

Family Justice Council

23<sup>rd</sup> October 2023

Dear Family Justice Council

**Re: Consultation on Alienating Behaviours**

Thank you for the opportunity to contribute to your consultation on alienating behaviours. This issue is of significant concern to me following a series of cases that have been raised with my office, where victims of serious abuse have been traumatised and separated from their children or parent following false allegations of "alienation". I am grateful to the Family Justice Council (FJC) in your efforts to provide stronger guidance on the issue, the final draft of which I hope will better protect victims and children.

To begin, I welcome that this draft guidance:

- Clarifies that there are three elements which must be established before concluding alienating behaviours have occurred;
- Stipulates that allegations of alienating behaviours can only be heard by a judge;
- Acknowledges that resistance to building a relationship with a parent who has been abusive may be a justified response and that allegations of alienating behaviours will fail when abuse has been likely present;
- Acknowledges that a child's resistance can be for a multitude of reasons not automatically the result of alienating behaviour;
- Clarifies that the behaviour of a child is not evidence of the behaviour of an adult;
- Clarifies that failed or false allegations do not constitute alienating behaviour without evidence that the child has been manipulated;
- Is clear that a finding of alienating behaviour should never be an automatic trigger for a change in a child's placement.

However, I remain concerned that this guidance will have negative consequences for parents and children who are victims of domestic and/or sexual abuse through the overall use of an alienating behaviours framework which validates and encourages alienation allegations. There are also some additions which I believe are required and some aspects of the guidance that should be strengthened. I provide details below, followed by a summary of my recommendations.

**The term parental alienation or alienating behaviours**

There is no agreed upon scientific, clinical, or governmental definition of parental alienation or alienation or alienating behaviours. There is also no reliable data on its prevalence and no robust empirical studies to back up the concept. Indeed, many experts on alienation claim it is unconscious even to the alienating parent or alienated child, so it is unclear how such alienation could ever be clearly evidenced.

In a recent judgement, Judge Clive Baker wrote "the term parental alienation is controversial and debates around the issue often speak of it being a 'theory' or a 'science'....As the higher

courts have made clear, it refers to something that is neither of those things and in fact is not a particularly helpful short-hand for the necessity in some cases to examine the factual matrix that underpins a child's wishes and feelings"<sup>1</sup>.

The Ministry of Justice's Harm Panel review 2020, identified that accusations of so-called parental alienation are regularly used by abusers to deflect or minimise their behaviour and undermine the voice, wishes and feelings of a victim and/or child. These claims are then supported by experts who subvert a child's fear or reluctance to see an abusive parent as evidence of alienation. The Harm Panel Review identified that fears of false alienation allegations are leading survivors to suppress disclosures of abuse. The result is a chilling effect where victims are being advised not to raise allegations for fear of retribution, and children are not trusted to be messengers of their own experiences. A report from the United Nations Human Rights Council similarly demonstrated how this theory is "widely used to negate allegations of domestic and sexual abuse within family court systems on a global scale"<sup>2</sup>.

It is difficult for those working with or on behalf of victims to accept the concept of alienation or alienating behaviours as this originates in a theory of "parental alienation syndrome" that was developed to minimise the abuse of women and children. Richard Gardner coined the term as a means to refute child sexual abuse allegations. In explaining his theory, Gardner made statements such as "the child has to be helped to appreciate that we have in our society an exaggeratedly punitive and moralistic attitude about adult-child sexual encounters". He also stated that a mother who is objecting to contact after child sexual abuse allegations "has to be helped to appreciate that in most societies in the history of the world, such behaviour was ubiquitous, and this is still the case"<sup>3</sup>. His theories are contrary to accepted children's safeguarding approaches and legislation, including the definition of sexual abuse as outlined in "Working Together to Safeguard Children".

With this being the origin of the term parental alienation, and the continued use of this term to perpetuate abuse via private law proceedings, I am concerned that the term alienating behaviours is a new iteration of "parental alienation syndrome" which has been identified as a pseudo-scientific concept by the United Nations and unhelpful for understanding the context of a child's reluctance, resistance, or refusal for contact. I strongly advocate that the FJC reconsider its use of this term and look for a more nuanced framework, such as that advocated by the Domestic Abuse Commissioner in her report "*The Family Court and Domestic Abuse: achieving cultural change*"<sup>4</sup>.

