

Local authority input into private law proceedings, Part IV: parental alienation

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Mani has a broad practice covering all areas of family law, particularly in cases which have an international element pursuant to both the 1980 Hague Convention and the Inherent Jurisdiction. In public law proceedings, Mani

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This fourth instalment, looking at the intersection of private and public children law, will focus on local authority involvement in cases where the concept of parental alienation may arise.

In practice, the concept of ‘parental alienation’ is more commonly referred to in private law proceedings. In such proceedings, one parent may allege parental alienation against the other. This may be flagged up during the initial safeguarding checks which Cafcass will file and serve prior to the FHDRA. At the time of the FHDRA, the court will have the benefit of the C1A form¹ and in practice, a party pleading parental alienation for the first time in this form is becoming frequent. In any event, the Cafcass officer will seek to speak to both parties in advance of the FHDRA for the purposes of the safeguarding letter and it may in fact be during this conversation a party raises

parental alienation. At this stage, it is necessary to define what is parental alienation? Cafcass² defines the concept as:

‘The definition of parental alienation itself as a concept in family court cases, its surrounding terminology and its scale remain under debate, meaning there is no clear data as to its extent.

While there is no single definition, we recognise parental alienation as 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. All potential risk factors, such as domestic abuse, must be adequately and safely considered, reduced or resolved before assessing the other case factors or reasons.

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.

Both men and women can demonstrate alienating behaviours. While alienation can be demonstrated solely by one parent, it is often a combination of child and adult behaviours and attitudes, with both parents playing a role, that lead to the child rejecting or resisting spending time with one parent.

While not restricted to alienation, behaviours and indicators can include: a

1 C1A form is titled: ‘allegations of harm and domestic violence’ and normally accompanies a C100 form when a party is applying for a Child Arrangements Order.
2 <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/what-to-expect-from-cafcass/parental-alienation/>

parent constantly badmouthing or belittling the other; limiting contact; forbidding discussion about them; and creating the impression that the other parent dislikes or does not love the child.

They can also include spurning, terrorising, isolating, corrupting or exploiting, and denying emotional responsiveness. These tactics can foster a false belief that the alienated parent is dangerous or unworthy. Children may adapt their own behaviours and feelings to the alienating parent to ensure that their attachment needs are met (Baker, 2010).

It is worth noting that even the most alienated child will hold strong views of their own in addition to those they may have been coached to hold. Where a child is being alienated, it may be in their interests for the authority of the court to be used to work towards restoring the relationship, although we are aware of how difficult this can be. The court must carefully balance its decisions to ensure that both children and adults are kept safe, and ensure that children are able to maintain relationships with both parents where this is safe and in the child's best interests.'

Lord Justice Peter Jackson in *Re S (Parental Alienation: Cult)* [2020] EWCA Civ 568, [2020] 2 FLR 263 commented at paras [8] and [9]:

'[8] As to alienation, we do not intend to add to the debate about labels. We agree with Sir Andrew McFarlane (see [2018] Fam Law 988) that where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition. It is nevertheless necessary to identify in broad terms what we are speaking about. For working purposes, the CAF/CASS definition of alienation is sufficient: "When a child's resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent."

To that may be added that the manipulation of the child by the other parent need not be malicious or even deliberate. It is the process that matters, not the motive.

[9] Where a child's relationship with one parent is not working for no apparent good reason, signs of alienation may be found on the part of the other parent. These may include portraying the other parent in an unduly negative light to the child, suggesting that the other parent does not love the child, providing unnecessary reassurance to the child about time with the other parent, contacting the child excessively when with the other parent, and making unfounded allegations or insinuations, particularly of sexual abuse.'

In a very recent judgment published on Bailii, HHJ Vincent in *S and T (care proceedings following private law dispute)* [2021] EWFC B54 (06 July 2021) goes on to comment at para [75]:

'75. Parental alienation is a loaded term which means different things to different people. It can describe a child who is estranged from a parent for justifiable reasons; if that parent presents as a risk to them. It can describe the motivation or actions of one parent deliberately acting to manipulate and control their child so as to reject the other parent. That process can also take place deliberately or inadvertently, a parent unconsciously transferring onto their child their fears about the other parent or fears of losing control. It can describe the behaviour of a child who appears to reject a parent completely with no rational basis'.

