



Response to: Family Justice Council Consultation: Draft Guidance on Responding to allegations of alienation behaviour

About Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women’s vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women’s understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

1. We are grateful that the FJC feels that the issues in relation to parental alienation and alienating behaviours are sufficiently serious to warrant guidance. We are deeply concerned about the adoption of the parental alienation belief system within the Family Court and the way in which it is weaponised to harm women and children, in particular, victims of domestic abuse and sexual violence. While we appreciate that it is a difficult topic to grapple with, we consider the guidance has a number of fundamental flaws which we have set out below.

Summary

2. A summary of our response is:

- a. Parental alienation and associated concepts are pseudo-science and, as such, do not meet the admissibility test for admission in Family Court proceedings.
- b. Parental alienation and associated concepts are an effective litigation tool that distracts the court from a more nuanced welfare analysis because it draws overly simplistic conclusions about family dynamics, can lead to allegations of domestic abuse and/or sexual abuse being ignored and overrides the voice of the child.
- c. There is no clinically approved 'treatment' for alienation. As a result, court's enforcement or therapeutic interventions that include transfers of residence, 'flooding' techniques and 'reunification' therapies amount to experimentation.
- d. Children's autonomy must be respected and views must always be heard by the court. Their involvement in decisions about their lives are an integral part of the Family Court process.
- e. Not all children are the same, children are not fixed in their behaviour and views and even a child who has experienced some of the behaviours raised in this guidance will still have their own opinions about their lives. Children's views should be understood, not assessed by an adult's view of what is 'reasonable'. From the child's perspective, their views are reasonable.
- f. The Court is continuing to fail victims of domestic abuse and sexual abuse by minimising or ignoring allegations of abusive behaviour in favour of ordering contact.
- g. Even where the Court makes findings of abusive behaviour, the court is failing to understand or properly assess the risk posed by that behaviour and are too eager to label abusive behaviour as 'in the past' and therefore not relevant.
- h. The court must be alive to the way in which the court process and professional responses can cause further trauma to adult and child victims of abuse. The ease with which perpetrators of abuse can use the court system to further their abuse means they often do not need to take many active steps, the court process does all the work for them.
- i. When a case has continued for a long time or returned to court a number of times, the court must be willing to reflect on their own past decisions and question whether they have made poor decisions that have led to the case returning to court again.
- j. The Court should reflect on the way in which the case has been handled in the past and whether poor practice in the administration of justice may have contributed to the parents' animosity not only towards each other but also towards the Court and professionals.
- k. The standards to which adult and child victims of domestic abuse and sexual abuse are being held in cases of alleged alienation are inhumane and would challenge any parent.

3. Our response to the FJC's draft guidance is set out under the following headings:
 - The validation of a belief system that has no place in the Family Court
 - The ways in which the court can exacerbate problems between parents
 - The lack of emphasis on the importance of the voice of the child
 - The failure to acknowledge the importance of domestic abuse, sexual abuse and child abuse and the ways in which allegations of alienating behaviours are used to undermine a protective parent's behaviour
4. We have chosen not to comment on each part of the guidance in turn as we consider the amendments needed to be so significant that it is unhelpful to suggest minor amendments to individual paragraphs/sections. We have commented on some parts under the four headings above where appropriate.

The validation of a belief system that has no place in the Family Court

5. In the first section the draft guidance (Introduction and Scope of the Guidance), the FJC states that 'parental alienation' is a 'vexed and highly emotive concept' but that the guidance does not aim to explore the research literature or socio-political context. The guidance cannot achieve the stated aim of increasing understanding when it does not grapple with the many fundamental problems with the parental alienation belief system, how it has infiltrated the Family Court without proper scrutiny and the many examples of poor practice as a result. Furthermore, it cannot be good practice if it is not evidence based.
6. The appropriate context in which to place this guidance is set out below.
7. It must be recognised that the Family Court deals with a tiny minority of families in private children proceedings¹. Of the families the courts see, the majority of cases involve domestic abuse². Although domestic abuse is the most prevalent form of harm raised in private children proceedings, other forms of harm also appear including child sexual abuse, drug and alcohol misuse and severe mental health issues. The harm and the continuing risk to adult and child survivors of

¹ Less than 0.75% of all families with dependent children in England (including intact and separated families) make a private law application each year, marginally lower than in Wales (less than 1%). [Cusworth, L. et al. \(2021\). Uncovering private family law: Who's coming to court in England? Summary. London: Nuffield Family Justice Observatory.](#)

² Sources include: 62% *Allegations of domestic abuse in child arrangements cases*, CAFCASS and Women's Aid, [Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf \(cafcass.gov.uk\)](#); 60-70% Home affairs committee, 2008; 70-90% HMICA, 2005 and 63% Aris and Harrison 2007, <https://www2.warwick.ac.uk/study/cl/research/swell/ourwork/final-safe-not-sorry-for-web-jan-2016.pdf>; 49% Harding and Newnham 2015 <http://www.nuffieldfoundation.org/sites/default/files/files/Full%20report.pdf>; 50% Hunt and Macleod 2008 <http://dera.ioe.ac.uk/9145/1/outcomes-applications-contact-orders.pdf>

domestic abuse is well-recognised, not least through the Domestic Abuse Act 2021, Practice Direction 12J and case law such as *Re H-N and Others (children)(domestic abuse: finding of fact hearings)* [2021] EWCA Civ 448.

