

Investigation Tug of love

MOTHERS' RUIN

Courts are increasingly ruling that women must live apart from their children after divorce. Is this an attack on working mothers or a reward for better male parenting? Christine Toomey reports. Photographs: Dirk Lindner

Tension is high in the waiting area outside the top floor courtrooms of the Inner London Family Proceedings Court in Wells Street, central London. In one corner, an agitated young mother sits pressing crumpled tissues to her face, mumbling, "I just want my kids back", as solicitors huddle close by talking among themselves about the need for her to attend parenting classes.

In the opposite corner, an older mother sits staring straight ahead, her handbag perched primly on her lap, studiously avoiding eye contact with her former partner, who has sidled over to sit by my side. Like all family courts, Wells Street, the largest in the country, has only been open to media scrutiny since April after a campaign arguing that the close secrecy in which they traditionally operated ➤➤➤

led to widespread miscarriages of justice. “Blokes are being crucified in here,” the man blurts out to me, his face red with pent-up fury. This is not quite true.

Over the course of the next few hours, a formidable female judge patiently listens to his pleas to be allowed to see his baby son fortnightly, despite objections by the baby’s mother that this should not be granted until full background checks on him are completed. She claims that he was once excluded from a leisure centre for inappropriate attention to children. Her objections are overruled. Supervised contact is granted.

After years of high-profile stunts by pressure groups such as Fathers4Justice, many people assume that men still systematically fare badly in family courts. But in the wake of a recent spate of stories highlighting the treatment of mothers considered “too stupid” or disruptive or too busy working to look after, or even be allowed contact with, their children, some question if the pendulum has begun to swing the other way.

I hear the stories of mothers whose experiences have convinced them of it. Isabel is a former teacher, aged 40, now living in the northeast of England. Her voice trembles as she tells of a lengthy legal battle with her wealthy ex-husband for custody of her son. “He left me when I was pregnant and showed little interest in our son at first. But as soon as he got a new girlfriend with children of her own, he wanted to impress her by playing the family man, and applied for contact and eventually full custody,” she says. Her ex-husband, a prominent businessman, Isabel says, is a bully who intimidated social workers into writing negative reports about her mothering abilities. She tried to challenge them in court, only to be

brainwashed a child against the other by obsessive denigration. It has been cited in high-profile custody battles such as that of the actors Alec Baldwin and Kim Basinger, but it has never been recognised as a clinically diagnosed condition.

In this country PAS has been dubbed by some mothers “the new Munchausen’s syndrome by proxy” — the now widely questioned suggestion that parents expressing concern for a child’s health may be fabricating or inducing illness. There are no statistics cataloguing the extent of its use in the British courts, but it appears to be gaining an increasing foothold here. Time and again in my conversations with mothers who have lost custody of their children, or are struggling to maintain contact with them, it emerges that they have been accused of suffering from PAS.

It was on the strength of such accusations against her that Isabel finally lost custody of her son. She is allowed to see him only once every three weeks during visits that involve her making a round trip of more than 300 miles. Devastated that her son is being raised by her ex-husband’s new wife, who she believes neglects her child, she is “seething with anger and feelings of impotence” at the injustice. “I am heartbroken that my happy intelligent little boy has been so let down by the system,” says Isabel, who describes the family courts as “a one-size-fits-all setup” that leaves too many parents and children traumatised.

Isabel describes her son now as “just a shadow of himself” when she manages to see him. “He appears at the door and I hardly recognise him, he is so withdrawn. But I daren’t say anything more to the courts about this because I am sure then they will stop me from seeing him altogether.” Laura, a 44-year-old businesswoman, has not



WHEN ISABEL TOLD THE COURT THAT SHE BELIEVED HER SON WAS BEING SEXUALLY ABUSED, SHE WAS ACCUSED OF PLANTING FALSE ALLEGATIONS

told, she says, by the judge who granted her son’s father increased contact: “Any more from you and you will never see your son again.”

“It was all about control as far as my ex was concerned,” she says, “and because he had a cousin in the legal profession, he knew how to play the system. I began to be treated like some sort of criminal and entered a living hell.”

When Isabel’s son was three, he started to complain, grabbing his genitals, that his father was “hurting me there lots and lots”. But when Isabel told the court that she believed her son was being sexually abused by his father, she was accused by psychologists employed by her ex-husband of suffering from Parental Alienation Syndrome (PAS), a controversial term used to imply that she had planted false allegations in her son’s mind.

