



## **Consultation: Draft Guidance on Responding to allegations of alienating behaviour**

**August 2023**

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## **1. Introduction and scope of the Guidance**

'Parental alienation' has for some time been a vexed and highly emotive concept with polarised opinion in the research literature, and one which has gained significant publicity and political attention internationally. It is also an allegation which the family courts in England and Wales are increasingly asked to consider and act on.

This guidance does not aim to explore the research literature into the concept of 'parental alienation', the socio-political context in which such allegations arise or to give an historical account. These are important and it is likely that these debates will continue, and our understanding evolve. However, in the meantime it is necessary to consider how such allegations are responded to by the courts and professionals in the wider family justice system. For this reason, the focus has been to provide practical guidance as to how allegations of alienating behaviours are responded to; recognising that they are allegations that can arise at different points in the litigation journey and are likely to be made alongside other allegations of harmful behaviour including domestic abuse or child abuse.

It is hoped that this guidance will contribute to increased understanding, good practice, and ultimately good welfare outcomes for children. The guidance includes sections on the Litigation Journey, Case Management, Welfare decision, understanding hostility and psychological manipulation in cases in which alienating behaviours are alleged and the use of experts.

FOR CONSULTATION

# Mapping the litigation journey where Alienating Behaviours (AB) are alleged

NRP = Non resident parent  
 AB = Alienating Behaviours  
 DA = Domestic Abuse  
 \* denotes area where guidance provided

Note: not all journeys will look like this, but the essential requirements to establish and respond to AB remain the same

We follow the judgment of the PFD in *Re C (Parental Alienation) [2023] EWHC 345 (Fam) para 103* that the court's focus should be on the identification of **ALIENATING BEHAVIOUR (as defined)** and the **IMPACT** of that behaviour on the **RELATIONSHIP OF THE CHILD** with either of his/her parents.

\* Guidance note to when an expert should be utilised – assessment after fact-finding rather than deciding on existence of AB

\* Need factual matrix to identify the child does not want to see the parent and whether this is **JUSTIFIED**

\* Guidance note to good CMH Duty to distill alleged AB which **MUST** result in **HOSTILITY**

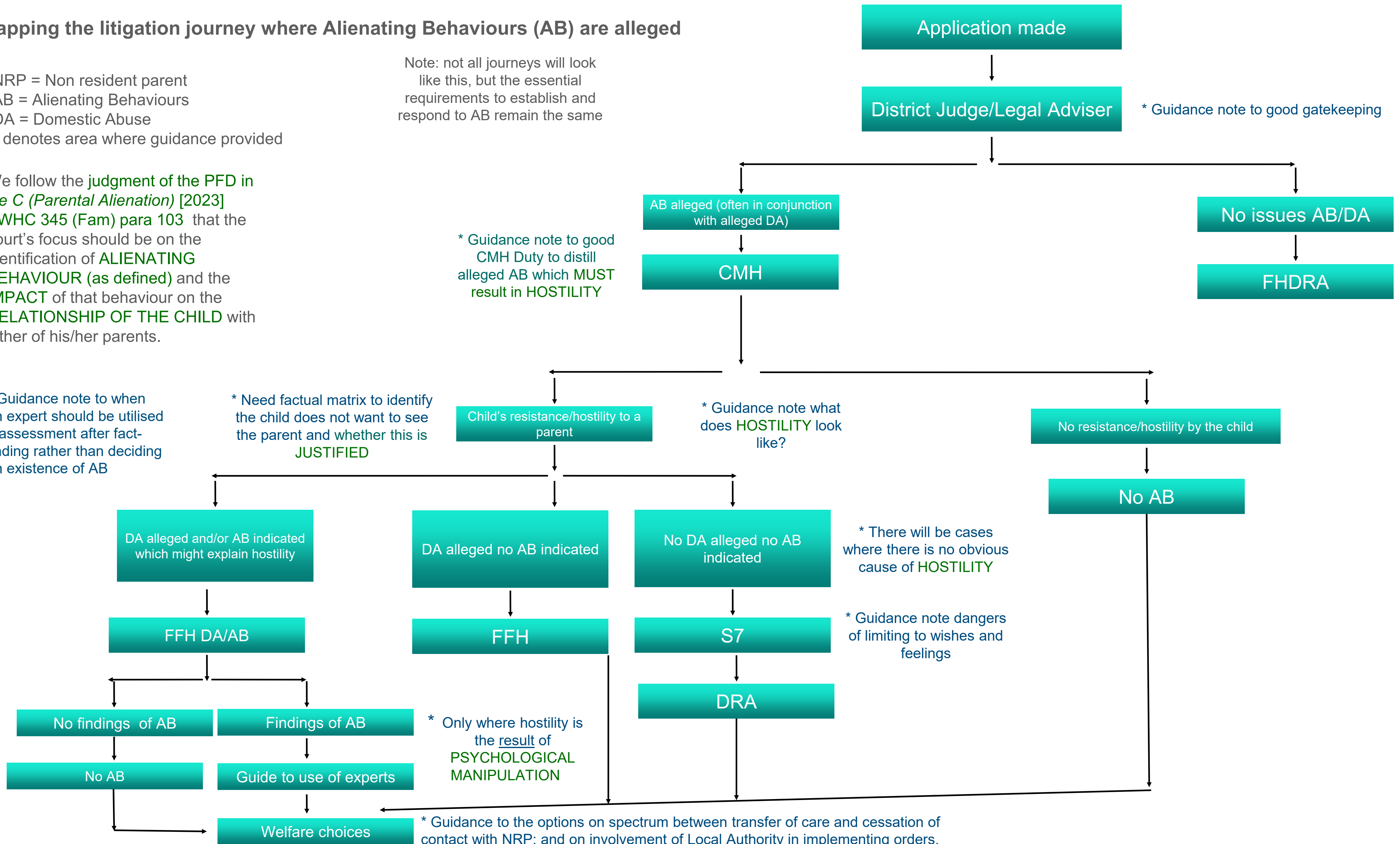
\* Guidance note what does **HOSTILITY** look like?

