

Alienating Behaviour: What is the latest judicial thinking following Re Y (Experts and Alienating Behaviour: The Modern Approach) [2026] EWFC 38?

Relevant material: -

1. FJC Guidance on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour (December 2024);
2. ***Re Y (Experts and Alienating Behaviour: The Modern Approach)*** [2026] EWFC 38;
3. ***Re A Mother (Appeal: Alienating Behaviours: Fair Procedure)*** [2026] EWHC 783 (Fam).
4. ***Re A (A Child) (Fact-finding: domestic abuse and alienating behaviour)*** [2026] EWFC 58 (B);

Introduction

1. This talk has one central message: alienating behaviour is a question of fact for the court, not a diagnosis for an expert — and the modern case law is really about the sequence in which the relevant facts are found.
2. Three things landed in quick succession and together they now form the "modern approach": (1) ***The FJC Guidance (December 2024)*** — the framework. (2) *Re Y* (20 February 2026) — the President applying that framework to a real, and troubling, historic case, and distilling it into a 7-point checklist. (3) Two very recent first instance/appellate decisions — *Re A* — an appeal (Poole J), *Re A* -first instance (Recorder Cragg KC) and showing the framework working well in one case, and being got badly wrong in the other, only weeks apart.
3. ***Re Y*** — The former President Sir Andrew McFarlane background.
 - Two children, X and Y. Parents separated in 2014. By 2019 there were cross-allegations of abuse. At a hearing listed as fact-finding hearing the court declined to undertake that exercise but heard from a psychologist, Ms Melanie Gill, over two days — and at the “*end of her evidence, without hearing from anyone else*”, the judge found the children had been alienated by their mother.
 - Two months later — before the mother's appeal had even been determined — the children were moved immediately to live with their father.
 - As a consequence: the children had no contact with their mother for five years. Eventually the daughter, then 18, went to stay with her; later the son, then 15,

left his father's home unilaterally, was picked up by police and taken into foster care before being placed with a family friend.

- In 2025 the mother applied under FPR Part 18 to set aside the original findings. The President heard it himself in January 2026, allowed the application, and set aside the findings — this judgment gives his reasons.
4. In her report Ms Gill had called herself an "assessment psychologist" / "forensic consultant." The court noted that she is not a chartered psychologist and not registered with the HCPC. Her 100-page report applied "Attachment Science" and bespoke tools (e.g. the Adult Attachment Interview) to conclude the mother had significant psychopathology (narcissistic/histrionic traits, unresolved childhood trauma) and that this — not either parent's actual conduct — explained the children's alienation from their father. Crucially: when the judge asked her whether proven findings of physical abuse (including marital rape) by the father would change her recommendation, her answer was no — because in her view the driver was the mother's own psychology, not anyone's actual behaviour.
 5. That is the structural flaw that the whole modern approach exists to prevent: an expert's opinion about a parent's psychological makeup was allowed to pre-empt — and effectively make irrelevant — the court's own fact-finding about what had actually happened.
 6. In other words, do not put the cart before the horse. This is in fact learning which dates back as far as the seminal CA decision in *Re L* in 2000.
 7. Anyway, the judge accepted her evidence was "not successfully challenged," directed that a fact-finding hearing was not proportionate, and moved straight to welfare. Every layer of the system — CAFCASS, the children's guardian, the local authority, the court — aligned behind that one report. Sadly, not surprising feature of these cases. Sometimes need an ISW.
 8. The President is emphatic: this judgment is not "about" Melanie Gill personally. It is about system failure — every agency, held up against now-established good practice, was at fault. Note also: Ms Gill appears not just in *Re Y* but in *Re C (Parental Alienation; Instruction of Expert)* [2023] EWHC 345, in *P v M* [2023] EWFC 254 (before Judd J), and in *O v C* [2025] EWFC 334 (also Judd J) — a pattern of cases, not a one-off.
 9. In allowing the appeal against the findings of alienation the judge incorporated the updated FJC Guidance from 2024.
 10. The Guidance sets out a clear structure for dealing with allegations of alienation in the context of allegations of domestic abuse or other forms of inflicted harm. The reason for this is that previously the approach taken in many cases was that if the allegations usually

made by the resident parent were not proved, some courts would automatically track to the conclusion that the allegations must necessarily have been motivated by a desire to alienate the child from the non-resident parent. To emphasise the fact that there is no universal answer the Guidance emphasises a structured analysis.

