



# PUMP COURT

## CHAMBERS

# **Alienating Behaviour: The FJC Guidance**

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- Parental Alienation Syndrome - yay or nay? (Nay!)
- Alienating Behaviours:
  - *“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”*
  - (Family Justice Council 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)

# Background

- *Re C [2023] EWHC 345 (Fam) MacFarlane (P) judgment*

*“Central issue... of...general importance... relates to the instruction of experts in proceedings where there is an allegation of parental alienation”*

- Para 103 endorsed:

*“The decision about whether a parent has alienated their child or not is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist...”parental alienation” is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as “alienating behaviours”. It is, fundamentally a question of fact.”*

- **Behaviour and Impact on the relationship of a child with either or both parents**

# FJC Guidance December 2024

- Full Title: Family Justice Council Guidance on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour
- Endorsed by President
- PAS internationally discredited - no evidential basis and considered a harmful pseudo science
- Alienating behaviours considerably rarer in reality than the frequency at which alleged

# FJC Guidance: Definitions

- Glossary of Terms - pg 4:
  - Attachment, affinity and alignment (“AAA”)
  - Appropriate Justified Reaction (“AJR”)
  - Alienating Behaviours (“AB”)
  - Protective Behaviours (“PB”)
  - Reluctance, resistance or refusal (“RRR”)

Some more details about RRR and psychological information towards end of Guidance - Guidance Note paragraphs 101-107

# Establishing AB: The three essential elements

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; 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.



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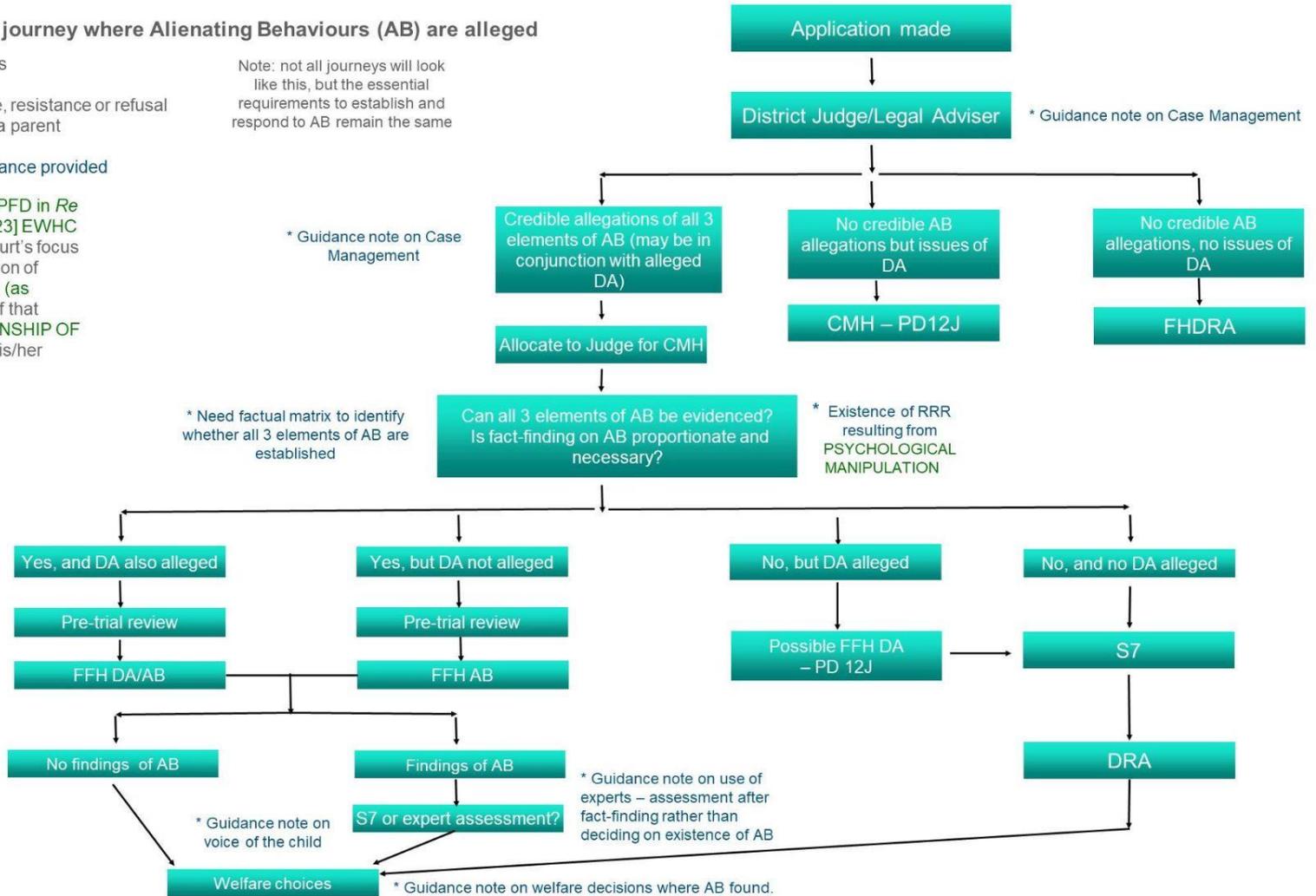
## Mapping the litigation journey where Alienating Behaviours (AB) are alleged

