

# WESTGATE CHAMBERS



## Parental Alienation and Relocation

- How best to prepare an international relocation application
- How to approach cases concerning allegations of sexual abuse of a child (not necessarily the child of the family) both historic and recent, in cases where the alleged perpetrator has not been prosecuted or convicted in the criminal court.
- How best to present your parental alienation case from both perspectives

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## HOW TO BEST PREPARE AN INTERNATIONAL RELOCATION APPLICATION

### Legal Framework & Statutory Basis

- Section 8 Children Act 1989 V Section 13 Children Act 1989
- Legal debate - paragraph 21 of *Re C (Internal Relocation)* [2015] EWCA 1305

### Caselaw

Pivotal case : **Re F (A Child) (International Relocation Cases)** [2015] EWCA Civ 882

Encapsulated following three cases:

- i i. *Payne v Payne* [2001] EWCA Civ 166
- ii ii. *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793 [2012]
- iii iii. *Re F (A Child) (Relocation)* [2012] EWCA Civ 1364,

- i i. *Payne v Payne* [2001] EWCA Civ 166

"The only principle to be extracted from *Payne v Payne* is the paramountcy principle. All the rest...is guidance as to factors to be weighed in search of the welfare paramountcy." As per Lord Justice Thorpe, in *K (Children)* [2011] EWCA Civ 793

**However, for reasons that will become clear – still need to be able to identify said guidance:**

**Guidance, *Payne v Payne* [2001] EWCA Civ 166**

"(a) Is the mother's application genuine in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?... Is the mother's application realistic, by which I mean, founded on practical proposals both well researched and investigated? ... (b) Is [the father's opposition] motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive...What would be the extent of the detriment to him and his future relationship with the child were the application granted? To what extent would that be offset by extension of the child's relationships with the maternal family and homeland?... (c) What would be the impact on the mother, either as the single parent or as a new wife, of a refusal of her realistic proposal?..."

(d) ) The outcome of the second and third appraisals must then be brought into an overriding review of the child's welfare as the paramount consideration, directed by the statutory checklist insofar as appropriate.

Both subsequent cases enshrined paramountcy principle and welfare checklist:

- i ii. *K v K (Relocation: Shared Care Arrangement)* [2011] EWCA Civ 793 [2012]

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Its central message is conveyed, succinctly and accurately, in the headnote in the Law Report:

*"...that the only principle to be applied when determining an application to remove a child permanently from the jurisdiction was that the welfare of the child was paramount and overbore all other considerations however powerful and reasonable they might be; that guidance given by the Court of Appeal as to factors to be weighed in search of the welfare paramountcy and which directed the exercise of the welfare discretion was valuable in so far as it helped judges to identify which factors were likely to be the most important and the weight which should generally be attached to them and promoted consistency in decision-making; but that (per Moore-Bick and Black LJ), since the circumstances in which such decisions had to be made varied infinitely and the judge in each case had to be free to decide whatever was in the best interests of the child, such guidance should not be applied rigidly as if it contained principles from which no departure were permitted".*

iii. *Re F (A Child) (Relocation)* [2012] EWCA Civ 1364, the approach which is now to be applied could not have been more clearly stated than it was by Munby LJ:

*"paragraph 37 There can be no presumptions in a case governed by s 1 of the Children Act 1989. From the beginning to the end the child's welfare is paramount and the evaluation of where the child's interests truly lie is to be determined having regard to the 'welfare checklist' in section 1(3)"*

*"paragraph 61 The focus from beginning to end must be on the child's best interests. The child's welfare is paramount. Every case must be determined having regards to the 'welfare checklist', though of course also having regard, where relevant and helpful, to such guidance as may have been given by this Court"*

