



FAMILY COURT REFORM COALITION

RESPONSE TO FJC CONSULTATION ON ALIENATING BEHAVIOUR

By email to: FJC@justice.gov.uk

16 October 2023

The Family Court Reform Coalition is an informal association of individuals and groups working towards improving Family Court processes, to minimise harm to children arising from separation and associated litigation, thereby providing better outcomes for children and their parents and lower overall costs to parents and taxpayers.

<https://frcr.uk/>

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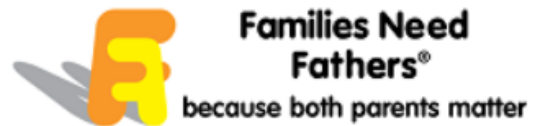
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Putting Kids at the Heart, Not in the Middle



Promoting gender-parity in UK laws and their implementation.



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A. Executive Summary

We commend the valiant effort of the Family Justice Council (FJC) to reconcile two hotly contended positions concerning Parental Alienation (PA). However, the two positions are not equally valid, and the FJC cannot rely on (a misreading of) an obiter remark in a High Court case, albeit from the President, to overturn law established at the Court of Appeal. We propose a ‘two-stream approach’ to resolve the quandary.

The definition of PA that has been accepted at the Court of Appeal in *Re S*¹, and to which the FJC is bound, is:

The unjustified resistance or hostility from a child towards one parent as a result of psychological manipulation by the other parent; the manipulation need not be malicious or even deliberate - it is the process that matters, not the motive.

Therefore PA is first-and-foremost an affect of the child. To fail to act in response to a child whose presentation is consistent with abuse victimization, because the conduct of abuse is not otherwise evidenced, is to repeat the child safeguarding failures of Haringey Council in the ‘Baby P’ affair.

The President’s urgency in *Re C*² that “the identification of ‘alienating behaviour’ should be the court’s focus” is not an instruction to ignore all other considerations; ‘focus’ does not mean ‘tunnel vision’.

The 3-part test proposed by the FJC is unfortunately inappropriate:

- It would prevent the Family Court from considering some real domestic and child abuse issues, by requiring both specific ‘alienating behaviours’ and actual alienation to be proved, whereas no other domestic abuse fact-finding or child abuse intervention works this way;
- It requires, in both parts ‘b’ and ‘c’, the court to make exactly the kind of psychological diagnoses of the child to establish facts that were critiqued by the President in *Re C*, but even worse: with no expertise or even contact with the child;
- It seems to have no technical scientific or empirical justification, nor case-law precedent, and is arbitrary in nature;
- It is functionally a new invented law that limits access to justice, and is therefore ultra vires;

¹ Paraphrased from *Re S* [2020] EWCA Civ 568 (29 April 2020) at [8], affirming and extending the Cafcass definition at <https://researchbriefings.files.parliament.uk/documents/CBP-8763/CBP-8763.pdf>

² *Re C*, (‘Parental Alienation’; Instruction of Expert) [2023] EWHC 345 (Fam) at [103]



- It violates the ‘paramountcy principle’ in s.1(1) of the Children Act 1989, and the positive obligation for “exceptional diligence” established by ECtHR and Court of Appeal pursuant to Article 8 of the Human Rights Act 1998 (as informed by Articles 7-9 of the UN Convention on the Rights of the Child).

We recommend instead a ‘two-stream approach’, in which a Family Court ought to first identify the minority of cases where the child is already demonstrating actual contact refusal / reluctance (what seems to be ‘**an Alienated Child**’), and stream such cases into receiving early intervention:

- the support commensurate with other children presenting with signs of child abuse; and
- the psychological expertise required to safely understand what is driving the child’s contact refusal / reluctance and, if possible and appropriate, treat a complex and harmful psychological dysfunction of a child’s attachment system.

Otherwise, ‘**Alienating Behaviours**’ are acts carrying a RISK of harm, that a Family Court can deal with at Tier 1 as a simple determination of observable facts. However, because the acts are committed directly against the child, there’s no need to link them to a child’s behaviour. It is properly consistent with the decision of the Court of Appeal in *Re S* for a Family Court to act against Alienating Behaviours before the child presents as affected:

“...it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken.”³

The two-stream approach is the best means by which to fulfil the President’s urgency in *Re C*, whilst conforming with the binding precedent of the Court of Appeal in *Re S* (and elsewhere, including ECtHR) and the child-safeguarding lessons of ‘Baby P’.

By appropriately streaming **an Alienated Child** to receive the care they deserve, a Family Court can focus its own efforts on “the identification of ‘**alienating behaviour**’”⁴ in other cases, before those behaviours also amount to “serious, worse still irreparable, harm”⁵.

It seems that the FJC’s Working Group is not properly focused on the welfare of the child, but rather is currently preoccupied with determining the adult conflict, not merely to the detriment of the child’s best interests, but in conflict with established principles of child safeguarding. Regardless of cause, a child’s alienation from their parent represents an attachment dysfunction: the paramount consideration of the Family Court ought to always be the child’s welfare. If the child is presenting with signs of psychological or

³ Re S, Ibid

⁴ Re C, Ibid

⁵ Re S, Ibid



emotional harm, it is unconscionable that those harms should be ignored for want of external evidence of fault.

The FJC should be mindful of common erroneous presuppositions (“Parental Alienation myths”) that:

- Alienating Behaviours are not harmful unless or until they have become effective (ie that there must be a ‘diagnosis’) - the very process of alienation is the conduct of harm and abuse on the child (*Re S*: “it is the process that matters”);
- Alienating Behaviours must be deliberate, or that only one parent does them;
- The only adverse outcome for children of exposure to Alienating Behaviours is contact refusal;
- Alienating Behaviours cannot co-exist with other forms of abuse by either or both parents; or that
- Victims of domestic abuse are ‘allowed’ to psychologically abuse their child.

Headline Recommendations

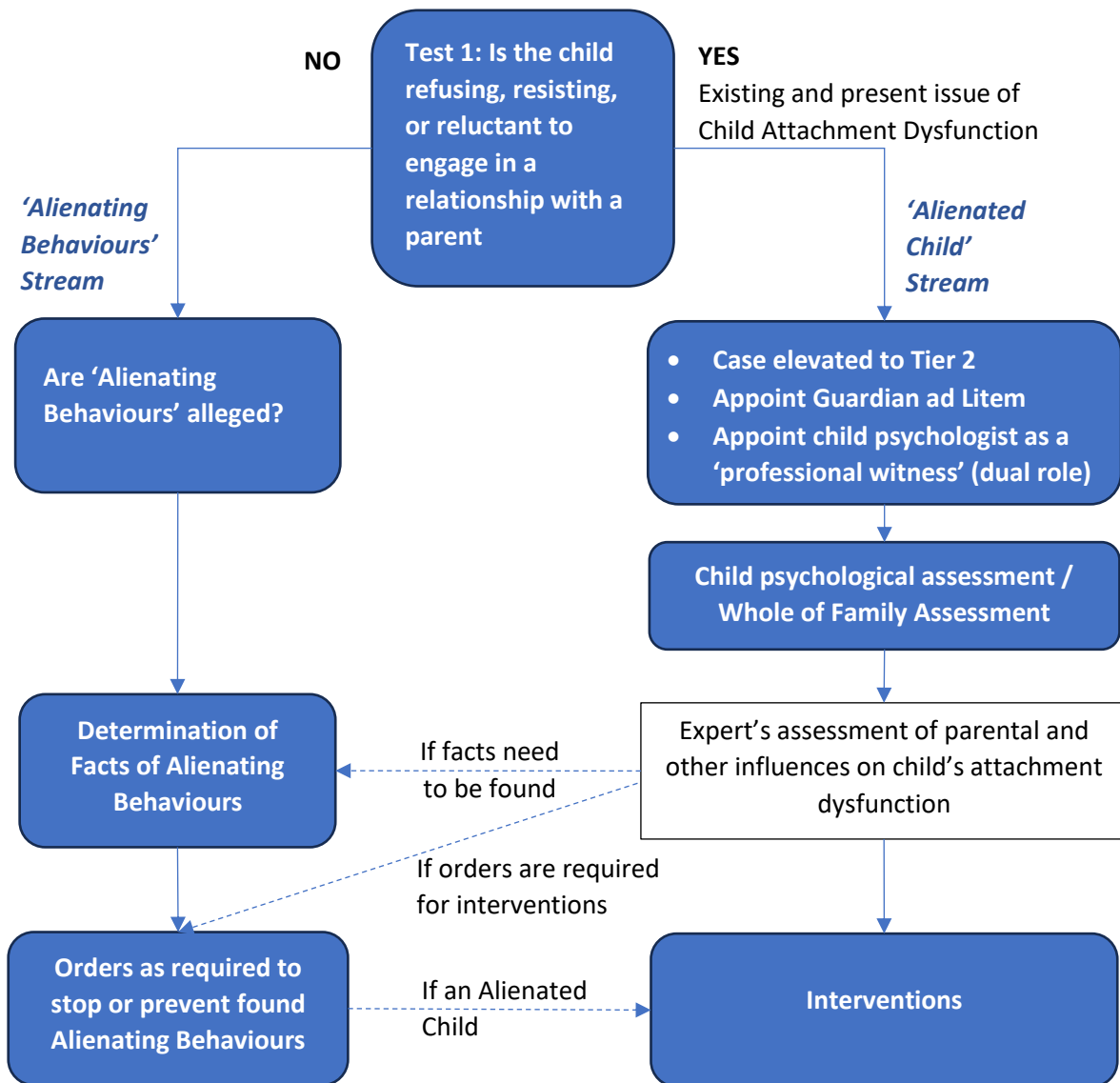
1. The 3-part test ought to be abandoned, and instead the Guidance ought to make a triaging determination of fact, similar to ‘part a’ of the FJC’s test, to differentiate between cases concerning “Alienating Behaviours” by an adult and the presentation of “an Alienated Child”:
 - **“Alienating Behaviours”** are acts of domestic and child abuse by adults, which ought to be stopped immediately as they pose RISK of serious harm (not unlike a parent committing acts of *domestic abuse*), and
 - **“an Alienated Child”**, is an ACTUAL presentation of a child with a psychologically disordered parental attachment, a symptom and source of serious harm for the child that, regardless of cause, ought to be expertly assessed and ameliorated quickly to the extent it is safe to do so, in the interests of the child’s welfare (not unlike a child presenting with signs of *child abuse* such as neglect).

Thereafter, the different circumstances can follow separate litigation streams:

- **‘Alienating Behaviour’** is a question of fact that can be determined at Tier 1 with no external expertise usually required and no requirement for the children to be examined;
- An **‘Alienated Child’** is a present welfare issue and must be elevated to Tier 2, with a Guardian ad Litem appointed and experts involved early to assess the harms presented.