\* There will be cases where there is no obvious cause of **HOSTILITY**

\* Guidance note dangers of limiting to wishes and feelings

\* Only where hostility is the result of **PSYCHOLOGICAL MANIPULATION**

\* Guidance to the options on spectrum between transfer of care and cessation of contact with NRP; and on involvement of Local Authority in implementing orders.



### 3. Case Management Guidance Note for the Family Court: Cases in which alienating behaviours are alleged

#### **Alienating behaviours**

Sir Andrew McFarlane P observed in **Re C ('Parental Alienation'; Instruction of Expert)** [2023] EWHC 345 (Fam) that the disruption or undermining of a parent/child relationship is often encapsulated in the term 'parental alienation' or alienating behaviours. A court would need to be satisfied that three elements are established before it could conclude that alienating behaviours had occurred:

- a) the child is refusing, resisting, or reluctant to engage in, a relationship with a parent or carer;
- b) the refusal, resistance or reluctance is not consequent on the actions of the non-resident parent towards the child or the resident parent; and
- c) the resident parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's refusal, resistance, or reluctance to engage in a relationship with the other parent.

Either parent could demonstrate alienating behaviours. Such behaviours can include (but are not limited to) one parent:

- repeatedly or constantly criticising or belittling the other.
- unjustifiably limiting or restricting contact or undermining contact.
- forbidding discussion about the other parent.
- creating the impression that the other parent dislikes or does not love the child, or has harmed them or intends them harm.
- denying emotional responsiveness to the other parent or spurning, terrorising, isolating, corrupting, or exploiting them.

This Guidance Note will use the terms 'non-resident parent' and 'resident parent' when referring to alienating behaviours. While it is accepted that either parent can engage in alienating behaviours, for the sake of brevity this Note will assume the allegations are made against a resident parent. The court must however remain mindful that examples of a non-resident parent engaging in alienating behaviour can and do occur.

This Guidance Note will be of assistance to the court at whatever stage of the proceedings the issue of alienating behaviour is to be considered.

#### **The Burden of Proof**

Whilst alienating behaviour can be subtle and insidious, a parent alleging alienating behaviours **must** discharge the burden of establishing that such behaviour has occurred.

## Evidence of alienating behaviours

Where alienating behaviours are alleged, the court should require those making the allegation to identify the evidence upon which they rely.

Alienation involves an act or acts by a parent, that must be evidenced, resulting in the psychological manipulation of the child and the child's unjustified rejection of the other parent. Such behaviours must be evidenced just as other acts of abuse are evidenced.

The behaviour of a child is not evidence of the behaviour of an adult, so the behaviour of a child should not be used to evidence adult behaviours.

All potential risk factors, such as domestic abuse, must be adequately and safely considered when looking at the nexus between the behaviour of a parent and a child.

The fact that a child is resistant to spending time with a parent, does not automatically mean that the child has been exposed to alienating behaviours from the other parent. The court should remain mindful that a child might withdraw from a relationship with a parent for a variety of reasons e.g.: a new adult relationship; parental separation; loyalty to the other parent; rigid parenting; abusive parenting; or differing parenting styles.