8. There is a pro-contact culture within the Family Court that is well evidenced³. There remain too many professionals within the Family Court who do not have a sufficient understanding of domestic abuse, in particular but not exclusively, coercive control. While it is becoming more common for the court to identify coercive control, there remains very poor understanding of the risk presented to both adult and child victims. Victim survivors of domestic abuse who are from Black and minoritised communities experience heightened anxiety in private children proceedings and the operation of myths and stereotypes about their backgrounds present an additional barrier to reporting abuse in the Family Court⁴.
9. While no one denies that there are parents who behave poorly after they have separated and that this can have an impact on the children of the relationship, the belief system that has built up under the label 'parental alienation' does not, in our view, illuminate or assist the court in the difficult decisions they must make about children's best interests. Instead, the parental alienation belief system that is rooted in pseudo-scientific psychological theory has become a very effective tool in litigation to further the pro-contact culture, to silence adult and child victims of domestic abuse and child abuse, especially child sexual abuse and distract from what is really happening in the child's life.
10. The report by Drs Sturge and Glaser⁵, relied upon in *Re L & Ors (children)* [2000] EWCA Civ 194 was clear that:

The basic concept in the Parental Alienation Syndrome is a uni-directional one as if such situations are a linear process when they are, in fact, dynamic and interactional with aspects of each parent's relationship to the other interacting to produce the difficult and stuck situation.

This fundamental criticism of 'Parental Alienation Syndrome' applies to 'parental alienation' and now 'alienating behaviours'.

11. In 2002, Carol S Bruch wrote of Parental Alienation Syndrome theory and that of alienated children that:

³ Ministry of Justice, 2020, Assessing Risk of Harm to Parents and Children in Private Law Children Cases

⁴ Thiara, R.k. and Harrison, C., University of Warwick, Safe not sorry: Supporting the campaign for safer child contact (Bristol: Women's Aid, 2016)

⁵ Sturge, C., & Glaser, D. (2000). Contact and domestic violence – The experts' court report. *Family Law*, 30, 615–629

Many parents are angry, and a broad range of visitation problems occurs. Dr Gardner's description of PAS may well remind parents, therapists, lawyers, mediators, and judges of these frequently encountered emotions, and this may help to explain why his audience has often accepted PAS without question. The overwhelming absence of careful analysis and attention to scientific rigor these professionals demonstrate, however, is deeply troubling. As the following discussion reveals, this carelessness has permitted what is popularly termed junk science (pseudo science) to influence custody cases in ways that are likely to harm children.⁶

12. At the time, there were a number of efforts by proponents of the parental alienation belief system to try to reformulate the concept as 'parental alienation' without the word 'syndrome' which varied in their approach and their readiness to criticise Richard Gardner's work but about which, Carol S. Bruch wrote that:

These authors are careful in their references to research literature and usually qualify their claims appropriately. In addition, to varying degrees, they provide helpful clinical insights for the use of therapists whose work includes families with child-parent antipathies or other visitation difficulties. To this extent, their insights, although not yet scientifically proven, are an important step forward.

Unfortunately, however, these mental health specialists, like Gardner before them, go far beyond their data as they craft recommendations for extended, coercive, highly intrusive judicial responses.

13. Despite these warnings that the reformulation of the concept was 'not yet scientifically proven' and that these mental health specialists 'go far beyond their data', in 2010, HHJ Bellamy gave a series of judgments⁷ ordering the transfer of residence for a child who had been diagnosed as an 'alienated child' by a psychiatrist. After the child refused to live with his father, the case returned to court and HHJ Bellamy made an order for the 12-year old child's forceable removal from the mother's home to the father by the Tipstaff. In that judgment, HHJ Bellamy considered research in relation to alienation but it was research provided by the expert in the case and, unsurprisingly, supported his views in relation to alienated children. This decision was appealed and the Court of Appeal replaced HHJ Bellamy's decision with the local authority's plan for an interim placement in foster care while contact was reintroduced. The child was moved to foster care and contact attempted. It was agreed that this was causing the child real harm and he was returned to live with his mother. Finally, another expert who specialises in parental alienation was appointed and worked with the

⁶ Bruch, C., 2002. Parental Alienation Syndrome and Alienated Children – getting it wrong in child custody cases [2002] CFLQ 381

⁷ Re S (A Child) [2010] EWHC 192 (Fam)(04 January 2010); Re S (A Child) [2010] EWHC B2; Warwickshire County Council v TE & Ors [2010] EWHC B19 (Fam) (11 August 2010);

family. Her recommended 'treatment' was not one which the other parental alienation expert in the case agreed with. Eventually, CAMHS became involved and recommended that the court leave the child alone after he had started expressing suicidal ideation.

14. There were no arguments about the admissibility of the evidence of the experts, the concepts they were promoting, or consideration of the contrary views about alienation already within the case law and previous articles. Despite this, HHJ Bellamy went on to conclude in the final judgment that the "concept of alienation as a feature in some high conflict parental disputes may today be regarded as being mainstream". Unfortunately for the child in that case, he was wrong.

15. We highlight this series of cases because they exemplify a clear problem with expert reports that continues today. One of the problems with the parental alienation belief system is that many of the proponents of the belief system do not agree among themselves about what they are 'diagnosing' or what the 'treatment' is.

