

Children of an abusive parent can be at significant risk due to inadequate procedural and legislative measures in the UK criminal and family justice system. Those trying to protect children find themselves embroiled in protracted, expensive, complicated and often damaging proceedings. This paper discusses some of the issues, potential solutions and calls for action to help families overcome and thrive after suffering a family crisis.

# Protecting children & families from abusive parents

Mosac- Advocacy Team, December 2018

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## Introduction

Mosac is a charity supporting non abusing parents of sexually abused children. Child sex abuse is a devastating crime for the victim, creating complex and often urgent needs for the child. The protective parent is often traumatised by the discovery that their child has been abused, particularly as 69% of child abuse occurs in the family<sup>1</sup>. This invariably means the protective parent is coping with the trauma of the disclosure as well as family breakdown. Protective parents can't seek support in the usual ways as they can't identify their child as a sexual abuse victim. Mosac exists to provide emotional and practical support to parents during this harrowing time.

Protecting your child from family members is extremely challenging. This is particularly so when the accused is the other parent, they have parental responsibility and the right of involvement in their children's lives<sup>2</sup>.

More than 64% of the cases Mosac's advocacy team encounter, involve complex safeguarding issues due to the accused having parental responsibility. The first hurdle is the child being recognised as a victim or at risk from the accused parent. The second hurdle is providing them with protection. It surprises many people to know that even where the accused parent has been convicted of child sex abuse against their own child, they still retain all of their rights as a parent.

There are no **automatic** protections for these victims or their family. The protective parent is ultimately responsible for safeguarding their children, yet they find themselves seriously disabled in their duty by current legislation and authority practices.

Mosac believes that these issues create danger, stresses and expense for a family already in crisis. The purpose of this paper is to provide a voice to parents who struggle to speak out about the issues they face and in doing so, promote change.

1. The issue of being recognised as a victim in order to receive protection from the perpetrator.

In Mosac's professional experience, obtaining a charge and conviction against a child sex offender is rare. Without a charge or conviction however, children

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<sup>1</sup> Children's Commissioner *Protecting Children From Harm- A critical assessment of Child Sex abuse in the family network in England and priorities for action* (November 2015) p 30

<sup>2</sup> Children and Families Act 2014 s.11



are significantly less likely to be recognised officially as victims and receive protective and therapeutic measures. This is particularly so where the accused is a parent, where according to our advocacy statistics, the child is the least likely of all to be recognised as a victim. In 2017, 14% of Mosac's advocacy cases where the accused was not a parent received a conviction. Where the accused was a parent, the conviction rate dropped by more than half to less than 7%.

This is likely to be due to many factors, some of the main factors Mosac record are listed below -

- a) The child is often very young (the average age of victims Mosac deals with is 4 – 5 years old). We believe this is deliberate on the part of offenders. The child is also emotionally attached to the abuser, which means disclosure to strangers (such as police or Social Services) is rare and disclosures are often only given to the protective parent or someone the child knows and trusts<sup>3</sup>
- b) The police or other authorities can't be seen to lead the child so there will be no trust building to enable a disclosure, i.e., a young child is expected to disclose to relative strangers in odd situations (such as an ABE interview suite with cameras). This procedure frequently fails to produce disclosures and children rarely disclose in time for physical evidence to be obtained. Even if a child does disclose, the young age of the victim often precludes the case from proceeding to trial as they may not be deemed capable of withstanding cross examination.
- c) Where a child does disclose to a stranger, in Mosac's experience, these are individuals with extensive experience and/ or empathy on

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<sup>3</sup> Children's Commissioner *Protecting Children From Harm- A critical assessment of Child Sex abuse in the family network in England and priorities for action* (November 2015) p 64



sexual abuse issues. Uniformed officers in particular, can appear very intimidating to a young child. These issues are recognised elsewhere, some organisations such as RASAC have policies to employ therapeutic staff who have extensive experience or have suffered trauma themselves. This may not be representative in the authorities interviewing child victims.

- d) These factors mean that the evidence of the protective parent is often the only evidence that the child disclosed sexual abuse. The accused (parent) has had close proximity to the protective parent and set up 'defences' long in advance. For example, they may have affairs, get the family into debt or create an acrimonious break up and then claim that the protective parent is making malicious allegations. The majority of the Mosac's Advocacy cases are those where the father is the accused. Protective parents can't protect their children as the accused will often have parental responsibility and rights in respect to the victim or their siblings.

