

# WESTGATE CHAMBERS



## PARENTAL ALIENATION

How to best prepare and present your case to the court

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## **1. BACKGROUND**

Families Need Fathers Conference 2018 Keynote Address by Lord Justice McFarlane 25 June 2018: <https://www.judiciary.uk/wp-content/uploads/2018/06/speech-lj-mcfarlane-fnf.pdf>

## **2. MEDIA COVERAGE**

- 'Divorcing parents could lose children if they try to turn them against partner' *The Guardian* 28 November 2017
- <https://www.theguardian.com/global-development/2022/jun/12/questions-over-use-of-psychological-experts-in-parental-alienation-cases>

## **3. CAFCASS**

[file:///C:/Users/sayer/Downloads/Childrens-resistance-or-refusal-to-spending-time-a-parent-guide%20\(2\).pdf](file:///C:/Users/sayer/Downloads/Childrens-resistance-or-refusal-to-spending-time-a-parent-guide%20(2).pdf)

**"...when a child's resistance or hostility towards one parent is not justified and is the result of psychological manipulation by the other parent. It is one of a number of reasons why a child may reject or resist spending time with one parent post-separation... Alienating behaviours present themselves on a spectrum with varying impact on individual children, which requires a nuanced and holistic assessment. Our role is to understand children's unique experiences and how they are affected by these behaviours, which may differ depending on factors such as the child's resilience and vulnerability"**

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## **'The 4 A's'**

- i. *Appropriate Justified Rejection - due to substantiated allegations of DA*
  - ii. *Affinity or Alignment - innocent preference of a child of one parent or family system*
  - iii. *Attachment - an unconscious emotional response of the child to parental separation*
  - iv. *Alienation - Alienation itself exists on a spectrum ranging from intermittent to persistent*
- Review of research and case law on parental alienation Julie Doughty, School of Law and Politics Nina Maxwell and Tom Slater, School of Social Sciences, Cardiff University Commissioned by Cafcass Cymru, April 2018

## **4. RULES & STEPS**

### **FIRST STEPS:**

#### **Get the case to court pronto.**

Delay is Alienation's friend. Point at which you come into a case

- Therapeutic Intervention - *The effectiveness of directions for independent expert evidence and/or therapy will depend on availability and funding, as well as acceptance by both parties. Sussex have a number of providers, Iris and Family Law Partners.*

### **PARALLEL CONSIDERATION: Contact**

#### ***Re C [2011] EWCA Civ 521 at para 49***

- *Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.*
- *Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when*

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*there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.*

- *There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.*
- *The court should take a medium-term and long-term view and not accord excessive weight to what appears likely to be short-term or transient problems.*
- *The key question, which requires "stricter scrutiny", is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.*
- *All that said, at the end of the day the welfare of the child is paramount; "the child's interest must have precedence over any other consideration".*

## **Section 1 (2A) Welfare of the child:**

*"A court...is to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare."*

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## **SECOND STEPS**

### **Decide on the course of the case and support required**

#### **- Fact Find**

*'The guidance in PD12J is both clear and correct in stating that, where such a hearing is necessary, it must be undertaken and undertaken very promptly in the early stages of proceedings. Not to do so simply stores up problems which become more and more difficult to unpick as the months, and years, go by. The interests of the children are not served and those who may be called upon to advise the court as to the children's welfare, whether as CAFCASS officers or guardians, have no factual bedrock from which to work.*

#### **- Guardian**

*There is specific provision in the court rules (Part 16) for the child to be made a party and be separately represented under FPR r 16.4. The associated Practice Direction states that this appointment is only to be made after considering further work by the Cafcass family court adviser; a s 37 referral; or obtaining expert evidence (PD 16 para 7.1). However, the reported cases indicate that a r.16.4 appointment is more likely to precede a s 37 direction than the other way round.*

*One ground for making a r 16.4 appointment is in the Practice Direction at para 7.2(c): where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute.*

*The advantages are that the child is given separate party status and a children's guardian will be appointed by Cafcass to ascertain the child's wishes and feeling and advise the court on the options available to it in respect of the child and the suitability of each such option, including what order should be made in determining the application (FPR 16.6 (e)).*

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*A solicitor will also be appointed by Cafcass who the child, if old enough, will be able to instruct direct.*

## Family Assistance Orders under s 16

*These also require co-operation and can be made only if all parties and the Cafcass agree.*

### - **Section 37**

*A direction for a s 37 investigation – the local authority will be directed to investigate whether it should consider applying for a care or supervision order. Such an application will only be made by the local authority if it finds evidence of significant harm. While in some reported cases, there is evidence of significant emotional harm, such an order would only achieve a meaningful outcome for the child if the local authority exercised its parental responsibility to remove the child into foster care.*

*A supervision order would require an element of co-operation by both parents.*

### - **Therapeutic Intervention - Again**

## **THIRD STEP**

### **Detailed statements**

*Be as thorough as possible from the outset: Ensure that your statement paints an accurate chronology of the relationship both before and since the allegations of alienation have arisen. Be mindful of the 4 A's and the very subtle nuances between the reasons for resistance.*

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## **FOURTH STEP**

### **Cafcass - Section 7 report**

Cafcass are now better equipped to deal with the issue, given said specialist toolkits

## **FIFTH STEP**

### **Remedy**

*Where a court does make a finding of parental alienation that amounts to a risk of emotional harm (short of significant harm), family court advisers need to be cautious in assessing or recommending a particular intervention because the evidence base for interventions is very limited.*

- *Transfer of residence, either immediate or suspended, may be the best outcome for some children but the limited amount of information about how such cases are approached by the court indicate that this is a complex solution requiring intensive support and management **Re S** [2010]*
- *The enforcement provisions of the Children and Adoption Act 2006 have not been shown to be very effective (Trinder & Hunt 2013; Halliday et al 2017).*
- *Wardship has been mentioned as an option in **Re M** [2017] but not found in any reported cases at that point*
- *Therapeutic Intervention – Again & Ongoing*