Figure 1: Proposed 'Parental Alienation' Family Court Litigation Streams



2. The Guidance should focus on first alleviating harm to the child during proceedings:

- a. The Guidance should require the issue of early guidance to both parents upon receipt of an application for Children’s proceedings, to notify each of them of the harms to the child from Alienating Behaviours and encourage them to avoid specified common alienating behaviours (in particular the inappropriate sharing of information about proceedings with a child, which is already prohibited by provisions restricting communication of information in Children’s proceedings);
- b. Where alienation is already or becomes apparent (an ‘alienated child’, with present ‘alignment or attachment issues’), regardless of cause, this is a child welfare issue; the Guidance should mandate psychological assessment and a Guardian ad Litem ought to be



appointed as a matter of course to assist the court to determine the child’s authentic wishes and feelings and to control or monitor assessments and interventions;

- c. The Guidance should ensure that alienation does not arise during the course of proceedings, by guiding courts to provide maximal interim contact within the parameters of ensuring child safety, whether or not any AB is alleged or alienation observed;
 - d. The Guidance should ensure robust and timely enforcement of orders for contact and interim contact, encouraging monitoring of parents’ compliance with orders during proceedings and the use of punitive measures where orders are contravened without good cause, just as it ought to act promptly and decisively to stop the continuation of any other form of domestic abuse.
3. The Guidance ought to explicitly recognize that children who are alienated from a good-enough parent are at high risk of significant psychological and emotional harm from that alienation;
 4. Wherever alienating behaviours are evidenced, as with other forms of domestic abuse, the Court has a positive duty to the child to intervene and stop those behaviours continuing, whether or not they have yet had the effect of turning a child against the Targeted Parent;
 5. The Guidance should make clear that Alienating Behaviours may be intentional or inadvertent, but that there is harm done to the child regardless;
 6. The non-exhaustive list of common Alienating Behaviours in the Guidance ought to be more comprehensive in both range and depth, with case-study examples provided to assist recognition;
 7. The Guidance must be clear that “in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available”⁶ – this must include sanctions against a parent who continues to flaunt court orders for contact, and the potential remedy of a change in the child’s primary residence to the parent more willing to protect the child’s rights to relationships with both parents and extended family;
 8. The Guidance ought to require Family Courts to automatically carve-out enforcement applications for contact withdrawal from S.91(14) orders, or otherwise be directed to determine “chance of success” in permission hearings as the probability of reinstating withheld contact, rather than the probability that the breaching parent will be sanctioned;

⁶ Re S (Parental Alienation: Cult), [2020] EWCA Civ 568 (29 April 2020) at [13]



9. Where enforcement procedures of existing orders have been initiated, the Guidance ought to recommend interim methods to streamline reinstatement of contact, particularly the use of without-hearing interim orders including for police power of arrest (especially where violating parents have not themselves filed any application to vary the order);
10. In matters of cross-allegations of abuse and alienation, the Guidance should take a balanced view that not only might false allegations of alienation be used to counter genuine allegations of abuse, but false allegations of abuse (including allegations of neglect) may be made in furtherance of alienation, and its also possible that both abuse by one parent and alienation by the other, or both by both, occur in situations of bi-directional domestic abuse (which accounts for about 70% of domestic abuse cases⁷);
11. In any case where an allegation of abuse has caused the disruption to the child’s relationship with the accused parent, and is then determined as unproven by the Court, the Court must then go further to opine on whether the allegation itself was an Alienating Behaviour and, as such, an act of post-separation domestic abuse and child abuse;
12. The Guidance ought to nominate a variety of measures for intervention, particularly for early intervention where a child has become, or is at high risk of becoming alienated;
13. Whilst the use of separate child expert psychologists for assessment and treatment is a sensible arrangement to protect the integrity of the court’s decisions in most cases, where a public provision can or is already being made, such as via CAMHS/NHS or a local authority provision, child psychological experts ought to be able to perform a dual role of assessment and therapeutic intervention (a “professional witness”⁸) to minimise the number of different professionals that interact with the children (a significant source of stress for them) and to provide them with continuity;
14. The Guidance should not refer to “resident parent” or “non-resident parent” in place of (alleged) ‘alienating’ or ‘targeted parent’, as this is likely to create bias and/or lead to the court into error;
15. The Guidance should include guidance about the admissibility of a parent’s recordings of children, since the FJC is effectively requiring such evidence;
16. The Guidance ought to avoid assertions of a child-development psychological nature that may not be supported by empirical scientific evidence, and whereas the draft Guidance has no technical references

⁷ Babcock, J.C., Snead, A.L., Bennett, V.E. and Armenti, N.A., 2019. Distinguishing subtypes of mutual violence in the context of self-defense: Classifying types of partner violent couples using a modified Conflict Tactics Scale. *Journal of family violence*, 34(7), pp.687-696

⁸ See [British Psychological Society Guidance on Expert Witnesses](#): for where the appointed expert provides a dual role of expert witness and practitioner (witness of fact).



at all, the Guidance should draw extensively from the substantial body of scientific work associated with parental alienation, children’s parental attachments and attachment disorders;

17. The Family Justice Working Group for this Guidance ought to be reconfigured to increase membership of child development psychological experts, to include a greater diversity of viewpoints on parenthood and parenting, attachment research and to avoid harmful ‘group think’.

We are concerned that no data appears to be available to assist the FJC in regards to the actual welfare outcomes of children who have hitherto undergone changes in primary residence or other interventions aimed at alleviating alignment or attachment issues.

The draft Guidance appears to be heavily biased towards minimizing this form of domestic and child abuse, seeming to bypass or undermine long-established precedent, and seemingly careless of children’s welfare.

B. FJC is repeating the errors of Haringey Council in ‘Baby P’

We’re concerned that the approach taken by the Family Justice Council is insufficiently child- focused, being preoccupied with determining the adult conflict. Parental alienation is both a form of domestic abuse and a serious form of child abuse.

However, the FJC has treated ‘alienating behaviours’ as a form of domestic abuse only, requiring observations of actual misconduct in order for the court to intervene. This view is particularly problematic due to the difficulty in observing a resident parent with their child all the time.

It seems the painful lessons of ‘Baby P’, who was brutally murdered by his resident mother and two others in the absence of his father, and who presented with injury but the authorities didn’t intervene without observed acts of abusive parenting, seem to have been overlooked by the FJC:

“The lack of an identified perpetrator contributed to lack of action in relation to child protection procedures”

“Mother’s overt co-operation and observed positive parenting led to high degree of trust”

“[recommendation to] establish more secure assessment and earlier intervention strategies which ensure that, in all cases where concerns about children are identified, agencies can intervene and assess risks of significant harm to children in a timely manner”⁹

⁹ [‘JOINT AREA REVIEW HARINGEY CHILDREN’S SERVICES AUTHORITY AREA’, April 2009](#)



It appears from examination of SCRs on post-separation filicide that the alienation of one parent from the child, whether or not by means (ironically) of abuse allegations, is a reliable precursor to filicide by the alienating parent.

Filicide may often be the ultimate ‘alienating behaviour’.

The FJC are repeating errors of Haringey Children’s Services that were identified in the ‘Joint Area Review’ of the ‘Baby P’ debacle:

1. by prioritizing the identification of a perpetrator over the welfare needs of the child,
2. by requiring, on the one hand, the Family Court to ‘stand still’ on interventions following observations of harmful conduct (alienating behaviours) until “serious, worse still irreparable, harm”¹⁰ is done; and
3. by requiring, on the other hand, the Family Court to ignore completely the presentation of children consistent with abuse victimization in favour of observations of parenting conduct (alienating behaviours), and this might falsely lead the court to have a “high degree of trust” in an abusive parent.

C. Justice issues surrounding Parental Alienation and Alienating Behaviours

Public interest duty

The first statistically-valid study on the prevalence of alienating behaviours in the UK¹¹, with representative independent sampling of 1,000 family separations, has found Alienating Behaviours in almost 60% of them, of which in two-thirds of cases the targeted parent believed the perpetrator intended to harm the child’s attachment with them, and in which the target parent says the child’s attachment was actually harmed 45% of the time (i.e. in 27% of all separations).

This makes ‘alienating behaviours’ the form of domestic abuse most commonly-witnessed by children, and one of the most commonly-experienced forms of child abuse.

Only a tiny fraction of these abuses is considered in Family Court, and so there is significant public interest in fostering a culture that addresses these abuses robustly and does not reward them.

Additionally, PA is also experienced by the child’s half-siblings and the child’s extended family (grandparents, cousins, aunts and uncles), who lose their family relationships. The FJC ought to also consider the effect of

¹⁰ S (Parental Alienation: Cult), Re [2020] EWCA Civ 568 (29 April 2020) at [13]

¹¹ Hine, B. A., Harman, J. J., Leder-Elder, S., Bates, E. A. (2023). Acrimony and abuse: Establishing the prevalence of family violence in the context of family breakdown, separation, and divorce (FBSD) in the United Kingdom. Sir Halley Stewart Trust. See discussion later



its recommendations on the right to family life of these non-litigants, pursuant to Article 8 of the Human Rights Act 1998.

Violence Against Women and Girls

Some members of the FJC's working group may feel they are protecting women's rights by unfairly or unduly preventing the Court's consideration of PA, however female victims of PA include:

- mother-victims of PA,
- half of all PA-abused children, and
- half of every abused child's extended family.

These female victims deserve consideration as victims of Violence Against Women and Girls, even if the perpetrator of the abuse is also female.

Children's rights to their parents and extended family

PA is a direct attack and violation of the human rights of the child, protected by UNCRC:

"7.1 The child ... shall have... as far as possible, the right to know and be cared for by his or her parents."

"8 1. ... the right of the child to preserve his or her identity, including ... family relations ... without unlawful interference";

"8.2 Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity";

"9.1 States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child";

"9.3 States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.";

"16.2 The child has the right to the protection of the law against [arbitrary or unlawful interference with his or her family]"; and

"36 States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."



As a part of the State, the FJC has a positive obligation pursuant to Article 8 of the Human Rights Act and the ECHR to protect the child’s rights by ensuring that Family Courts consider allegations of PA.

Duty to ascertain the children’s wishes and feelings

Family Courts have a statutory obligation in child residence matters to consider:

“the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)”¹²

This is in addition to the general duty of Article 12 of the UNCRC:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”

However, PA is a direct attack on the court’s ability to ascertain, and the child’s freedom to express to the court, their own views:

“if a court would base a decision on the views of children who are palpably unable to form and articulate an opinion as to their wishes – for example, because of a loyalty conflict and/or their exposure to the alienating behaviour of one parent –such a decision could run contrary to Article 8 of the Convention”¹³

The Family Court is therefore positively charged with the duty to consider allegations of PA and not disregard them arbitrarily, in order to ensure it has properly ascertained the child’s authentic views as required by law and its Article 8 duties to the child (and others).

D. FJC’s 3-part test

The draft guidance includes a three-part test, located in a paragraph quoting Sir Andrew McFarlane’s High Court decision in *Re C*¹⁴, giving the impression that this test was devised by the Court. However, this 3-part test is not referenced at all in that court decision.