I also recommend much stronger recognition within this guidance that most allegations of parental alienation or alienating behaviours are an attempt to deflect from domestic abuse and child abuse and that genuine attempts to control and coerce a child and/or the other parent by undermining a child's relationship with that parent, are in the minority of cases.

I do not accept alienating behaviours as a response to allegations of domestic or sexual abuse, however I do accept that a child's relationship with a parent can be undermined by the other parent in high-conflict relationships. However, this is usually within the context of controlling and coercive behaviour and post-separation abuse. I do not recognise it as isolated or stand-alone

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<sup>1</sup> <https://www.thebureauinvestigates.com/stories/2023-10-21/family-court-files-mothers-ordeal-after-judge-dismisses-rape-allegation-in-error>

<sup>2</sup> United Nations General Assembly (2023) *Human Rights Council, 53<sup>rd</sup> Session: Custody, violence against women and violence against children; Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem*

<sup>3</sup> Gardner, R.A. *Child Custody Litigation: A Guide for Parents and Mental Health Professionals*, 1986

<sup>4</sup> Domestic Abuse Commissioner (2023) *The Family Court and domestic abuse: achieving cultural change* [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-2023_Digital.pdf)

behaviour, but as one amongst other behaviours that demonstrate a pattern of controlling and coercive behaviour as defined by Section 76 of the Serious Crime Act 2015, which was amended as part of the Domestic Abuse Act 2021 to recognise post-separation abuse.

## Domestic Abuse

Children who live with domestic violence are considered victims of abuse in Section 3 of the Domestic Abuse Act 2021. The FJC guidance must make this clear. I have spoken with several parents where private law family proceedings have concluded that domestic abuse was a factor, however it was irrelevant to proceedings as it had no welfare impact on the child. This is wrong and contrary to the Domestic Abuse Act 2021 and Section 31A of the Children Act 1989. Findings that domestic abuse does not impact on a child, will also inevitably support allegations of alienation as the victim-parent can be characterised as overly concerned with their own welfare as opposed to their child's. The guidance should make clear that domestic abuse will always be relevant to the welfare of the child.

As illustrated by the Harm Panel report 2020, allegations of parental alienation may be brought as part of ongoing post-separation abuse. The FJC guidance should highlight this, so that judges are alive to the possibility that private law proceedings can be exploited for this purpose and judges must respond accordingly to protect victims and children.

I am concerned that in this draft guidance, alienating behaviours is presented as equally harmful as domestic abuse (eg p9). It may be described as emotional and psychological harm or "induced splitting" or "attachment trauma". However, I query what evidence there is of the long-term impacts on a child's wellbeing of so-called alienating behaviours, and certainly question if it is a safeguarding concern comparable to domestic and sexual violence. The short-term and long-term psychological impacts on children and young people of experiencing and witnessing domestic abuse are well evidenced. It is associated with high rates of behavioural problems, conduct disorders, increased risk taking, school truancy and exclusion, early sexual activity or harmful sexual behaviour, substance misuse, self-harm and suicidal thoughts and criminal offending<sup>5</sup>. Witnessing abuse as a child also increases the likelihood of perpetrating or becoming victim to domestic abuse in later life (ibid). Furthermore, domestic abuse can lead to serious injury and homicide of a child, including in cases where contact has been ordered by a court<sup>6</sup>. To support practitioners, the harms and risks associated with domestic abuse must be listed and fully recognised and understood.

I would also recommend clarifying in this document that if domestic abuse is agreed to have been present, any resistance, reluctance, or refusal on behalf of the child can be legitimised and alienating behaviours can never be found. It should list examples of protective behaviour displayed by victims of abuse and/or their supporting parent which should not automatically be assumed to constitute alienation. For example, limiting contact with the perpetrator, moving away from the area, or obtaining protective orders.

The guidance should be clear that domestic abuse must be investigated first, as the presence of domestic abuse will negate allegations of parental alienation and could instead be evidence of the alleged using the courts as part of a campaign of ongoing post-separation abuse. This

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<sup>5</sup> Barnardos (2020) *Not Just Collateral Damage: The hidden impact of domestic abuse on children* [https://www.barnardos.org.uk/sites/default/files/uploads/%27Not%20just%20collateral%20damage%27%20Barnardo%27s%20Report\\_0.pdf](https://www.barnardos.org.uk/sites/default/files/uploads/%27Not%20just%20collateral%20damage%27%20Barnardo%27s%20Report_0.pdf)

<sup>6</sup> Women's Aid (2016) *Nineteen Child Homicides Report* <https://www.womensaid.org.uk/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>

sequencing approach is being taken in Pathfinder Courts in Dorset and North Wales and is so far proving to be very positive.

