



RIGHT TO EQUALITY

Response to Family Justice Council Consultation Draft

Right to Equality is dedicated to promoting equality in the law for all and is currently undertaking a campaign to end the presumption of contact in family courts. Based on existing research¹ and survivor testimony², we believe this presumption often overlaps with allegations of ‘parental alienation’³ and significantly impacts the safety of survivors and children. Therefore, Right to Equality calls for the following changes and amendments to the Family Justice Council’s Consultation: Draft Guidance on Responding to allegations of alienating behaviour⁴, which can be summarised as follows:

1. Emphasise in the guidance that allegations of Domestic Abuse must be investigated as a priority in accordance with Practice Direction 12J.⁵
2. Investigate whether the child is reluctant, resistant, or refuses contact and, if so, why, using a holistic approach⁶ which recognises protective behaviours.
3. Ensure the ‘expert’ language in reports is specific and descriptive.
4. See the Conclusion for a detailed description of suggested changes.

We appreciate the FJC's efforts to craft improvements for survivors and children in their draft and are happy to support several of the points made. Our input is to express the seriousness of the issue of using parental alienation within the court. We attempt to work within the existing system to create

¹ Barnett, A. (2014). Contact at All Costs: Domestic Violence and Children's Welfare. *Child & Fam. LQ*, 26, 439.

² Alsalem, R. (2023). *Custody, violence against women and violence against children (A/HRC/53/36)*. United Nations.

<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>

³ “It [parental alienation] has been dismissed by medical, psychiatric and psychological associations, and in 2020 it was removed from the International Classification of Diseases by the World Health Organization” (*Ibid.*, pg.3)

⁴ Family Justice Council. (2023) *Consultation: Draft Guidance on Responding to allegations of alienating behaviour*.

<https://www.judiciary.uk/wp-content/uploads/2023/08/For-Consultation-FJC-Draft-Guidance-on-Responding-to-allegations-of-alienating-behaviour-August-2023.pdf>

⁵ “Schedules of findings sought - where domestic abuse and controlling and coercive behaviours are alleged, PD12J governs the proceedings” (Family Justice Council, 2023. p. 8).

⁶ “The court must be cautious when invited to agree a default finding that a parent who fails to establish allegations of domestic abuse or abuse of the child has therefore engaged in alienating behaviour. The absence of an alternative explanation does not lead automatically to an explanation in terms of alienation” (*Ibid.* p. 9)

helpful changes; however, we are deeply aware that enacting positive reform around the use of a flawed concept will be difficult. Therefore, we express our suggestions with the understanding that the end goal should be *eradicating the use of the concept of parental alienation from the courts*.

If you have questions or concerns about this document, please contact us at info@righttoequality.org.

The Prioritisation of Domestic Abuse Allegations:

We understand that the Family Justice Council (FJC) has recognised to some extent the overlap between ‘parental alienation’ allegations and domestic abuse allegations and has given precedence to PD12J; however, we ask that the FJC state more explicitly within their guidance that domestic abuse *must* be investigated at the highest priority, for the safety of all involved. Prioritising domestic abuse allegations does not neglect other allegations or minimise their significance; however, priority given to domestic abuse allegations reflects the urgency and potential for harm in these situations, which pose immediate threats to the safety and well-being of individuals within a household. There must be a nuanced and victim-centric approach to protect the well-being of all parties involved, especially the safety of domestic abuse victims, including children who are victims in their own right. Studies show that domestic abuse against a mother directly indicates the risk of physical and sexual abuse against children⁷. The imbalances in power and control which domestic abuse victims face make them particularly vulnerable. Prioritising these cases acknowledges the need to address power imbalances and provide support to those who may be more marginalised or disadvantaged, which should be noted by the FJC.