The origin of this test is unclear but would appear to be original output of the FJC. The wording and structure of the Guidance is forceful well beyond guiding (e.g. “A court would need to be satisfied that three elements are established before it could conclude that alienating behaviors had occurred”), particularly considering the guidance will be expected to be applied by magistrates and Cafcass officers to make determinations concerning child welfare. The FJC draft Guidance is therefore more than guidance and effectively is a new form of law that is neither common law nor legislated law. It is not clear whether this would survive a judicial

¹² S.1(3)(a) of the Children Act 1989

¹³ *K.B. AND OTHERS v. CROATIA* ECHR 36216/13 Judgment (Merits and Just Satisfaction) 14/03/2017 at [143]

¹⁴ *C, Re ('Parental Alienation'; Instruction of Expert)* [2023] EWHC 345 (Fam)



review, but its inclusion in judicial guidance for Family Court could certainly inflict much harm to children in the meantime.

There is no indication that the FJC has considered any technical input, empirical evidence or case law precedent in deriving a 3-part test that would, if given effect, exclude harm done to the child from being considered by the Family Court. The test is therefore arbitrary in nature.

Of particular concern is that the FJC’s 3-part test requires exactly the type of child psychological determinations of ‘facts’ about which the President is wary in *Re C*, but without the benefit of any professional psychological expertise to assist the Court, and without so much as meeting the child.

Part ‘b’ of the test requires the court to determine whether the child’s observed alienation is “consequent on” actions of the non-resident parent, and Part ‘c’ of the test requires the court to determine whether the Alienating Behaviours are “leading to the child’s refusal, resistance or reluctance to engage in a relationship with the other parent.” Both of these questions are psychological diagnoses of the child. As noted earlier, the possibility of PA would prevent the Court from being able to rely on the child’s expressions in this regard, and so these questions cannot be resolved by a Family Court without expert psychological assessment.

The Court would not ordinarily have any direct contact with the subject children, and therefore is in no place to even hazard a guess at these densely complex psychological determinations surrounding a child’s deep instinctive attachments with their parents. These issues ought to be properly assessed and opined upon by an expert psychologist.

Even worse, the Guidance requires these test questions to be addressed before any detailed consideration of the matters at hand: at a triage stage of Case Management, often by magistrates.

The 3-part test means that alienation can only be acted upon if the child is currently suffering symptoms AND the specific parenting behaviours are witnessed. We reiterate that parental alienation is both domestic abuse and a serious form of child abuse.

The Guidance ought to differentiate between, and have separate streams for:

- “Alienating Behaviours”, which is a factual finding of acts of domestic and child abuse, which acts ought to be stopped immediately as they pose RISK of serious harm (not unlike a parent committing acts of *domestic abuse*), and
- An “Alienated Child”, which is an ACTUAL harmful state-of-being for the child – a psychologically dysfunctional parental attachment - that regardless of cause ought to be expertly assessed and ameliorated quickly to the extent it is safe to do so in the interests of the child’s welfare (not unlike a child presenting with signs of *child abuse* such as neglect).



E. An Alienation Child

No other form of child abuse is restricted to only being recognized in Family Court if the abuse is actually witnessed taking place: physical child abuse can be inferred from cuts and bruising, neglect by signs of starvation or the child's presentation. It is noteworthy that in the matter of 'Baby P', no actual harmful parenting was ever observed, and in fact, positive observations of parenting led the authorities to overlook signs of abusive parenting until it was too late.

Whereas it may be the case that criminal or other sanctions against a parent may require findings of facts about their observed conduct, interventions to protect the welfare of a child ought not to require such stringent evidentiary hurdles.

The lessons from 'Baby P' were that administrations responsible for children's welfare, such as the Family Court and Cafcass, must be alert to signs of abuse, be actively engaged in assessing risk of harms and apply early intervention strategies.

"The key tension that the court will need to grapple with in circumstances where there is refusal or resistance by a child to contact is *why* that contact is not taking place."¹⁵

We respectfully disagree with Sir Andrew MacFarlane's obiter observations at [103] of Re C, in which one paragraph of a litigant's skeleton argument, which was otherwise dismissed, was favourably quoted:

"Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact..."

Rather than being "like an allegation of domestic abuse", we submit that a child refusing contact is much more similar to a child presenting with injuries that are consistent with neglect or abuse. In the first instance, those injuries must be treated and the child made safe. The apportionment of blame is only a subsidiary consideration to assist in selecting the right protection strategy, but not necessarily required and certainly ought not to hinder protective intervention.

Also unlike "an allegation of domestic abuse", which is litigated between two competent adults, in a case of an Alienated Child the court is instead engaged with a child who is vulnerable and who cannot represent themselves in the proceedings. In this respect it is much more akin to cases of child abuse than domestic abuse. Furthermore, if the alienation is the result of abusive conduct, the child will likely be residing with, and wholly dependent upon, the parent that is abusing them. This complex 'co-dependency' means that it is

¹⁵ Kig, S (KC) and Sharma, F, 'A Practical Guide to Parental Alienation in Private and Public Law Children Cases', 2022, ISBN-10 1913715183



difficult for the Court to determine the child’s authentic wishes and feelings, or even the accuracy of their accounts of facts, and so the court should promptly appoint a Guardian ad Litem.

Risk of harmful outcomes for children ought to be assessed early with a primary focus on establishing the child’s physical, psychological and emotional safety:

1. If a child is observed to be alienated from one of their parents, this ought to lead directly to early psychological assessment, therapeutic intervention and ameliorating measures; and
2. The potential for alienation to arise during proceedings ought to be addressed early and be a consideration, within the meaning of the term ‘safety of the child’, when making decisions regarding interim parental contact, including under Practice Direction 12J.

A child presenting as an ‘Alienated Child’ may not be a victim of ‘parental alienation’, but rather from (or in addition to) a range of environmental or psychological pressures¹⁶. Nonetheless, the nature and effect of such influences ought to be known to the Family Court, and taken into consideration with due care, diligence and proportionality when considering child arrangements orders. Certainly, the addition of Alienating Behaviours by either parent, or indeed imposed by inappropriate ‘protective measures’ by an overzealous Family Court, will likely exacerbate harm.

F. Alienating Behaviours

Contrarily, ‘Alienating Behaviours’ are an ongoing risk to the welfare of the child, whether or not those behaviours have yet alienated the child from his or her parents. No other form of harmful conduct is ignored by the Court and Cafcass until actual harm is observed – the risk of harm is sufficient. As an act of child abuse, there are manifold effects on the child in the long- and short-term beyond contact refusal:

“Parental alienation has repercussions on the child, as it annihilates their capacity to offer and receive affection from one of their parents. The child can develop: low self-esteem, lack of trust in oneself and others, depression, substance abuse, addiction, anxiety, self-sufficiency, uncertain attachment, feelings of loss, feelings of abandonment, feelings of guilt, and incapacity to respect authority, which are related to psychiatric afflictions”¹⁷

This accords with the experiences portrayed by child-victims of alienating behaviours after they become adults, even when they have never been convinced to reject the targeted parent¹⁸.

¹⁶ See: Hine, BA, ‘Parental Alienation: A Contemporary Guide for Parents, Practitioners, and Policymakers’, 2023, ISBN-13 979-8397892865

¹⁷ Isailă OM, Hostiuc S. Medical-Legal and Psychosocial Considerations on Parental Alienation as a Form of Child Abuse: A Brief Review. *Healthcare (Basel)*. 2022 Jun 17;10(6):1134. doi: 10.3390/healthcare10061134. PMID: 35742185; PMCID: PMC9223241.

¹⁸ https://www.youtube.com/playlist?list=PLqWv6zPR_tkzFtGnSpljc3RAMwZNTVAGP



The FJC is wrong to limit consideration of Alienating Behaviours to cases only where the child is so harmed that they are actually refusing contact.

An analogy to FJC's approach to Alienating Behaviours would be to ignore sexual abuse of a child because sexual abuse victims often cut themselves, but this child has not yet started cutting themselves.

If Alienating Behaviours are a question of fact, and the children are necessarily effected because the acts are committed against them, the court need do nothing more than establish that the Alienating Behaviours have occurred before acting to prevent further abusive conduct.

However, 'part (a)' of the FJC's 3-part test requires the Family Court to stand-by and permit ongoing Alienating Behaviours against the child until they have advanced to the extent that the child is finally "refusing, resisting or reluctant" to engage in their parental relationship. This approach runs counter the principles established by the Court of Appeal in *Re S*¹⁹, summarizing the ECtHR case law surrounding parental alienation and the courts' duty for "exceptional diligence":

"In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention. Above all, the obligation on the court is to keep the child's medium to long term welfare at the forefront of its mind and wherever possible to uphold the child and parent's right to respect for family life before it is breached. In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken. It is easier to conclude that decisive action was needed after it has become too late to take it."

It is not clear how the FJC came to the conclusion that, only in the particular area of parental alienation, known harmful parenting conduct ought to be permitted to persist until "serious, worse still irreparable harm" is done, but this is a clear affront to established human rights law that is specific to the issue of parental alienation.

¹⁹ *Re S (Parental Alienation: Cult)*, [2020] EWCA Civ 568 (29 April 2020) at [13]



However, there are many various options for the court to manage Alienating Behaviours depending on the degree of intentionality, severity and chronicity, including mandating parenting courses, prohibited steps orders, parent undertakings, altering child contact arrangements or changing the child's primary residency.

G. Guidance on parents recording children's disclosures

The Guidance places much weight on the evidential obligations required by litigants to establish proof of specific alienating acts, but the private nature of a parental relationship means that many of the alienating tactics undertaken cannot be observed and so could only be elicited from the children themselves. Such information-gathering is a delicate operation risking harm to the child that ought to be reserved for Cafcass or preferably an assessing child psychologist.

A targeted parent may be tempted to record conversations they have with their children, in order to provide the evidence of alienating behaviours that the FJC is requiring. There is a balance to be found between potential harm to children from improper evidence-gathering, and the harm to children from a failure to prove, and thereby prevent, abusive conduct that is being inflicted on them. The FJC ought to provide guidance about the acceptability of such evidence, and we recommend that such evidence ought to be accepted if:

- the recording is covert,
- the conversation is natural and
- the disclosures appear unforced and are not the result of leading questions.

Of course, any harm from improper evidence-gathering from children would occur whether or not the evidence is admitted in court, and the FJC ought to consider how the Judiciary might communicate with litigants early to inform them of appropriate evidence-gathering techniques.