The term PAS, sometimes referred to as “implacable hostility”, was coined by an American psychiatrist, the late Dr Richard Gardener, in 1985, to describe the process by which one parent

seen her two sons for more than a year, after her ex-husband was granted full custody (now known as “residency”) when she too was accused of trying to turn them against their father. “My sons were rejecting their father partly because they felt so guilty about leaving me when they went to see him. But the so-called experts who assessed them had such little understanding of child psychology and development, they were on a par with dentists trying to perform brain surgery.”

In the case of Norma, a 43-year-old London-based professional, it is she who believes her husband has indoctrinated her two sons with such animosity against her that they no longer wish to see her. Despite a court order granting her shared residency, she has not seen her sons for almost a year. Yet the courts, she says, refuse to acknowledge the damaging effect that this is having on her children’s psychological wellbeing, and insist that they continue to live with their father. “This is emotional abuse of the worst kind. I feel as if all

my instincts as a mother have been disregarded. Once you enter the British family court system, you enter a battle scenario that only ratchets up animosity and does nothing to help you reach an amicable settlement.”

Norma believes that being a working mother has counted against her. After her sons were born, she reduced the hours she worked at a middle-management level in the public sector from full-time to three days. But because her husband ran his own business, he was also able to be flexible with his working day, to adapt to his young sons’ needs, which was the reason, she believes, a shared residency order was granted.

At first, Norma says, she supported this arrangement; she had had a poor relationship with her own father, so was keen for her boys to have the best possible relationship with theirs. “I was very happy to share everything, including financial responsibility. But my ex-husband is not capable of sharing. He abused the situa-

tion and turned my boys against me to the point where they have nothing to do with me now, even though I continue to support them financially.

“I suppose I’m a victim of the typical aspirations of a 21st-century working woman, who, after a good education, wanted it all: a good career and a family, a true work-life balance. But in the end, when the family fell apart, I paid the price for that dream and got absolutely shafted,” continues Norma, who spent £80,000 on legal expenses to try to regain full custody of her sons. “If I had been a traditional Sixties stay-at-home mother, I wouldn’t be in the position I’m in now. The children would have stayed with me and the conflict that escalated to the point where I now no longer see them would never have started.”

Norma acknowledges that some fathers can be better carers than mothers, but she believes that mothers suffer particular hardship when deprived of contact with their children because society sees this as unnatural and stigmatises women in such

situations. “I feel bereft, empty, heartbroken. But I rarely admit this to anyone unless I know them very well,” she confesses. “I just live in the hope that my boys will reach a level of emotional independence one day and will come back to me and ask questions about what has gone on.”

Like all the women I interview, Norma begs me to change her name and details of her story that might identify her or her children to anyone familiar with the circumstances. Unlike the pranksters from Fathers4Justice, all these women shy away from publicity, fearful that this will further damage any hope of rebuilding better relations with their children in the future.

In the overwhelming majority of cases, children do still live with their mother after divorce or separation — 95%, against 5% with fathers. The figures have stayed proportionally the same over many years. But as divorce rates have risen, so has the number of women living apart from their

children. Data from the Child Support Agency (CSA) show that the instances where mothers are registered as the non-resident parent have increased from 32,100 in 2005 to 65,800 in March 2009. In the same period the CSA’s caseload doubled, from 647,000 assessments made to 1.28m, involving just under half of the estimated 2.6m separated families in Great Britain.

The charity Match (Mothers Apart from Their Children), representing women who find themselves in this situation, estimates that there could actually be as many as 250,000 mothers living apart from their children in this country.

“People assume a woman must have done something wrong if she has lost custody of her child, so it is very hard for women to admit to being in that situation,” explains Sarah Hart, an advisor to Match and author of a book called *A Mother Apart*. “While the courts might operate on a so-called gender-neutral basis when it comes to making decisions regarding the custody of

children, society does not. It is very judgmental of women whose children don't live with them, which not only damages them psychologically, but then impacts on their ability to mother their children — if they still have contact, that is."

This is certainly how Isabel feels. She was so traumatised by losing custody of her son that she abandoned a degree course she had begun after he was born, and now works part-time in a small business unrelated to education. "I felt totally destroyed. I couldn't bear to be around other children, and if anyone asked me if I had children, I would change the subject immediately," she says.