A child might align themselves with another child or adult or demonstrate attachment behaviour to protect the relationship with their resident parent. Alignment and attachment issues can result in resistance, reluctance and refusal without any alienating behaviours perpetrated by an adult.

## **Robust Case Management**

### First steps

Where the alleged behaviour is mentioned in the original application or response, the legal adviser or judge triaging the case will need to consider the nature, seriousness and complexity of the issues raised in deciding whether the matter can be retained by the magistrates for case management under the allocation rules.

Where on initial scrutiny of the allegations it appears that one or more of the three elements (described above) is absent, or a court has already considered the allegations to be lacking in any solid evidential base, the matter may remain with the magistrates. The magistrates must thereafter keep allocation under review in accordance with the allocation guidelines.

Where, after careful analysis of the information provided to the court in the documents, it appears that the three elements of alienating behaviour (described above) may be present, the case **must** be transferred for case management and determination by a judge.

Whilst allegations of alienating behaviours might be raised in the original application or response documents, the allegations might be raised for the first time at any stage in

proceedings e.g., at the first case management hearing, or at a subsequent point, as a reason for the breakdown in child/parent relations.

It is incumbent on the court to case manage robustly to avoid, whenever possible, alienating behaviours being raised as an issue for the first time late in proceedings. Where alienating behaviours are raised after the initial stage in proceedings it is important that the case is allocated/re-allocated to a judge to ascertain if there is a solid evidential base necessitating judicial determination of the issue. Allegations of alienating behaviours must be allocated to a District Judge/Circuit Judge for case management and trial. It will be important for the court to identify carefully whether what has been described by a party or professional as alienating behaviour, is capable of meeting all three elements or has no realistic prospect of doing so. If, at a later stage in the proceedings, the court is persuaded that there is an issue of alienating behaviour which it would be relevant, proportionate, and necessary to determine, earlier case management decisions must be reviewed accordingly.

### Case management hearings

The initial case management hearing may be the first opportunity for the court to consider the basis on which the allegation of alienating behaviour is made and to give directions accordingly.

The safeguarding letter from Cafcass should have been provided by the time the first case management hearing takes place. The letter will include a summary of the issues and the parties' positions. It provides an opening for identifying and examining the issues.

The court may wish to direct a schedule of incidents relied upon. Where a course of conduct is asserted, a narrative statement may be necessary.

- 1. Is the first element evidenced? Is there evidence the child is refusing, resistant, or reluctant to engage with a parent, and if not, how can it be obtained?*

If alienating behaviour is raised, the court should ascertain whether it is accepted that the child has rejected the non-resident parent. If the child/children is/are spending time with the non-resident parent, the assertion of alienation is unlikely to be made out. The court should look for evidence of children being reportedly unwilling to see, stay or remain with the non-resident parent and the reasons given for the child's refusal or resistance. Consider whether statements or reports are required from the parties or third parties as to the child's rejection of the parent.

In some instances, the court may direct Cafcass or a social worker to meet with the child/children to determine the child's perspective. In cases where the child's view is unclear/unknown and where there are no specific allegations of alienating behaviours or abuse that might justify the child's resistance to see, stay or remain with a parent, consider directing a Section 7 report with a specific direction for an enquiry as to those issues. It may be appropriate to direct Cafcass/Social services to have regard to their own guidance to assist the court on whether this is a case where there is evidence relevant to a finding that

alienating behaviours have or have not occurred. Cafcass have a series of practitioner tools that can be used to assist in identifying support for children where the parent/child relationship has been disrupted. Cafcass are not, however, arbiters of fact. The court and Cafcass must remain mindful that children can form negative views about a parent without influence or manipulation from the other parent.

The court should be cautious about ordering a stand-alone 'wishes and feelings report' as the court may be better able to assess the child's perspective with a contextual report that carefully examines the child's position.

*2. Is the second element evidenced? The child's reluctance, refusal or resistance is not consequent on the actions of the non-resident parent towards the child or the resident parent.*

Children who show resistance or unwillingness to maintain or build a relationship with a parent who has been abusive towards them or towards the other parent, may be found to have a justified response to that parent. The allegation of alienation will thus fail. Any abuse the children experienced or observed against others might have occurred during the course of the relationship between the parents, or it might have occurred after the separation.

What is the form of the behaviour alleged against the resident parent? Is there a pattern of behaviour alleged?

Are there other forms of abusive behaviour alleged that require/necessitate investigation including against the non-resident parent?