## **Re F (A Child) (International Relocation Cases) [2015] EWCA Civ 882**

- Ultimately, Court found that HHJ Waddicor had been constrained by the narrow guidance in Payne which remains a common pitfall for the courts and Cafcass –
- The case resulted in the courts moving from the question “why shouldn’t the would-be relocater with the reasonable plans be allowed to go?” to the position that the would-be relocater must demonstrate that relocation would be better for the child than not.
- The court endorsed the composition of the question posed by leading counsel for the Respondent/Mother at paragraph 14 of the Judgement, which is a helpful : *“Did the court engage with the LONG TERM welfare issues and address them in a holistic way by reference to each parents options and plans analysed separately and evaluated comparatively and proportionately in coming to its decision?”*

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## Painting the picture

### Welfare checklist

#### Common weighty factors:

#### *i. the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*

Often a difficult subject for child(ren)

Does the child(ren) present a clear, reasoned view one way or the other?

#### *ii. his physical, emotional and educational needs;*

- ii Key question: what is the benefit to the child?
- iii i.e. what will life look like for them if relocation permitted?

o School/nursery?

o What about friends?

o Family?

o Contact arrangements?

#### *iii. the likely effect on him of any change in his circumstances;*

Law applied the same whether that pre-existing care arrangement is one of shared care or is more accurately described in more traditional primary and second carer terms. But one of the most influential determinator of the judicial outcome in the relocation case is the pre-existing care arrangement.

In the vast majority of cases, relocation and shared care are mutually incompatible concepts.

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## **Motivation**

Motivation for moving

- Chasing the dream
- Homeward bound
- Employment / opportunity
- Partner

Motivation for opposing

- nothing more than the desire to thwart the plans of the other parent – adult convenience - reasoned view of what is best for the child.

## **Contact**

Is the relocator serious about maintaining the child's relationship with the left behind parent?

Is the locator likely to make good on their promise?

Can the would-be left behind parent travel to see the child?

i ***iv. any harm which he has suffered or is at risk of suffering;***

Majority of cases will be balancing exercise

## **How to prepare:**

Paint a clear and accurate picture:

- the current care arrangements for the judge
- what will care arrangements look like if relocation granted
- what will life look like for the child(ren) if relocation granted
- how will the judge be reassured contact will continue as proposed?

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## **Tactics from the outset throughout lifetime of the case**

- Remain child centred – in terms of overall position and documents prepared and filed
- May need to instruct a CG for this reason. Rule 16.4 of the Family Procedure Rules
- *The orders made by this court reflect the reality of this child's life and her best interests as considered by her guardian and the court when the case came before it in February 2017 some three years after she had moved to Pakistan with her mother. This court endorses his suggestion; it must be right that children in these cases should be separately represented to avoid the focus being on the dispute between parents and/or care-givers and their "rights". Re B (A Child by her Guardian) [2017] EWHC 488 (Fam)*
- If there are two children then the court must consider their welfare interests separately. The court having failed to do so in the case of *Re S (Children) [2011] EWCA Civ 454*
- Research the other Jurisdiction – know what the reciprocal rules are for contact
- Remember contact is a huge bargaining chip – what package can you offer?
- Identify any potential defects in Cafcass or other professional analyses. Ensure they are not blighted by Payne as soon as practicable and remedy if so – as still creeps in!

## **Conclusion**

Ultimately these are cases that are first and last about the welfare of the child –

- As Lady Justice Black (as she then was) put it in *K v K*:

*"[141] ... Everything that is considered by the court in reaching its determination is put into the balance with a view to measuring its impact on the child."*

So paint a clear picture for the judge from the outset

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## **How to approach cases concerning allegations of sexual abuse of a child (not necessarily the child of the family) both historic and recent, in cases where the alleged perpetrator has not been prosecuted or convicted in the criminal court.**

According to research carried out by the **NSPCC**, prosecutions and convictions for Child Sexual Abuse have reduced by approximately 50% in the last four years.

- 2016/17 - 6,394 prosecutions – 4,751 convictions

- 2020/21 - 3,025 prosecution – 2,595 convictions

### **Some things to consider**

#### **PD12J**

Fact finding?