Hart cautions mothers to be very aware — especially in the current economic climate, with more women forced to take up the financial reins of their family — that the hours they spend out of the home can influence court decisions should there be disputes over custody. Courts will take into consideration such factors as which parent has performed more child care in a household prior to family breakdown, in deciding who a child's "primary carer" has been, although increasingly shared residency orders are granted.

Jane, a police officer who also lost custody of her two children because she had worked longer hours than her ex-husband, offers a warning: "I would say to any woman who considers the equality role swap, 'Don't do it.' I did it for the right reasons, but it came back and bit me."

The gradual shift in custodial arrangements can be seen as a direct consequence of women's fight for equality in the workplace. But the unforeseen effect of mothers losing custody of their children as a result has taken many by surprise. One senior advertising executive who lost custody of her son and daughter to her ex-husband — a building-site foreman who gave up his job to look after their children so that she could retain her six-figure salary — describes how a picture was painted of her as a "hard-faced woman more interested in board meetings than school plays". This was so far from the truth, she says.

With family courts long since operating a strictly gender-neutral approach to resolving conflict over issues such as where children will live after their parents separate, some people have raised concerns that the traditional nurturing role of mothers is being undermined, and that women's worries over the welfare and safety of their children are too often being ignored.

Despite the recent historic opening of the family courts to the media, on condition that the identities of those involved in cases remain protected, journalists are still prohibited from accessing court documents. This means that a true understanding of how many crucial judgments are reached is still limited. It is a shortfall that those who have campaigned for the opening of the courts, including our sister paper *The Times*, are pressing to have addressed. But in recent months, several cases have emerged of mothers whose children have been taken from them and

put up for adoption because the women were deemed "not clever enough" to look after them. One mother, prevented from even seeing her three-year-old daughter as the adoption process continues — despite a psychiatrist's report stating that her intellectual ability appears to be "within the normal range" — is now taking her case to the European Court of Human Rights.

Prior to this there was widespread astonishment at the decision of a judge to ban a mother from seeing her daughter and two sons for three years because she was ruled to be an "overindulgent" parent who was "infantilising the children and encouraging them to make complaints about the father". The woman, the former wife of a wealthy financier, was even jailed for a month for approaching one of the children on the street, in defiance of the ban, and telling him she loved him. She now faces a further prison sentence for ignoring a gagging order preventing her from talking about the case, by posting a video about her situation on the internet.

So are women finding it increasingly difficult to get just settlements for themselves and their children? And are these shifting currents a reflection of the way our society is evolving, to the point that mothers are no longer perceived to have the special role they once did, and the roles of mothers and fathers are now seen as almost interchangeable?

Some people in the legal profession argue that since the vast majority of separation disputes — excluding maintenance settlements involving the CSA — are settled privately, with only 10% on average reaching the courts, any apparent hardening of attitudes towards women in the justice system has little bearing on most people's lives. But high-profile judgments by the family courts do influence the thinking of people trying to come to private agreements. "It's called 'bargaining in the shadow of the law', and means that many more than those involved in a judgment are affected by it," says Mavis Maclean, joint director of Oxford University's Oxford Centre for Family Law and Policy (Oxflap).

Legal professionals are also agreed that the worsening economic situation is hitting women caught in the midst of family breakdown harder than the majority of men. Whatever their financial circumstances, many women are finding it increasingly difficult to access legal advice, they say. This is partly a result of drastic reductions in legal aid in recent years, which disproportionately affects women with young children, who are less likely to be working.

With legal aid now available to so few, many mothers who have given up work to look after their children find they cannot afford to consult a solicitor when a family splits up, though the children's father may be able to do so. "While women might be able to make an application for an interim maintenance order while the details of



the separation or divorce are worked out, releasing equity in a shared property to allow a woman to pay for legal fees can be more complicated," explains Teresa Richardson of Resolution, an organisation representing 5,500 family lawyers.

The government's failure to grant cohabiting couples legal rights similar to those of married couples also disproportionately disadvantages women. The widespread belief that couples who have lived together for years are "common law" husband and wife is a fallacy that leaves many women devastated when their relationship fails.