*3. Is the third element evidenced? One parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's refusal, resistance or reluctance to engage in a relationship with the other parent.*

The court will need to examine carefully what is alleged. The court will require evidence of manipulation of the child for this third element to be established. The burden of proving such allegations will fall to the person making the allegations. As with other forms of abuse the abusive behaviour must be evidenced. How can it be evidenced? Is there independent evidence e.g., witness statements; police, school, or medical reports; a s7 report?

#### Possible directions

Are schedules needed as well as narrative statements?

Should case management directions await the formal joinder of the child?

Should the child/ren be joined as a party?

Consider approaching Cafcass for agreement to join the child and appoint a guardian.

Consider the appointment of NYAS.

Is a fact-finding hearing relevant, proportionate and necessary?

If the facts underpinning a child's relationship with a parent are in issue, or where the child is alleged to have been exposed to abuse directly or indirectly, the court will need to consider whether a fact-finding hearing is relevant and necessary for determination of the welfare issues. Some matters may already be established (e.g., by admissions or in criminal proceedings).

The factual matrix surrounding a case of alleged alienation is one for the court alone. In the same way that the court must, at the first opportunity, gather evidence and list a fact-finding hearing where other forms of abuse are alleged, the court must gather the evidence and make findings in relation to alienating behaviours.

Failure to grasp this nettle risks cases being delayed and the costs of experts wasted. Effective case management can reduce the risk of delay and multiple hearings.

The court should be mindful that a fact-finding hearing will only be required where it is relevant to the ultimate issues to be determined and where such a hearing is both necessary and proportionate. The court must be mindful that allegations of alienating behaviours are sometimes raised as a response to allegations of domestic abuse. The court must carefully examine what/why and when the allegations of alienating behaviours were first reported to be an issue.

Consider carefully what evidence the trial court will need by way of police disclosure, medical records, social work records, school records, telephone records. Try and ensure that orders for disclosure are as focused as possible on alleged alienating behaviours and their impacts on the child. The court may wish to review the evidence disclosed by third parties at a further case management hearing to ensure that the trial court has before it all necessary and relevant evidence, proportionate to the issues. If a course of conduct is alleged then critically examine the period, and the events likely to be relevant to disclosure. The court should be mindful that a child may be impacted by exposure to events that took place a long time ago. The significance of an event may become greater, not lesser, over the passage of time.

Schedules of findings sought - where domestic abuse and controlling and coercive behaviours are alleged, PD12J governs the proceedings. It will be usual to invite both sides to consider what findings they are seeking against the other and for the court to consider the relevance of those to the issues in the case before directing a fact-finding hearing. Schedules of findings sought may be appropriate. Where a pattern of behaviours is relied upon the court may direct a narrative statement alongside a summary of the types of behaviours alleged, the period over which they occurred and the impact on parent and child, and may choose 'sample' elements to be tried to evidence the pattern alleged.

In order to consider and determine whether alienating behaviours are a factor and have impacted the adult/child relationship, the court should consider a parent's assertions of the



same at the earliest opportunity with reference to the chronology of the parent child relationship and any alternative possible causes of the breakdown.

List a pre-trial review to consider the evidence.

What interim orders, if any, should be made in relation to the child's relationship with the non-resident parent whom the child is rejecting?

### **Fact-finding Hearings**

Alienating behaviours present themselves on a spectrum with varying impact on individual children, and the appraisal of this requires a nuanced and holistic assessment. The court's role is to analyse the behaviour of the adults in the context of the children's unique experiences, their resilience and vulnerability. The court should remain mindful that for an allegation of alienating behaviours to be made out, all three elements must be established.

### Default Findings

The court must be cautious when invited to agree a default finding that a parent who fails to establish allegations of domestic abuse or abuse of the child has therefore engaged in alienating behaviour. The absence of an alternative explanation does not lead automatically to an explanation in terms of alienation. The court must remain alive to the distinction between a parent who is opposed to contact, and a child who is implacably opposed to contact; a parent who is engaging in alienating behaviour and children who have aligned themselves with a parent or sibling or are demonstrating an attachment strategy. Failed or false allegations of abuse against a non-resident parent will not constitute alienating behaviour unless there is evidence that the subject child has been manipulated (on the basis of those false/failed allegations) into an unjustified resistance or reluctance to engage with the allegedly abusive parent.

### Next steps

Where the court has made findings of any form of abuse, including, but not limited to, domestic abuse, sexual violence or alienating behaviours, the court will need to consider whether further or other evidence is needed for the court to conduct a proper welfare evaluation.

