

False allegations and their effects

We've seen in the last couple of weeks in the Guardian that family judges are to be provided powers to use investigatory, or inquisitorial, processes in UK family courts, like those used in some EU jurisdictions. The same week, MP Philip Davies advocated in Parliament for changes to legislation, for placing parental alienation into the criminal category of domestic abuse, amongst other proposed changes. If made and implemented wisely, these changes could assist in processing what senior judges have accepted, and research suggests, as a significant problem of false allegations being made when cases are progressing through family courts.

This article focuses only on the clinical and forensic research available on *knowingly false allegations*. What of? Well, for example, family judges have to consider a wide range of conducts that constitute domestic abuse, domestic violence, sexual abuse of partners and children, neglect, and allegations of parental alienation. And, let's be clear: not all allegations that are not true are knowingly falsely made. There are wider categories of allegations, such as those sincerely made to protect self and others, but are wrong. Allegations can be made in error. Or thought to be true by the accuser but the product of psychologically wrong perception at that time. Children make true, erroneous, and knowingly false allegations too, all perhaps common in family court, and each under various circumstances. For instance, they may make knowingly false allegations when under the pressure and influence of one parent at court, as part of their recruitment of a child, in their campaign against the other parent. And judges need to be able to differentiate between allegations that are likely true but don't necessarily affect the welfare decision.

Allegations made in child proceedings matter because those taken forwards to the point of being adjudicated are supposed to be restricted to issues affecting the welfare of any children in the case. They also matter because genuine perpetrators need to be reliably identified and appropriately dealt with; these kind of behaviours and crimes can inflict incremental damage to individuals and children, and by repeating across relationships, and even generations, if not stopped.

There is need for change in adjudicating allegations. I'm sure any forensic psychologist would agree that an adversarial system of competing advocate or litigant in person narratives, in front of a burdened single justice, with limited time and only the evidence (or narrative) provided by the parties, is not reliable enough to get it right for children. As commented by a forensic expert: "there is as yet no generally accepted, scientifically valid way to determine whether an abuse report is true or false" and, when commenting on the measures used by some to try to ascertain truth, "the clinical assessment processes which have been used in assessing allegations of sexual abuse have regularly and ambitiously raced ahead of the experimental/empirical foundations which would warrant their use as valid, and reliable methods."

Maybe the inquisitorial process being adopted by UK judges will help. It remains to be seen, however, whether providing investigatory powers will be accompanied by training in how to use them. In France, for instance, judges are investigators who take a different educational and professional route to legal advocates. For good reason, their journeys do not cross, like they do here. And in Germany, some judges are provided specialist training amounting to dozens of hours to learn how to question children.

Why are false allegations made? The forensic and clinical literature points to various influences: mental health issues; attempts to gain legal advantage; or prevent feared legal disadvantage; a desire to inflict pain and inconvenience on another parent; to justify and

perhaps deflect attention from the accuser's own abuse of children. Or perhaps, simply out of uncontrolled fear within an adversarial court process over children that is overwhelming, can be very long, and itself can cause a toxic mix and series of progressive anxiety disorders, so litigants simply cannot think straight, and become desperate. Parents may have pre-existing mental health issues that disrupt their perception, and aren't helped at all by the adversarial process. One reason mentioned as promoting knowingly false allegations by almost every clinical and forensic article on the issue is that the family court doesn't directly punish those evidenced or found to have deliberately lied. One legal expert inferred the reason he felt this lack of action happens: "Based on my experience, the political pressure surrounding domestic violence cases is a factor in some prosecutors' reluctance to prosecute false report cases in family violence situations."

What are other potential gains of false allegations? Firstly, there are resources made available. False allegations can qualify a false accuser for the protections quite rightly put in place for genuine victims. There may be community, social, welfare and other financial incentives in addition to this immense legal advantage at court. Another advantage for some may be the pleasure they gain from the difficulties inflicted on the other parent.

