



New Park Court

Family Briefing

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Family Briefing

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Family Law Update - Parental Alienation

Introduction

Parental alienation (“PA”) is a hotly contested term used in family proceedings. It is often the case that where an allegation of Domestic Abuse is made, a counterattack comes in the form of an accusation of PA. Indeed, many of those who practise in family law are filled with dread at the very mention of it.

The recent decision in the case of *Y (Experts and Alienating Behaviour: The Modern Approach) [2026]* brings the issue of PA back into sharp focus. Indeed, Sir Andrew McFarlane handed down a judgment on 20 February 2026 critically assessing the multi-agency failures in protecting the children subject to the proceedings and failure in prioritising their welfare needs.

This article will consider how the law in relation to PA has developed over time. I have previously considered the case of *Re C (Parental Alienation: instruction of expert) [2023]*, which provides a starting point. That article is accessible at [‘Now is the time to reassess presumption of parental involvement in cases involving domestic abuse’ \[2024\] FLJ 393](#).

Y (Experts and Alienating Behaviour: The Modern Approach) [2026]

The procedural history of this case is a sad, and regrettably not uncommon one. The parents of two young children separated in 2014. Four years later, in 2018, the father applied to the court for a lives with order. Cross allegations of “extremely serious” abusive behaviour were made by both parents and CAFCASS recommended for the court to hold a fact-finding hearing.

The children were joined as a party to the proceedings through their appointed guardian. Seemingly, it was by way of an oral Part 25 application made by the children’s guardian at a hearing in April 2019 that Melanie Gill, the now infamous psychologist, was appointed as an expert to undertake a specialist family assessment.

Ms Gill’s report was filed in September 2019 and prompted an urgent application by the father seeking for an immediate transfer of the children’s residence to his home. The mother applied for permission to instruct an alternative psychologist. This was refused.



The children's guardian filed their report endorsing Ms Gill's assessment, to the extent that they departed from the children's strongly expressed views to remain with their mother, citing:

"Unfortunately [the children's] wishes and feelings cannot be given much weight in the final decisions made for them due to the negative influence of their mother and the children's alignment with their mother."

While it is not unusual for a child guardian to scrutinise the wishes and feelings of a child when considering any possible risk posed by a parent, a finding of fact hearing is usually necessary to underpin that assessment of risk. It is noteworthy that the child guardian took such a stark view having read Ms Gill's assessment, notwithstanding the allegations of serious domestic abuse raised by the mother.

At a combined fact-finding and welfare hearing in October 2019, Ms Gill gave evidence in respect of alienating behaviours. The Judge queried Ms Gill as to whether, if the court made findings of the mother's allegations of physical abuse and marital rape, she would like to review or alter her recommendations. Ms Gill remained steadfast – she would not. The key welfare concern was that of the mother's hatred for the father and the impact this would have on the children.

Many practitioners will note that the question of whether a composite hearing, rather than a separate finding of fact, should take place is ventilated early on in proceedings. Often, it is preferable to have a finding of fact hearing in the first instance to ascertain the factual matrix the court must grapple with in making welfare decisions. This often assists in what sort of assessments should take place, and in assisting CAFCASS/ the Local Authority in their recommendations.

In this case, it seems to be an inversion of logic that Ms Gill's assessment, and the final assessment of the child guardian, was undertaken prior to any finding of fact hearing in respect of the emotional, physical and sexual abuse complained of by the Mother.

The new guidance in respect of alienating behaviours sets out that where **"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 on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour, December 2024], no conclusion as to alienation should be drawn. Though this guidance post-dates the hearing, it is perhaps a common-sense approach, that if the children had experienced either directly or indirectly the father's abuse, they may be justified in their reluctance to have a relationship with him. Furthermore, a finding of fact hearing should have taken place in the first instance.

Nevertheless, at the conclusion of Ms Gill's evidence, and without hearing from any other witness, the Judge concluded that the children had been alienated from their father as a result of (as Ms Gill put it), the mother's "hostile antipathy to the point of hatred of the father".

Accordingly, in December 2019, notwithstanding the mother's application for permission to appeal (later refused), the Judge directed that the two children should move immediately to live with their father. The mother had no contact of any sort with her children who had previously resided in her care, for six years.