The court must not direct the instruction of an expert unless such evidence is both necessary and proportionate to the issues under consideration. The court must consider the type of expert evidence required, always remembering that 'alienation' is not a syndrome capable of being diagnosed. The use of an expert at this stage would be to help the court decide on welfare outcomes. Separate guidance has been prepared to assist the court on the appointment of experts and welfare outcomes.

### Costs

The costs of an expert will be considerable. Where the child has been joined as a party ( as will usually be the case) all parties will be required to contribute to the costs, save where the court conducts an assessment of each parties' means and concludes that the adult parties are unable to contribute by reason of their impecuniosity.

FOR CONSULTATION

## **4. Guidance Note for the Family Court on Welfare decisions where findings of alienating behaviours have been made**

### **Purpose**

This Guidance Note is intended to have particular relevance to judges making welfare decisions where there have been findings of alienation. Whilst there are points of general application for the courts to consider when determining welfare, this Note is not intended to be a comprehensive note of all welfare considerations.

### **Preamble**

A finding that a parent has acted to alienate a child from the other parent is usually only one part of the factual matrix. The court should avoid treating a finding of alienating behaviours as an automatic trigger for a change in a child's placement. The court should also examine very carefully all the welfare ramifications for each child if considering making an order for the transfer of a child's care conditional on compliance with a 'time with' order.

Just as with findings of other harmful behaviour such as domestic abuse or child abuse, the fact that a child's relationship has been disrupted by the behaviours of a parent, is a factor to be weighed in the balance. The court should bear in mind the wider factual matrix, which may include associated findings of domestic abuse, alignment or other safeguarding issues, when considering next steps. A judgment in which the court draws together its conclusions on the various elements of the factual matrix will be important in helping those asked to assist the court with welfare options.

### **Guidance**

#### Statements

1. Where the court has made findings of alienating behaviour, and/or other forms of abuse, the court may find it helpful initially to direct statements from the parties in response to its findings of fact judgment. This will help the court understand the parents' level of insight and their willingness to engage in work to address those behaviours and the resultant impact.

#### The Guardian

2. The child will generally be a party in such complex cases. The Guardian will often be able to help with next steps after the court has delivered its fact-finding judgment. In appropriate cases the Guardian might be available to assist in informing the child in age-appropriate terms of the progress of the proceedings. If the Guardian would be assisted by a direction permitting disclosure of the court's judgment, then a direction could be made to that end. Where a Guardian is appointed the Guardian's analysis might consider external interventions which could be of assistance to the children and parents. The Guardian can be asked to consider the impact of the available interventions in their analysis of alternative welfare outcomes.

### Interim measures

3. In appropriate cases the court, upon making its findings, may want to look straight away at whether there is any form of intervention that can be adopted more or less immediately to ameliorate or reduce the impact of alienating behaviours on the children and the relationship with the other parent. There are a number of options that may be available and worth considering even if they have been tried before without enduring success e.g.: the safe and managed use of social media (such as Snapchat, Instagram, WhatsApp) or third-party interventions (such as involvement with schools, religious activities etc).
4. Cafcass offer a short-term piece of work under their **Improving Child and Family Arrangements Programme**. Cafcass Cymru are also looking at other programmes to support children. Some local authority areas have public and private professional services available to assist children and families. The process of reporting, accessing and monitoring interventions can take time and can lead to delay. Identifying who will deliver any work with the children and parents must be considered with reference to the children's welfare and the reality of the lives of the family.

### Assessments

5. In some cases, the court may be invited to direct a whole family psychological assessment to consider the family dynamics and functioning. Additional expert assessments are not always necessary but when one is considered to be so, the court should be mindful of the need to appoint an expert with the relevant qualifications and expertise to conduct a whole family assessment. The court and the parties should take particular note of the guidance from the President in **Re C (Parental Alienation)** [2023] EWHC 345 (Fam) together with the recent Revised Guidance on Psychologists as Expert Witnesses. The court will also wish to caution itself against appointing experts to assess a family where the expert has a financial interest in the delivery of subsequent services. ([FJC-interim-Guidance-use-of-experts-in-cases-with-allegations-of-alienating-behaviours.pdf \(judiciary.uk\)](#)).
6. When considering the ambit of an expert assessment, the court should bear in mind the nature, duration, and impact of the disruption in the relationship between the alienated child and parent against the wider factual matrix, to ensure that any assessment is both balanced and comprehensive.

