part in one of the focus groups.

Thanks a million, and I hope you will take part.

Dr. Lisa O'Rourke Scott
Principal Investigator, Genders and Sexualities Research Group (GSRG)
Limerick Institute of Technology,
Moylish,
Limerick

CONSENT FORM

Mothers managing court ordered custody and access following domestic abuse

Please do not sign the consent form until you have read the information sheet and you have been given satisfactory answers to any questions that you may have about the research. Please answer the following questions before signing the form:

Have you read the information sheet? YES/NO

Have you had an opportunity to ask questions about the research? YES/NO

Have you received satisfactory answers to your questions? YES/NO

Have you received enough information about the study? YES/NO

Are you satisfied that your name or identifying features will not be passed on to anyone as a result of this study? YES/NO

Do you agree to maintain the privacy of other women who take part in your focus group and keep the details of what is said in the focus group private? YES/NO

Do you understand that some of the things that you say in the interview might be quoted in the final report of the research but that your name or names of anyone you talk about will never be mentioned? YES/NO

Do you agree that the transcripts of the interviews can be passed on to a professional transcriber for typing? YES/NO

Are you aware that if at any time during the focus group you wish to leave or you do not wish to talk about anything that you are free to do so without any negative consequence? YES/NO

Do you agree to take part in the study? YES/NO

Are you aware that if you want to withdraw your participation in the study after the interview, you can let the researcher know within two weeks of the interview and your sections of the focus group transcripts will be deleted? YES/NO

Mothers managing court ordered custody and access following domestic abuse

Can you start by telling me a little bit about what the court order required of you and your child / children in relation to access with their father?

How were your child's concerns and wishes communicated to the court (e.g. speaking to the judge / speaking with professionals who spoke for them)?

To what extent do you think your child's voice was heard in the custody/ access process?

How do you manage planning of access and handover?

What are your experiences of handover?

How would you characterise your ongoing partnership with the child's father?

Have your child's wishes in relation to access changed over time?

What do you think your child wants from access?

To what extent are your child's wishes in relation to access taken into account?

What would help you and your child have a more helpful experience of court ordered custody?