As grave and pervasive issues, domestic abuse, including coercive control, often causes survivors long-lasting physical and psychological harm⁸. Concerningly, in cases where domestic abuse is alleged, ‘parental alienation’ is often brought against the accuser⁹. The FJC guidance states that ‘parental alienation’ is ‘sometimes raised’ in family court proceedings (p.8). The available evidence indicates, however, that allegations of domestic abuse are frequently countered with allegations of ‘parental alienation’. ‘Parental alienation’ claims are used as a tactic by abusers to A) deflect attention away from their own abuse and B) centre themselves and the child as the victim of the mother¹⁰. The

⁷ Holt, S., Buckley, H., & Whelan, S. (2008). The impact of exposure to domestic violence on children and young people: A review of the literature. *Child abuse & neglect*, 32(8), 797-810.

⁸ Macdonald, G. S. (2016). Domestic violence and private family court proceedings: Promoting child welfare or promoting contact? *Violence Against Women*, 22(7), 832-852; Barnett, A. (2017). ‘Greater than the mere sum of its parts’: coercive control and the question of proof.

⁹ Domestic Abuse Commissioner (2023). *The Family Court and Domestic Abuse: Achieving Cultural Change*. (p. 29)

https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf

¹⁰ Barnett, A. (2020). A genealogy of hostility: parental alienation in England and Wales. *Journal of social welfare and family law*, 42(1), 18-29; Birchall, J., & Choudhry, S. (2022). ‘I was punished for telling the truth’: how allegations of parental alienation are used to silence, sideline and disempower survivors of domestic abuse

report of the UN Special Representative on Violence Against Women highlights that ‘parental alienation’ allegations are used to dismantle valid concerns about domestic abuse¹¹. Research shows that ‘parental alienation’ allegations can have a detrimental effect on the outcome of a case. For example, children have been forced into contact with non-resident parents who have been found to have violent histories. In extreme cases, the residency of the child may even be transferred to the abusive parent¹². Due to this increase in contact, it is likely that the child and the victim-parent, often the mother, will be subjected to post-separation abuse. A range of data proves that abuse does not stop upon separation; in reality, it often continues or intensifies¹³.

Aside from the deep necessity to ensure domestic abuse is not occurring, the current use of ‘parental alienation’ in cases involving domestic abuse will only serve to victimise survivors and harm children. This practice supports abusers by giving them leverage in child arrangement disputes, which will create an unsafe environment for the mother and the child(ren). Centring domestic abuse allegations will assist in encouraging survivors to report domestic abuse, as once a parental allegation is made, it often sidelines reports of domestic abuse¹⁴. This change will create a safer reporting process for survivors as it will remove the barrier of fear of retaliation or further victimisation for themselves or their children from the abusive parent.

We have concerns that ‘alienating behaviours’ seem to be viewed with the same severity as domestic abuse in the draft guidance, as domestic abuse and ‘alienating behaviours’ cannot be equated. The recognised harms to children from domestic abuse, including child homicide¹⁵, cannot be put on the same footing as a term based on pseudoscience. Because domestic abuse is such a serious and impactful issue, we want to note the importance of all those involved in the justice process being domestic abuse-informed. When allegations of domestic abuse are brought, even if they are not found, the court needs to be alive to the range of protective behaviours adopted by child and adult victims, which should not be reconstructed as alienating behaviours. The risk of identifying behaviours as

in family law proceedings. *Journal of gender-based violence*, 6(1), 115-131; Hunter, Rosemary, Mandy Burton, and Liz Trinder. "Assessing risk of harm to children and parents in private law children cases." (2020).

¹¹Alsalem, R. (2023). Custody, violence against women and violence against children (A/HRC/53/36). United Nations.
<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>

¹² Birchall, J. and Choudhry, S. (2018) “What about my right not to be abused?” Domestic abuse, human rights and the family courts, Bristol: Women’s Aid.

¹³ Thiara, R., & Harrison, C. (2016). Safe not sorry. *Supporting the campaign for safer child contact. Key issues raised by research on child contact and domestic violence*. Warwick: University of Warwick Centre for the Study of Safety and Wellbeing.

¹⁴ Alsalem, R. (2023). Custody, violence against women and violence against children (A/HRC/53/36). United Nations.
<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>

¹⁵ Women’s Aid (2016). *Nineteen Child Homicides*.