### The child's timetable

7. For some children, time and appropriate support can be effective in reversing the harm consequent on alienating behaviours. In some cases, children will have been alienated from the parent's wider family of the non-resident parent and reparative work may help to re-establish those safe relationships. The court must remain mindful of the child's timetable and the need to manage the court process. Where

interventions are found to be outside the child's timetable the court should avoid delay in making difficult final decisions.

#### Parent's attitude to reparative work

8. An order transferring a child from the care of one parent to the care of another solely on findings of alienation, will be rare. The court should avoid making orders for the transfer of the care of children solely as a sanction for a parent's refusal to help restore the disrupted relationship. Whilst family courts are often asked to transfer care of a child between parents in the private law family arena, there is a qualitative difference as to the likely impact on a child where the child does not have a positive (or indeed any) relationship with the non-resident parent. The court must similarly consider the consequences for a child's welfare when considering making an order that would result in a change of placement as a consequence of non-compliance with a 'time with order'.

#### Welfare the paramount consideration

9. The court must remind itself that the welfare of the child/children remains paramount. A parent from whom a child might be moved is highly likely to perceive the prospect of a transfer of care as punitive. It may affect their presentation in court as well as their mental health. Whilst non-compliance with a court order is a serious matter the court must not conflate non-compliance with welfare. Non-compliance with a court order is not, of itself, a reason for a transfer of care albeit non-compliance and capacity to take up and act on professional support and guidance may be relevant factors in the welfare determination.

#### Factors to be weighed in the balance

10. Whilst every case must be considered on its own facts there are a number of potential considerations for the court that must be weighed in the balance when considering welfare after a finding of alienating behaviours. A non-exhaustive list of matters that might impact the child, particularly where their relationship with one of their parents has been disrupted, may include:

##### *Wishes and feelings of the child*

- a) Although likely to reflect a desire for the status quo, opportunities for the child to express their wishes and feelings may offer indications of the viability of reparative work, remaining with the resident parent or moving to live with the non-resident parent or another family member.

##### *Physical, emotional, and educational needs*

- b) The child's future relationship with the non-resident parent if there is only indirect contact
- c) A total cessation of contact both direct and indirect

- d) The impact of continuity or change of schooling/educational arrangements will often need to be considered
- e) The practical and physical arrangements for care of the child during and after any change of residence
- f) Therapeutic support for the family

*The likely effect on the child of any change in their circumstances*

- g) Different contact arrangements for siblings or possible separation from siblings
- h) Separation from the resident parent
- i) Contact plans for any new family configuration

*Any harm the child has suffered or is at risk of suffering* Risk of the child's living arrangements with the resident parent breaking down

- j) Central to the court's evaluation of welfare will be the risk of harm to the child from exposure to continuing alienating behaviours (and disruption to the relationship with the parent) in the resident parent's home weighed against the risk of harm to the child from being uprooted and moved to a parent with whom the child has been reluctant or resistant or refusing to engage
- k) Risk of the child's living arrangements breaking down if the child is moved to the current non-resident parent

*How capable each parent (and any other person in relation to whom the court considers the question to be relevant) is of meeting the child's needs*

- l) A deterioration in the mental health of a resident parent (e.g., where contact with a non-resident parent is imposed) (PD12J)
- m) A deterioration in the mental health of a non-resident parent (e.g., after direct contact is suspended or where re-introduction fails)
- n) The non-resident parent's capacity to have the child live with them after an interruption in the parent/child relationship

*The range of the powers available to the court in the proceedings in question*

- o) The bridging options (e.g., where there is no current relationship between the child and non-resident parent)
- p) Contact with the members of the wider family members of the alienated parent
- q) Contingency planning will be important.

11. Even if on some dimension another care-giving environment may be better than the child's current one, decision-making should assign considerable weight to the value of continuity of "good-enough" care. ( See Forslund et al., (2022) **Attachment goes to court: child protection and custody issues**). The court must remain mindful that the trauma of removal and the manner of it must be weighed in balance when considering a fundamental change in the child's living arrangements.

The Guardian's role

12. The Guardian may invite the court to make a direction for the local authority to prepare a section 37 report pursuant to the guidance of Wall J (as he then was) in **CDM v CM** [2003] 2 FLR 636 and attaching an ICO. Wall J observed;

*“The action contemplated (removal of the children from the residential parent's care either for an assessment or with a view to a change of residence) must be in the children's best interests. The consequences of the removal must be thought through: there must, in short, be a coherent care plan of which temporary or permanent removal from the residential parent's care is an integral part.”*

13. The Guardian will make a recommendation about whether a move from one parent to another is appropriate and/or practical. The Guardian is not in a position to assist with the mechanics of a move should one be proposed. Cafcass have no authority to take charge of a child or to be practically or physically involved in a transfer of care.
14. In appropriate cases the Guardian may make a referral to the local authority if they consider that a child is at risk and provide the relevant safeguarding information. A local authority may provide a bridging placement for a child to stabilise before a move of residence or to act as a neutral base from which they can build up / develop a relationship with the non-resident parent where there has been an absence of opportunity for them to spend time together. There may be very rare cases where the child is unable to continue to live within the family.