The standard defence of the parent offender is almost always that the protective parent is trying to stop contact or ruin their relationship with their child and that the allegation is malicious. The protective parent is usually then accused of emotional abuse and suddenly finds themselves in a defensive position. This means that even if there is a disclosure by a child, the offender will say the child has been led by the other parent. It is really all too easy for an offender to 'get away with it' and silence both the victim and the protective parent.

- e) The outcome is almost always, no further investigation, contact and residency proceedings at family court, with full staying contact awarded in almost every case. In some cases, residency is transferred to the parent who the child accused of committing sexual offences against



them. There is a presumption of contact in the family courts, which has only just been mitigated by practice direction 12(j) after years of campaigning by DV and abuse groups. The reality is still however that contact between a child and parent is a priority to the family court.

- f) In many cases, the protective parent has also been a victim of the accused. This takes many forms, including emotional, physical and sexual abuse. Mosac has case studies where despite reporting abuse to the authorities, practice direction 12(j) has not protected them or their children from unsupervised contact with the accused parent.
- g) The trauma these processes inflict on victims and their protective parent is severe.

## 2- Current protective tools

Even if a child is established as a victim, the 'protective tools' are often not enough.

For example, if there is a conviction, the sentence is often of little duration and the criminal court's protective measures for the victim is also therefore short lived. In our experience, the victim's probation service has been excellent but their powers are limited to the probation period of the offender. Victims of child sex abuse are vulnerable for at least the duration of childhood and many are vulnerable long into adulthood. They deserve protection from the offender for life. Non molestation orders are only applicable in certain instances and are also of short duration.

Most young victims report to us that they just want to be protected and have others protected. Whilst 'punishment' of the offender is seen as important for



parents of victims and often for victims as they get older, protection is usually seen by all as the first and most fundamental priority. The current CJS focusses on punishment, not protection.

Charities like Mosac can help families get protective orders but there are simply not enough 'tools in the tool box', we need more ways to protect victims. Indeed, in some cases there is even conflicting legislation which absolutely fails to protect child victims, as described below in part 3.

### 3. The issue of Parental Responsibility and child protection where there has been a conviction for offences against a child

- a) A person with Parental Responsibility retains all of their rights over their child even after conviction for serious offences against that child, or other children.
- b) The power Parental Responsibility confers is far reaching (Children's Act 1989 and subsequent amendments, also Children and Families Act 2014) and now includes an automatic right of involvement in a child's life (Section 11, Children and Families Act 2014).
- c) Surprisingly, there are no **automatic** family law or other powers to protect a child from an abusive parent and the protections under criminal law derived from sentencing and probation are usually of a short duration. Instead, either a protective parent, or carer (or the local authority where there is no suitable protective adult) must apply to court for lengthy and costly family court proceedings, which can (and often are) contested by the abusive parent. This leaves children and families in avoidable danger and suffering avoidable expense and distress. (Even though Legal Aid can be sought for these cases, the applicant must be financially eligible for Legal Aid and most are not eligible.)



- d) Both parents with Parental Responsibility are considered equal at the outset of court proceedings (irrespective of convictions). They are seated near each other in court. It is rare to achieve removal of Parental Responsibility (PR). In 9 years of working at Mosac our Advocacy team have only come across one case where PR was removed from the convicted offender. We have been informed in the past that there is a reluctance to do this because of the likelihood of appeal under the Human Rights Act 1998.
- e) Even if a no contact or prohibitive steps order is achieved, PR enables the abusive parent to make multiple applications to family court for contact or to vary existing orders. In our professional experience, abusive parents will often use the family court proceedings as a way of continuing to exert control.
- f) Instead of removing PR, it is standard practice for one of several types of court orders to be issued, such as child arrangement (no contact) orders or prohibitive steps orders or non-molestation orders.
- g) These orders all have inherent problems as below

#### 4- Child arrangement orders (no contact orders)

- Procedurally lengthy and costly to obtain and are almost always contested. The outcome is uncertain and in some cases, contact has been awarded despite a criminal conviction.
- The protective parent is expected to 'prove their case' in terms of the risks posed but they have no right to access the information required, such as probation reports. This causes long delays in proceedings.