**Paragraph 5:** *The court must, at all stages of the proceedings, and specifically at the First Hearing Dispute Resolution Appointment ('FHDRA'), consider whether domestic abuse is raised as an issue, either by the parties or by Cafcass or CAFCASS Cymru or otherwise, and if so must –*

- *identify at the earliest opportunity (usually at the FHDRA) the factual and welfare issues involved;*
- *consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms;*
- *give directions to enable contested relevant factual and welfare issues to be tried as soon as possible and fairly;*

...

**Paragraph 16:** *The court should determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic abuse –*

*(a) in order to provide a factual basis for any welfare report or for assessment of the factors set out in paragraphs 36 and 37 below;*

*(b) in order to provide a basis for an accurate assessment of risk;*

*(c) before it can consider any final welfare-based order(s) in relation to child arrangements; or*

*(d) before it considers the need for a domestic abuse-related Activity (such as a Domestic Violence Perpetrator Programme (DVPP)).*

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## Evidence

What evidence is there?

- Police
- Witnesses
- Children's services
- School?

## What evidence are you likely to get?

*Where the evidence of a child stands only as hearsay, the court weighing up that evidence has to take into account the fact that it was not subject to cross-examination (Re W (Children)(Abuse: Oral Evidence) [2010] 1 FLR 1485).*

Consent?

Admissions?

**PD12J, Paragraph 15:** *Where at any hearing an admission of domestic abuse toward another person or the child is made by a party, the admission must be recorded in writing by the judge and set out as a Schedule to the relevant order. The court office must arrange for a copy of any order containing a record of admissions to be made available as soon as possible to any Cafcass officer or officer of CAFCASS Cymru or local authority officer preparing a report under section 7 of the Children Act 1989.*

## Contact

### **PD12J, Paragraph 5 (cont.)**

- *ensure that where domestic abuse is admitted or proven, any child arrangements order in place protects the safety and wellbeing of the child and the parent with whom the child is living, and does not expose either of them to the risk of further harm; and*
- *ensure that any interim child arrangements order (i.e. considered by the court before determination of the facts, and in the absence of admission) is only made having followed the guidance in paragraphs 25–27 below. In particular, the court must be satisfied that any contact ordered with a parent who has perpetrated domestic abuse does not expose the child and/or other parent to the risk of harm and is in the best interests of the child*



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## **AS v TH (False Allegations of Abuse) [2016] EWHC 532 Fam**

### **The facts of the case are illustrative of what NOT to do, therefore informing better practice.**

From August 2014 to June 2015 the mother and her sons made a series of serious allegations against F. The allegations were of serious emotional, physical and sexual abuse perpetrated by TH against her and both children. Over the course of a nine-day fact-finding hearing Mr Justice MacDonald considered the written and oral evidence of numerous witnesses, to include Scottish and English police officers, social workers, refuge workers, teachers from the boys' schools, CAMHS support workers, the mother and TH. It was not considered appropriate for the children to give evidence. The court did not make a single finding sought by the mother. And at F's request it went further, and made findings that each of the allegations made by the mother was false. The court was so scathing of the way in which the case was handled that it found at paragraph 227 of the judgement: *"The actions of certain professionals in this case breached well-established principles of good practice, actively contributed to the difficulties that I have set out above and materially prejudiced the welfare of both children."*

### **Practical considerations in relation to the child and the investigation**

1. It will be the role of social workers and the police to investigate cases and make a judgment on whether there should be a statutory intervention and /or a criminal investigation. There need to be clear communication between both and a co-ordinated approach to avoid confusion and repetition. It is recommended that joint ABE interviews are completed by police and social workers
2. The decision may be made not to investigate the allegation but pursue therapeutic avenues but be mindful of how the latter could potentially prejudice future proceedings
3. Consider the issue of whether an intermediary is necessary. A proper assessment of the child must be undertaken prior to the ABE interview and should always be considered, particularly with the vulnerable and young children.
4. Ensure that the initial assessment and preliminary decision making is as objective as possible. The word allegation rather than disclosure should be used by all professionals who come into contact with the child.