#### Review

15. Even where the court has conducted its own welfare analysis and carefully weighed in the balance the risks of harm to the child under the various options, the court should keep its decision under careful review consistent with the child's welfare and a potentially changing landscape.

#### **Conclusion**

16. Where a child's relationship with a parent has been fundamentally undermined, the welfare decisions will always be difficult. The consequent orders made are not a punishment or admonishment albeit the family are likely to feel them to be so. In the extreme cases the child may lose all contact with a non-resident parent and at the other extreme, experience a change of placement. The court will no doubt wish to ensure that its decision is delivered as sensitively as possible. A short summary of the court's decision in child friendly terms or a letter to the child, may help the child understand and in appropriate cases leave open the option for a relationship with the non-resident parent at a later date.

## **5. Guidance Note for the Family Court: Understanding hostility and psychological manipulation in cases in which alienating behaviours are alleged**

### **What does hostility look like?**

It is easy to assume that a child's negative reaction, in particular their initial reaction, is a stable and pervasive indication of a decision about their desire for a relationship with a parent, or that hostility at some level will be implacable/unchanging. In response to a parental separation children may be expected to experience a wide range of emotions and react with initial anger or resentment due to the situation they find themselves in, and for this to be directed at the parent that they perceive to be at fault for the relationship rupture.

This hostility may include a range of behaviours from refusing to speak to or see a parent, throwing away things that they associate with them, to angry or challenging reactions to that parent, e.g., in response to typical parental boundary setting. It can also include making derogatory remarks about that parent to others, e.g., a teacher, or being critical about them. None of these behaviours can be taken to indicate evidence of exposure to alienating behaviours by the other parent in their own right. It can be helpful to consider the reaction to the relationship breakdown around them as a loss reaction, and to consider that observed behaviour may alter over time as this loss is processed by the child.

It is important to recognise that there will be situations in which there is no obvious cause or reason that can be identified for a child demonstrating such hostility. The lack of a rationale or explanation may cause there to be concern that the child has been exposed to alienating behaviours/psychological manipulation, but the absence of an identified justification does not in isolation evidence alienating behaviours.

Crucially, it is when there is no known justification for the hostility/rejection of a parent in combination with evidence of psychological manipulation that it may be determined that the child is in what is sometimes referred to as an 'alienated position' in the family dynamic.

### **Psychological manipulation**

It is well established in law that some parents manipulate their children, and this can include being manipulated to make false allegations in family law proceedings, e.g., *Re H (Children)* [2014] EWCA Civ 733 (Parker J). Examples of such harmful parental behaviour can include a parent reinforcing 'loyalty' and rejection of the other parent with emotional warmth, withdrawing emotional warmth in response to perceived disloyalty/a child wishing to maintain a relationship with the other parent. This can also include engendering a developmentally inappropriate need to protect the emotional fragility of the parent, e.g., through sharing of inappropriate information about the adult relationship or baselessly portraying the other parent as a source of harm to the wellbeing of that parent.



Children who have experienced loss arising from parental separation may anticipate the loss of another relationship or threat to the security of that relationship and be motivated by their attachment needs to protect that relationship over their other competing needs. What is often described in these scenarios is a parent struggling to maintain a boundary between their own psychological needs and those of their child – the parent’s capacity to prioritise a child’s emotional and psychological needs over their own. There may be factors in parent’s own psychological functioning which may lead them to actively or inadvertently engage in psychologically manipulative behaviour. Understanding these processes and a parent’s capacity to change such behaviour with or without support, may require the assistance of an appropriately qualified psychologist expert.

FOR CONSULTATION

## 6. Guidance Note for the Family Court: Use of experts in cases in which alienating behaviours are alleged

### Use of experts

It is inappropriate for experts to be asked to step into quasi-fact finding or determination of alienating behaviours – as such, the timing of expert evidence and the type of expert evidence needed is crucial. In determining the welfare outcome, when the presence of such harmful behaviours has been identified, it may be necessary to have expert evidence from a Psychologist expert. Determining the appropriate type of psychologist expert should be in accordance with the FJC/BPS 2023 guidance (link below). This updated guidance includes additional guidance in relation to the instruction of psychologist expert witnesses, specifically the scrutiny of their regulation, their qualifications and their access to psychological tests, given in *Re C ('Parental Alienation')* [2023] EWHC 345 (Fam).