<https://www.womensaid.org.uk/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>

alienating, rather than protective, presents risk to children. Recognising behaviours as protective creates a safer environment for those alleging abuse.

Family courts must prioritise evidence-based practices, not expert opinions, for the well-being of children. We agree that ‘alienating behaviours’ **if** presented in court, should solely be found by a Judge, not an expert, as it is not diagnosable (reemphasising here the presumed difficulty of diagnosing an unfounded concept).¹⁶ Particularly where domestic abuse is present, the focus should be on ensuring the children's and victims' safety and emotional health. Further, there must be an acknowledgement that ‘parental alienation’ is not a form of domestic abuse. The concept of ‘parental alienation’ is being used to obscure and pre-empt investigations of domestic abuse¹⁷, endangering vulnerable parties. What abusers paint as ‘alienating behaviours’ can often be a survivor of abuse trying to protect herself and her children from further harm. Labelling protective behaviours as alienating places blame on the victim-parent and subverts their experience of abuse.

When referencing findings of ‘parental alienation’, the FJC draft guidance notes, “The court should bear in mind the wider factual matrix, which may include associated findings of domestic abuse, alignment or other safeguarding issues when considering next steps,” which implies that ‘alienating behaviours’ can be found even when domestic abuse is present. We wholeheartedly disagree and suggest this be revised to replace ‘alienating behaviour’ with ‘protective behaviour.’ Further, the FJC has outlined, “The court must be cautious when invited to agree a default finding that a parent who fails to establish allegations of domestic abuse or abuse of the child has therefore engaged in alienating behaviour. The absence of an alternative explanation does not lead automatically to an explanation in terms of alienation” (p. 9), which we appreciate. We suggest a recognition of protective behaviours be included as a more likely explanation on page nine.

Centring Holistic Approaches:

‘Alienating behaviours’ is too often conflated with protective behaviours, especially in cases where there are allegations of abuse. In these cases, behaviours should primarily be viewed as protective behaviours, not alienating behaviours. We know domestic abuse occurs at high rates¹⁸. The case law and the Harm Panel report highlighted difficulties for victims’ ability to prove domestic abuse in family court proceedings and the structural barriers to proving the abuse. This can be attributed to different reasons; for example, incomplete understanding by courts and professionals of the nature and

¹⁶ [2023] EWFC 150

¹⁷ Alsalem, R. (2023). Custody, violence against women and violence against children (A/HRC/53/36). United Nations.
<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>

¹⁸ National Centre for Domestic Violence. (2023, March 29). Domestic Abuse Statistics UK.
<https://www.ncdv.org.uk/domestic-abuse-statistics-uk/#:~:text=1%20in%205%20adults%20experience,1%20in%206%2D7%20men>

impacts of domestic abuse¹⁹, including minimising its impact on survivors' and children's lives²⁰. We emphasise that there is a clear risk in courts using 'parental alienation' (and 'alienating behaviours') as an explanatory option where any likelihood that abuse is occurring exists.

Placing a focus on 'parental alienation' shifts attention away from the safety and well-being of the children. Courts should, in the first instance, investigate whether the child is reluctant, resistant, or refuses contact using a holistic approach²¹. We are pleased to see the FJC recognises that a child may resist contact with a parent for many reasons, and this resistance does not automatically indicate 'alienation'. Children's views and responses to parental involvement may stem, for example, from their developmental stage, pre-separation relationship with the non-resident parent, attachment to each of their parents, experiences of contact, and experiences of domestic abuse and child abuse²².