16. At Rights of Women, we have seen a number of cases where experts have diagnosed parental alienation without explaining what assessment framework they are relying on or setting out that there are differing frameworks, in relation to which there is no agreement. They do not comply with the rules in relation to expert assessment set out in Practice Direction 25B of the Family Procedure Rules that include a duty to provide advice to the court that conforms to the best practice of the expert's profession (paragraph 4.1). Reports do not comply with paragraph 9.1 in so far as they should indicate whether any proposition in the report is a "hypothesis (in particular a controversial hypothesis), or an opinion deduced in accordance with peer-reviewed and tested technique, research and experience accepted as a consensus in the scientific community". It is difficult to see how a lawyer is expected to pick up that this is not the case and argue for the report to be excluded when the experts are not setting it out in their reports. At the very least, it would probably require the appointment of a further expert, an extremely unusual step in private children proceedings. However, it has remained the position since 2000 that the parental alienation belief system would continue to fail to meet these criteria and this has remained untested by the Court.

17. In 2018, Cafcass Cymru commissioned research from Cardiff University⁸ to help shape their approach to parental alienation. The resulting report concluded that:

⁸ Doughty, J., Maxwell, N. and Slater, T., 2018. Review of research and case law on parental alienation. Cardiff: Welsh Government

This review has found the evidence base for parental alienation to be very limited because of a lack of robust empirical studies. There is an absence of literature about how the concept of alienation is understood, assessed and worked with from a practice perspective. The limited empirical evidence suffers from poor sampling, or a focus on specific populations, so cannot easily be generalised. There is a reliance on retrospective accounts, which do not allow for the controlling of extraneous variables or identification for a causal relationship between adverse outcomes and alienation to be established. Research is needed with a range of different stakeholder groups (including families and children). Another problem is that most of the research has focused on specific geographical locations, primarily the USA, where legal and clinical environments are different to those in Wales. Direct references to research in reported court judgments in England and Wales are very rare.

18. In relation to the interventions proposed by proponents of the parental alienation belief system, the review concluded that:

It is very doubtful that any of the studies identified by Templer et al., or by this review, would be sufficiently robust when appraised against National Institute for Clinical Excellence (NICE, 2012) checklists, or similar criteria.

19. Despite this, in 2018, HHJ Bellamy gave a further judgment⁹ in relation to parental alienation, accepting the conclusions of both Carol S. Bruch and the report commissioned by Cafcass Cymru. However, in an illogical judgment, he went on to accept that the child in the case had been alienated on the basis of a parental alienation expert who both relied on Gardner's theory of parental alienation and stated that it was a syndrome. Counsel in the case attempted to raise the concerns in relation to parental alienation but the arguments were made in the context of the appropriate weight to give to the evidence of the expert. At no point did the court consider whether the evidence of the expert in relation to parental alienation met the appropriate test for admissibility.

20. In this same judgment, HHJ Bellamy relied on the Cafcass tool titled "Typical behaviours exhibited where alienation may be a factor". Unfortunately, around the time of this case, Cafcass and Cafcass Cymru's approaches to alienation allegations diverged. While Cafcass Cymru commissioned the review referenced above in order to form an evidence base for the development of their approach, Cafcass did not.

21. The approach taken by Cafcass has led to them having to amend and rewrite their 'tools'. Most recently, Cafcass has entirely re-written the content on their

⁹ Re D (A Child: Parental Alienation)(Rev 1) [2018] EWFC B64 (19 October 2018)

website and the tools Cafcass officers should use in relation to allegations of alienating behaviours. The tool linked to in HHJ Bellamy's judgment above is now out of date. We do not know what research or consultation went into these changes, and we have not seen any comms to draw attention the fact that the guidance has changed. In our experience, few of the professionals operating within the Family Court seem to have noticed.

22. The questionable basis of Cafcass guidance on parental alienation is worrying because definitions that originate from Cafcass are now embedded in case law. Arguably the leading case on parental alienation for a number of years has been *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568. This case, on a closer reading was not one that benefited from the addition of the parental alienation belief system and would likely have reached the same conclusion on the basis that the court found the mother was indoctrinating the child into a cult. It is difficult to see how this case could have concluded any other way. The additional expense and time required to also argue parental alienation added nothing to the welfare of the child. What is troubling is that the judge endorsed the definition of parental alienation used by Cafcass at the time and this now appears routinely in submissions and reports prepared in proceedings.
23. This definition was not being used by Cafcass Cymru at the time but there was no consideration in the judgment of the reasons why there were differing approaches within the same jurisdiction. There was no consideration of the admissibility of any of the evidence in relation to parental alienation. Unfortunately, it has led to a situation where the case law now includes a definition of parental alienation that is no longer endorsed by Cafcass. But there is no further judgment which makes this explicit.
24. In 2021, Prof Jean Mercer, Professor Emerita of Psychology at Stockton University in New Jersey, USA concludes that parental alienation is pseudoscience. She highlights a number of traits relevant to the parental alienation belief system that enable her to draw that conclusion. They are:
 - *The research that is reported has no outside source of funding, so the researchers have a financial interest in showing that they have safe, effective methods. (Outside funding is not reported in published research related to parental alienation cases.)*
 - *Exaggerated claims of effectiveness are made without support by adequate research and may involve publication in journals with low standards. (The research claimed to support the parental alienation belief system does not meet the criteria for evidence-based treatments.)*

