

The FJC's Alienating Behaviour Guidance: Put in Practice

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Introduction

1. In December 2024, the Family Justice Council (FJC) produced much anticipated guidance on Alienating Behaviour (AB). Its purpose according to the President of the Family Division, Sir Andrew McFarlane, is “to ensure greater consistency of approach across the courts, to improve outcomes for children and families and to protect children and victims from litigation abuse.”
2. The following terms were defined:
 - *Attachment, affinity and alignment ('AAA') – reasons why children may favour one parent over another, or reject a parent, which are typical emotional responses to parenting experiences and not the result of psychological manipulation by a parent.*
 - *Appropriate justified rejection ('AJR') – situation where a child's rejection of a parent is an understandable response to that parent's behaviour towards the child and/or the other parent.*
 - *Alienating Behaviours ('AB') – psychologically manipulative behaviours, intended or otherwise, by a parent towards a child which have resulted in the child's reluctance, resistance or refusal to spend time with the other parent.*
 - *Protective behaviours ('PB') – behaviours by a parent towards a child in order to protect the child from exposure to abuse by the other parent, or from suffering harm (or greater harm) as a consequence of the other parent's abuse.*
 - *Reluctance, resistance or refusal ('RRR') – behaviours by a child concerning their relationship with, or spending time with, a parent, which may have a variety of potential causes.*

What is and *is not* AB

3. The guidance, in brief, is that the Court may find AB where three criteria are met:
 - (1) a child is displaying RRR;
 - (2) that RRR is not explained by AJR or AAA; **and**
 - (3) the preferred parent has acted in a way to directly/indirectly lead to RRR.
4. A non-exhaustive list of examples of RRR includes:
 - (1) refusing to speak to or see a parent;
 - (2) throwing away things that they associate with them;
 - (3) angry or challenging reactions to that parent, making derogatory remarks about that parent to others;
5. Crucially, none of these behaviours can in themselves be taken to indicate evidence of exposure to psychological manipulation by the other parent in their own right.
6. The guidance provides clarification and distinction between a parent who is engaging in AB in order to frustrate or obstruct the other parent's relationship with the child, and where a parent is employing PB in order to shield the child and/or themselves from abusive behaviour.
7. The report highlighted that a parent's or child's behaviour may also be a traumatic response to abuse (including litigation abuse) perpetrated against them by the other parent. Such traumatic responses likewise do not constitute AB.
8. Failed or false allegations of domestic abuse (DA) will not constitute AB unless there is evidence that the subject child has been manipulated (on the basis of those false/failed allegations) into an unjustified RRR to engage with the allegedly abusive parent.

9. 'Parental alienation syndrome' has no evidential basis and is considered a harmful pseudo-science. Such terminology should not be employed by practitioners moving forward.
10. The court's welfare determination ought to be focussed on the impact on the child rather than on parental behaviours per se.
11. Research suggests that AB which actually impacts on the child's relationship with the other parent are relatively rare, thus findings of parental alienation will be rare.
12. Children can and do come to their own conclusions about what has happened in their family and how this affects their attitude to living with, or spending time with, one of their parents. There are many reasons why a child may align themselves with one parent, and they are not necessarily caused by any malignant actions of either parent.
13. The burden of proof lies squarely with the parent alleging AB. They must prove both that harmful behaviour has occurred and that this has resulted in RRR.

Procedural/Practical Considerations

14. Practitioners and judges should consider:
 - (1) Early robust case management. If the 3 elements of AB appear to be legitimately present, the case must be reallocated from the Magistrates to District Judge level. It is incumbent upon all practitioners to consider at all stages of proceedings whether AB may be the reason for the breakdown in the relationship of a child and a parent;
 - (2) The importance of all participants in the family justice system having sufficient training and awareness to ensure that they can recognise when the behaviour of a parent is appropriately protective, a traumatic response, or AB;
 - (3) The need for a Fact Finding Hearing (FFH). However, this must be a "necessary and proportionate" exercise, and where such an exercise will be "relevant to the ultimate issues to be determined". It is clear that it is not appropriate for experts to 'diagnose' AB; it is for the court alone to determine the facts;

- (4) That a written judgment is preferable where findings of AB have been made. This is to enable Cafcass or other appropriate expert to assist the court with welfare options in light of the factual matrix.

Re T and G (Allegations of Alienating Behaviours) **[2025] EWFC 15 (B)**

15. The court considered the FJC guidance and its application in the above case where there were allegations of AB, and a recommendation for the transfer of residence of the child from the care of the mother to the father.
16. In this case, T was living with their father and refusing contact with their mother, and G was living with their mother and refusing contact with their father, although less effusively than T. Each parent alleged the other was engaging in AB in order to frustrate the relationship with the child who was resident with the other.
17. In applying the guidance, the court determined that:
- (1) Both children were exhibiting RRR – one child was living with the mother and the other was living with the father. They were each demonstrating RRR to spending time with the non-resident parent;
 - (2) In considering whether either child's RRR was as a result of AB, the court determined that they had each been exposed to behaviour by the other parent which had contributed to their RRR, but did not amount to AB by either parent. Rather, each parent had, in their own way, played a role in the current situation and each child had their own specific reasons for the way they felt about the arrangements to spend time with their parents;
 - (3) Having determined the factual matrix, the court moved on to consider what the appropriate arrangements for each child should be. In respect of T, it was not disputed that they should remain living with their father and that they should not be forced to spend

time with their mother, such was the nature and extent of their RRR, and particularly in light of their age and the strength of their wishes and feelings;

- (4) In respect of G, the court determined that there should not be a change of residence from the mother to the father, having considered very carefully in particular their wishes and feelings, their particular characteristics, and the impact on them of a change of residence;
- (5) The court's preferred pathway forward for G was with a carefully staged plan to reintroduce direct arrangements between G and T, and with G's father, which was to proceed at a gradual pace;
- (6) As to T, indirect contact was not ordered by consent, but it was endorsed by the court that the mother should continue to write to T on a monthly basis and that with the reintroduction of the direct relationship between G and T, and G and their father, it was anticipated that there may be a softening in T's objections to spending time with their mother.

Conclusion

- 18. The guidance therefore encourages practitioners and the Family Court to take a less black and white approach to cases where AB may be a relevant feature. Often parents will raise the issue of 'alienation' to explain what may, at first blush, appear to be inexplicable refusal of a child to engage with their parents on an equal footing.
- 19. It can be tempting for practitioners to view allegations of AB as a black and white concept, but the guidance encourages a more elastic approach to the issue, and that lack of an immediately obvious answer to a child's RRR does not necessarily lead to a single conclusion of AB.
- 20. Further, that where AB is alleged, or even proved, the guidance is clear that the Family Court should not automatically view a change of residence as the headline solution. The impact on the child of a change of residence, even where AB is found, cannot be underestimated, and the court should be cautious to view this as the solution to parental intransigence to contact with the other parent.



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Law is correct as at 10th February 2025

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