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5. Professionals should show an appropriate level of interest, so to support the reporting of genuine cases and yet not make or betray any premature presumptions that can irreparably taint the legal process.
6. Throughout entire process, not just the detailed account, initial report, brief Q&A – need for meticulous note taking. Not just what is said, what is asked – word for word – don't summarise so legible, must be a precise snapshot of all dialogue and other factors such as body language, demeanour and KEEP EVERY NOTE. In reality, given the need for such detail – a recording is always going to be preferable, providing permission given?
7. Style of questioning – allow the child to speak freely, without interruption, if absolutely necessary a question must be open ended or specific closed not forced choice leading or multiple
8. Need for speed. Once an allegation has been made, interviews should be conducted asap.
9. The ABE Guidance itself consists of 4 stages, with similar technique and approach, all must be recorded. It starts with establishing a rapport – specific wording used to try and establish the child's understanding of truth and lies, free narrative account, questioning and closure. Drawing pictures or other props and prompts can be used.
10. However, take care to ensure that children are not repeatedly exposed to repeated questioning and preferably not with a parent present.

## **Wider concerns for the child, family and court process**

11. Then look beyond the child, at the family, the parents individually, their relationship the wider family and their social situation, contacts and the family's perception of events as well as the child's vulnerability in that context.
12. A broad assessment of the child will be necessary and possibly of the family also.
13. Decision will need to be taken as to whether the child will give evidence in due course.
14. Remember that a persons vulnerability fluctuates, need for intermediary and advocates varies and must be kept under review throughout the case.

## **The Judgement makes specific reference to the following helpful source Materials:**

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- The Report of the Inquiry into Child Abuse in Cleveland 1987 (the 'Cleveland Report') led by Judge Butler Sloss precipitated a plethora of jurisprudence and guidance after 121 children were taken from their families based on experimental and unreliable new medical practices.
- Achieving Best Evidence in Criminal Proceedings (March 2011) ('ABE Guidelines')
- The case law on the correct approach to allegations of sexual abuse (*Re I-A (Allegations of Sexual Abuse)* [2012] 2 FLR 837, *Re H (Minors); Re K (Minors)(Child Abuse: Evidence)* [1989] 2 FLR 313;
- HM Government Guidance: Keeping Children Safe in Education (July 2015)
- What to do if you're worried a child is abused (March 2015).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/419604/What to do if you re worried a child is being abused.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/419604/What_to_do_if_you_re_worried_a_child_is_being_abused.pdf)

## **Allegations of sexual abuse**

30. In accordance with the foregoing general principles, when assessing whether or not allegations of sexual abuse are proved to the requisite standard, the court should focus on all of the relevant evidence in the case, including that from the alleged perpetrator and family members (see *Re I-A (Allegations of Sexual Abuse)* [2012] 2 FLR 837).

31. The court should adopt a two stage process. First, is there evidence of sexual abuse? If so, is there evidence of the identity of the perpetrator (*Re H (Minors); Re K (Minors)(Child Abuse: Evidence)* [1989] 2 FLR 313 and *Re H and R (Child Sexual Abuse: Standard of Proof)* [1995] 1 FLR 643).

32. The Report of the Inquiry into Child Abuse in Cleveland 1987 (hereafter the Cleveland Report) contains a plethora of salient and important guidance with respect to cases involving allegations of sexual abuse. I set out some of that guidance below.