- *Findings are misrepresented. (For example, studies of adults' reports of their parents' behaviour are said to provide clear evidence that children who avoid a parent have had similar experiences.)*
- *The way a treatment is said to work is not congruent with well-established existing knowledge. (For example, attitude change does not necessarily result from new information or from intense motivators like threats.)*
- *Treatments have not been shown to work by a discipline's usual standards of evidence but are claimed to be effective anyway. (Evidence for parental alienation treatments does not meet usual standards.)*
- *Treatments have not only not been tested but are also based on implausible ideas. (As there is no evidence that children who avoid a parent have been "brainwashed", it is implausible that that can be "deprogrammed" by the methods used.)*
- *Treatments are potentially harmful, either directly or in terms of side effects. (It is plausible that experiences with the treatments could be harmful, and there is anecdotal evidence that they have been harmful.)*
- *Technical terminology is used to obfuscate rather than to clarify the discussion. (Esoteric terms such as "targeted parent" and "aftercare professional" imply a body of knowledge that does not exist.)¹⁰*

25. Outside of the Family Court, there has been considerable concern about the belief system and the way in which it has been used as a tool in litigation for many years. It is not a phenomenon or problem that has been recognised as warranting state intervention in any other sphere but family law litigation.

26. The World Health Organisation removed the concept from the ICD-11 following review on the basis that it was a term that was specific to judicial contexts, did not contribute to health statistics and there are no evidence-based health care interventions for parental alienation¹¹. In 2018, the European Association of Psychotherapy voted to support a statement that the terms and concepts of 'parental alienation syndrome' and 'parental alienation' are unsuitable for use in psychotherapeutic practice¹². The New Zealand Psychological Society has

¹⁰ Mercer, J., & Drew, M. (Eds.). (2021). *Challenging Parental Alienation: New Directions for Professionals and Parents* (1st ed.). Routledge, page 246

¹¹ <https://www.who.int/standards/classifications/frequently-asked-questions/parental-alienation#:~:text=During%20the%20development%20of%20ICD,not%20a%20health%20care%20term.>

¹² See: <https://www.europsyche.org/quality-standards/eap-guidelines/parent-alienation-syndrome-pas-parental-alienation-pa/#:~:text=A%20Statement%20from%20the%20European,use%20in%20any%20psychotherapeutic%20practice>

states that “Parental Alienation Syndrome and Situational Violence are not research validated concepts and are not to be applied by judges, lawyers or others.”¹³ The Italian Supreme Court, Italian Psychology Society and Italian Ministry of Health have called into question the validity of so-called “parental alienation syndrome” theory¹⁴.

27. The Family Court in England and Wales has never, to our knowledge, applied the appropriate test to the admissibility of any of the evidence it hears about parental alienation as set out in *Kennedy (Appellant) v Cordia (Servies) LLP (Respondent) (Scotland)* [2016] UKSC 6. In that case, the Supreme Court stated:

There are in our view four considerations which govern the admissibility of skilled evidence:

- (i) whether the proposed skilled evidence will assist the court in its task;*
- (ii) whether the witness has the necessary knowledge and experience;*
- (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and*
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.*

28. All of these factors are relevant to the admissibility of expert evidence in relation to alienation but we are particularly concerned about the fourth factor. Despite allusions to parental alienation being pseudo-science¹⁵, at no point has a member of the senior judiciary been explicit that it is pseudo-science and that it would not meet the test for admissibility.

29. As a result of the vague pronouncements about the ‘unhelpfulness’ of parental alienation, a messy picture of case law that is now out of date and changes to Cafcass tools and frameworks that have gone unnoticed, at Rights of Women we see such widely varying practice across England and Wales in relation to allegations of alienation. Some of those practices, we consider to be dangerous to women and children. We must conclude that the only way to improve practice is for the Family Justice Council to be far more explicit about

¹³ New Zealand Psychological Society, 2015, [Submission on behalf of the New Zealand Psychological Society on the Review of Family Violence Law](#)

¹⁴ See CEDAW’s concluding observations on the 7th periodic report of Italy at paragraph 51 here: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsgA84bcFRy75ulvS2cmS%2F%2BggWNCU4%2FIGN%2BZiHvEZQc5SEWgcHa%2F%2BgSomFFruJyt%2FajkB5IO3%2FHdJ86%2FVRXmK72WeXGB9aYXQX5DqYUGqKWwW>

¹⁵ References to the label being ‘unhelpful’ from the senior judiciary are many but most explicitly, in the [President’s Memorandum: Experts in the Family Court](#), the President stated that the Family Court takes a rigorous approach to the admissibility of expert evidence and pseudo-science will be inadmissible.

the criticism and context within which this guidance sits. While there is no recognition that mistakes have been made in the past, little will change.

30. We are aware of an expert report produced by a regulated psychologist within the last few weeks which explicitly references the work of Richard Gardner and parental alienation and which has been accepted by every lawyer involved in the case, the Guardian and the judge without even a hint of challenge. The mother in that case will not be represented and any attempts she makes to build her own case will be interpreted as evidence she is a risk to her child because she has not accepted the expert's report. The only way this will stop, is if this guidance is explicit that this pseudo-science does not pass the admissibility test and must be rooted out. It cannot do this without setting out the context as we have tried to highlight above.
31. We would add that part of the varying practice we see across England and Wales includes practitioners who, in our view, would welcome a far more robust approach being taken to allegations of parental alienation. At present, our experience is that professionals who recognise the harm caused by the use of the parental alienation belief system in judicial decision making use the phrases handed down by the senior judiciary that "labels are unhelpful" but would, in our view, find decision making far easier if they could take a more robust response which is focused on the welfare of the child.
32. Rights of Women is concerned that this guidance is attempting to root out bad practice without being explicit about the current bad practice. Instead, by re-branding 'parental alienation' into 'alienating behaviours' we are concerned that this only validates the concept and the same problems will not only persist but will become more deeply ingrained.

