

Alienating behaviour in post-separation parenting disputes

Julie Doughty, Nina Maxwell and Tom Slater

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This briefing highlights messages from a review of international research and the relevant case law in England and Wales undertaken by CASCADE associates for Cafcass Cymru and published in April 2018. It is supplemented by reference to more recently published research. All references are open access. The briefing is aimed primarily at Cafcass Cymru family court advisers and local authority social workers who have responsibility for writing reports under section 7 Children Act 1989.

Key messages for policy and practice

- Family courts in England and Wales follow legislation and human rights principles to take a proactive approach to ensure that children maintain a continuing relationship with both parents, where this is safe. Under the Children Act 1989, there is an expectation that parents will take joint responsibility to make contact work beneficially for the child, although there is no legal presumption that all children should spend time with their non-resident parent.
- Whilst a small number of disputes between parents involve claims of parental alienation, there is no generally agreed definition of 'parental alienation' and no reliable evidence base for the term. This makes it difficult for practitioners to deal with allegations or suggestions of parental alienation they may encounter in their casework.
- Welsh Government (2018) policy adopts a child-centred approach, recognising that some types of behaviour associated with one parent alienating the other from a child's life can have an impact on children's wellbeing.
- Indicators of alienating behaviour may range from subverting communication and denigrating the other parent indirectly or in front of the child, to making false allegations and portraying the other parent as dangerous when this is not justified.
- Where alienating behaviour is found to exist, the impact on the child needs to be assessed; risk of harm can vary from the loss a relationship with one parent to the effects on the child's wellbeing where false allegations have been made.

CASCADE

Research Briefing

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- Long-term risk to the child of one parent undermining or failing to support the relationship with the other parent may require social work support.
- If a court makes a finding of alienating behaviour that amounts to a risk of emotional harm (short of significant harm), the evidence base for the quality and effectiveness of psychotherapeutic interventions is very limited and practitioners need to be aware that these should be treated with caution.
- At any stage, allegations of alienating behaviour that amount to significant harm should be referred to the local authority within normal procedures.
- Although parental alienation has been rejected as a 'syndrome' by the courts in England and Wales, the courts recognise that alienating behaviour can occur, and the term 'parental alienation' is occasionally used in court judgments.
- Senior judiciary have issued guidance that where alienating behaviour or unjustified denial of contact is alleged, the court should consider whether a finding of fact is required. If the issue arises as part of the section 7 report, this should be referred to the court for a finding of fact as early as possible.
- Writers of section 7 reports need to feel confident in requesting a hearing on finding of fact or consideration of appointment of a guardian under Family Proceedings Rules 16.4, where appropriate, at an early stage.
- Where the outcome of a fact-finding exercise by the court is awaited, social work reports should consider and advise for a range of orders on the basis that allegations may be found to be true, partly true or not true by the court. Recommendations in a section 7 welfare report are dependent on the judicial decision about which facts have been proved.
- Although the original concept of parental alienation assumed an unjustified rejection of a previously good relationship, claims of alienation are now also made in some cases where children did not know the non-resident parent, or which involve issues of domestic abuse.
- The court may therefore be investigating allegations of abuse under Practice Direction 12J (Ministry of Justice, 2017) alongside investigating claims of alienation. Where such allegations co-exist, early identification of factors that might lead to a child rejecting a parent is essential.

CASCADE

Research Briefing

Number 11: June 2019



The Research Review – Doughty, Maxwell and Slater, 2018.

A review of international research and relevant case law in England and Wales was undertaken on behalf of Cafcass Cymru. The review found that most research into parental alienation is conducted by a small number of authors who focus upon debates around its existence and definition, as opposed to empirical studies. What evidence is available tends to be from small or selective retrospective accounts, which do not control for other factors and fail to establish a causal relationship between parental alienation and child outcomes.

Whilst these cases tend to involve older children and young people, there is a lack of research with children themselves about their experiences and the extent to which they can have their voices heard and taken into account. Further, there is a lack of evidence from professionals within practice and court settings as to how the term is operationalised and understood. Whilst there is no definitive definition of parental alienation, the review found general agreement that it refers to:

the unwarranted rejection of one parent, and an alliance with the other parent, characterised by a child's extreme negativity toward the alienated parent due to the deliberate or unintentional actions of the alienating parent.

However, determining unwarranted rejection is problematic. This is exacerbated by the multiple determinants of parental alienation including the behaviours and characteristics of the alienating parent, alienated parent and the child. There is some general agreement on the existence of alienating behaviour, which has led to the development of several measures and tests for parental alienation, but their reliability and validity is not assured. These interventions focus on psycho-educational approaches to working with children and parents but have not been independently evaluated to determine their effectiveness. It should be noted that most of the research is from the USA and Canada, where legal and psychotherapeutic environments are very different to those in Wales and England.

Findings from case law revealed that there are only a very small number of reported court cases in England and Wales featuring parental alienation. Further, there does not appear to be a clear distinction between 'parental alienation' and references to 'implacable hostility' (a term more widely used in England and Wales which refers to high conflict cases where one parent may display hostility or reluctance for the other parent to have contact with the child). Whilst the proportion of cases that lead to enforcement of contact arrangements appears to be low, this data is not routinely quantified.

CASCADE

Research Briefing

Number 11: June 2019



Recent Developments

A large study of court cases in Canada (Neilson, 2018), showed that where parental alienation theory was accepted, there was a focus on attributing blame for parental conflict and on attempts to repair, restore or even create new relationships between children and non-resident parents (usually fathers) -- rather than making a child-centred analysis of existing relationships, each parties' parenting abilities and the child's needs and interests. This suggests that attempts to label difficulties in adjusting to post-separation arrangements as parental alienation may be at odds with reducing children's stress and supporting their resilience.

The Minister for Children and Social Care issued a statement on 1 May 2018 that Welsh Government (2018) policy was to promote positive parenting and minimise the adverse effects on children of parental separation; and that alienating behaviour can be appropriately dealt with using existing family and parenting support programmes and regulatory and legal frameworks.

A study of domestic abuse victims in England (Birchall and Choudhry, 2018) reported that some non-resident parents were using theories of parental alienation to explain why their children were reluctant about contact arrangements. Some of the participants in this study spoke of being disbelieved in court when they reported abuse and then in turn being accused of alienation.

Following widespread consultation, Cafcass in England published a Child Impact Assessment Framework (CIAF) that includes guidance and tools on assessing case factors, including child refusal or resistance to spending time with one of their parents; this may be due to a range of justified reasons or could be an indicator of unwarranted rejection of one parent by the child.



Further Details

References

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