11. The Guidance's actual title tells you its philosophy: *"...responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour."* The starting point is the child's presentation, not the parents' rival allegations.
12. "Parental alienation syndrome" has no evidential basis and is "a harmful pseudo-science." It is not something a psychologist can diagnose.
13. What can be found, on evidence, is "Alienating Behaviours" — a defined term): psychologically manipulative behaviours, intended or otherwise, by a parent, which have resulted in the child's reluctance, resistance or refusal ("RRR") to spend time with the other parent.
14. **The glossary:** **RRR** — reluctance, resistance or refusal — the observed child behaviour that triggers the inquiry. **AJR** — Appropriate Justified Rejection — the child's rejection is an understandable response to that parent's own behaviour. **AAA** — Attachment, Affinity and Alignment — ordinary, non-manipulated emotional responses to parenting experience (a child simply prefers one parent, without any adult manipulation). **PB** — Protective Behaviours — a parent shielding a child from further harm; by definition this cannot amount to Alienating Behaviour. **AB** — Alienating Behaviours — the defined harm itself.
15. The three necessary elements are that a court cannot find Alienating Behaviour unless all three criteria are established, namely
 - 1) The child is reluctant, resisting, or refusing to engage in a relationship with a parent or carer; and
 - 2) That **RRR** is not consequent on the actions of the rejected parent (i.e., not AJR), and is not explained by AAA; and
 - 3) The other parent has engaged in behaviours that have directly or indirectly caused that **RRR**.
16. Note: this is conjunctive. Fail any one limb and the finding cannot be made. the sequencing is baked into this test — you cannot even get to element 3 (what did the resident parent do?) until you've ruled out elements 1 and 2. That sequencing is exactly what *Re Y* turns into a formal checklist.

17. Allegations of alienating behaviour are frequently raised in response to allegations of domestic abuse — the Guidance is candid that this can be, and the Domestic Abuse Commissioner and others have raised concerns it is used as, a form of post-separation control and a litigation tactic to side-line domestic abuse survivors.
18. Domestic abuse features in an estimated 50–60% of private law children cases . Domestic abuse is a crime; alienating-behaviour allegations are not and are — on the research the FJC cites — relatively rare in terms of behaviours that actually cause the RRR. The Guidance therefore states plainly: there is no equivalence between the two, and risk/weight should not be treated as automatically equal.
19. In practical terms, Alienating Behaviours will not be found in cases where findings of domestic abuse result in AJR, PB, or a traumatic response by the victim parent.
20. Case management corollary: where DA and AB are both alleged, they will usually be heard together, but the court's deliberations should begin with domestic abuse and review the AB allegations "through that prism."
21. Equally: a parent's failed or false allegation of domestic abuse does not , without more, amount to Alienating Behaviour — unless there is separate evidence the child was manipulated on the basis of that false allegation into unjustified RRR. (This distinction becomes central in the Re A Mother appeal, below.)
22. Re Y doesn't change the FJC's three elements — it operationalises them, converting the Guidance into a step-by-step sequence courts must actually follow, and it adds hard rules on expert instruction that the Guidance had only gestured towards.
23. The seven-step "modern approach":-
 - 1) The trigger for the court's inquiry is the child's unexplained RRR — not the competing parental allegations.
 - 2) Where RRR is established (element i), the court moves to element (ii): is it a consequence of the estranged parent's own behaviour (alleged abuse)?
 - 3) Only if the estranged parent's behaviour does not make the reaction an AJR, and it isn't explained by AAA, does the court move to element (iii).
 - 4) Only at element (iii) does the court ask whether the caring parent has engaged in alienating behaviours causing the RRR.
 - 5) Where DA and AB are cross-alleged, fact-finding must address DA first , then ask whether the RRR is AJR, protective behaviour, or a traumatic response.

- 6) Courts must not determine alienating behaviour in isolation, without first establishing the underlying facts (in particular, DA).
- 7) No expert should be appointed in RRR cases until there is clarity — through findings if necessary — about both parents' past behaviour and, where DA is proved, whether the child's reaction to it is appropriate.