The mother applied to vary the child arrangements order in 2021. At a final hearing in April 2022, not only was the mother's application refused, a Children Act 1989 section 91(14) barring order was made. The mother's permission to appeal that order was refused.



The mother applied in April 2025 to have the previous findings set aside under Part 18 of the Family Procedural Rules 2010. Sir Andrew McFarlane subsequently set aside the findings at a hearing on 29 January 2026.

This is a sad case. In early 2025, the son made a clear expression of his wishes by unilaterally leaving the father's home and seeking out his mother. He was 15 at the time. Somewhat unbelievably, the police removed the son at 4am, using their powers under the Children Act 1989 s46. The son was then placed in foster care for a short period, before Lieven J discharged the child arrangements, prohibited steps and specific issue order made by DJ G Smith in 2020, allowing the son to reside with a family friend of the mother, and having ever increasing contact with the mother.

The son made clear in January 2026 that he was keen to live full time with his mother. Sir Andrew McFarlane acquiesced to this desire when considering the Part 18 application, making a child lives with order for the benefit of the mother.

In considering the application to re-open and set aside the findings made by DJ Smith in relation to Ms Gill's evidence, it is important to note the progression of the law in this area.

How to approach allegations of alienating behaviours since Re C [2023]

Since *Re C [2023] EWCH 345 (Fam)* there was an expectation that courts would move away from using the term "parental alienation". The Guidance on Responding to Allegations of Alienating Behaviours produced by Sir Andrew McFarlane encouraged the use of the following terms in lieu of parental alienation:

- Attachment, Affinity and Alignment ("AAA");
- Appropriate Justified Rejection ("AJR");
- Alienating Behaviours ("AB");
- Protective Behaviours ("PB"); and
- Reluctance, Resistance or Refusal ("RRR").

In particular, the President noted that PA is not a syndrome capable of diagnosis, but a process of manipulation of children perpetrated by one parent against another (alienating behaviours). Those were a matter of fact to be determined by the court.

The guidance goes on to identify three essential components that must be satisfied prior to any conclusions being drawn that alienating behaviours have occurred:

- i. The child is reluctant, resisting or refusing to engage in a relationship with a parent or carer.
- ii. 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 reaction by the child, or is not caused by any other factor, such as the child alignment, affinity, or attachment.
- iii. 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.

The Guidance could be no clearer than at paragraph 18 in relation to cases concerning allegations of domestic abuse:

"Given the relative impact of domestic abuse, the harms that flow from it and the importance of protecting children, Alienating Behaviours will not be found in cases where findings of domestic abuse are made which have resulted in a child's appropriate justified rejection (AJR), or in protective behaviours (PB) or a traumatic response on the part of the victim parent."



Crucially, unregulated experts, such as Ms Gill, should not be instructed in cases of alleged alienating behaviour. The advice is that expert evidence should only be directed after any findings of fact have been made and should not be relied upon for the purpose of making such findings.

It was noted by Sir Andrew McFarlane in *Y (Experts and Alienating Behaviour: the Modern Approach)* that in future, permission should not be given under CFA 2014, S14 for the instruction of an expert ‘psychologist’ who is neither registered by a relevant statutory body nor chartered by BPS. Any expert should be asked whether they hold a HCPC [The Health and Care Professions Council] protected title prior to being appointed.

O v C [2025] EWFC 334

Within his judgment, Sir Andrew McFarlane considered the case of *O v C [2025]* at length. That appeal was made by a mother to set aside the findings of a District Judge, placing reliance on a report prepared by Melanie Gill. Ms Gill was appointed by the Court to undertake an assessment of the children and found that the children had suffered emotional and psychological harm as a result of the mother’s parenting and would continue to do so if they returned to her care without the mother receiving significant and specific therapy.

In particular, the report stated that the children were being actively alienated from their father by their mother and thus to safeguard their welfare, they should live with the father. This assessment was accepted by the District Judge, who found as a fact that Ms Gill was correct.

As a result of Ms Gill’s assessment, the children were removed from the mother’s care on an interim basis in 2020. The Judgment notes that Ms Gill was concerned about the mother’s reaction to her recommendations. It is perhaps unsurprising that the mother was in disagreement with Ms Gill’s recommendations, given that her assessment stood directly at odds with the advice of the social worker involved in the proceedings, and the allegations that the father had mistreated the children.