Finally, there should be improved guidance on how evidence from criminal proceedings should be interpreted. I am concerned that some family court judges who have not worked in criminal court may have insufficient understanding about criminal investigations and that a no-further action decision or acquittal should not be assumed to be a false allegation. For example, the current charge rate for adult rape is 5%<sup>7</sup> with criminal justice partners and government acknowledging that this is due to institutional failings in investigating and prosecuting this offence<sup>8</sup>.

## Child Sexual Abuse

This guidance rightly highlights the issue of domestic abuse and how allegations of alienating behaviours should be responded to in these circumstances. However, I am concerned that the guidance does not sufficiently address cases where child sexual abuse has been disclosed by a child as being perpetrated by a non-resident parent. I have encountered such cases where disclosures from a child have been dismissed as alienation without evidence of this being the case. This has been based on a theory that alienated children are encouraged by an alienating parent to make false allegations. This is very dangerous as we risk dismissing the voice of a child and serious allegations of abuse. This has led to police investigations into children's disclosures being halted by a family judge and transfers of residence which have been counter to the welfare of the child. This FJC guidance should specifically address these cases and emphasise:

- A no-further action decision by police or CPS or an acquittal at court of allegations of child sexual abuse is not evidence of a false allegation or alienating behaviours. Very few allegations lead to charge, only 11% in the year 2021-22<sup>9</sup>. The court should review evidence gathered, alongside any additional evidence not gathered by the police, to determine its own view. It may be useful to hear directly from police officers involved in the case.
- Make clear that where child sexual abuse has been found either by a criminal court or family court, alienating behaviour allegations must fail.
- A child sexual abuse disclosure must be investigated first (as with domestic abuse).
- The court should not stop a criminal investigation into alleged abuse.
- A disclosure of child sexual abuse, founded or not, cannot be used as the sole evidence upon which allegations of alienating behaviours is made. Conviction rates are low as these cases are difficult to prove beyond reasonable doubt. It is also not uncommon for children to withdraw their disclosure of abuse against a parent, even when there is corroborative evidence, for fear of the impact of their disclosure upon the family<sup>10</sup>.

## CAFCASS Guidance

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<sup>7</sup> <https://criminal-justice-delivery-data-dashboards.justice.gov.uk/overview> accessed 19th October 2023

<sup>8</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf)

<sup>9</sup> <https://www.csacentre.org.uk/documents/child-sexual-abuse-in-2021-22-trends-in-official-data/>

<sup>10</sup> Centre of Expertise on Child Sexual Abuse (2019) *Key messages from research on identifying and responding to disclosures of child sexual abuse* <https://www.csacentre.org.uk/resources/key-messages/disclosures-csa/>

The draft FJC guidance says that CAFCASS may be directed to determine the child's perspective and that they will use their own guidance to assess if there is evidence that alienating behaviours have or have not occurred. I have reviewed the CAFCASS guidance available online and would like to highlight the following concerns:

- The CAFCASS definition is vague stating "There is no single definition of 'alienating behaviours'";
- It goes on to suggest it is a pathology "These behaviours can result from a parent's feelings of unresolved anger and a desire, conscious or not, to punish the other parent or carer" which is counter to this draft guidance which maintains that it is not a condition to be diagnosed;
- From the publicly available guidance, there is no specific information about what behaviours CAFCASS would constitute as alienation, which could lead to inconsistencies in applying this guidance;
- It says "Domestic abuse and alienating behaviours can co-exist" but provides no further explanation and potentially leads a practitioner to infer that a person can perpetrate domestic abuse and then be a victim of alienation. This is contrary to this draft FJC guidance which states that allegations of alienation will invariably fail where domestic abuse has been established.

CAFCASS must revise their own guidance and training to align with the final FJC approach to prevent confusion and inconsistency amongst professionals and ensure that this guidance is adhered to effectively.

I have spoken with parents where CAFCASS have assumed alienation and then instructed a known parental alienation expert to back up their claims, or objected when a judge has been eager to explore allegations of domestic abuse or speak to a child directly. Any CAFCASS practitioners who are making these potentially life-altering assessments must have appropriate training in domestic abuse, including coercive control, post-separation abuse and stalking, as well as child sexual abuse and trauma.