The ways in which the court can exacerbate problems between parents

33. As a result of the work we are undertaking in relation to the court's approach to allegations of alienation, we would add that a significant actor in these cases is the court itself. Before starting our current project, we had anticipated that it would almost always be the father who was raising and pursuing allegations of alienation. However, we have found that the way in which allegations are raised is more varied and there are cases where it is the court, Guardians or lawyers who drive the case down the 'alienation' route. As a result, it is the action of the court that is increasing the animosity between the parents by adopting a unilateral approach where all of the problems in the family must be the fault of the mother. Even where it is very clear that the father has behaved in ways that the child is not happy about.

34. We would also reflect that parents, in particular unrepresented parties, who experience the many administrative failings of the system over and over again, with no recognition from the professionals in the case that this is a problem can become extremely angry and disillusioned with all of the professionals within the system. The administrative failings undermine the authority of the court when it cannot get simple things right, these breeds in parents a feeling that the court will not get the big decisions right either.

35. The list of operational problems is lengthy but some simple examples include:

- a. not receiving court orders for many weeks after a hearing
- b. then when orders are received, they do not reflect what was agreed at the hearing or a lawyer for one of the parties has shaped the recitals to benefit their client and inaccurately recorded the unrepresented parties position
- c. never having the same judge from hearing to hearing
- d. not being able to speak to a member of court staff to resolve mistakes
- e. judges being impatient, rude and dismissive to unrepresented parties
- f. judges not having read any of the papers in the case
- g. children's solicitors and Guardians refusing to assist unrepresented parties with sometimes basic things
- h. children's solicitors not including all of the papers in the bundle for no apparent reason
- i. not receiving responses to emails
- j. special measures not being confirmed before a hearing

The many small errors and missteps that lead to parents becoming immensely frustrated with the system feeds into how well they feel the court has understood them and their concerns and ultimately, whether they think the outcome is just.

36. While we recognise the FJC is likely to find these problems as frustrating as we do, we believe the court should be alive to the fact that at present the court is operating in a way that is frustrating at best but deeply traumatising at worst. The recognition of this will at least help the court to start to recognise responses from parents that may be caused by the court itself.

The lack of emphasis on the importance of the voice of the child

37. We are concerned that the parental alienation belief system undermines the Family Court's responsibility in relation to children's voices enshrined in Article 12 of the UN Convention on the Rights of the Child.

38. The parental alienation belief system and associated concepts lead the court to minimise the importance of the child's autonomy and ignore their views without proper investigation of why they hold those views. In the worst cases, it has led to the court taking the view that they do not even need to know what the child's views are. This is contrary to the welfare principle as set out in section 1 of the Children Act 1989.
39. It must also be noted that in Wales, the Welsh Parliament has passed legislation that requires due regard to be paid to the rights of the child. If this guidance is to apply in England and Wales, this must be taken into account.
40. Even without allegations of alienation, children already struggle to properly participate in proceedings. Because of the pro-contact culture, professionals working in the Family Court are more likely to listen to a child if they are asking for contact/more contact and more likely to overlook their wishes and feelings when they express views that they either do not want contact or do not want contact to progress in the way sought by the non-resident parent.
41. Doughty, Maxwell and Slater (2020) summarised the problems:

A retrospective study in England and Wales of grown-up children's views of contact (Fortin et al 2012) concluded that there was no evidence of children resisting contact based entirely on pressure from their mothers; the child's own reasoning often attributed blame to the non-resident parent. Such attributions included a lack of parental interest, rejection by a new partner as well as practical factors such as distance and the non-resident parent's work commitments. These findings suggest that before a court takes the draconian step of overriding a child's wishes, the underlying cause of resistance should be very carefully explored to ensure that important information about the child's relationship with the non-resident parent is not overlooked.

An Australian report (Carson et al 2018) found that, whether changes were temporary or longer term, children and young people expressed an ongoing need to be listened to by their parents when it came to the workability of their parenting arrangements, and wanted continuous open communication to better understand their post-separation situation. In many cases, the children and young people who participated felt that their opinion was not heard where their living arrangements were unsafe or unworkable. Neilson (2013) noted that conflict can be inevitable for parents discussing childrearing issues and is highest in a relationship during the period of separation and when

*contact and residence issues are discussed. She suggested that more attention needs to be given to allow the child to settle into the new family structure, and keeping communication open.*¹⁶