## **Relevant Statutory Guidance and Non-Statutory Guidance**

33. I have in this case heard extensive evidence from those professionals to whom the children made allegations and from those professionals who subsequently assessed the children and/or

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*investigated those allegations (I pause to note that despite the fact that the use of the term "disclosure" to describe a statement or allegation of abuse made by a child has been deprecated since the Cleveland Report due to it precluding the notion that the abuse might not have occurred (see para 12.34(1)), every professional who gave evidence in this case (except the Children's Guardian) used the term "disclosure" to describe what the children had said to them).*

*34. In light of the criticisms that I make in this judgment of the conduct of some of the professionals involved with the children it is important to note the following matters set out in the statutory guidance and non-statutory guidance and, in addition, to note the following further guidance set out in the Cleveland Report.*

### **Initial Contact with a Child alleging Abuse**

*35. Where a child makes an allegation of abuse to a professional, the relevant guidance for professionals to whom allegations of abuse are reported makes clear the following principles with respect to the initial contact with the child.*

*36. In the departmental advice What to do if you're worried a child is being abused (HM Government, March 2015) (replacing previous guidance published in 2006) states that before referring to children's services or the Police an attempt should be made to establish the basic facts. Within this context, the following is said at [28]:*

*"The signs of child abuse might not always be obvious and a child might not tell anyone what is happening to them. You should therefore question behaviours if something seems unusual and try to speak to the child, alone, if appropriate, to seek further information"*

*And at [29]: "If a child reports, following a conversation you have initiated or otherwise, that they are being abused and neglected, you should listen to them, take their allegation seriously, and reassure them that you will take action to keep them safe."*

*37. The statutory guidance Achieving Best Evidence in Criminal Proceedings (March 2011) (hereafter the ABE Guidelines) makes clear at [2.4] that the need to consider a video recorded interview in respect of the allegations may not be immediately apparent to professionals involved prior to the police being informed. Within this context the ABE Guidelines state at [2.5] that: "Any initial questioning should be intended to elicit a brief account of what is alleged to have taken place; a more detailed account should not be pursued at this stage but should be left until the formal interview takes place. Such a brief account should include where and when the alleged incident took place and who was involved or otherwise present."*

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38. The ABE Guidance goes on to state at [2.6] under the heading 'Initial Contact with Victims and Witnesses' that a person engaged in early discussion with an alleged victim or witness should, as far as possible, (a) listen, (b) not stop a free recall of events and (c) where it is necessary to ask questions, ask open-ended or specific closed questions rather than forced-choice, leading or multiple questions and ask no more questions than are necessary to take immediate action.

39. Within this context, having examined the ABE guidance, in **Re S (A Child) [2013] EWCA Civ 1254** at [16] the Court of Appeal held that, with respect to initial contact with alleged victims, discussions about the facts in issue in respect of an allegation as distinct from whether and what allegation is being made and against whom, should be rare and should not be a standard practice.

40. Again within the foregoing context, when social workers are speaking to children who have made allegations they must be very careful to consider the purpose of the exchange and whether it is being conducted with a view to taking proceedings to protect the child or for separate therapeutic purposes where the restrictions upon prompting would not apply but the interview would not be for the purposes of court proceedings (*Re D (Child Abuse: Interviews) [1998] 2 FLR 10*)

## **Proper Recording**

41. The requirement that all professionals responsible for child protection make a clear and comprehensive record of what the child says as soon as possible after it has been said and in the terms used by the child has been well established good practice for many years. The Cleveland Report makes clear at paragraph 13.11 that: "We would emphasise the importance of listening carefully to the initial presentation of information and taking careful notes".

42. The ABE Guidance re-emphasises this statement of good practice under the heading 'Initial Contact with Victims and Witnesses' by making clear that the person speaking with the alleged victim or witness should (a) make a comprehensive note of the discussion, taking care to record the timing, setting and people present as well as what was said by the witness and anybody else present (particularly the actual questions asked of the witness), (b) make a note of the demeanour of the witness and anything else that might be relevant to any subsequent formal interview or the wider investigation and (c) fully record any comments made by the witness or events that might be relevant to the legal process up to the time of the interview.