We welcome the recognition by the FJC that 'parental alienation' is not a condition or disorder capable of diagnosis and does not, therefore, require diagnosis by an 'expert'. However, we are concerned about the suggestion that, in the absence of proven domestic abuse or child abuse, the court's inquiry should be on determining 'alienating behaviours'. We want to re-emphasise that experts do not diagnose 'parental alienation', and the voices of children must be heard – **facts** are necessary to prove 'parental alienation'; it cannot just be a case of the court claiming that they cannot see any other reason for a hostile child; the hostile child must directly and actively have a link to alienation. Should 'parental alienation' be brought forth, in spite of the lack of evidence behind the concept, then fact-finding must occur to address the issue²³. Arguments must be clearly pleaded, and children should have the option to give evidence. When facts are being brought forth, they must be specific, well-drafted allegations, including dates and times of specific behaviours. As noted above, there are many reasons why a child may be resistant, reluctant or refuse contact, and these will be ignored and obscured by the implicit assumption that in the absence of proven abuse, the only explanation must be 'alienating behaviours'. There should be, again, no expert to diagnose; neither the courts nor judges need an expert to do their jobs. The allegation must be brought by the person claiming 'parental

¹⁹Barnett, A. (2014). Contact at All Costs: Domestic Violence and Children's Welfare. *Child & Fam. LQ*, 26, 439; Hunter, Rosemary, Mandy Burton, and Liz Trinder. "Assessing risk of harm to children and parents in private law children cases." (2020).

²⁰ Barnett, A. (2014). Contact at All Costs: Domestic Violence and Children's Welfare. *Child & Fam. LQ*, 26, 439.

²¹ Domestic Abuse Commissioner (2023). *The Family Court and Domestic Abuse: Achieving Cultural Change*. https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf; Alsalem, R. (2023). Custody, violence against women and violence against children (A/HRC/53/36). United Nations.

<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>

²² Mercer, J., & Drew, M. (Eds.). (2021). *Challenging parental alienation: New directions for professionals and parents*. Routledge.

²³ "I therefore determined that I would undertake a fact finding hearing to get clarity as to what had actually gone on. I considered that the Father's allegation of "parental alienation" of S against him by the Mother should actually be referred to as an allegation that the Mother has undermined contact, given that there is such contention around the concept of "parental alienation"." (Mr Justice Moor in [2023] EWFC 165)

alienation’ (understanding that there can be no claim of alienation if the parent is still seeing the child in any capacity).

Ensure ‘Expert Witness’ Regulations:

We support the FJC’s attention to the criteria for expert witness qualifications. We still hold concerns that the language used regarding children and families is problematic. For example, children are often referred to as ‘hostile’ in court, which is a broad and inaccurate description to appropriately consider the complete nature of a child’s response²⁴. We ask that experts be instructed to use specific, accurate, descriptive language backed by evidence and expounded on when giving reports. Courts must hold all witnesses to the highest possible standards, and clear and accurate communication should not be relaxed when it is an ‘expert’ giving evidence. We appreciate the FJC’s recognition that expert witnesses may be appointed only where necessary to assist the court in resolving a case²⁵. Experts can have profound impacts on family court cases- the reports they produce are used to assist the court in making key decisions, such as which parent the child is to reside with. We recognise not all experts are being regulated by the appropriate bodies, such as the HCPC, which puts survivors of domestic abuse in danger, and we appreciate that the FJC has addressed this issue. We affirm that where experts are instructed, they should be HCPC-registered. We further ask that the FJC consider setting out requirements for specific and accurate language to be used, for registration with the HCPC to be required, and for experts to be trauma-informed and educated in domestic abuse prior to engaging in *any* case involving ‘parental alienation’ allegations.

Right to Equality’s Stance on ‘Parental Alienation’:

Right to Equality believes ‘parental alienation’ does not belong in the courts. The notion of ‘parental alienation’ lacks a scientific basis and is too often used to harm survivors and children. We see no viable reason for an unfounded concept to hold any place in our justice system. While our recommendations address changes that the FJC could make to protect survivors of domestic abuse, there remains the overarching issue that our suggestions will only address a few of the issues stemming from the true root of the issue. The frequent use of ‘parental alienation’ and the presumption of contact between children and non-resident parents is the root of the issue requiring address. In addition to the arguments presented in the previous points, it is important to emphasise that

²⁴ Domestic Abuse Commissioner (2023). The Family Court and Domestic Abuse: Achieving Cultural Change. (p. 65)
https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf

²⁵ Family Procedure Rules part 25 para.25.5(2)

evidence proves that claims of ‘parental alienation’ are used by abusers to dismantle allegations of domestic abuse and paint victim-mothers as emotionally abusive²⁶.

