**Re C (‘Parental Alienation’; Instruction of Expert) [2023] EWHC 345 (Fam)**

Sir Andrew McFarlane P dismisses an appeal against a judge’s refusal to reopen findings of fact and gives guidance about instruction of unregulated psychologists as experts in family proceedings.

\_\_\_

Reported: 21st February 2023

**Background**

There have been long-running proceedings about children now aged 11 and 13. In 2018 contact with the father (F) had broken down and attempts to agree a way forward had failed. In December 2019 the children were joined as parties and a 16.4 guardian (G) appointed. At a hearing in March 2020 interim contact was ordered. F had applied for the instruction of an expert, which both M and G agreed to. The court agreed that an expert was needed, although there was insufficient rigour in identifying even the appropriate discipline: either a child psychologist or child and adolescent psychiatrist was to be instructed. Following the hearing the parties agreed to instruct Ms A, incorrectly described in the order as “Dr A”; Ms A’s CV was not submitted to the court with the draft order.

Following Ms A’s report, which concluded that the children had been alienated from F by M, HHJ Davies (the judge) ordered the interim removal of the children from M, with limited contact pending the final hearing. At the hearing in June 2021 the judge concluded that M’s evidence lacked credibility and made adverse findings about her behaviour. She considered all the evidence, including that of Ms A and G, who had made her own independent analysis, and found that M had negatively influenced the children against F. She ordered that the children should live with F and that their contact with M should progress in a managed way.

M sought permission to appeal this order, on the basis that the judge had not accepted her criticisms of Ms A and should not have relied on her as she was not qualified to give expert evidence. Permission was refused on the basis that the complaints about the expert were unsustainable.

In April 2022 M applied to reopen the findings. An unsolicited letter was sent to the court by Professor Wang, chair of the Association of Clinical Psychologists-UK (ACP), setting out his views about Ms A. M’s application to instruct Professor Wang as a part 25 expert, specifically on the topic of Ms A’s qualifications as an expert, was dismissed. At a hearing in June 2022 the judge refused the application to reopen the findings, made a s91(14) order and ordered that M should pay a contribution to F’s costs in respect of M’s application.

**The central issue in the appeal**

The mother (M) appealed against all three of the June 2022 decisions, contending that Ms A was unqualified and should never have been instructed. It was said that there was “new information” since the hearing in June 2021 and unsuccessful permission application, including:

• The memorandum from the President of the Family Division (PFD) issued on 4 October 2021 on ‘Experts in the Family Court’;

• A quotation from a speech given by PFD in Jersey on 8 October 2021;

• Guidance issued by the ACP in December 2021;

• Guidance issued jointly by the Family Justice Council [‘FJC’] and the BPS.

Permission was granted, not on the merits but because of the more general importance of the central issue about the instruction of experts where there is an allegation of parental alienation.

**The appeal**

All parties, Ms A and the ACP were represented by leading and junior counsel. ACP were given permission to intervene in order to “*offer an independent analysis and account as to the core qualifications, skills and expertise required in order to be able to undertake an expert assessment in private law proceedings*.” In the event they went way beyond that remit and effectively took over aspects of the appeal.

**ACP submissions**  
Only practitioner psychologists who are registered with the HCPC, which is given statutory responsibility for the regulation of practitioner psychologists, may use the following ‘protected titles’:

– Clinical Psychologist

– Counselling Psychologist

– Educational Psychologist

– Forensic Psychologist

– Health Psychologist

– Occupational Psychologist

– Sport and Exercise Psychologist

– Registered Psychologist

-Practitioner Psychologist.

A psychologist may also be a ‘chartered psychologist’, which is a grade of membership of the BPS only open to those with certain post-graduate qualifications and who have been vetted by the BPS.  
The title “psychologist” is not protected.

ACP contended that Ms A, who does not hold any of the protected titles or a doctorate, “*holds herself out as an expert but has neither the qualifications nor the relevant skills to so hold*.” In oral submissions it was accepted that there is no authoritative document that supports this contention; leave was sought and given to file a short document dealing with that question. The document filed was a 30-page “*granular, negative critique of Ms A*“. Sir Andrew deprecated the ACP’s approach, commenting that  “*the ACP succeeded in putting before the court, in another form, the evidence that would have been likely to have come from its chair, Prof Wang, if leave to file such evidence had not been refused by the judge*.” He concluded that it would be “*neither possible nor fair to embark upon a detailed audit of Ms A’s involvement in this case by measuring her work against the critical opinion advanced by ACP”*. It would be “*fundamentally unsound and wrong*” to allow the hearing of the appeal to focus on Ms A’s fitness to practice as an expert.

**The outcome of the appeal**

Before M applied to instruct Prof. Wang, he had already sent the court his unequivocal views; if the application had been allowed he could have set out his reasons in more detail. The judge had heard Ms A being cross-examined on her qualifications and had the detailed guidance on this subject. She was not wrong to refuse the part 25 application. She was also right not to rely on Prof. Wang’s unsolicited letter, which is not evidence; to do so would have been an abuse of process.

As set out above, it was not possible to use this hearing to determine whether or not there should be an embargo on Ms A, and others like her, holding themselves out as experts. The difficulty is that both qualified and unqualified people can describe themselves as a psychologist and use other titles, such as child psychologist, which are not protected titles. ACP also raised the issue that certain assessment “tools” can only be used by psychologists with specific qualifications. The FJC will be asked to consider these matters and give further guidance if necessary.

The guidance issued since the June 2021 hearing is just that. It is not law and does not render unlawful that which was previously accepted or disqualify retrospectively someone who was previously accepted as an expert.

Further, the judge in her June 2021 judgment did not rely solely on Ms A but carefully weighed all the evidence and made adverse findings about M; equally G had made her own free-standing analysis. There is no basis for interfering with her decision not to reopen the findings.

There was no proper basis for challenging the  s91(14) order, the judge having properly considered all the relevant factors.

The costs order was justified in circumstances where the mother’s application had no reasonable chance of success and her attempt to have “another bite of the cherry” was unreasonable.

**Guidance on unregulated psychologists in the family court §86-102**

The “open-house nature” of the term “psychologist” is unhelpful and confusing, but it is a matter for the psychological profession and ultimately Parliament whether a tighter definition should be imposed. Accordingly the court needs to work with the current structure and be alive to the potential difficulties.

The expert’s CV needs to be clear, something Ms A’s was not1. It needs to set out clearly the expert’s qualifications and experience and highlight whether or not they are HCPC registered or not. If they are not they must set out a short, clear explanation of their experience.

In every case the court should identify whether or not the proposed psychologist is regulated. Caution should be exercised and if the court decides to allow the instruction of an unregulated psychologist there should be a short judgment setting out the reasons.

The FJC will be asked to consider the impact of the restrictions on the use of “tools”, as flagged by the ACP, and if necessary issue revised guidance.

Work also needs to done to produce a template for the basic qualifications of psychologists, perhaps including an easily understood “traffic-light” indicator of expertise.

**Parental alienation §103**  
Sir Andrew strongly commended the follow submission from the ACP:

*“The decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that “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.'”*

Accordingly the court’s focus should be on identifying alienating behaviour rather than considering whether or not to use the label of “parental alienation.”

1 §29: *“The CV is a diffuse and confusing narrative of attendance at courses and other activities*“.

Case Summary by [**Gill Honeyman**](https://www.coramchambers.co.uk/people/gill-honeyman/), Barrister, [**Coram Chambers**](https://www.coramchambers.co.uk/)

For full case, Please see [**BAILII**](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Fam/2023/345.html&query=(EWHC)+AND+(345)+AND+((Fam)))