"One of the biggest problems faced by women going through family breakdown is that they are not aware of such legal complexities, nor of the options open to them, nor the potential pitfalls," says Emma Scott, director of the voluntary organisation Rights of Women, which offers free legal advice to women but is only able to deal with a fraction of the requests for help it receives each year (last year it could only answer 1,130 of around 90,000 attempted calls).

Recent moves to encourage separating couples to settle their affairs privately, through either mediation or a relatively new non-adversarial process known as "collaborative law" — where couples are encouraged to make key decisions themselves, with legal advisors present, in more informal meetings than court sittings — have been

widely praised as a positive step away from often lengthy, costly and acrimonious court wrangles.

These processes are also becoming increasingly popular as the credit crunch puts costly legal consultation beyond the means of many. But Scott warns that there are problems with such methods of conflict resolution, particularly for women when it comes to making financial settlements. "Women are coming under increasing pressure to settle matters out of court, but often they feel their concerns are then not heard. Without the investigative powers of a judge, many are forced to rely on the honesty of their husband or boyfriend when it comes to disclosing family finances, for instance, and often this presents problems.

"Even when cases do go to court, we speak to very many women who feel their concerns are not listened to, especially when it comes to worries they have about the welfare and safety of their children at the hands of abusive ex-partners. All too often judges brush these concerns aside and continue to grant contact with fathers on the grounds that it is in the children's best interests to continue their relationship with both parents. It is, of course, but not if this leads to further abuse."

What is worse, say experts, is that as more mothers recognise that courts will grant contact to fathers regardless of concerns that they might have about how this might affect their children,

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growing numbers of women are keeping quiet about those concerns for fear they will be deemed obstructive by the courts, which could then grant full residence to the father.

"What is happening now is that women feel they have to be seen to be very supportive of Dad, no matter what, otherwise the court will be cross with them, and that is very dangerous," says Mavis Maclean. "Courts by and large are very sensible. But where there are instances of women being afraid to express their anxieties because they are afraid they will be badly thought of by the court, will be considered recalcitrant and, as a result, could lose custody of their child, that is tragic."

Under the 1989 Children Act, courts must consider the interests of the child above all else. But the way this legislation is framed means that parents are no longer referred to specifically as "mothers" or "fathers", but as those with "parental responsibilities". This gender-neutral approach also has its pitfalls, argue those who have both studied and practised family law for many years.

"We are 20 years away from the era when it was generally accepted that the mother should be

the primary carer post divorce unless there were grave reasons to suggest otherwise," says Robert Tresman, a barrister with Staple Inn Chambers and a specialist in both criminal and family law for nearly 30 years. "But we are 30 years away from a situation where gender might not matter when it comes to childcare, and I'm not sure that would be a good position to reach anyway. I don't think courts should ever ignore the role that gender plays in parenting. I do think courts can sometimes get into a situation where they are too focused on the practicalities of care without looking at the particular nurturing abilities of those involved and their abilities to cope and juggle."

"Some hold the view that the courts are engaged in social engineering by operating on gender-neutral principles, when the reality is that parenting is highly gendered," stresses Dr Liz Trinder, a specialist in family studies at Newcastle University.

Asked if fathers now feel they are getting a fairer deal in the family courts, Nick Barnard of Families Need Fathers is adamant they are not: "The courts probably think they are doing their best. But the fact that we still exist and have about 10,000 members shows that people still don't feel they are getting a fair deal." Barnard is quick to point out that his lobby group, established more than 35 years ago, also now operates on a gender-neutral basis and represents not just fathers but also mothers who feel excluded from their children's lives. His group insists there should be automatic assumption, both within the court system and in society in general, that parenting

responsibilities should be shared equally following family breakdown. "Unfortunately, we do not have a court system that has as its priority keeping both parents involved in children's lives, so we try to encourage people not to go near the courts because it puts them through an emotional hell."

Few would disagree with the latter.

The crucial voices missing in many of these arguments are those of children themselves. With the debate so often framed in terms of whether fathers or mothers are getting a bad deal, the question of whether or not children are getting a good deal is lost. Ask the experts for a view on this, and for once they are almost unanimous. Dr Liz Trinder sums it up: "Kids are not getting a good deal. With so much conflict left unresolved, children are left to live in a war zone." ■

TELL US YOUR STORY

Are you a working mother who has been given a raw deal in the family courts? Please tell us more online at www.timesonline.co.uk/families OR e-mail us in confidence at workingmum@sundaytimes.co.uk