It should also be made clear in the guidance that CAFCASS should not be instructing their own experts. I understand that in one local authority, CAFCASS have a service level agreement with an unregulated expert, who inappropriately diagnoses parental alienation and recommends costly reunification therapy.

## **The Voice of the Child**

Given that the premise of the alienating behaviours theory is that a child's wishes and feelings cannot be trusted, there is an inherent danger that a child or young person's experiences and perspective will be overridden. This has damaging impacts on young people's sense of safety, their capacity to trust professionals and confidence in the justice system.

I have spoken directly to children and young people whose voices and experiences have been eclipsed by claims of parental alienation or alienating behaviours. Each time they disclosed abuse, they were punished with reduced contact with their safe and preferred parent. In some cases, young people have been forced to seek their own legal representation to communicate their wishes as they were not listened to by CAFCASS or the legal representation CAFCASS appointed, and these professionals were in more regular contact with the parent they did not wish to see than with the child themselves.

Furthermore, some children have been forced to undergo therapy where they are encouraged to speak positively of a parent they do not wish to see or admit that they lied about allegations before their contact with their preferred parent can resume. I have received testimony from children that in proceedings and in therapy they have to 'censor' themselves. One young person said:



Given the danger of alienation allegations eclipsing the experiences and wishes of a child, this guidance must include a section on the voice of the child and how it can be safely incorporated and encouraged. It should emphasise that this is critical to consider in any cases where alienating behaviours are alleged. The JUSTICE report "Improving Access to Justice for Separating Families" recommends pro-active inclusion of children and young people at an early stage, that all children should be afforded the opportunity to meet a judge, and that children's views should be communicated fully and directly to the court<sup>11</sup>. Any interpretation by a professional of these views should be identified as interpretation only and kept entirely separate from the child's direct account. These recommendations should be incorporated into this guidance. There should also be a recommendation that children are offered independent support from an organisation that is trained to understand trauma and the victimisation of children.

I welcome the incorporation into this guidance that findings in favour of alienating behaviours should not be a trigger for a full change of residence to the parent with whom the child does not wish to reside. This must be emphasised more strongly as I have heard first hand of the wide-ranging negative impact of these decisions on children.

## **Use of Experts**

There is significant concern about the use of experts in cases of alleged alienating behaviours. I welcome the approach of this guidance which emphasises that findings of alienating behaviours can only be found by the court and experts should not be instructed before fact finding. However, I remain concerned that they are being recommended in the guidance to support the court in determining welfare outcomes, where biased experts may still unduly influence decisions about a child's welfare. I am especially concerned if the expert is providing therapy or has links with the therapists recommended, essentially equated to a financial conflict of interest.

I am concerned that there is a lack of consistency in the use of such experts. For example, they are not recommended for perpetrators of domestic abuse or child sexual abuse to determine welfare outcomes for children. Why then are they regularly used in cases of alienating behaviours when not used in response to potential criminal offending? Crimes such as child sexual abuse have profound impacts, including extensive adverse effects on psychological

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<sup>11</sup> JUSTICE (2022) *Improving Access to Justice for Separating Families* <https://files.justice.org.uk/wp-content/uploads/2022/10/12154403/JUSTICE-Improving-Access-to-Justice-for-Separating-Families-October-2022.pdf>

health and functioning. Compelling evidence was found of this by the Independent Inquiry into Childhood Sexual Abuse (IICSA) and the Centre for Expertise on Child Sexual Abuse<sup>12</sup>.

I welcome the guidance warning against the use of unregulated experts, but I recommend a change of wording so it is clear that experts must be HCPC registered (p18). Without this registration, there is no accountability or regulation for these experts. I welcome the guidance making clear that they should not be undertaken by academic psychologists or psychological researchers, and that ‘there is an inherent risk of confirmatory bias if instructions and assessments are framed solely in terms of allegations of alienating behaviours’. The guidance may benefit from further explanation of the difference between psychotherapists and psychologists.

I also wish to highlight that there are few routes to redress when a parent finds fault with an expert’s findings. I would also caution that the complaint regulations for HCPC do not allow for complaints to be made about evidence given in court. Improved options for redress in relation to expert testimony in family court proceedings are therefore needed as these assessments can have huge impacts on children and families’ lives.