43. In the context of schools, the departmental advice entitled *What to do if you're worried a child is being abused* (HM Government, March 2015) makes clear at [26] that professionals should record in writing all concerns and discussions about a child's welfare, the decisions made and the

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*reasons for those decisions". The statutory Guidance Keeping Children Safe in Education (HM Government, July 2015) makes clear at [19] that poor practice in relation to safeguarding children includes poor record keeping.*

*44. The need for professionals working with children to record, as contemporaneously as possible, what the child has said has been recognised and endorsed by the courts as vital in circumstances where, in determining allegations of sexual abuse, it is necessary for the court to examine in detail and with particular care what the child has said (sometimes on a number of different occasions) and the circumstances in which they said it (D v B and Others (Flawed Sexual Abuse Enquiry) [2007] 1 FLR 1295). Within this context, it will also be important that, when recording an allegation, the child's own words are used and that those speaking with the child should avoid summarising the account in the interests of neatness or comprehensibility or recording their interpretation of the account.*

## **Social Work Assessment**

*45. Following the allegations being made in this case assessments were carried out by the London Borough of Hackney, including an investigation pursuant to s 47 of the Children Act 1989. The London Borough of Westminster and the local authority in whose area the mother and children now reside have also been involved with the children.*

*46. The Cleveland Report provides extensive guidance on proper social work practice in the context of allegations of sexual abuse. The salient points are as follows (emphasis added):*

- i) Whatever the nature of presentation, whether the response is immediate, prompt or deferred, the response should be planned and conducted with professional skill. Children's best interests are rarely served by precipitate action. Initial action in securing the widest possible information about the child's circumstances and family background is an essential pre-requisite to careful judgment and purposeful intervention" (para 13.9);*
- ii) It is necessary to assess the family by looking at the parents individually, the parents' relationship, the vulnerability of the child, the child's situation in the family, the family's social situation, their contacts with extended family etc. as well as considering and recording the family's perspective of events which set the referral in motion (para 13.13);*
- iii) The principle aim of the social worker's contact with the family at this stage should be to compile a social history, obtaining as comprehensive a picture of relationships and pattern of family life as possible. The quality of the marital relationship and parental skills should be carefully assessed (para 13.19);*
- iv) Social workers should seek a broadly based assessment of the child. An outline of the child's social development together with information about the important relationships in the child's life is vital information. Where a child is attending playgroup,*

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*childminders or school it will be helpful to record the views of those responsible for the child's day to day care (para 13.23); v) Intervention should proceed as part of a planned and co-ordinated activity between agencies. Children and families should not be subject to multiple examinations and interviews simply because agencies and their staff have failed to plan their work together (para 13.10); vi) The social worker will need to establish a clear understanding with the Police about how their respective roles are to be co-ordinated (para 13.12); vii) Throughout the phase of the initial assessment and preliminary decision making, social workers should be conscious of the fact that the presumption that abuse has taken place can have damaging repercussions for the child and the family. Equally, an abnormally low level of alertness to the possibility of child sexual abuse may deter children from subsequently trusting adults sufficiently to reveal the fact of abuse to them (para 13.22).*

*47. Within this context, and echoing this approach, the statutory guidance Working Together to Safeguard Children (HM Government March 2015) reiterates at [35] the principles and parameters of good assessment. These principles and parameters include the need for such assessments to be rooted in child development and informed by evidence, to involve children and families, to adopt an integrated approach, to be a continuing process and not an event and to be transparent and open to challenge. The three domains of the assessment specified at [36] should be the child's developmental needs, the parents' or carers' capacity to respond to those needs and the impact and influence of wider family, community and environmental circumstances. At [37] the guidance makes clear that the interaction of these domains requires careful investigation during the assessment and that it is important that (a) information is gathered and recorded systematically, (b) information is checked and discussed with the child and their parents/carers where appropriate, (c) differences in views about information are recorded and (d) the impact of what is happening to the child is clearly identified.*