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

\* Existence of RRR resulting from PSYCHOLOGICAL MANIPULATION

\* Guidance note on Case Management

\* Guidance note on Understanding RRR and Psychological Manipulation

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

\* 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.

# C100 and FHDRA

- Set out why you say the 3 elements are present (likely not full statements)
- Importance of conveying the need for a FFH
- At/before FHDRA, can the parties agree that “the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer” to narrow the issues?
- Raise alienating behaviours as soon as possible

# Allocation

“29. Where on initial scrutiny of the allegations it appears that one or more of the three elements (described above and below) is absent, or a court has already considered the allegations to be lacking in any solid evidential base, the matter may remain with the Magistrates unless there are other matters contained in the application that would justify reallocation under the Family Procedure Rules (FPR). The Magistrates must thereafter keep allocation under review”

“31. Where, after careful analysis of the information provided to the court in the documents, it appears that all three elements of Alienating Behaviours (described above and below) may be present, the case must be transferred for case management and determination by a Judge.”

- Realistically, how early can ‘early’ be?
- Being ready for FHDRA
- Where there are cross-allegations, “The court’s deliberations should begin with domestic abuse and review the Alienating Behaviours allegations through that prism.” [para 60]

# Potential directions for FFH (para 50)

- Joinder of the child and whether direction setting should be postponed pending joinder.
- Narrative statements.
- Independent evidence – consider what evidence the trial court will need by way of disclosure, for instance; medical records, social work records, school records, telephone records.
- Schedules – where appropriate, mindful of the guidance in Re H-N. If a course of conduct is alleged, then critical examination of the period and the events is likely to be relevant to disclosure.
- A pre-trial review to consider the evidence.
- Any interim orders necessary – should any orders be made in relation to the child's relationship with the parent with whom the child is reluctant, resistant or refusing to spend time? Are any protective orders necessary to manage risk as a consequence of domestic abuse allegations?
- Participation directions.

# Are these alienating behaviours?

- Distinction between e.g.
- Clients who are having contact and would like more, but they say alienating behaviours are stopping this from happening
- Clients who feel alienation is happening and therefore contact is reducing
- Clients who are having no contact
  
- Also see paragraphs 19-24 of the Guidance (Appropriate justified rejection (AJR) and attachment, affinity and alignment (AAA))

# Interim Contact

- Not addressed in detail by the guidance
- Depends on the specific case
- Delay could entrench views
- Consider, e.g.
  - Contact centre
  - ISW
  - Family member being present
  - Contact in a neutral place
  - Think outside the box – parent joining child’s video games, texting etc.