Private law: the ways parental alienation can be considered

In the private law arena, there are various ways in which parental alienation can be considered. The Cafcass officer may at the outset recommend a detailed s 7 report (or indeed a local authority in the relevant

circumstances)³ to consider the issue and to provide their views to the court as to whether such an allegation has any merit. Section 1(4)(a) Children Act 1989 requires the court to have regard to ‘the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)’. It is a fundamental principle applicable to every case concerning the welfare of a child that the relevant subject child be heard, the manner and the degree to which the child is heard will vary from case to case but it may be during this process that an experienced professional can first seek to ascertain whether there are elements of parental alienation present.

Further, in cases where there is an allegation of parental alienation the court may regard it appropriate to make the relevant child a child to the proceedings under r 16.4 of the Family Procedure Rules 2010. Practice Direction 16A sets out: ‘

‘... where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational or implacable hostility to contact or where the child may be suffering harm associated with the contact dispute’ (7.2(c))

In other circumstances, a party may raise the allegation so strongly and advance that it is having a huge impact on their relationship with the child, so much so that it is causing harm to the relevant child. The court may consider it necessary to pursue the allegation at a fact-finding hearing. The parties will of course during this process be provided with the opportunity to adduce relevant evidence that goes directly to the issue on hand. The court can then be in a position to consider making a finding that there is parental alienation or not, and if so what the impact of it is on the relevant child and the ultimate application with which the court is faced with. For example, Lord Justice Peter Jackson in *Re S (Parental Alienation: Cult)* (above) commented at para [7]:

‘At the outset, it must be acknowledged that, whether a family is united or divided, it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent. Children have their own feelings and needs and where their parents are polarised they are bound to feel the effects. Situations of this kind, where the concerned parent is being no more than properly supportive, must obviously be distinguished from those where an emotionally abusive process is taking place. For that reason, the value of early fact-finding has repeatedly been emphasised’

Further, paras [10] and [11] of the same judgment goes on to consider:

‘10. Where a process of alienation is found to exist, there is a spectrum of severity and the remedy will depend upon an assessment of all aspects of the child’s welfare, and not merely those that concern the relationship that may be under threat. The court’s first inclination will be to reason with parents and seek to persuade them to take the right course for their child’s sake, and it will only make orders when it is better than not to do so. Once orders are required, the court’s powers include those provided by sections 11A to 11O of the Children Act 1989, and extend to consideration of a more fundamental revision of the arrangements for the child. We agree that whilst a change in the child’s main home is a highly significant alteration in that child’s circumstances, such a change is not regarded as “a last resort”: *Re L (A Child)* [2019] EWHC 867 (Fam) at [53] to [59] per Sir Andrew McFarlane P. The judge must consider all the circumstances and choose the best welfare solution.

11. Cases at the upper end of the spectrum of alienation place exceptional

3 Circumstances in which the court may direct a local authority to prepare a s 7 report was considered in the November edition of the *Family Law Journal*: November 2020 issue at [2020] Fam Law 1517, Mani Singh Basi and Lucy Logan Green

demands on the court. It will recognise that the more distant the relationship with the unfavoured parent becomes, the more limited its powers become . . .’

In considering the ‘impact’ of parental alienation where there is a finding of it, the court has a number of options, some of which may directly involve the local authority. For example, the court could be sufficiently concerned with the welfare of a child that the court may direct the appropriate authority to undertake an investigation pursuant to s 37 Children Act 1989⁴. The wording under s 37(1) is clear. The power to direct a s 37 report arises in ‘any family proceedings’⁵ and the power to direct such a report arises when it appears to the court that it may be appropriate for a care or supervision order to be made, thereby warranting an investigation to be undertaken by the local authority.