H. List of Alienating Behaviours

The list provided by the FJC is useful but, although it is noted that it is non-exhaustive, it remains too incomplete to be useful for guidance and that may contribute to harm to the child, particularly since:

“in general, exposure to more alienation behaviors leads to more negative outcomes in children of divorce, which can be seen across the life span.”²⁰

²⁰ Amy J. L. Baker & Naomi Ben-Ami (2011) To Turn a Child Against a Parent Is To Turn a Child Against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being, *Journal of Divorce & Remarriage*, 52:7, 472-489, DOI: 10.1080/10502556.2011.609424



Dr Amy Baker identified 17 common alienating behaviours^{21,22}, some of which are included in FJC’s list

Strategy	Notes
Strategy 1: Badmouthing	Included
Strategy 2: Limiting Contact	Included. The Guidance must further include: <ul style="list-style-type: none"> • attempts to relocate • false or vexatious allegations in to illicit restrictive Family Court orders
Strategy 3: Interfering with Communication	Included under “contact”
Strategy 4: Interfering with Symbolic Communication	partially included (forbidding discussion)
Strategy 5: Withdrawal of Love	Included
Strategy 6: Telling Child Targeted Parent Does Not Love Him or Her	Included
Strategy 7: Forcing Child to Choose	Including especially choices about contact
Strategy 8: Creating the Impression that the Targeted Parent is Dangerous	This may include allegations or stories of child abuse
Strategy 9: Confiding in Child	Especially the sharing of information about court proceedings
Strategy 10: Forcing Child to Reject Targeted Parent	
Strategy 11: Asking Child to Spy on Targeted Parent	
Strategy 12: Asking Child to Keep Secrets from Targeted Parent	
Strategy 13: Referring to Targeted Parent by First Name	
Strategy 14: Referring to a Stepparent as “Mum” or “Dad” and encouraging child to do the same	
Strategy 15: Withholding Medical, Academic, and Other Important Information from Targeted Parent/ Keeping Targeted Parent’s Name off Medical, Academic, and Other Relevant Documents	

²¹ Baker, Amy & Fine, Paul & Lcsw,. (2008). Beyond the High Road: Responding to 17 Parental Alienation Strategies without Compromising Your Morals or Harming Your Child.

²² Amy J. L. Baker & Naomi Ben-Ami (2011) To Turn a Child Against a Parent Is To Turn a Child Against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being, Journal of Divorce & Remarriage, 52:7, 472-489, DOI: 10.1080/10502556.2011.609424



Strategy	Notes
Strategy 16: Changing Child’s Name to Remove Association with Targeted Parent	In the UK, this might include refusal to register the child’s unmarried father on their birth certificate
Strategy 17: Cultivating Dependency	

We recommend that the guidance should take considerably more time to provide greater descriptions and case studies of common alienating behaviours, and recommend the descriptions in Part IV of Dr Baker’s paper “Beyond the High Road” as a good starting point, to be developed with the assistance of expert psychologists such as members of the ‘Evidence Based Domestic Abuse Research Network’ (‘EBDARN’).

I. [Educating separating parents to minimise Alienating Behaviours](#)

The UK’s first statistically-valid study of alienating behaviours indicates that in the UK²³ shows that of those separations featuring alienating behaviours (59% of all separations):

- A third were not considered by the target parent to have been purposeful on the part of the perpetrator; and
- 40% involved BOTH parents perpetrating alienating behaviours on the children²⁴.

Whether or not the alienating behaviours are inadvertent, or performed without knowledge of the harm they cause, or are indeed purposeful, they are potentially harmful to the child’s familial attachments and their sense of self and self-esteem. Therefore they ought to be stopped, preferably before they start.

Nearly 30 years ago, a generation ago, an American Judge provided this sage but forceful admonishment from the bench to divorcing parents:

“Your children have come into this world because of the two of you. Perhaps you two made lousy choices as to whom you decided to be the other parent. If so, that is your problem and your fault.

“No matter what you think of the other party—or what your family thinks of the other party—these children are one-half of each of you. Remember that, because every time you tell your child what an “idiot” his father is, or what a “fool” his mother is, or how bad the absent parent is, or what terrible things that person has done, you are telling the child half of him is bad.

²³ Hine, B. A., Harman, J. J., Leder-Elder, S., Bates, E. A. (2023). Acrimony and abuse: Establishing the prevalence of family violence in the context of family breakdown, separation, and divorce (FBSD) in the United Kingdom. Sir Halley Stewart Trust

²⁴ Please note that although for an Alienated Child, that is where the Alienating behaviours have overwhelmed the child’s natural attachment system, only one parent is aligned or targeted. Bidirectionality is therefore lower.



“That is an unforgivable thing to do to a child. That is not love. That is possession. If you do that to your children, you will destroy them as surely as if you had cut them into pieces, because that is what you are doing to their emotions.”²⁵

We therefore recommend that, upon receipt of any child arrangements application, a court automatically issue guidance to all litigants about Alienating Behaviours, explaining the harms to the child and listing the common types of these behaviours with examples. Litigants may also be notified that improper sharing of information about the court proceedings with the children potentially violates confidentiality rules and that they may be held in contempt of court.

J. [The Alienating Behaviour of false or vexatious allegations of abuse](#)

The draft Guidance provides little information as to how the court ought to manage the issue of false or vexatious allegations conducted as part of a scheme of Alienating Behaviour.

The Family Court is often misled by alienators into undertaking Alienating Behaviours on behalf of the alienator, by means of suspended or greatly-restricted contact time with the accused parent. Although undertaken as ‘protective measures’, such actions are themselves harmful to the child.

Such conduct is also known as ‘Legal and Administrative Abuse’.

Legal and Administrative Abuse (“LAA”) is a form of coercive and / or controlling behaviour that occurs when one party manipulates institutions such as the police, social services and the courts to undertake the acts of abuse vicariously for them.

The following extract from a March 2021 Canadian paper²⁶ succinctly explains LAA:

“A scale of legal and administrative aggression developed by Hines et al. (2015) includes false accusations to authorities that the partner physically or sexually abused the other or the children, threats to take the children away, and threats to ruin the partner’s reputation at work and/or in the community. A study of 302 men who sustained severe IPA from their women partners within the previous year and sought help found that 67.2% reported that their partner falsely accused them of hitting or beating their partners (Hines & Douglas, 2010). Also, about 38.7% reported that their partners filed a restraining order against them under false pretenses; 48.9% said that their partners falsely accused them of physically abusing the children; and 15.4% reported that their partners falsely accused them of sexually abusing the children (Hines & Douglas, 2010).

²⁵ Judge Michael Haas, divorce ruling in Cass County, Minnesota, 1994, cited in *Burke v. Burke*, Tennessee Court of Appeals, No. M2000-01111-COA-R3-CV, 2001 and *Krupp v. Cunningham-Grogan*, Tennessee Court of Appeals, No. M2005-01098-COA-R3-CV, 2006.

²⁶ Eugene Emeka Dim, Alexandra Lysova (2021) Male Victims’ Experiences With and Perceptions of the Criminal Justice Response to Intimate Partner Abuse. PubMed. <https://doi.org/10.1177/08862605211001476>



False accusations are particularly harmful to victims of IPA when mandatory and pro-arrest policies are in place.”

That last sentence may be associated with the effect that Practice Direction 12J has in facilitating Alienating Behaviours, performed vicariously by the Family Court on behalf of an alienator who uses false or vexatious allegations (see below).

A 2021 UK study²⁷ found similarly that:

“Almost two thirds of the men [reporting victimisation] had been threatened with false allegations which, when combined with the qualitative data, suggests that abusive female partners are using institutions such as the police, social services and the family court as a means of coercive control. Additionally, female perpetrators appear likely to use children to control men in the relationship and post-separation with over 4 out of 5 in our data being threatened with having their children taken away and over half with having contact with children withheld if demands (e.g., for money) were not met.”

The increasing emphasis of sub-judice actions by social workers, the Family Court and police to protect claimants of abuse provides significant power to deceitful LAA abusers, and risks drawing authorities into committing acts of controlling and /or coercive behaviours and child alienation on behalf of an abuser.

This is recognised as an ‘Offender Tactic’ in §32 of the 2015 Guidance Framework for Controlling and Coercive Behaviours:

“causing or creating vexation- using the system against the victim by making false or vexatious allegations to agencies. The Police should examine whether this has been a feature in previous relationships. The Authorised Professional Practice on Investigating Domestic Abuse issued by the College of Policing states: “A manipulative perpetrator may be trying to draw the police into colluding with their coercive control of the victim. Police officers must avoid playing into the primary perpetrator’s hands and take account of all available evidence when making the decision to arrest;””²⁸

A recent High Court case example²⁹ was published whereby the father was practically alienated by the Family Court by means of false allegations of abuse and the court’s subsequent ‘protective measures’:

²⁷ <https://www.mankind.org.uk/wp-content/uploads/2021/07/Male-Victims-of-Coercive-Control-2021.pdf>

²⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf

²⁹ SP v DM [2023] EWHC 2089 (Fam)



“80. A tragedy of this case is that in the last two years, the child has seen his father on only one occasion since July 2021, namely in February 2022. The judge had made a detailed order in December 2022 to restart contact. That has all been stayed by order of Mostyn J.”

Helpfully, Sir Jonathan Cohen therein acknowledges that judgements can go further than merely determining whether allegations are ‘proved’ or ‘unproved’, and to do so is in the child’s best interests:

“25. It would be wrong if a judge was straitjacketed into only saying that an allegation was proved or unproved. That would permit the person making the allegation to say that they only failed because the judge was not satisfied on the balance of probabilities when in fact, a judge had found that the allegation was completely false. The judge must be able to make the finding that he/she thinks is appropriate on the evidence seen and heard. It is important, also, for the child that clear findings are made when the evidence permits.”

We recommend that, in any case where an allegation of abuse has caused the disruption to the child’s relationship with the accused parent, and is then determined as unproven, the Court has a positive duty to the child pursuant to Article 8 of the HRA, informed by Article 9 of the UN Convention on the Rights of the Child, to go further and to opine on whether the allegation itself was false or vexatious and therefore an Alienating Behaviour and, being deliberate, an act of post-separation domestic abuse and child abuse.

However, we note that the draft Guidance currently states that:

“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.”

This assertion has no foundation in any case law precedent or technical literature and seems to be a profession only of ideology. We refer again to the Court of Appeal’s ratio in *Re S*, that “...it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken.”

A child who has been unjustly separated from his or her parents has been denied their UNCRC Articles 7-9 rights, particularly Article 9.3 (right to direct contact after separation), and this is prima-facie evidence of harm to the child. The court is duty-bound to protect the child’s rights pursuant to HRA Article 8.

Such a serious, harmful act of domestic abuse against a parent (and a contempt of court), in which a child has been harmed, cannot be ignored as anything less than a monumental failure of parenting capacity. The accuser has been revealed to be an abusive parent and the court must act to protect the children and the victim parent pursuant to Practice Direction 12J [35-37]. Thus, the current draft Guidance conflicts with Practice Direction 12J and undermines it.



K. The Court's duty to prevent itself being a cause, agent or facilitator of Alienating Behaviours

A generous reading of the draft Guidance's assertion that:

"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"

would be that:

The Family Court must act in a way that prevents itself being used as a tool of alienation, and manage the proceedings in a way that minimises the risk that a child will become alienated from their parent during the course of proceedings.

However, this is not elucidated in the Guidance and ought to be.

Interim contact

A consistent error of Family Courts, and Cafcass advisors, in cases involving allegations of domestic abuse has been to wrongfully assume that the separation of a child from the accused parent is a "safe harbour" against risks of harm, at least until facts can be found. However, such separations are themselves potentially harmful Alienating Behaviours and authorities must take a balanced approach to preserve the whole welfare interests of the child.