## **Police Interviews of Children**

*48. Police interviews with children should be conducted in accordance with the ABE Guidelines to which I have already referred. In this case N was interviewed by both English and Scottish police officers and S was interviewed by Scottish officers. In Scotland the Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland (The Scottish Government 2011) takes the place of the ABE Guidelines.*

*49. Whilst DC Glendenning stated that there is no longer a requirement in Scotland to establish in an interview whether a child understands the difference between truth and lies, it would appear that her understanding is not entirely accurate. The Scottish Guidance makes clear that, whilst the*

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*Vulnerable Witnesses (Scotland) Act 2004 abolished the competence test in respect of all witnesses, the Vulnerable Witnesses Guidance Pack (Scottish Executive 2006) states in chapter 11 that "the court will still have to make a judgment of the witness's truthfulness and reliability, therefore any interview should still clarify, in age appropriate ways, the witnesses level of understanding".*

*50. The courts have further endorsed a number of the general principles set out in the ABE Guidelines. It is desirable that interviews with young children should be conducted as soon as possible after any allegations are made (Re M (Minors)(Sexual Abuse: Evidence) [1993] 1 FLR 822). Where a child has been interviewed on a number of occasions the court may attach diminishing weight to what is said in the later interviews (Re D (Child Abuse: Interviews) [1998] 2 FLR 10). The court will wish to see responses from the child which are neither forced nor led (Re X (A Minor)(Child Abuse: Evidence) [1989] 1 FLR 30). It is normally undesirable for a parent to be present during an interview with the child (Re N (Child Abuse: Evidence) 1996 2 FLR 214 and see the Cleveland Report para 12.35). In Re S (A Child) [2013] EWCA Civ 1254 Ryder LJ confirmed that the guidance set out in the Cleveland Report at paragraph 12.34 with respect to interviewing children remain good practice.*

*51. It is of note that guidance from the Children Act Advisory Committee concerning the Memorandum of Good Practice which preceded the ABE Guidelines, made clear that: "Any joint child abuse interview conducted by police and social services must follow the memorandum of good practice. Otherwise, not only is the resulting interview of no forensic value, but it may impede or contaminate any further assessment of the child ordered by the court."*

*52. Where there has, as in this case, been a failure to follow the interviewing guidelines, the court is not compelled to disregard altogether the evidence obtained in interview but may rely on it together with other independent material to form a conclusion (Re B (Allegations of Sexual Abuse: Child's Evidence) [2006] 2 FLR 1071). However, where the court finds that no evidential weight can be attached to the interviews the court may only come to a conclusion that relies on the content of those interviews where it has comprehensively reviewed all of the other evidence (TW v A City Council [2011] 1 FLR 1597)."*



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## **PARENTAL ALIENATION**

There is no precise definition in Law, it being a relatively new evolving concept and so quite divisive.

### **Cafcass guidance 2019 definition:**

*“...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”*

*Must remember that alienation is one of a number of reasons why a child may reject or resist spending time with one parent post-separation and therefore must be careful to identify the correct reason.*

### **‘The 4 A’s’**

- i i. *Appropriate Justified Rejection - due to substantiated allegations of DA*
- ii ii. *Affinity or Alignment – innocent preference of a child of one parent or family system*
- iii iii. *Attachment – an unconscious emotional response of the child to parental separation*
- iv iv. *Alienation - Alienation itself exists on a spectrum ranging from intermittent to persistent*

Given that the topic is arguably open to interpretation it is therefore also vulnerable to manipulation and fast being viewed as a weapon in retaliation to allegations of Domestic Abuse. Without wanting to fall into stereotypes – it seems Father’s are most commonly deploying it. There have been a series of articles in the Guardian on the topic. The most recent stating that “Parents – more often mothers – are losing access to their children on the advice of unregulated experts.” <https://www.theguardian.com/global-development/2022/jun/12/questions-over-use-of-psychological-experts-in-parental-alienation-cases>