Secondly, the court may be guided by expert assistance when considering the impact of parental alienation or whether there is parental alienation in the first place before it takes any further step. In practice, if a finding has been made in respect of parental alienation it may be that a party seeks to make a part 25⁶ application for an expert, such as a psychiatrist psychologist or specialist independent social worker to assess the impact of parental alienation. It may be after this report that the court considers whether there should be a s 7 report by Cafcass or the local authority (or indeed a s 37 report). This is because, often when the court makes a finding in respect of parental alienation, it is necessary to consider the finding in the context of the overall application, ie if a party is seeking to spend time with a child. If the expert report raises matters to which the court is concerned about, it may be that the court

would want the author of the s 7/s 37 report to consider it in detail and to provide further recommendations. This is an avenue in which a local authority may start to become involved in the proceedings.

Re A: the complex journey of such cases

Re A (Children) (Parental alienation) [2019] EWFC, HHJ Wildblood QC, demonstrated the impact that can arise in cases concerning the welfare of a child, impact on the parties and also the complexity of the journey of such cases. The judge commented;

‘11. The history of these proceedings is that they began by way of private law application by the father eight years ago (ie in 2011). That set of proceedings continued until 2014 when an order was made that the father should have indirect contact only with the children. In 2016 the proceedings resumed and continued until the father withdrew them recently. Public law proceedings were issued shortly after the failed attempt at transfer of residence occurred.

12. On my counting this is now the 36th time that the proceedings have been before the court. At least 10 professional people have been involved. The first full hearing on extensive evidence took place before me six years after the first private law application was made. There was an intended final hearing which took place on some evidence in 2014 but it has not been possible to obtain a transcript of the judgment or of the evidence. It led to an unsatisfactory arrangement for indirect contact only.

13. With all the benefit of hindsight, I consider that there were these ten

4 Section 37 reports were considered in detail in the June edition of the *Family Law Journal* by Mani Singh Basu and Lucy Logan Green, June [2021] Fam Law 861.

5 Under the heading ‘interpretation’ in the Family Procedure Rules 2010, it states: ‘“proceedings” means, unless the context requires otherwise, family proceedings as defined in s 75(3) of the Courts Act 2003’. Section 73(3) of the Courts Act 2003 provides that ‘family proceedings’ mean (a) proceedings in the family court and (a) proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Sch 1 to) the Senior Courts Act 1981, to that division of the High Court and no other.

6 Rule 25 FPR 2010, 25.4(3) states that the court may give permission ‘only if the court is of the opinion that the expert evidence is necessary to assist the court to resolve the proceedings’. Also to consider s 13 Children and Families Act 2014, s 13 (6) and (7).

factors which have contributed significantly to the difficulties that have arisen:

- (i) There was a failure to identify, at an early stage, the key issue in this case – the alienation of the children from their father by the mother. By the time that it was identified, the damage had been done.
- (ii) Overall there has been significant delay within these proceedings.
- (iii) At the early stage of the private law proceedings the case was adjourned repeatedly for further short reviews. I have counted that there were eight orders for review hearings in the first two years of the private law proceedings alone. That occurred, of course, before the current Children Arrangements Programme (PD 12B of The Family Procedure Rules 2010) came into force on 22nd April 2014. Paragraph 15.3 of that Programme now states: “While it is acknowledged that an interim order may be appropriate at an early stage of court proceedings, cases should not be adjourned for a review (or reviews) of contact or other orders / arrangements and/or for addendum section 7 reports, unless such a hearing is necessary and for a clear purpose that is consistent with the timetable for the child and in the child’s best interests.” Therefore, I think it very unlikely that there would a succession of review hearings like this now; this is an example of just how necessary the changes made by the Programme in this respect were.
- (iv) At no point prior to my involvement in 2017 was there a full hearing on evidence to determine what was going on in this family. There were underlying and important allegations of fact that needed to be resolved but my comment is not limited to the absence of a fact-finding hearing. In my opinion, it was essential that there should be a definitive judgment explaining the difficulties within this family so that future work with the family members could be based upon that judgment.
- (v) The use of indirect contact in a case where there is parental alienation has obvious limitations, as this case demonstrates. The father’s letters, cards and presents were being sent by him into a home environment where he was ‘demonised’, to use the terminology of Dr Berelowitz. They served no purpose in maintaining any form of relationship between the father and the children. It is regrettable that there was not more perseverance in the earlier private proceedings to resolve the obstructions to contact.
- (vi) These proceedings have seen a vast number of professionals. I have counted 10 and I am sure that I have omitted some. The difficulty that that creates is obvious. Each new person brings a new, personal and different insight into a case of this nature. Family members (especially children) are embarrassed about speaking of personal issues with strangers, develop litigation fatigue and learn to resent the intrusions into their lives by a succession of professional people. As the children have done, people reach a stage where they say: ‘no more.’
- (vii) A particular difficulty in this case has been the absence, at times, of collaborative working by professionals. A particular example of that occurred when an attempt was made to move the children to the father’s care. The professionals involved with the court process and the schools had not had sufficient dialogue before that move was attempted and now have very strong and opposing opinions about what occurred and the merits of moving the children from the mother. Pre-planning for the move was inadequate, in my opinion. If professional people show their disagreements, as happened here on the day of transfer, it undermines