Over-zealous application of the protective provisions of Practice Direction 12J can lead to cessation of contact and the unjust cauterisation of a child's most-significant relationship, together with all the extended family relationships and sense of heritage. This is harmful to the child and in some cases, the relationship can never be fully recovered. Witnessing domestic abuse is an adverse childhood event, but so is the loss of a parent during divorce or separation.³⁰ The long-term damage from ACEs compounds with number and chronicity, so adding a new ACE where one may already exist is more likely to harm than help a child.

Practice Direction 12J is unfortunately constructed without an explicit appreciation of these consequential harms to the child. It does, however, acknowledge at [26(b)] that harm can be done by declining to make an order for interim contact. This Guidance ought to draw further on that acknowledgement and make clear that:

- i) The court must bear in mind that a false or vexatious allegation of domestic abuse might have been made for the purpose of alienating a child from their parent, and the court must minimise its own facilitation of such abusive and harmful conduct in its orders for interim contact; and

³⁰ Emergent psychological research indicates that Parental Alienation may even be an independent screening item for ACEs. See: Marsden, J., Saunders, L. and Harman, J.J., 2023. Pilot Study of Parental Alienation Items in the Adverse Childhood Events Scale.



- ii) Interim contact ought to be maximized within the limiting parameters at §25 of Practice Direction 12J (that an interim order for contact is in the interests of the child and that the order would not expose the child or the other parent to an unmanageable risk of harm), to minimise any wrongful abuse of protective measures to cause harm to the child and to the accused.

It may be useful to refer in the Guidance to the ‘Offender Tactic’ in §32 of the 2015 Guidance Framework for Controlling and Coercive Behaviours (supra).

Enforcement of orders for contact

It has long been acknowledged that Family Courts seldom enforce their orders. A parent’s ability to simply deny contact on a whim provides not only for the alienation of the child from a parental relationship, extended family and heritage, but significant capacity to exercise post-separation coercive control over a non-resident parent. Elsewhere, FCRC has recommended structural changes to mimic the fixed penalty notice system for parents that applies to school truancy. It cannot be just that the State is willing to act against a parent where a child refuses to go to school (UNCRC Article 28), but will not act where a parent violates court orders protecting a child’s relationship with the other parent (UNCRC Article 9).

The Guidance ought to require that, at each interim hearing during proceedings, violations of contact orders since the prior hearing are recorded and indications are given whether any withholdings were for a good reason. This will assist the court to monitor alienating behaviours in view of final orders for residence and contact and encourage parental performance of orders during proceedings.

Where a chronic alienator persists in violating orders, targeted parents are left with no option but to return to court for enforcement proceedings. Therefore the number of applications can be excessive in cases involving an intransigent alienator. However, the response of the Judiciary has been to instead sanction the targeted parent, as they are the party that has made the applications. Reckless imposition of S.91(14) orders, (that prevent a parent returning to court without permission) made without having due regard to the Alienating Behaviours performed by the other parent, can lead to children being harmed.

Case Example: Mr A, a litigant-in-person of limited financial means and a GCSE-level education, had his contact with his son reinstated following unjust withdrawal, for the seventh time in the five years since the child was born. Repeated unjustified contact withdrawals, which each re-set the stepped contact arrangements for the child, have prevented his contact progressing to overnight staying contact during those five years. This time, however, he was made subject to a 12-month S.91(14) order because the court was concerned about the effect of constant litigation on the child. Six months after the order was made, contact was unjustly withheld yet again when it was due to progress. At the permission hearing three months after that, Mr A was refused permission to apply for enforcement because the judge thought there was little chance of the mother being punished, which was the only factor the court used to determine “chance of



success”, even though Mr A only wanted contact reinstated. An appeal would have taken such time that the s.91(14) order would have expired before the matter was reheard. Consequently, the child’s paternal relationship was disrupted yet again for a total of 9 months, without any just cause, and the child once again became unfamiliar with his father. When contact was finally reinstated at the enforcement hearing (immediately upon hearing the matter because there was no reasonable cause), its was regressed to commence the stepped arrangement all over again. The issue of punishment for the mother was not raised.

The Guidance ought to require Family Courts to automatically carve-out enforcement applications for contact withdrawal from S.91(14) orders, or otherwise determine “chance of success” in permission hearings as the chances of reinstating withheld contact, rather than the chances that the breaching parent will be sanctioned.

Where enforcement procedures of existing orders have been initiated, the Guidance ought to recommend interim methods to streamline the reinstatement of contact, particularly the use of without-hearing interim orders. This should especially be the case where the violating parent has not filed any application to vary the order, as the violating parent has not made the court aware of any reason for violation and is assuming the authority of the Family Court to alter orders. Such without-hearing orders might be for things like supervised contact where the refusal of contact is for reasons of allegations of domestic or child abuse, or for alteration of exchange arrangements to utilise a child’s school or nursery, prohibited steps or specific issues orders to prevent interference with third-party exchanges, or orders that will enable police officers to arrest a parent who fails to exchange the child for ordered contact.

L. [Terminology: use of ‘Resident / Non-Resident Parent’ to describe alienators and targeted parents](#)

We strenuously object to the use of ‘Resident Parent’ and ‘Non-Resident Parent’ to describe (alleged) ‘alienators’ and ‘targeted parents’:

There is established terminology in the technical literature and no need to use different terms

It prejudices the issues before the court, often as the child’s residency is in dispute

It excludes and discourages resident parents, often mothers, who are being alienated

It excludes consideration of non-parents, including grandparents, foster parents and step-parents who are alienators;

It can create confusion and misapplication of the law and remedies to the wrong parties, and lead the court into significant error that could cause harms to a child;

It is justified by “brevity” but in fact saves no time or space.



The section of the Guidance dealing with changes of residence is rendered functionally incomprehensible by the use of this terminology, as it is impossible to know which parent the Guidance is talking about at any particular time.

A similar biased error in approach in Practice Direction 12J (at [5], [34] and [36]) creates confusion that can prevent the proper protection of victims of domestic abuse, and can be the source of much resentment from victims who are not resident parents, causing public mistrust in the impartiality of the Family Court and the Judiciary generally. There is no apparent benefit to this. Additionally, as the “NRP” in this draft Guidance would be the victim of this domestic abuse, but the terminology of PD12J seems to prevent NRPs from being victims of domestic abuse, the two pieces of Guidance would seem to render each other ineffective in protecting victims.

M. Assertions of child trauma from change of primary residency

The Guidance does not provide evidence to support its claim that a change of primary residence is a traumatic experience. In situations where there are two good-enough parents in close proximity, there is little reason why primary residence cannot be transferred to alleviate a situation where risk of harm to the child is evident.

Where Alienating Behaviors are alleged but the child is not yet alienated, a change of primary residency cannot be considered especially or necessarily traumatic, even if large distances are involved. Children often move during their childhoods and are often enriched by the experience.

Where a child is already alienated, a change of primary residence must clearly be managed well, but probably done in short order. The FJC’s Guidance must also consider the healing impact of change of primary residency, as the child is freed to enjoy the love of both their parents. An additional change of school may even assist a child to alter their misconceptions.

This Guidance is made in the absence of supporting data or long-term longitudinal analyses of outcomes from ordered changes in primary residency. As such, the Guidance risks causing more harm to the child than is necessary.

The Family Court ought not to be preoccupied with maintaining a status quo, or too afraid of transient disruption, where a current situation appears to be harming a child or allowing risk of harm.

Unbalanced hyperbole about relocation trauma affronts the common law established by the Court of Appeal:

“In this as in other contexts, judges should be guided by what Sir Thomas Bingham MR said in *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124, 129, that “the court should take a medium-



term and long-term view of the child's development and not accord excessive weight to what appear likely to be short-term or transient problems.”³¹

“...in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term. But it does not represent a solution to the problem.”³²

N. Other unsupported assertions

The draft Guidance includes assertions that are unsupported by either case precedent or technical sources, are wrong and are potentially harmful.

“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.”

This astonishing claim denies any ability of a parent to influence the conduct of their children. There is well-established knowledge of parental influence on child behaviour: from obesity to sports-team fandom, reading-for-fun and maths skills, voting proclivities and mate selection. Child behavioural indications are widely applied in the welfare sector to identify children-at-risk³³. It may be correct to say its not ‘proof’ of abuse, but the behaviour of a child is unquestionably ‘evidence’ of how they have been / are being parented.

“If the child/children is/are spending time with the non-resident parent, the assertion of alienation is unlikely to be made out.”

There is no technical evidence supporting this assertion and it contradicts part a) of the FJC’s own 3-part test, which refers broadly to “refusing, resisting, or reluctant to engage” and so considers a range of child conduct, much of which would be observed whilst spending time with the Target parent.

In this sentence the FJC has abandoned the concept of ‘Alienating Behaviours’ and concerns itself with “assertion of alienation”. The fact of whether or not harmful behaviours are occurring should not be dependent upon proof of actual harm to the child: the behaviours are of themselves harmful and the question before the court is properly the RISK of harm to the child.

The FJC would seem here to be endorsing the continuation of known, proved harmful parenting until actual harm to the child is ‘achieved’.

³¹ Re M (A Child: Leave To Oppose Adoption) [2023] EWCA Civ 404 (18 April 2023) at [20]

³² S (Parental Alienation: Cult), Re [2020] EWCA Civ 568 (29 April 2020) at [13]

³³ See: <https://www.nspcc.org.uk/what-is-child-abuse/spotting-signs-child-abuse/>



“An order transferring a child from the care of one parent to the care of another solely on findings of alienation, will be rare.”

There is no basis for this assertion, which seems very much like an instruction. If one parent is abusing a child and the other is a good enough parent, the change of primary residence should be the first and primary option, as is required by Practice Direction 12J for child protection: the order must ensure the child is protected from harm (as well as a parent-victim).

The FJC has no evidence that this is not an effective and compassionate remedy to the infliction of abuse by a parent on a child. There is good evidence that most changes of primary residence of alienated children repairs BOTH parent relationships, whereas efforts to restore relationships whilst the child remains living with the alienating parent are often doomed to failure. The FJC’s assertion is pure ideology and risks causing actual harm to children.

O. The two sides of the ‘Parental Alienation’ debate are not equally valid

PA is subject to much gender-political gamesmanship. Those that contend that PA is “pseudo science” are, ironically, not usually scientists themselves but lawyers, often academic lawyers³⁴. Their “research” tends to be Critical Theory “knowledge products” designed to persuade rather than investigate and inform, and is often of poor scientific quality, biased for sex and anecdotal in nature. Importantly, the actual outcomes on the child are almost always overlooked. The overwhelming weight of scientific opinion on this matter recognizes that parental alienation represents a harmful dysfunction of the child’s attachment system, assessable using existing diagnostic criteria.