I welcome that the guidance states that any treatment should be able to be ‘delivered by any suitably qualified practitioner’ as I have encountered cases where the type of therapy was so specific that the parent could not find anyone who could provide it. This intervention must also be delivered by a recognised and regulated professional.

I also welcome the sentence “The court should be extremely cautious when asked to consider assessment and treatment packages offered by the same or linked provider” but ask that this be amended to say that the court should ‘reject’ assessment and treatment packages offered by the same or linked provider. It should make clear that this would constitute a conflict of interest.

Finally, the guidance must be clear that experts must have comprehensive training in domestic abuse and child sexual abuse, prior to engaging in any case involving alienating behaviour allegations.

### **In summary my recommendations are:**

- The FJC reconsider its use of the term ‘alienating behaviours’ and look for a more nuanced framework, such as that advocated for by the Domestic Abuse Commissioner in her report “*The Family Court and Domestic Abuse: achieving cultural change*;
- The guidance alerts judges to the fact that most allegations of parental alienation or alienating behaviours are an attempt to deflect from abuse allegations. Genuine attempts to control and coerce a child or the other parent by undermining a child’s relationship with that parent, are in the minority of cases;
- The guidance should make clear that domestic abuse will always be relevant to the welfare of the child;
- The harms and risk associated with domestic abuse should be listed and training offered to ensure they are fully recognised and understood;

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<sup>12</sup> IICSA (2017) *The Impacts of Child Sexual Abuse: A rapid evidence assessment* <https://www.iicsa.org.uk/reports-recommendations/publications/research/impacts-csa/research-findings/1-impacts-csa-victims-and-survivors.html#:~:text=Mental%20health%20outcomes%2Finternalising%20behaviours,of%20other%20mental%20health%20conditions>. And

- Stronger emphasis on the fact that if abuse is likely to have been present, any resistance, reluctance or refusal on behalf of the child is legitimate and alienating behaviours can never be found;
- The guidance should clarify that abuse claims must be investigated first, as the presence of abuse will negate allegations of parental alienation and could instead be evidence of the alleged using the courts as part of ongoing post-separation abuse;
- The document should provide more detailed guidance on how evidence from criminal proceedings should be used, particularly highlighting that no further action decisions or acquittals are the most likely outcome from abuse disclosures and must not be automatically assumed as a false allegation and therefore evidence of alienation;
- The document must provide further guidance on child sexual abuse allegations including:
  - how criminal investigation evidence should be used, including that which resulted from a case where there was a no further action decision or acquittal;
  - that child sexual abuse must be investigated first before alienating behaviour allegations;
  - that a family court should not halt a criminal investigation into alleged sexual abuse;
  - the patterns and process by which disclosures of sexual abuse are usually made by children, as evidenced by research and testimonies from adult survivors;
  - that a disclosure of child sexual abuse, founded or not, cannot be used as the sole evidence upon which allegations of alienating behaviours are made.
- CAFCASS must revise their guidance and training to align with the final FJC approach to prevent confusion and inconsistency amongst professionals and ensure that this guidance is adhered to effectively;
- The guidance should stipulate that CAFCASS should not be instructing their own experts;
- This guidance must include a section on the voice of the child and how it can be safely incorporated and encouraged, and emphasise how critical it is in any cases where alienating behaviours are alleged;
- The guidance should advise that children in these cases should receive an offer of independent support;
- Stronger emphasis that findings in favour of alienating behaviour must not be an automatic trigger for a transfer of residency to a parent with whom the child does not wish to reside;
- A change of wording is needed so that it stipulates that experts must be HCPC registered;
- Further explanation of the difference between psychotherapists and psychologists and the theoretic and evidence base upon which they generally rely;
- An amendment which stipulates that the court should reject assessment and treatment packages offered by the same or linked provider and make clear that this would constitute a conflict of interest;



- To accompany this guidance, the FJC should look to improve options for redress in relation to expert testimony in family court proceedings so inaccurate and harmful assessments can be more easily challenged;
- The guidance should stipulate that any experts must have comprehensive training in domestic abuse and child sexual abuse before providing any assessment of alienating behaviours.

Thank you again for your attention on this important issue. I look forward to seeing your revised and final guidance which I hope will provide support to courts in making safer decisions for victims and children.

Please do not hesitate to contact me should I be of further assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Waxman', written in a cursive style.

**Claire Waxman OBE**  
Independent Victims' Commissioner for London