- the process and allows cherry-picking by family members of what they want to hear.
- (viii) Early intervention is essential in a case such as this, in my opinion. It did not occur in this case. It took years (probably five) to identify the extent of the emotional and psychological issues of the mother. By that stage it was too late for there to be any effective psychotherapeutic or other intervention in relation to her, the children's views having already become so entrenched.
- (ix) There is an obvious difficulty about how to approach the expressed wishes and feelings of children who are living in an alienating environment such as this. If children who have been alienated are asked whether they wish to have a relationship with the non-resident parent there is a likelihood that the alienation they have experienced will lead them to say "no." Therefore, in this type of case, the approach to the wishes and feelings of children has had to be approached with considerable care and professionalism. To respond simply on the basis of what children say in this type of situation is manifestly superficial and naive. The children in this case have been expressing wishes that they should not see their father for many years now. The lack of an effective and early enquiry into what was happening within this family meant that there was no effective intervention. That, in turn, has led to the children's expressed wishes being reinforced in their minds. It has also resulted in the mother being able to say "we should listen to the children", rather than addressing the underlying difficulties.
- (x) It was unfortunate that the joinder of the children to the second set of proceedings was so delayed. I was

due to embark upon the first final hearing before me two years ago with these two parents appearing in person. It is fortunate that the case was adjourned for other reasons and I was able to take that opportunity to join the children. Any attempt to conduct these proceedings without the joinder of the children would have been even more complex and unsatisfactory.'

The above judgment provides useful information in respect of various points. First, in family proceedings it is necessary at an early stage to consider whether 'alienation' is a relevant consideration and whether a fact-finding process needs to be engaged in. The case also demonstrates how complex cases can be, ie with 10 professionals being involved in that one and the delay that can arise in such complex cases.

Process court may adopt

Furthermore, *Re H (Parental Alienation)* [2019] EWHC 2723 (Fam), [2020] 1 FLR 401 is a case which demonstrates the process which the court may adopt. Mr Justice Keehan in this report commented on the reliance of 'one of the country's foremost experts in the field of parental alienation'⁷. This judgment is of useful reading in that it sets out the issues the court was concerned with in respect of alienation and the reports available. For example, his lordship commented at one stage in respect of the involvement of a social worker who prepared a s 37 report in the proceedings:

'I then heard evidence of the author of a s 37 report by the social worker J, which is dated 9th August 2019. This social worker had no previous experience of cases of parental alienation, she had made a passing report. In my view this report of J is woefully inadequate. It is critical of the father but not of the mother and had no regard to Dr Braier's opinion and conclusions. In the premises I have

taken no account of this report or of the evidence of this witness’.

