

Parental alienation: updating guidance from the President, Sir Andrew McFarlane

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[Re Y \(Experts and Alienating Behaviour: The Modern Approach\) \[2026\] EWFC 38](#)

Summary

The President provides guidance on the modern approach to parental alienation in private children cases, which can be summarised as follows:

1. Allegations of domestic abuse should be determined prior to allegations of parental alienation.
2. Expert psychologists should be instructed after findings of parental alienation have been made, not before.
3. Experts must be properly qualified (registered by a relevant statutory body, or chartered by the British Psychological Society (BPC)).

Background

Re Y involved an application by the mother to set aside findings of parental alienation made in 2019 and 2020. Following separation in 2019, the father applied for a child arrangements order relating to their daughter aged 12 and son aged 9. Both parties made serious allegations of domestic abuse, and a fact-finding hearing was listed. However, the Children's Guardian also applied for an expert instruction of a psychologist, Melanie Gill.

Unfortunately, whilst Ms Gill holds herself out as a psychologist, she is neither registered with the Health and Care Professionals Council, nor a chartered psychologist with BPC, and she does not have a clinical or therapeutic practice.

Ms Gill's report, which was received prior to the fact-finding hearing, concluded the mother had alienated the children and they should be removed from their *'traumatising environment'*

and relationship with their mother [para 10, vii]. Upon receipt of this report, the father applied for a transfer of residence, a position which was supported by the Guardian, who endorsed the findings and recommendations of Ms Gill. The fact-finding was re-listed as a composite fact-find and welfare hearing, with Ms Gill's evidence preceding the parents.

At the conclusion of Ms Gill's evidence, she was asked by the Judge whether she would alter her recommendations if findings of marital rape were made, to which she confirmed she would not. The Judge therefore decided evidence from the parents was not necessary and the fact-finding hearing was no longer proportionate. The mother unsuccessfully applied for permission to appeal this decision. In the meantime, a section 37 report was directed, which ultimately aligned with Ms Gill's recommendations. On 18 December 2019, the court ordered an immediate transfer of residence with no contact for the mother.

At the four-day final hearing in early 2020, the court heard evidence from Cafcass, the local authority and the parents. The Judge criticised the mother for not engaging in schema therapy and made a final order for the children to live with the father and have no contact with the mother. The order reflected that Ms Gill's findings stood as the court's findings, which included significant emotional harm to the children and parental alienation by the mother.

The mother applied to vary the final order in 2021, which was unsuccessful and resulted in a section 91(14) CA 1989 order for 12 months. She unsuccessfully applied to appeal this order.

In April 2025, the mother applied to set aside the findings, which led to the current judgment. Following a hearing on 29 and 30 January 2026, the President set aside the findings of fact as fundamentally flawed due to:

1. The premature instruction of an expert prior to determination of the factual matrix
2. The filing of the guardian's final report prior to the fact-finding
3. The decision of the Judge to hear evidence from Ms Gill first and no other evidence
4. The use of an unregistered psychologist

Key learning points

Parental alienation

The President re-emphasised the FJC guidance on parental alienation and the modern approach at paragraph 75, which requires the court to determine allegations of domestic abuse prior to any allegations of parental alienation and prior to any expert instruction:

- 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 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.*

Expert instruction

The guidance in relation to expert instruction is twofold: firstly, experts should not be instructed until after the fact-finding hearing when the alienation behaviours have been identified, and secondly, the experts must be regulated.

With regards to the timing of the expert instruction, the FJC Guidance states at paragraph 108: *'It is inappropriate for experts to be asked to step into fact-finding or determination of Alienating Behaviours – as such, the timing and type of expert evidence needed is crucial. In determining the welfare outcome, when the presence of such harmful behaviours has been identified, it may be necessary to have expert evidence from a psychologist expert.'*

With regards to the type of expert, the FJC Guidance states at paragraph 110: *'These assessments should not be undertaken by academic psychologists or psychological researchers in the field of alienation. The guidance from the BPS is that only HCPC registered psychologists have the relevant clinical experience and training to conduct psychological assessments of people and make clinical diagnoses and recommendations for treatment or interventions, whereas, academic psychologists, who should be Chartered, but who are not registered with the HCPC, would not normally have the clinical experience and training in order to complete psychological assessments or make clinical diagnoses.'*

In Re Y, the President re-iterates this position at paragraph 73: *'permission should not be given under CFA 2014, s 13 for the instruction of an expert 'psychologist' who is neither registered by a relevant statutory body, nor chartered by the BPS.*

The following is recommended as good practice: *'before a potential expert is appointed, for them to be asked to state whether they hold an HCPC protected title, and if so what that is, before any order is made appointing them as an expert. The 'registered or chartered' requirement should only be departed from where there are clear reasons for doing so (for example no registered or chartered expert is reasonably available); where that is so, those reasons should be set out in a short judgment.'*

Conclusion

Allegations of domestic abuse should be determined prior to allegations of parental alienation and before any expert instruction. The timing and identification of an expert psychologist is a crucial step within these cases. The FJC Guidance, which is re-iterated by the President in Re

Y, must be carefully followed. Otherwise, the involvement of “psychologists” can have a detrimental impact on the fairness of proceedings and contribute to wholly unjust outcomes.

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