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How do you handle allegations of ‘alienating behaviour’ as opposed to Parental Alienation, and when should you run an argument in court?

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# Overview

- New guidance by FJC on alienating behaviours
- Essential case law
- Strategy, welfare and enforcement



“There remains considerable tension around the concept of ‘parental alienation’ and the associated term ‘alienating behaviours’. These highly emotive tensions serve to polarise opinion in a way that is often counterproductive to the best interests of children, and which shifts the focus away from the voice of the child. The purpose of this guidance is to assist the court in determining the welfare of the child where allegations of ‘parental alienation’ or ‘alienating behaviours’ are made, by maintaining a focus on the impacts on the child rather than on parental behaviours *per se*”.



# New Definitions

- Attachment, affinity and alignment ('AAA') – reasons why children may favour one parent over another, or reject a parent, which are typical emotional responses to parenting experiences and not the result of psychological manipulation by a parent.
- Appropriate justified rejection ('AJR') – situation where a child's rejection of a parent is an understandable response to that parent's behaviour towards the child and/or the other parent.
- Alienating Behaviours ('AB') – psychologically manipulative behaviours, intended or otherwise, by a parent towards a child which have resulted in the child's reluctance, resistance or refusal to spend time with the other parent. [This term is capitalised throughout the guidance to refer to this definition]
- Protective behaviours ('PB') – behaviours by a parent towards a child in order to protect the child from exposure to abuse by the other parent, or from suffering harm (or greater harm) as a consequence of the other parent's abuse.
- Reluctance, resistance or refusal ('RRR') – behaviours by a child concerning their relationship with, or spending time with, a parent, which may have a variety of potential causes.



A court would therefore need to be satisfied that three elements are established before it could conclude that Alienating Behaviours had occurred:

- 1) the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer; and
- 2) the reluctance, resistance or refusal is not consequent on the actions of that parent towards the child or the other parent, which may therefore be an appropriate justified rejection by the child (AJR – see Glossary above), or is not caused by any other factor such as the child's alignment, affinity or attachment (AAA – see Glossary above); and
- 3) the other parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's reluctance, resistance or refusal to engage in a relationship with that parent.



Family Justice Council Guidance – December 2024

2. Litigation Journey Overview

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

AB = Alienating Behaviours
DA = Domestic Abuse
RRR = a child's reluctance, resistance or refusal of a relationship/time with a parent

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

\* denotes area where guidance provided

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

\* Guidance note on Case Management

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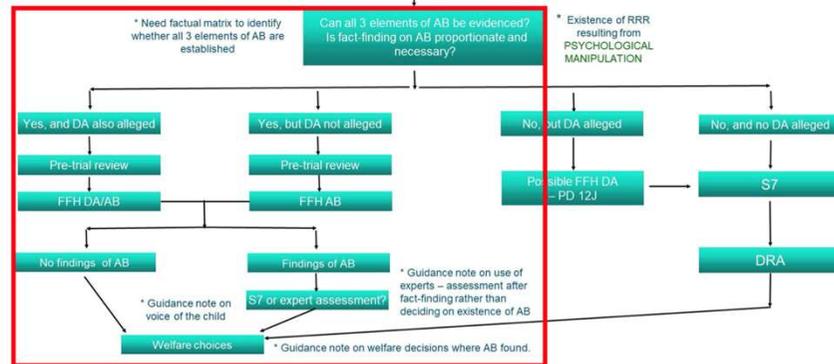
\* Guidance note on Understanding RRR and Psychological Manipulation

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

\* Need factual matrix to identify whether all 3 elements of AB are established

Can all 3 elements of AB be evidenced? Is fact-finding on AB proportionate and necessary?

\* Existence of RRR resulting from PSYCHOLOGICAL MANIPULATION



\* Guidance note on voice of the child

\* Guidance note on use of experts - assessment after fact-finding rather than deciding on existence of AB

\* Guidance note on welfare decisions where AB found.



# Guidance notes

- Case management
- Defining RRR or ABs
- Welfare decisions/judicial approaches
- Experts

# Case Management

- Triage: immediate consideration of seriousness and effect and consideration of the elements of AB
- Timing of allegations
- Are the 3 elements satisfied?
- Fact finding: the perennial problem



## Welfare and voice of the child

- Great prominence following work by Nuffield and Family Justice Young People's Board
- AB not an automatic trigger for shift in residence
- Interim measures readily used (if for example post-FFH and before expert evidence is in – see table)



## Experts

- Absolutely crucial they are deployed appropriately
- Keep well clear from FFH
- Re C [2023] EWHC 345 must always be considered
- Beware of confirmatory bias

# Cases

They are all heavily fact specific. Beware of drawing wide principles from first instance decisions. But here goes:

## Good for defending PB:

Warwickshire CC v Mother (2023):

- The court highlighted the need to move beyond labels and focus on behaviour. It emphasised the importance of early fact-finding to distinguish between supportive parenting and emotionally abusive processes. The CAFCASS definition of parental alienation was deemed sufficient: "When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent"
- The court noted that remedies for alienation depend on the severity and the child's welfare, and that changing the child's main home is not regarded as a "last resort" but rather a necessary step if it is the best solution for the child's welfare.



## A good general overview and need for judicial alacrity

Re S (Parental Alienation: Cult) (2020):

- The Court of Appeal reiterated that the label of parental alienation is less important than identifying specific behaviours that constitute alienation. The focus should be on the welfare of the child and taking effective action to address the alienating behaviour
- The court emphasised the need for judicial resolve and early intervention to prevent the entrenchment of alienation, highlighting that decisive action is needed before the situation becomes irreparable



The best example of a worked through welfare decision:

*Re A and B (parental alienation no 1)*: [2020] EHWK Civ 3366 (and 2, 3 and 4). It works (sometimes) and Judges know that:

‘The difference between the presentation of Child A and Child B could not have been more different than from the first time I met them in November 2020 to inform them of my decision to transfer their living arrangements from their mother to their father. Then, Child A was very angry and upset and Child B was very distressed. When I walked into court on 15 May I was met by two smiling young people who appeared to be very happy and relaxed. They told me that they now enjoy their lives living with their father and stepmother, attending their schools and spending time with their respective friends.

36. Child A, speaking on behalf of herself and Child B, thanked me for the decisions I had made about them and for ensuring that there was judicial continuity.’