From that comes the obvious possibility that the worst cases may involve certain mental health difficulties with one or both parents. Dr Kathleen Ray quoted several leading clinical experts in 2015 when writing: "Parents who make false allegations of child abuse, conceivably those who are obsessively determined to annihilate the child's relationship with the target parent, are likely to demonstrate characteristics of various personality disorders. In particular, borderline personality disorder; narcissistic personality disorder; paranoid personality disorder; or sociopathic traits. Clinical psychologist Dr Richard Sauber stated the next problematic stage in proceedings, after allegations are made: "Untrained child protection workers and clinicians may not be able to accurately assess the differences between true allegations of child abuse and false allegations of child abuse which are commonly seen in severe cases of parental alienation."

The falsely accused face a raft of psychological problems and other difficulties that are then harder to cope with from the multiple processes that can kick in once false allegations or insinuations are made. We can start with attachments. Attachment is a neurobiological survival system built into us from before birth that autonomously controls the body's sympathetic nervous system. So it's hard-wired into our stress responses. Any disruption of a positive attachment inflicts real harm on the target adult and especially their children, by chronic activation of stress, compounded by unresolved loss and eventually, trauma. In this state, many separated parents need to use services such as the family court, where false allegations can be used to by alienating to justify with-holding or preventing their children's relationship with them. The court's various deficiencies and long timelines can, and probably will, be exploited by the false accuser. The falsely accused may also be subject to non-molestation orders (NMOs), which can be extremely prejudicial, threaten liberty in cases where further allegations may be likely, with thousands of NMOs apparently issued without any adjudication of the allegations made. An NMO infers guilt or suspicion to child agencies who may also seek to cut out an innocent, separated parent from their children's lives. Once an NMO is in place, the legal process has effectively taken jurisdiction over all else, and the ostracised parent probably has no choice but to use the family courts if they wish to maintain any kind of relationship with their children.

It is possible that allegations are made and investigated but No Further Action (NFA) is taken by investigators such as child services or the police. They may not always inform the accused, who then has no idea that social or criminal intelligence files have been opened on them and their children. Sometimes, drastic action is taken without real evidence. An accused parent who does not meet any threshold for arrest can nonetheless be persuaded by child services or police to leave their home. Positive arrest policies can also remove a

falsely accused person from their family home and children before adjudication of allegations. In both scenarios, perhaps the accused parent is never able to return. There may be criminal prosecutions of the falsely accused, and it's possible they could be falsely convicted. Even if not, the suspension of any time with their children whilst criminal or family proceedings are ongoing keeps their stress-related sickness high. If they are provided supervised or supported contact to their children during any interim period before adjudication, it is humiliating, degrading, and too infrequent to maintain quality attachments. Separated parents sometimes endure these very short and restricted contact periods for months, helplessly watching the degradation of their children's mental health over time. And supervised contact is another layer of significant financial expense. Some accused professionals may have to stop work, and lose their assets. I have seen a case where a teacher, for instance, didn't get his job back even when eventually cleared of abuse allegations. Not that innocents *are* ever cleared; the terminology used is that allegations either are, or are not, 'substantiated.'

It has to be said that in this area of litigation, the accused are often considered and treated as guilty before being 'unsubstantiated,' if they're that fortunate. It can take a long time to physically recover, and some never do, psychologically. I have conducted small scale research suggesting that once the attachment system is as disrupted, as it normally is during family proceedings, sufferers never really recover from the trauma. Research has shown further that 'unsubstantiated' or even exonerated, falsely accused separated parents probably won't get to see their children again. If deliberate, false allegations were part of a campaign of alienating children against the separated parent, that process of manipulation can be so far advanced by the time anything is adjudicated that either way, their children will be so intensely psychologically damaged as to require specialist assessment and reunification processes, which are not on offer within Child and Adolescent Mental Health Services (CAHMS) of the NHS, and not always reliably provided when directed at family court, if directed at all.