Given the complexity of these cases and the often-interacting psychological factors at play in the adults and the children, it is likely that assessments which will assist the court in determining welfare outcomes are those offered by HCPC regulated Practitioner Psychologists with competence in assessing adults and children, e.g., Clinical Psychologists/Counselling Psychologists. Although there are differences in their training competencies, both are trained to assess both adults and children (FJC/BPS 2023 guidance (footnote)). It is important that the instructions for psychological evidence when there are allegations of alienating behaviours are not narrowed in focus but have the breadth and scope typical to holistic psychological assessments of parents and children in the family courts. <https://www.lawsociety.org.uk/topics/family-and-children/instructing-experts-in-family-and-children-court-proceedings#questions-for-experts>

These assessments should not be undertaken by academic psychologists or psychological researchers in the field of alienation. Only HCPC Registered psychologists have the relevant clinical experience and training to conduct psychological assessments of people and make clinical diagnoses and recommendations for treatment or interventions, whereas, academic psychologists, who should be Chartered, but who are not registered with the HCPC, would not normally have the clinical experience and training in order to complete psychological assessments or make clinical diagnoses. There is an inherent risk of confirmatory bias if instructions and assessments are framed solely in terms of allegations of alienating behaviours.

Assessments of children should focus on their cognitive, educational, emotional, social, and behavioural development, and comment on any matters of concern. They should comment upon any harm which the children may have suffered in respect of their psychological, intellectual, educational, emotional, social, and behavioural development and assess what the cause of such harm may be and advise on the support services (including therapeutic support) which should be put in place to assist the child.

Assessments of adults should focus on a parent's psychological functioning/personality and prognosis and any appropriate treatment/support required. A parent's ability to prioritise the child(ren)'s needs above their own, their understanding, insight and acknowledgement of any findings made by the court and the concerns raised by professionals, their ability to make changes in her own behaviours and support the child(ren), their capacity to engage in work to secure a favourable outcome for the child(ren) including any recommended therapeutic intervention or any other necessary intervention or support.

### **Conflict of interest**

The Family Justice Council (FJC)/British Psychological Society (BPS) guidance for Psychologist expert witnesses (2023) emphasises the importance of the expert being alert to potential conflicts of interest. In particular it notes that:

*"The expert witness's overriding duty is to the Court and to be impartial in their evidence; the impartiality of expert witnesses is essential to their evidence; if the psychologist has a view that is controversial as between experts or that might be derived from partiality, she or he must declare the extent of that interest. This is particularly relevant when a psychologist expert recommends an intervention or therapy that they or an associate would benefit financially from delivering. Whilst this may be experienced as helpful and facilitative to the court, this would be a clear conflict of interest and threat to the independence of their expert evidence."*<sup>1</sup>

The President of the Family Division's Memorandum on the use of experts in the family court (October 2021) emphasises the rigorous approach to be taken by the family courts in admitting expert evidence and the need for a reliable body of knowledge or experience to underpin the expert's evidence.

The importance of robust psychological approaches consistent with this memorandum is highlighted in the FJC/BPS guidance. This includes assessments drawing on a range of different sources and methods (to combat biases inherent in any single approach) in order to inform therapeutic recommendations in the opinion given. Recommendations should be consistent with typical current psychological practice and evidence base and flow from a rationale based on recognised assessment methodology. This is a marker of a good quality psychological report. The court should expect a range of options in psychological opinion and recommendations that are:

- Transparent as to the intervention and requisite qualifications needed to effect desired change.
- Interpretable by a wide range of practitioners in the field.
- Deliverable by any suitably qualified practitioners.

Recommendations for interventions deliverable only by the instructed expert or their associates are inconsistent with this. It increases the risk of bias, can limit appropriate oversight of interventions and risks delays as it may create barriers to families accessing appropriate, timely support local to them.

The court should be extremely cautious when asked to consider assessment and treatment packages offered by the same or linked providers.

References:

1. [Guidance on the use of Psychologists as Expert Witnesses in the Family Courts in England and Wales \(Standards and Competencies\) - June 2023 | BPS](#)
2. <https://www.judiciary.uk/wp-content/uploads/2021/10/PFD-Memo-Experts.pdf>

FOR CONSULTATION