# Is there still a role for experts?

- In short...

- Yes



- But at the welfare stage

# Welfare Decisions where Findings of AB have been made

- Guidance Note at Part 5 (paragraphs 73 onwards):
- Court should not treat a finding of AB against resident parent as an automatic trigger for a change in child's living arrangements - need to examine very carefully ALL the welfare ramifications if considering ordering a conditional transfer of care order;
- Court should bear in mind the wider factual matrix when considering next steps;
- Judgment where court draws together its conclusions on the various elements of the factual matrix will be important to help CAFCASS (or an appropriately qualified expert) to assist the court with welfare options. Preferable to a preamble to the order.
- Statements
- Court consider whether to appoint CG (if child not already a party)

# Making the child(ren) a party - appointment of a Guardian

- Recognition that a CG will often be able to help with next steps after a FFH
- CG may be able to assist in informing the child about the progress of proceedings
- Consider whether direction needed for disclosure of FFH judgment to CG
- CG analysis may consider whether external interventions may be able to assist the family and what the impact of such interventions may be on alternative welfare outcomes
- Court should consider whether child should be represented separately from CG

# Making the child a party

- Para 7.2 PD16A FPR 2010 lists the relevant factors that may justify
- Various may have application in a case where alienating behaviours findings have been made:
- (b) Child's stand point/interests inconsistent with or incapable of being represented by any of the adult parties
- (c) Intractable dispute over residence or contact, including where all contact has ceased or where there is irrational but implacable hostility to contact or where child may be suffering harm associated with the contact dispute;
- (d) Views of child cannot be adequately met by a report to the court;
- (e) Older child opposing a proposed course of action;
- (h) Serious allegations of abuse in relation to the child
- (i) Where more than one child and the welfare of the children is in conflict, or one child is in a particularly disadvantaged position

# CG's role if change of placement contemplated

- CG may invite a s37 direction
- CG will make recommendation about whether a change of placement is appropriate and/or practical
- Or CG can make a referral to the LA
- CG not in a position to assist with the mechanics of a move
- LA may be able to provide a bridging placement to enable child to stabilise and build/develop relationship with the alienated parent
- If change of living arrangements has happened. CG will be expected to make recommendations as to how child can build a positive relationship with both parents and be protected from exposure to further AB's.

# Expert instruction post findings

- Envisaged as a potential next step by the Guidance (para 85-87)
- “Not always necessary but when one is considered to be so, the court should be mindful of the need to appoint an expert with the relevant qualifications, registration and recognised expertise in the assessment of both adults and children to enable them to conduct a whole family assessment.”
- Court must bear in mind the nature, duration and impact of the disruption in the relationship between the alienated child and parent against the wider factual matrix - to ensure assessment is balanced and comprehensive
- Court and parties should take particular note of:
  - Guidance from Re C
  - Revised Guidance on Psychologists as Expert Witnesses
  - Guidance Note at paragraphs 108-114 of Guidance - sets out likely qualifications necessary, reference to Law Society templates of LOI

# Interventions

- Position of WHO “There are no evidence-based health care interventions specifically for parental alienation”
- Crucial, in order to avoid iatrogenic harm, that interventions are:
  - Tailored to the individual family
  - Cognisant of the full range of factors pertinent to the case and the established factual matrix;
  - Recommended by a suitably qualified registered psychologist with the requisite training and expertise to do so.

# Considering the Welfare Checklist

- Para 93 sets out particular matters to consider when analysing the case against the welfare checklist;
- Court should keep its own decisions under careful review consistent with the child's welfare and a potentially changing landscape (para 99)
- Child friendly judgment or explanatory letter to child may be appropriate



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Thank you for listening.  
Feel free to contact us with any questions.

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