In *Re S* [2020] EWHC 217 (Fam) Mrs Justice Knowles was considering a case where the local authority issued public law proceedings within pre-existing private law proceedings. The matter was heard before Mrs Justice Knowles to consider the threshold criteria in s 31(2) of the Children Act 1989 were met, if relevant. In summary, the local authority’s case was that the children had suffered and were likely to suffer significant emotional harm arising from the mother’s false and inaccurate allegations that (a) AB was physically and sexually abusing X when he had contact with her and (b) CD had physically harmed Y when he had contact with him. Both AB and CD denied the mother’s allegations that they had either sexually or physically harmed their respective children during contact. This judgment provides criticism of the involvement of the local authority at paras [61]–[71]. It is commented at para [63]:

‘63. It is my perception that local authorities may be ill-equipped to grapple with complex private law proceedings where there are allegations of abuse made by one parent against the other. Though it is trite to observe that social workers are well aware that children can be harmed in such situations, translating that knowledge into effective social work practice is rather more difficult. There is little specific assistance to be derived from the contents of “Working Together To Safeguard Children”. Furthermore, an organisational resistance to sustained involvement in what is seen as essentially a dispute between separated parents may also be in play in circumstances where local authorities are hard pressed to manage their child protection workload. This case demonstrates the need to develop more coherent and child focused ways of working with families such as this one”

And at para [71]:

‘71. In summary, what might be gleaned from this case of benefit to professionals

working with complex private law disputes? The following matters suggest themselves:

- a) repeated section 47 investigations, which are not anchored to a comprehensive family assessment, are ultimately of little benefit;
- b) greater respect needs to be given to the views of professionals who see the family more often than most social workers ever do;
- c) in the interests of effective multi-disciplinary working, social workers may, on occasion, have good reason to challenge the views of other professionals. Ensuring other professionals understand the local authority’s concerns and are updated as to recent events may assist that process;
- d) families should be referred to sources of guidance and support or offered it as part of the local authority’s intervention. This should happen sooner rather than later. The mother might well have benefitted from guidance about separated parenting and child development. Both parents would also have benefitted from advice and guidance in managing contact handovers and in communicating with each other about their child;
- e) mediation services (aimed at separated parents and with appropriate expertise in dealing with complex contact cases) might have helped this family at an early stage of the proceedings;
- f) delay in commissioning expert assessments is damaging. This case would have benefitted from an early specialist assessment which might have obviated the need for these proceedings;
- g) such cases require a high degree of professional skill from social workers and their managers and, in my view, should not be allocated to trainee or inexperienced social workers. These can be some of the most frustrating and difficult cases to work because of the high levels of entrenched parental conflict into

which children are inevitably drawn. Better training about the complex issues these cases demonstrate, such as repeated but unsubstantiated allegations of abuse, seems to me to be urgently needed both for local authority social workers and their managers.

Conclusion

This article has not explored the facts of the particular cases, nor the circumstances in which 'parental alienation' can occur, ie, what does the concept mean in practice. However, this article has instead focused on providing examples of when the local authority may be involved where there are allegations or findings of parental alienation made in private law proceedings. It is apparent, they can be involved in numerous circumstances, from s 7, s 37 reports to issuing proceedings themselves. The concept of alienation is a complicated one, and one in which there is often expert involvement. It is apparent from the judgments in *Re H* and *Re S*, the need for social workers and professionals generally to be proactive to concerns when a child's welfare is at stake, particularly in cases concerning alienation. It

is therefore essential that social workers, who may often be required to undertake s 7 reports or s 37 reports after findings of parental alienation, undertake training in respect of the area. In private law proceedings where there may be a lack of legal aid available, not all parties may be able to fund an independent expert, especially one who has a reputation for undertaking reports in parental alienation cases. A burden may therefore fall on the involvement of a social worker to provide the court with a welfare analysis on the issue.

There have been a number of key judgments published in 2020 and 2021 in respect of the concept of parental alienation, demonstrating the complexity of such cases particularly where there are experts involved. At the time of submitting this piece for publication (September 2021), a series of four judgments have been published by Keehan J, titled A and B (*Parental Alienation: Nos 1_4*) looking at a case involving the concept which should also be referred to (see www.judiciary.uk/judgments/a-and-b-parental-alienation-no-1-no-2-no-3-and-no-4).