- These orders rarely come with a power of arrest, which makes them unfit for purpose in protecting a child from an offender.
- The order only protects a named child but often the whole family need a protective 'ring fence', i.e step children and the protective parent.
- The order expires if the child leaves home at 16 or when the child reaches 18. If the offender committed offences against a child within the family then the victim and family continue to be vulnerable and at risk from the offender past the victim reaching adulthood (I have case examples of this).
- Offenders can make multiple applications to court for variation of orders, even after an order has been granted. We have case studies of this happening and trauma caused by the applications or contact granted.
- There are also no protective measures in the family court during hearings and the protective parent is forced to sit in close proximity with an offender who may have abused their child and may be cross examined by them.
- The applicant for the protective order has to know the address of the offender to serve the court papers and any subsequent order. After conviction, the offenders address will often change and the applicant will not have access to the current address (which is highly protected information for obvious reasons) – There are other general issues with serving orders, such as if the order isn't correctly served then the order is not valid.

#### 5- Child arrangement orders (Prohibitive Steps)

- Costly to obtain and often contested
- The protective parent is expected to 'prove their case' in terms of the risks posed but they have no right to access the information required, such as probation reports. This causes long delays in proceedings.
- Predictive in nature - a protective parent has to think of how the offender might cause issues and list what is to be prohibited (for example no access to school or medical records, no contact with child, family or friends etc). This leaves room for the offender to think of ways to circumvent the order.
- Time limited – usually to 6 months or a year



- Limited to the child concerned
- Powers of arrest are not automatic
- Once again, the court papers and any orders must be served to a known address / be served correctly in order to be valid

#### 6 - Non-Molestation orders

- Free to obtain (no court fees) but complex procedurally (so costly representation is often recommended) and often contested
- The protective parent is expected to 'prove their case' in terms of the risks posed but they have no right to access the information required, such as probation reports. This causes long delays in proceedings.
- Power of arrest is not automatic
- Must be thoroughly thought through and written correctly to be fit for purpose
- Time limited (usually 6 months to 1 year) – without further order notices are very rare to obtain and even these can be varied by application to court by the offender.
- Benefit – it can name the whole family
- Again, the offender must be able to be notified and served correctly

None of the orders above help in the event of the death or incapacity of the protective parent. The Children's Act 1989 is very clear that no guardian can



obtain PR until the death or incapacity of *both* parents with PR (unless by court order – which begs the question of who will apply for the court order and at what cost?). Any party with PR has the right to manage the finances and affairs of the protective parent on behalf of the children concerned, including the offender.

Sometimes protective parents are unaware of the legislation and dangers to their family after conviction, which can leave families very vulnerable to the offender. Although there is legal aid available for family court proceedings where there is proof of abuse, the subsequent financial qualification criteria preclude many protective parents from receiving help. Family court proceedings are mostly self-financed or self-representing, which creates further scope for protection issues as the parent feels they are unable to spend the money required or lack knowledge and confidence to self-represent effectively.

## 7 - Potential solutions where there is a conviction (with associated issues)

- a) Automatic removal of Parental Responsibility for parents convicted of serious crimes against their own and or other children. This can be recommended by a criminal judge for issue by a family court. However this won't protect the whole family and won't stop the offender from making contact.
- b) Automatic protection orders such as non-molestation orders, issued by the family courts. However, this might be time consuming and expensive for the court to decide which orders to issue and where to issue them.
- c) Alternatively, a solution could be to increase the powers of the protective parent. This could be via a new type of order such as a



parental empowerment order (PEO). This order could enable protective parents to take all the necessary protective measures without repeated application to court. This might include name changes, change of address without notification, preventing access to school or doctors records etc. It could apply to the whole family. It could have an automatic, no direct or indirect contact/non molestation type order for the duration of childhood. The onus for change in the order should shift to the offender to prove they pose no threat before they can request a variation. There should be powers of arrest attached to a breach of the orders.