An example of influential, but poor-quality publications by legal scholars is a 2019 ‘study’ purporting to find misapplication of parental alienation in US courts³⁵. A scientific, peer-reviewed rebuttal and parallel assessment found as follows:

“We failed to find any support for the conclusions made by Meier et al..... Results indicate that the majority of courts carefully weigh allegations of all forms of family violence in their determinations about the best interests of children. These findings, along with several others, raise concerns that the methodological, analytical, and statistical problems we detail about Meier’s report that make her conclusions untrustworthy. Discussion focuses on the importance of using open science practices

³⁴ <https://www.americanbar.org/groups/litigation/committees/family-law/articles/2022/critics-of-parental-alienation-have-it-wrong/>

³⁵ Meier, Joan S. and Dickson, Sean and O’Sullivan, Chris and Rosen, Leora and Hayes, Jeffrey, Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations (2019). GWU Law School Public Law Research Paper No. 2019-56, GWU Legal Studies Research Paper No. 2019-56, Available at SSRN: <https://ssrn.com/abstract=3448062> or <http://dx.doi.org/10.2139/ssrn.3448062>



for transparent and rigorous empirical testing of hypotheses and the dangers of misusing scientific findings to mislead influential professionals who affect the well-being of millions of families.”³⁶

The debunking of the Meier paper was recently confirmed by a significant replicative empirical study which further found Meier’s gendered narrative about women’s abuse allegations being disregarded was false³⁷.

Yet this paper still found influence in UNSRVAW’s Report (2023 A/HRC/53/36) calling for parental alienation to be excluded entirely from ‘custody’ decisions in Family Courts. The UNSRVAW report was itself soundly critiqued as biased and unreliable^{38,39} and she refuses to release the responses she received to her ‘call for inputs’. More recently, the BBC reported on a ‘study’ criticising the Family Court by another lawyer, Dr Elizabeth Dalgarno⁴⁰, focused entirely on adult women’s subjective experiences but which, as yet, remains unpublished and therefore cannot be critiqued.

Meanwhile the Domestic Abuse Commissioner published her own advice on reforming the Family Court⁴¹ that leans heavily of the UNSRVAW’s Report, the similarly-flawed ‘Assessing risk of harm to children and parents in private law children cases’ report of 2020 (authored by legal scholars, methodically flawed, and published but disowned by the UK Ministry of Justice so that the civil service code or Magenta Book standards don’t apply), and the DAC’s own ‘practitioner survey’. The DAC’s practitioner survey mirrored many of the design flaws of the UNSRVAW’s ‘call for inputs’, was shut down early, and the DAC’s office refused a Freedom of Information (FOI) request to provide reasons for the shutdown nor to provide the survey questions, promising these will be published later - presumably after this FJC consultation has ended.

Such conduct is rife in this policy area due to the powerful influence of activists seeking to ‘win’ adult ‘gender wars’, and weak institutions that are unwilling to remain principled and truthful in the face of activist pressure⁴².

Typical misinformation strategies of Critical Theory “knowledge products” include:

- Gendered and selective data sampling, especially excluding fathers despite almost all Family Court disputes involving one male and one female litigant;

³⁶ Harman, J.J. and Lorandos, D., 2021. Allegations of family violence in court: How parental alienation affects judicial outcomes. *Psychology, Public Policy, and Law*, 27(2), p.184.

³⁷ Harman, J., Giancarlo, C., Lorandos, D. and Ludmer, B., 2023. Gender and Child Custody Outcomes Across 16 Years of Judicial Decisions Regarding Abuse and Parental Alienation. *Children and Youth Services Review*, p.107187.

³⁸ https://www.academia.edu/102761213/An_Analysis_of_the_Report_by_the_Special_Rapporteur_on_Violence_against_Women_and_Girls_Its_Causes_and_Consequences

³⁹ <https://www.centreforalepsychology.com/male-psychology-magazine-listings/parental-alienation-and-the-united-nations-is-gender-politics-getting-in-the-way-of-childrens-wellbeing?rq=alienation>

⁴⁰ <https://www.bbc.co.uk/news/uk-66531409>

⁴¹ <https://t.co/a5QMFGfJm>

⁴² William Bernet (2021) Recurrent Misinformation Regarding Parental Alienation Theory, *The American Journal of Family Therapy*, DOI: 10.1080/01926187.2021.1972494



- Focus on who ‘wins’ the adult conflict in court, ignoring the outcomes for the children
- Relying on unverified subjective anecdotes, mostly from mothers aggrieved they lost their cases when their allegations were examined in court
- Failing to disclose or publish research data or responses
- Asking survey / qualitative questions that are leading or biased-by-presupposition
- Undertaken by lawyers and reviewed by ‘peers’ with no technical qualifications
- Failing to search for contrary evidence or examine alternative explanations
- Publishing in socio-legal journals with low technical standards
- Bypassing quality controls required for civil service publications, the application of other professional standards or any other means of holding the authors to account for their conduct

This may be compared to the data-driven, transparent and technically-valid research conducted by psychologists examining the phenomenon, that has “produced a scientifically trustworthy knowledge base”⁴³.

Most recently, the UK’s first statistically-valid, scientifically peer-reviewed study of alienating behaviours in the UK has been published, using a sample of 1,005 separated parents recruited from a data pool of over 50,000 using a probability sampling methodology, collected by an independent data analytics company, fairly approximating the composition of the UK population.⁴⁴ It found not only that the prevalence of alienating behaviour is 59% of separated families, with 27% demonstrating disrupted parental attachments, but that “Prevalence did not differ between any of the key sociodemographic groups including gender”. This appears to contradict a widely-held belief that alienating behaviours are gendered.

‘Parental Alienation’ is diagnosable

An oft-repeated myth, unfortunately included in the President’s comment in *Re C*, is that parental alienation is not capable of diagnosis. But this is not true. Rather, it is diagnosed under a broader category of attachment dysfunction. For instance, the World Health Organisation delisted PA because:

“The broader category of ‘caregiver-child relationship problem’ was seen as adequately covering aspects of this phenomenon that could be the focus of health services

...

⁴³ Harman JJ, Warshak RA, Lorandos D, Florian MJ. Developmental psychology and the scientific status of parental alienation. *Dev Psychol.* 2022 Oct;58(10):1887-1911. doi: 10.1037/dev0001404. Epub 2022 Jun 2. PMID: 35653764.

⁴⁴ Hine, B. A., Harman, J. J., Leder-Elder, S., Bates, E. A. (2023). *Acrimony and abuse: Establishing the prevalence of family violence in the context of family breakdown, separation, and divorce (FBS) in the United Kingdom.* Sir Halley Stewart Trust.



“In situations in which an individual labelled with [parental alienation] presents for health care, other ICD-11 content is sufficient to guide coding. Users may classify cases to ‘caregiver-child relationship problem’”⁴⁵

Similarly, the American Psychological Association’s DSM-V recategorized parental alienation as “child affected by parental relationship distress”, so that “the notion is clearly referred to in at least two chapters of the new American classification of mental disorders”.⁴⁶

[Submission to this consultation from Dr Craig Childress](#)

United States psychologist Dr Craig Childress has very recently made his submission to this consultation publicly available. His forceful rhetorical approach notwithstanding, Dr Childress appears to be in broad agreement with the key tenets of this submission.

In particular, at pg 14, he distinguishes between ‘psychological control’ and ‘behavioral control’, which roughly corresponds to the two-stream approach proposed herein (respectively, “an alienated child” and “alienating behaviours”). He does not expand on ‘behavioural control’/‘alienating behaviours’, which would be matter of legal determination of facts, but rather focuses on what to do about an alienated child. In this respect his process diagram on pg 13 seems to be relevantly similar to our proposed “Alienated Child” stream described in Figure 1 (supra), importantly including early expert diagnosis once the Court realises the child is alienated (i.e. an ‘attachment pathology’). The ‘pathogenic parenting’ construct provides for ‘inadvertent alienation’, albeit still categorized as pathological in nature.

We note important observations from Dr Childress that are also broadly reflected in this submission:

“Doctors should not be deciding on custody. Judges should not be diagnosing the cause of pathology”

“A child who is refusing, resisting, or reluctant to engage in a relationship with a parent represents an attachment pathology”

“When child custody cases enter the courts and severe attachment pathology is part of the presentation, a proper risk assessment for child abuse should be routinely conducted as soon as possible to return a diagnosis to guide the Court’s decision making surrounding the child”

“Making it a requirement to observe parenting behaviors when the parent is alone with the child will prevent the diagnosis of Child Psychological Abuse since the pathogenic parenting episodes are rarely presented to others.”

⁴⁵ <https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation>

⁴⁶ Bensussan P. [Parental alienation, child psychological abuse and DSM-5]. L'encephale. 2017 Dec;43(6):510-515. DOI: 10.1016/j.encep.2017.08.003. PMID: 29169785.



“Following the recommendations of this Guidance will lead to undiagnosed and un-treated Child Psychological Abuse in the family courts by pathological parents”

“The worst possible thing we can do is leave a breached attachment bond un-repaired”

“A child rejecting a parent due to child abuse is a serious trauma and treatment for the trauma created by child abuse needs to be undertaken. The rejection of a parent is not “justified” – it is trauma ... The conceptualization that any pathology is “justified” is a misunderstanding of the situation”

“When that [parenting] pathology is also the psychological spousal abuse of the targeted parent by the allied parent using the child as the weapon, then the mental health professional and/or the Court become participants in the spousal psychological abuse of the targeted parent because of their misdiagnosis of the pathology in the family.”

“Children do not make custody decisions. Asking the child’s preference will directly triangulate the child into the spousal conflict and provoke loyalty binds for the child. . It is possible that the child’s beliefs and opinions are influenced and compromised by the manipulative psychological control of a pathological (narcissistic-borderline dark personality) parent. Diagnostic clinical interviewing of the child should be informed with the necessary professional knowledge required for competence.”

Also

“There is Child Psychological Abuse (DSM-5 V995.51). But there is NO defined pathology in clinical psychology called “parental alienation” – it is mythical thing that people just make up.” This broadly accords with our assertion that ‘Parental Alienation’ is diagnosed under broader categories of attachment dysfunction.

“In all cases of child abuse, we always protect the child. ... If a child abuse diagnosis is returned from a proper risk assessment, then professional standards of practice and duty to protect obligations require the child’s protective separation from the abusive parent. ... When the child’s recovery has been stabilized, the child’s contact with the abusive parent is reestablished with enough safeguards in place to ensure that the child abuse does not resume when contact with the abusive parent is restored.” This conflicts somewhat with Dr Childress’s earlier assertion that “Doctors don’t make custody decisions”, however it highlights the need for the Court to benefit from expert opinion about the appropriate child protection and treatment in these complex cases.

“Parents should always follow court orders. Parents should teach their children to always follow court orders. If a parent teaches their child that disregarding court orders is okay, then a DSM-5 diagnosis of Child Neglect (V995.52) should be considered.” – This is the closest Dr Childress comes to examining in any detail ‘behavioral control’/‘alienating behaviours’ without a psychologically-determined impact on the child, but



his recommended response to such observed failures in parenting capacity is clear: it is abusive and ought to be stopped.