42. In cases of domestic abuse, sexual violence and child abuse, we are concerned that the lack of curiosity shown by some professionals to understand why a child is behaving in the way they are is exacerbated by the parental alienation belief system.
43. We have seen children's views ignored and over-ridden to such an extent that it becomes clear that the continuation of the proceedings themselves are causing harm to the child and preventing a child from re-establishing a relationship with their father, on their own terms.
44. For example, in a case in which the court did not make findings of abuse against the mother but the child was older at the time of the abuse and had their own clear memories of the father's behaviour. When the child consistently maintained their own, independent account of what had happened, they were ignored. Experts were appointed and the child refused to engage with them. The child, when left to their own devices was slowly re-starting contact with text messages and phone calls. When the court insisted on action being taken to progress contact at the court's speed, instead the child's, she drew away from contact altogether.
45. We are aware of a case where father has accepted allegations made by children and then continued this behaviour but rather than address the root cause of the resistance, the court has maintained that the child's resistance to contact is a result of something the mother has done. In this scenario, mothers can be accused of 'over-reacting'. Linked to the point we have made above about the impact of the court's actions in these cases, we are confident that if the court had properly held the father accountable for his own behaviour, the mother would not have ended up responding in the proceedings in the way she did.
46. We are concerned that the draft guidance will become framework through which all cases where a child expresses resistance to contact will start to be interpreted. We are worried that given the court's inclination to minimise, ignore or not believe allegations of abuse, this guidance will become the 'go-to'. In our view, the vast majority of (if not all) cases should not have this guidance applied at all. We are very worried that because of the lack of

¹⁶ Julie Doughty, Nina Maxwell & Tom Slater (2020) Professional responses to 'parental alienation': research-informed practice, *Journal of Social Welfare and Family Law*, 42:1, 68-79

appropriate context within the guidance, it will be received in a way that sees it applied to every case

47. We have also seen cases in which the professionals involved in the case seem determined to keep the case going despite the child having contact with their father, there being no objection to that contact from the mother, but there being objections from both the mother and child to contact taking place in the way in which the father wants. The insistence of the court, in the face of a secondary school age child asking to be left alone by the court and professionals is an example of the pro-contact culture. It is within this culture that the parental alienation belief system finds fertile soil.
48. In relation to some of the language used in the draft guidance, we do not believe it is ever appropriate to refer to a child as 'hostile' or their behaviour towards a parent as 'hostile'. Any parent could agree that sometimes a child's developmentally appropriate behaviours can feel quite 'hostile' to the adults around the child, it is not appropriate to use this language to refer to a child.
49. We find the language of children's views being 'unreasonable' or 'unjustified' similarly unhelpful. This language, in relation to children's views is paternalistic. What is reasonable or unreasonable for the adults is, in many ways, irrelevant. When the court is considering the wishes and feelings of a child, they should not be trying to mark the child's reasonableness against what an adult, Family Court judge thinks is reasonable. The priority should be that the court listens to what the child is saying and that work is done with the child to try to understand why they are saying it.
50. In relation to the role of the child in decisions to transfer residence, we have been shocked about the lack of care and attention paid by the professionals in the court when considering orders transferring residence and the way this will be viewed by the child. In particular, we have come across cases where:
- The court has ordered immediate transfer of residence and the child being collected from school by the non-resident parent with no preparation and not to see the other parent for sometimes many months. In at least one case, they have still not seen their mother years later.
 - The court has done no proper planning of what the child will be told about the transfer of residence and made no attempt to write child-friendly judgments or letters from the judge.
 - The court has made immediate transfer of residence orders with no plans for contact with the non-resident parent leading to longer periods, sometimes of many months or years, with no contact and no explanation being given to the child (at least by the professionals) of why this has

happened or why they are suddenly not allowed to see the parent they want to live with. In one case, a child was told her mother was not well and then did not see her for a year. Contact then restarted with no consideration given to what the child would be told or how the mother was expected to manage this. This mother is still unaware of what her child thinks about the fact that she suddenly disappeared from her life for a year.

- The court has come up with what they refer to as an 'agreed narrative' for the parents to give the child about why they have moved to live with the other parent but which is false. This has included parents being forced to comply with a narrative that they agreed to the transfer of residence when they absolutely did not.
- The court has ordered the immediate transfer of residence with little preparation and no professional visits the child after transfer to check they are okay.

51. In light of the information provided above about the validity of both the concept of parental alienation and the proposed 'treatments', that the court is willing to make orders with such little care is shocking to most laypeople. It is certainly questionable how well these decisions meet the welfare test.

52. As Lieven J set out in *Warwickshire County Council v the Mother & Ors* [2022] EWHC 2146 (Fam) "[w]hat might be characterized as choosing the course which is less stressful for the child could alternatively be described as taking into account and giving appropriate weight to the child's wishes and feelings." We recommend this judgment is read by all.

53. Subjecting children who have given a clear view, often with age-appropriate reasons, to expert assessment, months and sometimes years of proceedings, in some cases, a transfer of residence all while failing to listen to the child when they explain why they do not want contact is not acting in their best interests. There are a group of children who will experience this insistence on contact when they do not want it as punitive. They will lose trust in the adults around them. The person who they are most likely to consider to blame for this intrusion in their lives is the non-resident parent. As a result, it does not, in our view, assist non-resident parents to continue to place this stress upon a child.

54. Ultimately, the court can force a child to spend time with their non-resident parent but they cannot force them to enjoy it. Helping parents to understand why their child might be saying the things they are and focusing on improving their parenting is a more productive and less punitive approach.

55. The draft guidance does acknowledge the need to examine why a child is resisting contact, which is a positive step forward. However, we are concerned that there is a lack of emphasis placed on the role of the voice of the child as part of the welfare assessment. We are concerned that children's views are still referred to as potentially 'unreasonable' and that children's behaviours are framed as potentially 'hostile'. We consider significant work can be done to improve the parts of the draft guidance that do reference the voice of the child to make this a much more prominent part of the draft guidance.