The child arrangements were later confirmed at a final hearing in September 2020 and since then, the mother had only limited contact with her children, who previously resided with her.

Aside from the fact that Ms Gill is not a HCPC regulated practitioner [Readers may find the [Bureau of Investigative Journalisms article](#), incorporating undercover recordings with Melanie Gill of interest] and would thus not be considered a suitable expert to carry out such an assessment on the children now. Mrs Justice Judd went further, to say that:

“Ms Gill’s report is based very much on attachment science and her assessment of the parents is through that prism. It makes it very difficult to retain any of what she says as a base for future decision-making. Accordingly that report should be left out of account by anyone going on to carry out a further assessment of the children, which includes any observation the judge made about it. Everyone agrees that it should be Cafcass who should now investigate and prepare a section 7 report for the court. [32]”

Judd J was also clear that Ms Gill’s assessment of the mother considered her own attachment and other behaviours but that did not form a finding of fact about how the mother actually behaved. Furthermore, there were no findings with a solid foundation that the mother alienated the children.

Further Guidance on Parental Alienation

Sir Andrew McFarlane endorsed Judd J’s approach here, pointing out the lack of any sound foundation for Ms Gill’s expert evaluation. Sir Andrew McFarlane went on to say, at paragraph 66 of *Y (Experts and Alienating Behaviour: The Modern Approach)*:



“This is a good example of the approach required by the FJC guidance, which makes plain that findings on significant and relevant allegations of domestic abuse might provide an understandable context for ‘a child’s appropriate justified rejection (AJR), or in protective behaviours (PB) or a traumatic response on the part of the victim parent’.”

Sir Andrew McFarlane also summarised the modern approach to alienating behaviour at paragraph 75 of his judgment:

- i. As the full title to the FJC guidance makes plain, the reason for the court’s investigation should be ‘a child’s unexplained reluctance, resistance or refusal to spend time with a parent’, rather than the allegations that one or other parent may be making against the other;
- ii. Where a child is reluctant, resisting or refusing to engage in a relationship with a parent or carer (element (i) of the three elements in paragraph 10 of the guidance), then the court’s focus will move to element (ii) to consider whether that reluctance, resistance or refusal is a consequence of the action of the estranged parent, where it is alleged that that parent has been abusive to the child and/or caring parent;
- iii. If it is found that the estranged parent has not behaved in a way in which the child’s reaction can be seen as an ‘appropriate justified reaction’ [AJR] to such behaviour, or, for other reasons, it is found that the child’s reaction is not caused by any factor such as a child’s ordinary alignment, affinity or attachment [AAA] to the parent with care, then the court will move on to element (iii);
- iv. It is only at the stage of element (iii) that the court will focus on whether the caring parent has engaged in alienating behaviours that have directly or indirectly impacted on the child, leading to the child’s reluctance, resistance or refusal to engage with the estranged parent.
- v. Thus, where domestic abuse is alleged, and there is a cross-allegation of alienating behaviour, if a fact-finding process is required, the focus of the fact-finding must be to first determine the issues of domestic abuse and secondly to consider whether the child’s refusal to engage with the estranged parent is an ‘appropriate justified reaction’ to any abusive behaviour, or that what has occurred is the result of protective behaviour or a traumatic response on the part of the victim parent.
- vi. Courts should not follow the route adopted by the judges in *O v P* and the present case in determining the issue of alienating behaviour on its own and without determining the underlying facts and, where it is alleged, the primary issue of domestic abuse;
- vii. Courts should not appoint an expert to advise in cases where a child is reluctant, resistant or refusing to engage with a parent unless and until there is clarity and, if necessary, facts that have been found, as to the parents’ past behaviour towards each other and the child and, if domestic abuse is proved, whether the child’s reaction to that behaviour is an appropriate one.

It is hoped that this clear guidance will prevent the over-use of PA in cases where children demonstrate reluctance to spend time with one parent, and where one parent holds negative views of the other as a result of the domestic abuse they have suffered.

Practitioners should note that at paragraph 75(v) of the President’s judgment, which sets out the proper procedure when faced with allegations of domestic abuse. Sensibly, the focus of any fact find must first determine the issue of domestic abuse. Any such findings (or not) will then assist the court in considering whether the child’s refusal to engage with the estranged parent is an AJR.