We firmly request that the use of ‘parental alienation’, ‘alienating behaviours’, and ‘parental alienation syndrome’ in courts be prohibited. The ‘RRR model’ proposed by the Domestic Abuse Commissioner provides a more productive framework for understanding and responding to children’s wishes and feelings and their lived experiences.²⁷

We understand the FJC is working where they are able to mitigate harm and promote a more just approach within these situations; however, it would be helpful for the guidance to include revisions which outline the specific harms that allegations of ‘parental alienation’ cause and a more explicit declaration that it is a pseudoscientific concept.

Conclusion:

While we are delighted that the FJC is working to remedy the issues faced in court in this area, we strongly suggest serious revisions be made to avoid legitimising a pseudoscientific concept, avoid further harming survivors and children, and protect those seeking justice through the legal system. To reiterate the changes we suggest above, we seek that the FJC:

- I. State explicitly that domestic abuse must be investigated at the highest priority and outline why this increases the safety of all involved.
- II. Acknowledge the power imbalances present in cases where ‘parental alienation’ is brought as a response to domestic abuse allegations and the tactical use of allegations of ‘parental alienation’ as a form of litigation abuse, outlining provisions for support for those alleging domestic abuse.
- III. On page eight, change the language of “sometimes raised” to “often,” “regularly,” or “frequently” to reflect the high frequency of allegations of ‘parental alienation’ brought in response to allegations of domestic abuse.
- IV. Require all involved in the justice process who interact with parties or make decisions to be domestic-abuse informed.
- V. Acknowledge that so-called alienating behaviours are actually often protective behaviours and engage with them as such. To this end, on page eleven, replace ‘alienating behaviour’ with

²⁶ Alsalem, R. (2023). Custody, violence against women and violence against children (A/HRC/53/36). United Nations.
<https://www.ohchr.org/en/documents/thematic-reports/ahrc5336-custody-violence-against-women-and-violence-against-children>

²⁷ Domestic Abuse Commissioner (2023). The Family Court and Domestic Abuse: Achieving Cultural Change. (p. 65)
https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf

‘protective behaviour’; on page nine, include ‘protective behaviour’ as an explanation for resistance.

- VI. Acknowledge ‘parental alienation’ is not a form of domestic abuse.
- VII. Note that allegations of ‘parental alienation’ are primarily used to obscure and pre-empt investigations of domestic abuse.
- VIII. Emphasise the understanding that the absence of an alternative explanation does not indicate ‘alienation’ as explained in the Domestic Abuse Commissioner’s report. Further, emphasise that there is a clear risk in courts using ‘parental alienation’ (and ‘alienating behaviours’) as an explanatory option where any likelihood that abuse is occurring exists. Outline, in detail, other reasons for resistance or reluctance to contact.
- IX. Replace the language of ‘alienating behaviours’ with the RRR model proposed by the Domestic Abuse Commissioner.
- X. Experts should be instructed to use specific, accurate, descriptive language backed by evidence and expounded on when giving reports. Requirements for specific and accurate language to be used and for experts to be trauma-informed and educated in domestic abuse prior to engaging in *any* case involving parental alienation allegations should be included moving forward.
- XI. **Acknowledge the use of ‘Parental alienation’, ‘alienating behaviours’, and ‘parental alienation syndrome’ in courts should be prohibited- until then, the root of the issue will be allowed to persist, causing significant harm. Outline the specific harms that allegations of ‘parental alienation’ cause and explicitly declare that it is a pseudoscientific concept.**

We appreciate the opportunity afforded to us to present our concerns, suggestions, and thoughts on this to the FJC and hope to see continued positive changes moving forward. Thank you all for your work and for the work you will continue to do.



RIGHT TO EQUALITY

Who is Right to Equality?

Right to Equality is a non-profit organisation dedicated to making tangible change in the UK's legal system. Our core objective is to advance gender equality through the law and support the rights of women and girls. Using research, events, training, collaborations, and active involvement in social media, we defend the rights of those facing discrimination.