The failure to acknowledge the importance of domestic abuse, sexual abuse and child abuse and the ways in which allegations of alienating behaviours are used to undermine a protective parent's behaviour

56. The Family Justice Council and, in particular, the President must adopt the recommendation in the Harm Panel Report for a Statement of Practice to be published which is designed to ensure a consistent and ethical approach to cases raising issues of domestic abuse, sexual violence and other serious offences, including child sexual abuse. The leadership from the senior judiciary in this respect is notable by its absence.

57. We are concerned about an attitudinal shift towards viewing private children cases as either domestic abuse or alienation and that those are in some way equivalent or should be treated in the same way. We worry that this guidance may solidify this view. Given the clear ways in which allegations of alienation are weaponised against survivors of abuse, any guidance on alienation or alienating behaviours must refer to best practice in relation to domestic and sexual abuse and be extremely careful not to appear to be setting up this dichotomy or drawing equivalence between these two things in the way the flow chart in the draft guidance currently does.

58. There is increasing evidence that supports the suggestion that allegations of alienation are highly gendered in nature and are used to distract the court from allegations of abuse.

59. Research in Canada found "a pattern of implicit judicial bias against mothers/primary care givers and against domestic violence evidence in the cases that endorse parental alienation theory"¹⁷.

¹⁷ Linda C Neilson (2018) Parental Alienation Empirical Analysis: Child Best Interests or Parental Rights? (Fredericton: Muriel McQueen Fergusson Centre for Family Violence Research and Vancouver: The FREDA Centre for Research on Violence Against Women and Children)

60. Research in the USA concluded that of ten years of US cases, mothers' claims of abuse, especially child physical or sexual abuse, increase their risk of losing custody and cross-allegations of alienation from fathers' virtually double that risk. When gender roles are reversed and fathers' allegations of abuse face cross-allegations from mothers' of alienation, they are not similarly undermined¹⁸.

61. In 2021, the European Parliament adopted the following resolution:

Expresses its concern about the impact of gender stereotypes and bias leading to inadequate responses to gender-based violence against women and to a lack of trust in women, in particular concerning presumed false allegations of child abuse and of domestic violence; is also concerned about the lack of specific training for judges, prosecutors and law professionals; stresses the importance of measures aimed at combating gender stereotypes and patriarchal biases through education and awareness-raising campaigns; calls on the Member States to monitor and fight the culture of denigration of women's voices; condemns the use, assertion and acceptance of non-scientific theories and concepts in custody cases which punish mothers who attempt to report cases of child abuse or gender-based violence by preventing them from obtaining custody or by restricting their parental rights; stresses that so-called parental alienation syndrome and similar concepts and terms, which are generally based on gender stereotypes, can work to the detriment of women victims of intimate partner violence by blaming mothers for their children's 'alienation' from their father, calling into question victims' parental skills, disregarding the children's testimony and the risks of violence to which their children are exposed, and jeopardising the rights and safety of the mother and children; calls on the Member States not to recognise parental alienation syndrome in their judicial practice and law and to discourage or even to prohibit its use in court proceedings, particularly during investigations to determine the existence of violence¹⁹.

62. In June 2022, the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) published its third General Report which recommended that States:

¹⁸ Meier, J.S., (2020) U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?, *Journal of Social Welfare and Family Law*, 42:1, 92-105

¹⁹ [European Parliament Report A9-0254/2021 – Report on the impact of intimate partner violence and custody rights on women and children](#)

*ensure that relevant professionals are informed of the absence of scientific grounds for “parental alienation syndrome” and the use of the notion of “parental alienation” in the context of domestic violence against women to overshadow the violence and control exerted by abusive men over women and their children, and their perpetuation through child contact.*²⁰

63. In April 2023, the UN Special Rapporteur on violence against women published her report recommending that States legislate to prohibit the use of parental alienation and related pseudo-concepts in family law cases and the use of so-called experts in parental alienation and related pseudo-concepts²¹.

64. In July 2023, the Domestic Abuse Commissioner for England and Wales raised her concerns about the use of the term parental alienation and its related concepts including alienating behaviour and offered a child-centric alternative designed to protect the child that does not use this language at all²².

65. Most recently, in September 2023, GREVIO published its baseline country report for Croatia and reconfirmed its position in relation to parental alienation, recommending that the Croatian authorities should:

*ensure that all professionals concerned, particularly those working in the justice system, the social services and the medical, psychological and psychiatric sector, are alerted to the lack of any scientific foundation for what is called “parental alienation syndrome”, as well as for any other approach or principle that tends to consider mothers who invoke the violence as “unco-operative” and “unfit” as a parent, and refrain from blaming them for the poor relationship between a violent parent and his children*²³

66. As a result, the Croatian Ministry of Labour, Pension System, Family and Social Policy sent a letter to all competent actors in social protection not to use the concept of “parental alienation” further to the recommendation in the GREVIO report²⁴.