P. Line-by-line analysis of the draft Guidance

GUIDANCE TEXT	COMMENT
<p>1. Introduction and scope of the Guidance</p>	
<p>'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.</p>	<p>It is wrong and a disservice to children to equate rigorous scientific literature generated by psychologists with poor-quality, biased, Critical Theory "knowledge products" produced by activist lawyers and published in low-standard journals, or even without any professional standards applied at all.</p> <p>The FJC must not be afraid to discern quality.</p>
<p>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..</p>	<p>But the Guidance does exactly that with a series of unsupported assertions about alienation and child attachments.</p>
<p>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.</p>	<p>This guidance has switched from 'parental alienation' to 'alienating behaviours' as if the two were synonymous.</p> <p>This Guidance should be clear that 'Alienating Behaviours' are the means by which parental alienation occurs.</p> <p>A child can be observed to have become alienated without allegations of specific 'alienating behaviours' being made.</p>
<p>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.</p>	
<p>Graphic: Mapping Litigation Journey</p>	<p>No account is made for AB in the absence of DA. (AB indicated, no DA alleged).</p> <p>No facilitation is made for allegations of AB during proceedings, or observations that a child has become alienated during the proceedings.</p> <p>No account is made for interventions for Alienated Children</p>
<p>3. Case Management Guidance Note for the Family Court: Cases in which alienating behaviours are alleged</p>	
<p>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:</p> <ol style="list-style-type: none"> the child is refusing, resisting, or reluctant to engage in, a relationship with a parent or carer; the refusal, resistance or reluctance is not consequent on the actions of the non-resident parent towards the child or the resident parent; and 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. 	<p>We reject this 3-part test for the reasons set out in the main body of the response.</p> <p>Alienating Behaviours need only be determined to have occurred.</p> <p>It would be useful for the court to then determine whether they are intended or inadvertent, which will assist in remedying the harmful behaviours.</p>



GUIDANCE TEXT	COMMENT
<p>Either parent could demonstrate alienating behaviours. Such behaviours can include (but are not limited to) one parent:</p> <ul style="list-style-type: none"> • 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. 	<p>Alienating behaviours can be demonstrated by both parents.</p> <p>Comments on this list are provided in the main body of our response</p>
<p>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.</p>	<p>We reject the use of these terms for reasons in the main body of our response.</p>
<p>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.</p>	
<p>The Burden of Proof</p>	
<p>Whilst alienating behaviour can be subtle and insidious, a parent alleging alienating behaviours must discharge the burden of establishing that such behaviour has occurred.</p>	<p>This is an impossible standard that facilitates ongoing abuse of children.</p>
<p>Evidence of alienating behaviours</p>	
<p>Where alienating behaviours are alleged, the court should require those making the allegation to identify the evidence upon which they rely.</p>	
<p>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.</p>	<p>Alienating behaviours can be acts of non-parents. “Alienation” does not require evidence of act - the court may require evidence to respond but it is not definitional to the term “alienation”.</p> <p>The Guidance must be clear that the court can act to secure the welfare of the child and the welfare of the child is the court’s paramount consideration.</p> <p>Child abuse can be evidenced by the presentation of the child.</p>
<p>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.</p>	<p>This is not technically true. This is an assertion without validation. The FJC cannot invent facts. The uniquely intense dependent relationship of a child with their parent absolutely means that their conduct is evidence of parental influence.</p>
<p>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.</p>	<p>Not clear what “and safely” means in this sentence.</p>
<p>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.</p>	<p>The FJC should be clear that the child is at risk of being harmed by the alienation itself and appropriate intervention is required regardless of cause.</p>
<p>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.</p>	<p>This highlights the importance of taking a diagnostic approach where there is contact refusal or reluctance, because the condition of being a child alienated from their “good-enough” parent is harmful in and of itself,</p>



GUIDANCE TEXT	COMMENT
	<p>regardless of cause, and appropriate intervention is required.</p> <p>In the event the psychological work reveals that the child's response is the result of alienating behaviours, those behaviours need to be stopped</p>
Robust Case Management	There ought to be a different track for 'Alienating Behaviours' and 'an Alienated Child'
First steps	
<p>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.</p> <p>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.</p> <p>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.</p>	<p>The facts only of whether there have been alienating behaviours can be determined at magistrates level. The court must not be permit abusive conduct to continue merely because it hasn't yet wrecked the children. But the determination of facts is within the scope of the magistrates' tier.</p> <p>The promotion to a higher tier is required wherever the actual alienation of the children is alleged or apparent, whether or not there is evidence of 'Alienating Behaviours', as the welfare issue has been triggered and the court cannot readily determine the children's wishes and feelings without expert assistance.</p>
<p>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.</p>	
<p>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.</p>	<p>This duty is not explained well – it seems to suggest that the court should endeavour to prevent alienation of the child during the course of the proceedings. This could be achieved by means such as ensuring adequate interim contact is maintained and the parents are appropriately warned about Alienating Behaviours.</p> <p>The Guidance should be more explicit.</p>
<p>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.</p>	<p>The facts only of whether there have been 'alienating behaviours' can be determined at magistrates level.</p> <p>The promotion to a higher tier is required only when actual alienation of the children is alleged or apparent, whether or not there is evidence of 'Alienating Behaviours', as the welfare issue has been triggered and the court may not be able to readily determine the children's wishes and feelings without expert assistance.</p>
<p>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.</p>	<p>We reject the 3-part test. For reasons set out in the main body of this response.</p> <p>The court's attention should be focussed on the children's welfare interests, not on the 'prospects of success' in a fact finding hearing.</p> <p>There is no similar 'prospect of success' assessment for any other allegation of child or domestic abuse. Why only this form?</p>
Case management hearings	



GUIDANCE TEXT	COMMENT
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.	<p>This assertion has no foundation in empirical evidence or case law.</p> <p>On the issue of 'Alienating Behaviours', if the allegations can be made out they should be proceeded with regardless of whether they have ruined the children YET. To do otherwise is abusive of the child and to place that child at risk</p>
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.	<p>The court should not be determining the reasons for contact refusal, as it is a question of what is in the mind of a child. but rather that should be put to an expert assessing psychologist.</p> <p>Ultimately, this is an issue of determining the child's authentic wishes and feelings. A Guardian ad Litem ought to be appointed to represent the child's authentic views directly to the court.</p>
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.	<p>Cafcass do not have the expertise to assess a child's psychological state. An alienated state - a child attachment disorder - is a serious psychological condition that ought to be examined professionally.</p>
The court and Cafcass must remain mindful that children can form negative views about a parent without influence or manipulation from the other parent.	<p>Negative views is not the same as alienation. Ambivalence is normal.</p> <p>The assertion that alienated behaviour can occur without influence or manipulation from the other parent is not supported by any technical scientific paper nor empirical evidence.</p> <p>We absolutely reject the FJC's proposition that parents are helpless against the development of the child's views of the other parent. Whatever the underlying reasons for contact refusal may be, each parent has a positive duty to</p>



GUIDANCE TEXT	COMMENT
	the child to help them develop and retain a positive relationship with their other parent and their extended family. A failure to reconcile the child with an alienated parent is a failure in parenting capacity of the parent with care.
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.	<p>‘Consequent’ is too binary and ignores proportionality. A mild or inconsequential act of abuse may not justify the estrangement of a parent, and some other factor may be at play.</p> <p>An Alienation Child may be justified from the point of view of an external person, but nonetheless could actually be the result of some alienating behaviour instead /as well.</p> <p>Justified estrangement ought to be determined by an assessing psychologist, as there may be multiple causative elements and the child’s welfare dictates that their psychological position is assessed.</p> <p>The FJC seems to drop concern about the child as soon as they can’t nail the blame to a person.</p> <p>Even in cases where estrangement might be justified, the the child is nonetheless presenting as psychologically harmed and ought to be treated.</p> <p>Treatment may include the child’s reconciliation with the estranged parent, even if that parent has been abusive. The child’s long-term best interests are required to be the paramount concern the Family Court.</p> <p>An assessing psychologist may assist the court in regards to repairing justified estrangement.</p>
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?	Careful guidance is required concerning the use of covert recordings by parents. Because the actions of parents are not often watched as the relationship is so personal, targeted parents may overtly or covertly record the children making disclosures about the care of the other parent. Such ‘evidence gathering’ may be harmful to the child. Conversely, it may be necessary to prevent ongoing harm. We recommend the guidance is detailed about what the Court ought to accept and offer the following suggestions:



GUIDANCE TEXT	COMMENT
	<p>Covert recording is less likely to be harmful to the child than overt recording;</p> <p>Recording the other parent’s time with a child violates the other parent’s and the child’s privacy;</p> <p>The Court must ensure that disclosures are unforced and any conversation between parent and child is natural.</p>
<p>Possible directions</p>	
<p>Are schedules needed as well as narrative statements?</p>	
<p>Should case management directions await the formal joinder of the child?</p>	
<p>Should the child/ren be joined as a party? Consider approaching Cafcass for agreement to join the child and appoint a guardian.</p>	<p>We recommend that in any case of observed alienation, a Guardian ad Litem ought to be automatically appointed and an expert psychologist report undertaken, regardless of the cause of the alienation. The facts and blame matter less than the psychological well-being of the child.</p> <p>Early psychological assessment and intervention may circumvent any need for a fact-finding hearing.</p>
<p>Consider the appointment of NYAS.</p>	
<p>Is a fact-finding hearing relevant, proportionate and necessary?</p>	
<p>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).</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	<p>The Guidance should stipulate that not only “that allegations of alienating behaviours are sometimes raised as a response to allegations of domestic abuse”, but also that false or vexatious allegations of abuse are sometimes raised as a means of alienating a child from the accused parent.</p> <p>The court must also “carefully examine what/why and when the allegations of [abuse] were first reported to be an issue”.</p> <p>The court must remain mindful of alienating behaviours occurring during the course of its proceedings, and these may only have had a noticeable affect after commencement of proceedings.</p>
<p>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</p>	<p>Guidance is required on recordings of child disclosures for reasons set out in the main body of the response</p>



GUIDANCE TEXT	COMMENT
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.	<p>The court need only determine whether Alienating Behaviours have occurred.</p> <p>The impact of such behaviours on the child is not a matter of fact that can be properly determined by a court, not least as the court has no direct interaction with the child, but rather is an assessment of the individual child best performed by an assessing psychologist. The court may then make determinations based on the psychologist report.</p> <p>The court may in any event determine that the behaviours would be likely to affect a notional, "reasonable child" who was exposed to them.</p>
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?	The Family Court must do its utmost not to itself be a cause, agent or facilitator of alienation, and so must provide the maximal contact possible within the parameters of ensuring safety of the child and both parents.
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 is in no place to make such psychological determinations of the child, who is not even present at the hearings.
The court should remain mindful that for an allegation of alienating behaviours to be made out, all three elements must be established.	This is a statement of clear intent to create law and prevent the court from acting in the best interests of the child, violating the Children Act 1989 and the Human Rights Act 1998.
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.	<p>We disagree.</p> <p>The court is imbued with the obligation to determine whether or not a parent has committed act of domestic and child abuse, particularly when the court itself has been used to achieve that end.</p> <p>The court holds this duty not only to the child, but to the wider public as the Family Court cannot be participating in domestic and child abuse as cause, agent or facilitator.</p>
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.	There is no basis for this assertion other than the 'new law' being created ultra vires by the FJC.