Where the victim was a direct victim within the family, the order should be issued with a lifelong non molestation type order covering direct or indirect contact (including potential exclusion zones and to include no contact with family members), as the victim and family are more vulnerable in these situations. There should be a power of arrest for breaches. There should be an automatic nature to these orders, not costing the protective parent time or money. The order and powers of PR should be automatically transferrable to a named guardian upon the death or incapacity of the protective parent/carer. The convicting criminal court could make recommendations regarding the issuing of a parental empowerment order in appropriate circumstances, which are then automatically issued by the Family Court to the protective parent or carer.

The PEO could be served shortly after conviction, when the authorities know where the offender is.



The Offender should retain the right to have such automatic orders reviewed and potentially overturned. However, rather than the onus being on the protective parent to show the offender poses a risk, the onus should turn to the offender to prove they pose no risk before they are able to apply to have the order varied or overturned. Given the level of resources and risk assessments already conducted with convicted child sex offenders, this information should be readily available to the courts.

- d) All orders to be ensured to be served by authorities, who have access to the known address of the offender.

#### 8- Call for a review of investigative and disclosure methods

There should be a thorough review of child sex abuse investigative/ disclosure methods and outcomes to address the issues highlighted in this report.

#### 9- Raising awareness so far

These issues were raised with the Family Justice Council between 2007 and 2010 although there was an acknowledgement of issues, there was no further action. These issues were also raised twice with the Law Commission between 2008 and 2012 and were shortlisted but failed to make the final law review list due to other priorities.

Mosac's Advocacy Manager raised these issues with the Minister for Children, Beverley Hughes in or around 2008.

Mosac has previously provided statistical and other information on these matters to the Children's Commissioner as part of the Child Sex Abuse in the



Family Environment (CSAFE) enquiry between 2014 and 2016. A number of protective parents (many of whom were professionals themselves) were invited to provide face to face evidence for the CSAFE enquiry. Regrettably, most of the evidence provided was excluded from the final CSAFE reports.

Mosac has presented evidence to the Dare2Care round table and the London Victim's Commissioner.

Mosac also saw the Minister of State for the Ministry of Justice in 2015, who stated there would be a report compiled. Unfortunately a general election was called and the report went no further.

Most parties Mosac has spoken to have agreed there is an oversight and been sympathetic about the issues but ultimately nothing has changed.

Whilst it is important for Mosac to help parents have a voice, Mosac do not have the resources or constitution for sustained campaigning. Most parents are unable to come forward, they are silenced by the crime and trying to protect their vulnerable children.

Mosac's advocacy team are seeing the number of cases where a parent is the offender increasing. This is not surprising perhaps, with improved safeguarding measures in other areas where there is access to children and with a lack of protection and increasing PR rights in family law. Even where there is a conviction, children are not automatically granted protection from the offender.

An anecdotal fact which was little publicised in the case of Ian Watkins, the lead singer of the Lost Prophets, was that an ex-girlfriend had told police that Watkins wanted to impregnate a woman so he could rape a baby of his own



and have total control of a victim to abuse<sup>4</sup>. It is difficult for people to believe, but offenders who target children really are this callous and children and their families desperately need more protection.

## Conclusion

Mosac reports that the case numbers of protective parents struggling to protect their child from another parent accused of child sex abuse is on the rise and accounts for the majority of the cases the advocacy team see.

There are inherent difficulties in the current legislative and authority practices that create barriers to the protection of children from an abusive parent.

Mosac concludes that the process of collection of evidence from Children needs to be reviewed as the present system is failing to identify children as victims. This consequently denies them protection from perpetrators.

Even where a child is identified as a victim of child sexual abuse, or a parent is identified as a child sex abuser, there are not enough appropriate protective orders and the process of obtaining them is onerous. There are certainly no **automatic** protective orders to ensure children are safe from a parental abuser and decisions from court are uncertain. This can be remedied in the short term, by empowering the protective parent, without removing rights from the abusive parent.

Abusive parents are often abusive to more than one member of the family and the whole family are deserving of protection and time to heal. Protective orders therefore need to be automatic and cover the whole family. They need to have

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<sup>4</sup> <https://www.independent.co.uk/news/uk/crime/ian-watkins-ex-girlfriend-took-mother-of-baby-he-wanted-to-rape-to-police-court-told-9963035.html>



powers of arrest attached and the entire onus for changing orders needs to shift to the offender to prove they pose no risk. In our view, there is no need to remove rights from the parent offender, but there is clearly a need to protect victims and empower those responsible for their care.