It's perhaps no wonder that, with all these pressures, new research confirms what we've long known: a huge proportion of suicides inevitably follow this long term, deep and chronic distress and devastation, linked to parent/child separation, false allegations and parental alienation. The other side of the coin also plays a large part: it seems just as many suicides result from genuine domestic violence, both by victims and perpetrators.

Then there's the effect of false allegations on the very children the court is obliged to protect. The distress on this specific sample of children embroiled in false allegation cases was expressed by a UK expert psychologist who followed dozens of cases where child abuse allegations were made, to record that only 5% were upheld, 70% were considered false, and 24% unsubstantiated. He said: "the message here is again clear. A parent who makes false allegations of child abuse against the other parent for whatever reasons – and the reasons varied considerably, including parents who genuinely believed contact was not good for the child but could find no other way to have it stopped – is likely to damage the child's mental health. Sometimes that damage was of a tragic and distressing nature..... Mental health issues in these cases included anxiety, panic, suicidality, hair pulling at times to the point of disfigurement and general loss of confidence and a sense of grief." Note the further link to suicide: the anxiety, trauma and adjustment disorders associated with being a child in a case where false allegations are made are synonymous with higher suicide in adolescents. Is it a coincidence that so many troubled people have suicide ideation and are dying when their issues are dealt with by a family court system that senior judges have inferred is unfit for purpose?

In any caring society, the above should all place a massive duty on the family courts to do two things that are not currently apparent: ensure they use the best practices possible, and do so quickly. What we *have* seen, however, are a string of cosmetic changes in procedures

correctly aimed at protecting genuine victims, but little or nothing in terms of assisting judges to adequately distinguish them from false accusers, or the rightly from wrongly accused. The little forensic literature evaluating judicial performance is clear: judges are no more reliable arbiters of truth or deception than anyone else. Some have even relied on ‘witness demeanour’ as a means for judging someone’s credibility at court, where there is no other indication of guilt. The forensic literature is clear there too, as is the case *R vs Rhayel*, ONCA 377. Judging according to witness demeanour is unreliable and should be avoided, especially where parents are anxious, traumatised and not presenting well – probably because they are *not* well. I’ve also known litigants in person marked down by judges on important allegations against them, only to find out later they were dyslexic, with cognitive delays that made them seem shifty under cross examination, when in fact they were deeply hurt by and struggling to process the legal dialogues deployed against them in court.

Even with these latest changes, serious issues that impinge on the health of children, who are always innocent, will still be adjudicated behind closed doors, with the public not knowing how. Life changing (and even life ending) allegations are dealt with in a paper-based system, that doesn’t promote research or monitor outcomes, or evolve much despite hundreds of thousands of cases, which means the family courts are, to some extent, still medieval. The same processes as a thousand years ago still exist today. Sir Andrew Macfarlane, the current President of the Family Division, has likened the family court judge’s job to trying to hit a darts board by throwing darts backwards over their shoulder in the dark. Pretty much the same has been expressed by previous Presidents such as Sir James Munby, in regards to lack of training, scant resources, the parlous state of some family courts, and shock at some of the professional misconduct seen.

Is there a way out? Perhaps neuroscience technology can help. Lie detection has long since been a reliable science. Polygraphs and the newer technology, EyeDetect™, are used worldwide by leading government and commercial agencies, including child protection. These two technologies each use different means of physiological measurement to detect deception with accuracy rates for specific testing at over 90%, and up to 99% if administered together. That’s far higher than the balance of probabilities test used in family courts, which may sometimes be little more than a test of persuasion. Currently, risk to children is not always spotted where it could be, and asserted where there’s no risk at all. An EyeDetect™ testing station and administrator could easily be sourced and trained at every family court, reduce costs, and significantly cut the court backlog, quickly. EyeDetect™ is now widely used by law enforcement in the US, and government agencies here. Trialling and deploying it might help keep a lot of people keep their mental health, or even their lives. It’s food for thought.

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