24. The President goes further than his own 2023 judgment in *Re C*. In *Re C*, he said courts should be cautious about unregistered "psychologists" and explain in a short judgment why, exceptionally, one is being used. In *Re Y*, he tightens this considerably:

- Going forward, permission should not be given under **Children and Families Act 2014, s.13** to instruct an expert "psychologist" who is neither HCPC-registered nor BPS-chartered, save in clear, justified exceptional circumstances (e.g. no registered expert reasonably available) — and if departed from, reasons must be given in a short judgment.
- Good practice: before appointment, ask the proposed expert to confirm whether they hold an HCPC protected title.
- He notes a live FPR rule-change consultation (mid-2025) which would go further still and restrict permission under s.13 to "regulated experts" only (HCPC or equivalent statutory/accredited regulation) — not yet in force but flagged as the clear direction of travel.

25. On the facts, the President found multiple, compounding case-management failures in 2019 — not just the choice of expert:

- The expert and the guardian were asked to file final welfare recommendations before any fact-finding hearing had taken place.
- The judge heard the expert's evidence first and then declined to hear any further evidence at all before accepting her analysis.
- When asked whether proven findings of serious physical/sexual abuse would change her view, the expert said no — and the court accepted that answer as a basis for not needing a fact-finding hearing on the abuse allegations at all.
- This is the clearest possible illustration of a psychological formulation being allowed to substitute for judicial fact-finding, precisely what the Guidance and *Re Y* now prohibit.

26. The framework in action — two recent cases, three weeks apart (7–8 minutes).

27. *Re A Mother (Appeal)* [2026] EWHC 783 (Fam).

- Twins P and Q. Final hearing before a Recorder in July 2025 (pre- *Re Y* , but post-FJC-Guidance). Mother alleged serious sexual abuse by the father; Father's Scott Schedule included an allegation of manipulative/alienating behaviour by the mother.
- At the outset, the judge made a preliminary decision not to determine the father's allegations of alienating behaviour at all — he said he would only look at "*the general issue of why the allegations have come up which might feed into parental alienation.*"
- He then dismissed all of the mother's allegations against the father, found she had fabricated several of them (sexual abuse and Sudocrem allegations) to frustrate contact — and then, despite having taken the alienation allegation off the table , went on in six short paragraphs to make a formal finding of "parental alienation" against the mother and ordered a "suspended residence order" : any further sign of her frustrating contact and residence would transfer to the father, with her contact supervised.

28. Poole J allowed the appeal on (in effect) three overlapping grounds:

- A. Procedural unfairness (Article 6 / natural justice) : having expressly excluded the alienating-behaviour allegation from the hearing's agenda, the judge could not fairly then determine it. The mother had no notice she faced that finding, and the evidence and submissions at trial were never directed to it as an allegation to be proved .
- B. Substantive misapplication of the three-element test , even on its own terms:
 - Element 1 not met for P at all — the judge himself said he'd "need up to date information about her actual view of her father." No RRR finding for P → the enquiry should have stopped there for her.
 - Element 2 inadequately addressed for Q — the judge found Q's animosity wasn't due to the father's behaviour but never considered AAA — whether Q's shift might simply reflect ordinary alignment/attachment dynamics during a period with no paternal contact. Poole J notes later evidence made this a live possibility.
 - Element 3 barely reasoned — the judge said only that the mother was "the only person who has been able to influence" Q, without identifying what she actually did that caused the RRR.

- Fabricating an allegation to stop contact is not, without more, a finding of Alienating Behaviour causing RRR in the child — this is exactly the "default finding" trap the Guidance warns against (see 2.5 above), and Poole J calls it out directly.

C. Inadequate reasons generally — six paragraphs to underpin a consequential finding with "potentially draconian" welfare orders attached.

NB. Fair notice matters as much as substance. If alienating behaviour is going to be found, it must be on the agenda as a pleaded, evidenced allegation from the outset — you cannot arrive at it as a side-effect of dismissing the other side's case

29. *Re A (Canterbury) [2026] EWFC 58* (B) — an example of the framework applied well.