²⁰ © Council of Europe, 2022, [3rd General Report on GREVIO’s Activities](#)

²¹ [Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem – A/HRC/53/36](#)

²² Domestic Abuse Commissioner, 2023, [The Family Court and domestic abuse: achieving cultural change](#)

²³ Council of Europe, 2023, [GREVIO Baseline Evaluation Report, Croatia](#)

²⁴ See here: <https://www.womenngo.org.rs/en/policy-activities/advocacy/2079-2023-another-confirmation-of-the-unacceptability-of-the-usage-of-the-parental-alienation-concept>

67. GREVIO is currently preparing their first visit to the UK in January 2024 to report on our compliance with the Istanbul Convention. It is certain that they will be interested in the position adopted by the Family Court in relation to alienation.
68. Our experience at Rights of Women matches the international concerns highlighted above. The Family Court struggles to identify domestic abuse and understand the impact it has on women and children. Even when findings of abuse are made, the Court does a poor job of assessing the ongoing risk from the perpetrator of abuse. When allegations of alienation are added to this picture, behaviours of a protective parent can be interpreted as 'alienating'.
69. This is particularly difficult in relation to steps mothers take to protect children after separation when contact is proving harmful. In this situation, it is unlikely that the mother, who is not there during contact, will have a clear narrative about what is happening. However, when a child's behaviour starts to deteriorate such as the child is having night terrors or starting to bed wet, this behaviour is blamed on the mother. Allegations of domestic abuse against the mother are deemed 'historic' and, therefore, not relevant. As a result, the court can find no 'reasonable' explanation for the child's behaviour. Reasonable steps such as taking the child to the GP or asking for a referral to children's services can become used as evidence of alienating behaviours. As the child's primary carer. The interaction between the court's poor responses to allegations of abuse and alienation can lead to extensive traumatising by the court and unsafe child arrangements being ordered.
70. The court also poorly understands why a child who has experienced domestic abuse with the adult victim may be more likely to align themselves with that parent and that these are normal responses from a child who has experienced abuse from their other parent.
71. It is also the case that a child who has a good relationship with a parent is more likely to tell them about abuse they are experiencing than they are to tell a stranger. This is a sign of a positive relationship between the parent and child, not an abusive one. Unfortunately, in this situation, the court will view the fact that only the mother is able to give evidence of a child's statements of abuse as evidence of alienating behaviours.
72. Children, including those described as intelligent and capable, are accused of mimicking adult language for saying things that are completely within normal language skills for even young children. We have come across words such as 'blackmail' being interpreted as 'adult' in a way that is insulting given the age of the child involved.

73. Unfortunately, once a professional has decided that a parent is alienating a child, almost any behaviour can be interpreted as furthering that alienation. A parent who seeks to comfort their child when they are upset before or after contact is viewed as 'alienating'. A parent who is distant and sends the child to meet the other parent so that they can avoid any words being misinterpreted is viewed as 'alienating'. A parent who tries to be encouraging by asking the child how contact was is viewed as encouraging the child to make allegations but when they don't ask the child anything about the other parent at all, they are viewed as alienating because they are not showing the child they think contact is good. In reality, mothers who are tarnished with this label are caught in a Catch-22 and no matter what they do, it can be interpreted as 'alienating behaviours'.
74. This leads us on to the potential pitfalls of the three stage test and examples of alienating behaviours set out in the guidance.
75. The examples given could arise both for a victim of domestic abuse and any other parent. Where the behaviour only happens once, it is unlikely to be the cause of a child not wanting to see their other parent. It should be included that it is hard to brainwash a child.
76. However, some of the behaviours are problematic for a victim of domestic abuse. For example, "constantly criticising the other parent" is a behaviour we have seen used against women who advocate for themselves in court and pursue their concerns about the other parent. This can include appeals (even when they are successful) being used as an example of a victim of domestic abuse who 'keeps bringing up abuse'. Women who attempt to protect their own right to a fair hearing and advocate for themselves in front of the court and professionals are entitled to do so. We have seen this being used as an example of criticising the other parent despite there being no evidence whatsoever that they said any of the things they say to the court to or in front of the child.
77. In relation to the inclusion of "creating the impression that the other parent dislikes or does not love the child", we are at a loss as to how this would actually be evidenced in any meaningful way that will not lead to the issues we have raised above where any behaviour at all can be interpreted as 'creating an impression'.
78. In relation to the three stage test itself, it is possible to meet all three stages of the test despite the parent accused of alienating behaviours not being

responsible for the child's refusal to see their other parent. While we recognise the guidance goes on to set out that this is not the end of the decision, we are concerned that the culture within which this guidance is expected to operate remains consistently pro-contact and minimises domestic abuse. As a result, we take the view that this three stage test is not workable and will only lead to the same problems with the parental alienation belief system which distracts from the court's attempt to understand what is happening in a child's life and making orders that best meet the child's welfare.

79. In reality, no parent's parenting would withstand the scrutiny under which victims of domestic abuse are placed. Victims of domestic abuse who are recovering from the trauma of abuse and trying to protect their children are being further abused by the court process when faced with this level of scrutiny. We strongly endorse the comments made by Lieven J in *Warwickshire County Council v the Mother & Ors* [2023] EWHC 399 (Fam) in which she wrote about some of the criticisms of the mother in that case:

Some of the criticism of the Mother's conduct was not merely unfair it bordered on the inhumane. The Mother was denied any contact with her children between March and July 2022. When she was told in June that X was at the school fence very much wanting to see her mother she went and gave X a hug. She was criticised in cross examination for acting inappropriately by breaking "the rules". I consider that the Mother acted as any loving parent in her situation would have done. Somewhere in the history of this case we have lost our humanity. Ms Tyler submits that this paragraph may be taken to justify parents breaching safe contact arrangements. That the Mother breached an order may be clear, but the failure to understand why she did so, and judge it with some humanity is what has been lacking in this case.

Rights of Women

30.10.2023