### **But ... allegations need to be taken seriously and investigated**

There are instances when alienating behaviour takes place  
Parents do falsify allegations of domestic abuse + they do use their children to corroborate untruthful allegations

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## ***AS v TH (False Allegations of Abuse) [2016] EWHC 532 Fam***

- Parental alienation not mentioned in the judgment

If facing allegations of domestic abuse, have to deal with those

1. If denied or if dispute about nature of relationship – likely need FFH

2. If perpetrator of abuse, need to recognise that and submit to assessment process (Penny Coombes)

### **Presenting a case of ‘alienation’**

Get to court quickly

- if parent has time to inculcate story with children due to delay, system works in favour of that parent.

- Mere expression of fear about the child having contact can be enough to influence child’s belief

- Contact – supervised / supported / unsupervised?

First statement very important - Paint a detailed and clear picture early on:

- All guidance begins with what is happening for this child – try not to use phrase ‘parental alienation’. Focus on behaviour of the ‘alienating’ parent

### **The more obvious**

Is there evidence of manipulation?

- ABE interview, police interview, children’s services information, Cafcass safeguarding letter, section 7

- Are there recordings or has client heard other parent ... denigrate and/or emotionally blackmail e.g.: ‘do you really want to see daddy? Mummy won’t know what to do’.

# WESTGATE CHAMBERS

## **The less obvious**

What was the parent/child relationship like before the behaviour complained of?

- Client to tell you about their relationship with the child/ren
- Paint a clear and detailed picture - What was the child like with parent?
- What activities did they do?
- How involved with care before/after separation?
- Time spent together since the breakup (holidays with paternal family)?
- School/nursery reports about child's presentation when in parents' care – happy, clean, thriving?
- Wider family members who can help paint the picture?
- Back up with primary evidence - Photos, videos that support pen picture
- Has client kept cards/letters

## **Build the counter narrative**

Key question: this person had perfectly good and healthy relationship so what brought it to an end, what is stopping it?

## **Findings**

Findings the allegations were falsified

## **If your client is being accused of Parental Alienation – what steps do you need to take?**

1. Be frank and candid in your advice. If your client is staunch in their opposition to contact, remind them that the court's starting position will be that contact with both

# WESTGATE CHAMBERS

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

1. *“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.”*

2. Act as soon as you can – as false allegations will be damaging for the children.

3. Be as thorough as possible from the outset: Ensure that your statement paints an accurate chronology of the relationship as it has deteriorated for the other parent. Explain why the relationship suddenly soured or what caused the gradual erosion. Be mindful of the 4 A's and the very subtle nuances between the reasons that the child has for not seeing the other parent.

4. Consider external help assistance and Experts in a bid to introduce some objectivity and demonstrate that you are not shying away from the family dynamic being thoroughly explored:

### **a. Guardian**

Consider whether a Guardian for the child should be appointed and the child made a party to the proceedings in accordance with Rule 16.4 of the FPR 2010.

Ultimately this is an adult issue which negatively impacts on the children, much like International Relocation.

### **b. Cafcass**

They are now better equipped to deal with Parental Alienation, given that they have developed their own specialist tools to identify

### **c. Therapeutic intervention**

Whilst you must be careful so not to engage in a therapy which may muddy the waters it may be beneficial for the family to involve in a holistic assessment or therapy to better understand the family system and provide support for the children.

5. Try to remain dispassionate, not to take it personally and deal with it as logically as possible

# WESTGATE CHAMBERS

## Summary

Best defence when think a child is manipulated in expressing a view not to see the parent is to provide counter narrative – the more primary evidence the better

Try to avoid term of parental alienation. Could use manipulation.

Best evidence is primary evidence. what was happening when together, what was relationship like, what activities with each child kept cards, letters, let client talk you through it. Build up the profile. The more you build up counter profile using evidence to the one already in court arena, the more you can advance, not this is PA but this person had perfectly good and healthy relationship so what brought it to an end, what is stopping it – that is the key question