Our team is comprised of experts from diverse demographic backgrounds in policy advocacy, activism, legal analysis, research and more. This broad spectrum of skills and experience equips us to tackle the complex challenges concerning violence against women and girls in both societal and legal contexts.

We have launched a range of campaigns that pertain to women's issues. These campaigns include a project which aims to adopt affirmative consent into law, a campaign that aims to decriminalise abortion, a campaign that strives to address further the issue of "sex for rent" under UK law, and a recently successful campaign to criminalise public sexual harassment.

Learn more about Right to Equality at <https://righttoequality.org/>



RIGHT TO EQUALITY

Our Presumption of Contact Campaign

Right to Equality is launching a two-year campaign to end the pro-contact culture in family courts.

Family courts currently operate under the presumption that maintaining a relationship with both parents is in the child's best interest. This presumption requires compelling reasons to suspend or deny contact between a child and either parent. Even in cases where a parent has a history of abuse, the court begins with the assumption that contact with the abusive parent should occur. This scenario places the burden on survivors to contest child contact with the abusive parent and challenge the presumption. This extends to matters of parental responsibility, wherein family law upholds the norm of shared responsibility, sometimes disregarding instances involving severe abuse offences like rape and murder.

The Ministry of Justice's Harm Report of June 2020 highlighted the systemic minimisation of domestic abuse allegations in family courts, contributing to harm faced by survivors. The report emphasised a prevailing 'pro-contact' culture that obstructs a thorough evaluation of the potential harm stemming from contact with an abusive parent. Moreover, abusers employ tactics like '*parental alienation*,' falsely accusing victims of alienating them from their children. Despite being debunked as a pseudo-concept, 'parental alienation' is used to discredit protective parents, particularly mothers, perpetuating an environment that endangers survivors and their children.

We are stepping up with a resolute two-year campaign in response to the government's inaction following the Harm Report's release. Director Dr. Charlotte Proudman, Advisor Dr. Adrienne Barnett and Project Manager Safa Haroon are leading Right to Equality in advocating for a crucial shift in family law. The current presumption of child contact, especially in cases of domestic abuse, is unacceptable. Our campaign seeks to replace this flawed presumption with one that safeguards survivors and children.

Our strategy is clear: active engagement to catalyse lasting change. Right to Equality is determined to reform existing legislation that grants abusive parents the right to parental involvement. It is well established and recognised by statute that contact with perpetrators of abuse jeopardises the well-being of survivors, both adults and children. We strive to prevent further tragedies and foster a future where safety and justice are paramount.



RIGHT TO EQUALITY

Dr Charlotte Proudman: *FOUNDER*



Dr Proudman is the founder of Right to Equality, a barrister, academic and campaigner. Charlotte represents victims of domestic abuse, rape and controlling behaviour in court. Drawing upon her expertise and experience within the justice system, she is dedicated to advocating for legal reforms and safeguarding the interests of victims. She has a large online platform where she educates the public on women's issues. Her accomplishments include receiving prestigious awards like Advocate of the Year from Women and Diversity in Law and being recognized as a Leading Junior Barrister by The Legal 500.

Dr Adrienne Barnett: *CAMPAIGN ADVISOR*



Dr Adrienne Barnett was called to the Bar of England and Wales in 1981 and practised at the independent Bar in London for over 30 years, during which she specialised in Family Law, primarily representing parents and children in serious care cases and in private law cases involving allegations of domestic abuse. She is a door tenant at One Pump Court Chambers. She is a Reader in Law, teaching Family Law and Children and the Law and is Divisional Lead, Private and Commercial Law. She has undertaken research into domestic abuse and family court proceedings for over 26 years and, more recently, parental alienation, and is widely published. She has presented papers at numerous academic and professional conferences in the UK and abroad. She is a member of the Advisory Group of Rights of Women, a core founder member of SHERA Research Network, a member of Hague Mothers (a FiLiA legacy project) and UK lead of its International Strategy Group, and a member of the Advisory Group of SafeLives Domestic Abuse Training for Lawyers.



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