GUIDANCE TEXT	COMMENT
	If an allegation is false, nothing more need be proved for it to be Alienating Behaviour other than it did limit or prevent the child’s relationship with their 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.	Where there is observed alienation, an expert should always be considered necessary and proportionate because the court is positively charged with exceptional diligence and to obtain the child’s authentic wishes and feelings, and there is a present child psychological welfare issue before the court
The court must consider the type of expert evidence required, always remembering that ‘alienation’ is not a syndrome capable of being diagnosed.	This is an assertion is not supported by empirical evidence. Alienation is capable of being diagnosed under existing criteria as an attachment disorder, but is not separately diagnosed. Reference is made to the WHO and DSM V
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.	
4. Guidance Note for the Family Court on Welfare decisions where findings of alienating behaviours have been made	Welfare decisions should be determined whenever there is observed alienation (ie. equivalent to the first part of the proposed test is satisfied) and prior to worrying about whether ‘alienating behaviours’ are found. This is because a welfare issue has been identified. The Court cannot just ignore identified welfare issues.
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.	<p>It is insufficient for the guidance to merely discourage the use of one remedy (change of residence). The Guidance ought to provide other intervention strategies and the considerations that ought to be applied for each strategy.</p> <p>Regardless, where one parent has been found to be abusive, PD12J must be applied to limit the contact of the abusive parent.</p> <p>The court must ensure the child safety before further work is done. Where the other parent is “good enough” a change of residence ought to be the primary means of ensuring child safety.</p> <p>The FJC has the resources and ability to investigate whether change of residence has proved to be an effective long-term measure.</p>



GUIDANCE TEXT	COMMENT
Guidance	
Statements	
<p>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.</p>	
The Guardian	<p>Guardian should be appointed where-ever actual alienation is identified.</p>
<p>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.</p>	<p>A Guardian would not usually be required where only Alienating Behaviours are alleged but the children are not yet presenting as alienated.</p>
Interim measures	
<p>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).</p>	
<p>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.</p>	<p>This may not be required where only Alienating Behaviours are alleged but the children are not yet presenting as alienated.</p>
Assessments	
<p>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.</p>	
<p>The court will also wish to caution itself against appointing experts to assess a family where the expert has a financial interest in the</p>	<p>There is a specious allegation of profiteering by psychologists which is not supported by the evidence.</p>



GUIDANCE TEXT	COMMENT
<p>delivery of subsequent services. (FJC-interim-Guidance-use-of-experts-in-cases-with- allegations-of-alienating-behaviours.pdf (judiciary.uk)).</p>	<p>Nonetheless, the appointment of Guardian in these matters will control any excessive use of psychological experts.</p> <p>Continuity of Care: The dual-role of a “professional witness” is a useful means of minimising the affect on the child of bandying them about from professional to professional. Continuity of Care is an important consideration for child welfare, and has commonality to the concept of judicial continuity in its ability to provide the court with consistent, developed knowledge of the matter.</p>
<p>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.</p>	
<p>The child’s timetable</p>	
<p>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.</p>	
<p>Parent’s attitude to reparative work</p>	
<p>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.</p>	<p>The FJC cannot simply make this assertion. If one parent is abusing a child and the other is a good enough parent, the change of primary residence should be the first and primary consideration, utilising the principles of PD12J for child protection.</p> <p>The FJC has no evidence that this is not an effective and compassionate remedy to the infliction of abuse by a parent on a child.</p>
<p>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.</p>	<p>The FJC is obsessed by the adult conflict to the detriment of child welfare issues.</p> <p>It is not a ‘sanction’ but a remedy. A parent’s refusal to help restore the disrupted relations is a prima facie failure of parenting capacity.</p> <p>The FJC is recommending against a valuable and effective remedy to child abuse with nothing to offer otherwise.</p>
<p>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’.</p>	<p>The FJC is making recommendations blind to the empirical evidence that is available.</p> <p>Short-term or transient issues should not be the overriding consideration of the Court.</p>
<p>Welfare the paramount consideration</p>	



GUIDANCE TEXT	COMMENT
<p>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.</p>	<p>FJC ironically says the welfare of the child is the paramount consideration but then only talks about the welfare of the parent.</p> <p>The FJC ought to be reinforcing the Court of Appeal decision in Re S about the need for judicial resolve.</p>
<p>Factors to be weighed in the balance</p>	
<p>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:</p>	
<p><i>Wishes and feelings of the child</i></p> <p>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.</p>	<p>The FJC ought to be warning that where the Court has found either Alienating Behaviours or observed actual alienation, the court's reliance on the children's expressions must be highly restricted.</p> <p>To suggest the opposite is a betrayal of the FJC's duty to the child.</p>
<p><i>Physical, emotional, and educational needs</i></p> <p>b) The child's future relationship with the non-resident parent if there is only indirect contact</p> <p>c) A total cessation of contact both direct and indirect</p> <p>d) The impact of continuity or change of schooling/educational arrangements will often need to be considered</p> <p>e) The practical and physical arrangements for care of the child during and after any change of residence</p> <p>f) Therapeutic support for the family</p>	<p>Here the FJC's decision to inter-change the is causing immense confusion.</p> <p>Who are they talking about here?</p> <p>Why would the Targeted parent's contact be restricted?</p> <p>The FJC should here be reinforcing the Court of Appeal's views of transient issues and the long-term welfare interests as expressed in Re M 2023</p>
<p><i>The likely effect on the child of any change in their circumstances</i></p> <p>g) Different contact arrangements for siblings or possible separation from siblings</p> <p>h) Separation from the resident parent</p> <p>i) Contact plans for any new family configuration</p>	<p>The FJC should here be reinforcing the Court of Appeal's views of transient issues and the long-term welfare interests as expressed Re M 2023</p>
<p><i>Any harm the child has suffered or is at risk of suffering</i></p> <p>Risk of the child's living arrangements with the resident parent breaking down</p> <p>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</p> <p>k) Risk of the child's living arrangements breaking down if the child is moved to the current non-resident parent</p>	<p>The FJC should here be reinforcing the Court of Appeal's views of transient issues and the long-term welfare interests as expressed and the need for judicial resolve.</p>
<p><i>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</i></p>	



GUIDANCE TEXT	COMMENT
<p>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</p>	
<p><i>The range of the powers available to the court in the proceedings in question</i> 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.</p>	
<p>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.</p>	<p>The FJC should consider the healing potential for the child of change of residence.</p>
<p>The Guardian’s role</p>	
<p>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; <i>“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.”</i></p>	<p>The Guidance should explain that where Alienating Behaviours have not been observed to have YET had the effect of alienating the child from their parent, but a change of residence is required to protect the child and the targeted parent provides good enough care, the court can and should act quickly in accordance with Re S. Excessively, unnecessary delay is inimical to the welfare interests of the child.</p>
<p>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.</p>	
<p>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.</p>	
<p>Review</p>	
<p>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.</p>	
<p>Conclusion</p>	



GUIDANCE TEXT	COMMENT
<p>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.</p>	
<p>5. Guidance Note for the Family Court: Understanding hostility and psychological manipulation in cases in which alienating behaviours are alleged</p>	
<p>What does hostility look like?</p>	
<p>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.</p>	
<p>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.</p>	
<p>None of these behaviours can be taken to indicate evidence of exposure to alienating behaviours by the other parent in their own right.</p>	<p>This is untrue. In any form of child abuse, the child’s presentation indicates evidence of exposure to parental abuse. The FJC does not explain why, uniquely in respect only to parental alienation, this evidence ought to be disregarded. Further this violates the principles of child safeguarding established in the aftermath of ‘Baby P’. “indicate” is a sufficient qualifier. “in their own right” is meaningless. Therefore “these behaviours can indicate evidence of exposure to alienating behaviours”</p>
<p>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.</p>	<p>The FJC should not be providing bar-room psychological advice. This is for the expert psychologist to assess in interaction with the individual child.</p>
<p>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.</p>	
<p>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</p>	



GUIDANCE TEXT	COMMENT
<p>child is in what is sometimes referred to as an ‘alienated position’ in the family dynamic.</p>	
<p>Psychological manipulation</p>	
<p>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., <i>Re H (Children)</i> [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.</p>	
<p>6. Guidance Note for the Family Court: Use of experts in cases in which alienating behaviours are alleged</p>	
<p>Use of experts</p>	
<p>It is inappropriate for experts to be asked to step into quasi-fact finding or determination of alienating behaviours</p>	<p>This is an unsupported assertion and is later contradicted by the FJC in this draft Guidance: “... and assess what the cause of such harm may be”</p> <p>A psychological assessment is absolutely required to establish certain facts of a psychological nature. Hence the term “assessment”.</p> <p>It is in fact wholly inappropriate for the Court to make quasi- or actual psychological assessments, which the FJC’s 3-part test requires it to do, with no professional expertise and no contact with the children.</p>
<p>– 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.</p>	<p>A Psychological Expert is required where-ever the child is refusing contact – that is alienation has been observed - whatever the cause. The assessment can help direct the court as to what findings of fact are required to be found to determine the appropriate resolution.</p> <p>For instance, a child might have identified a parent breaking into the house as a reason for her fear. However, this may never have actually happened. The Court ought to make findings of fact about the incident and where the child obtained a false view of reality.</p>
<p>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</p>	



GUIDANCE TEXT	COMMENT
<p>psychological tests, given in <i>Re C ('Parental Alienation')</i> [2023] EWHC 345 (Fam).</p>	
<p>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</p>	
<p>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.</p>	
<p>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.</p>	
<p>Conflict of interest</p>	
<p>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:</p>	
<p><i>"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</i></p>	<p>The BPS guidance also considers 'professional witnesses', and this should be incorporated into the Guidance so that the affected children are not banded about between professionals more than they must be.</p>



GUIDANCE TEXT	COMMENT
<p><i>helpful and facilitative to the court, this would be a clear conflict of interest and threat to the independence of their expert evidence.</i>"¹</p>	
<p>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.</p>	
<p>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:</p>	
<ul style="list-style-type: none"> • Transparent as to the intervention and requisite qualifications needed to effect desired change. 	
<ul style="list-style-type: none"> • Interpretable by a wide range of practitioners in the field. 	
<ul style="list-style-type: none"> • Deliverable by any suitably qualified practitioners. 	
<p>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.</p>	<p>This ought to be controlled by the Guardian. There is a welfare benefit for the children from professional continuity, that should not be disregarded without due consideration.</p>
<p>References:</p>	
<p>1. Guidance on the use of Psychologists as Expert Witnesses in the Family Courts in England and Wales (Standards and Competencies) - June 2023 BPS</p>	<p>This is a disconcertingly sparse reference range for such an important issue of child welfare that is so technically complex.</p>
<p>2. https://www.judiciary.uk/wp-content/uploads/2021/10/PFD-Memo-Experts.pdf</p>	