- 10-year-old A; serious cross-allegations — mother alleged the father sexually and physically abused A (touching his penis in the bath, strangling, holding underwater, failure to feed, locking her in an attic); father alleged the mother had coached/pressurised A into false allegations and manipulated professionals and the process
- Recorder Cragg KC, sitting days after *Re Y* was handed down, had originally listed a combined fact-finding/welfare hearing but — expressly because of *Re Y* — converted it to a fact-finding-only hearing → no welfare/expert evaluation until the facts are found
- Outcome on the DA allegations: each of the five sexual/physical abuse allegations against the father was found not proved on the balance of probabilities — not necessarily because they were false, but because the evidence didn't get there (e.g., the "strangling" allegation turned out, on Ms B's and the father's evidence, to be more consistent with a hold/hug during play; the "held underwater" allegation could equally be explained by an ordinary breath-holding game).
- Applying element (ii): because the father's behaviour was not found proved, A's RRR could not be characterised as AJR on that basis. But note carefully what the Recorder does not do — he does not then leap to a finding of alienation.
- Applying element (iii): the mother's own allegations against the father are tested one by one — and the majority also fail on the evidence: no finding that she discussed the father in false/negative terms, no finding she pressurised A to make false disclosures, no finding she sought to derail proceedings for delay, no finding of undermining A's relationships with professionals. The only allegation proved was that she had been restrictive/prescriptive in controlling the psychologist's access to A — a real finding, but a narrow one, well short of "Alienating Behaviour."

30. Conclusion: the factual underpinning for a finding of Alienating Behaviour against the mother was not established. No findings of DA proved; no findings of AB proved. The court is left with an unexplained RRR — precisely the category the Guidance says must not be defaulted into a finding either way.

31. This is the disciplined version of the exercise: evidence-tested, allegation-by-allegation, no shortcuts, no diagnosis substituting for fact-finding — and the judge is candid that this leaves matters genuinely unresolved for welfare purposes (the case proceeds to a further directions hearing).

32. This case shows what the three-element test looks like when it's actually failed to be made out on both sides — the honest outcome is "unexplained," not a forced finding either way.

33. So:-

1. Alienating behaviour is a fact, not a diagnosis. No psychologist — registered or not — determines it. The court does, on evidence, using the three-element test.

2. Sequence matters more than substance. Facts first (including DA), then and only then welfare/expert evidence. Getting the order wrong is now, on its own, a ground of appeal (see *Re A Mother*) and a ground for reopening historic findings (see *Re Y* itself).

3. No equivalence between DA and AB, and DA must be determined first where both are alleged. Watch for AB allegations being used, deliberately or not, as a rejoinder to DA allegations.

4. AAA is not optional analysis — courts must actively consider whether a child's RRR is just ordinary alignment/attachment before jumping to manipulation. Both recent cases show this limb being either done properly (*Canterbury*) or skipped (*Poole J's* appeal case).

5. Beware the "default finding" trap — disproving one parent's allegations, or even finding they were fabricated, is not the same as proving the other parent alienated the child. Each must be separately evidenced.

6. Expert instruction is now tightly gatekept — HCPC registration or BPS chartering should be the norm; unregistered "psychologist" experts (titles like "assessment psychologist," "attachment psychologist") need justification in a short judgment, and there's a rule-change in the pipeline that may go further still.

7. Procedural fairness is substantive — if alienating behaviour is going to be found, it needs to be a live, evidenced allegation from the start, not a by-product of resolving the other side's case.

8. Historic findings are vulnerable to challenge. Anyone advising a client with an old parental-alienation finding based on an unregistered expert (*Ms Gill* or otherwise)

should be actively considering a Part 18 application — *Re Y*, *P v M*, and *O v C* now form a clear line of authority for reopening such findings.

- 34. *Re Y* isn't a new legal test — the three-element test and the "no equivalence with DA" principle were already in the December 2024 Guidance.
- 35. What *Re Y* does is convert good guidance into hard-edged, appealable process: a mandatory sequence for fact-finding, and a much tighter rule on who may be instructed as an expert. The two most recent cases show that the profession is still learning to apply that sequence consistently — which is exactly why this remains essential reading for anyone practising in this area right now.

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