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# Review of research and case law on parental alienation

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## 1.0 Introduction

This review of research and case law on the topic of parental alienation aims to provide an evidence base to guide practice for Cafcass Cymru. The notion of parental alienation was first recognised by Wallerstein and Kelly in 1976, but it was Gardner's assertion in 1987 that parental alienation was a syndrome, that is, a mental condition suffered by children who had been alienated by their mothers, which has led to debate over the last 30 years. However, despite a wealth of papers written by academics, legal and mental health professionals, there is a dearth of empirical evidence on the topic.

Research in this area is dominated by only a few authors who appear polarised in their acceptance or rejection of the nature and prevalence of parental alienation. Such variability means that there is no commonly accepted definition of parental alienation and insufficient scientific substantiation regarding the identification, treatment and long-term effects (Saini, Johnston, Fidler and Bala, 2016). Without such evidence, the label parental alienation syndrome (PAS) has been likened to a 'nuclear weapon' that can be exploited within the adversarial legal system in the battle for child residence (Schepard, 2001). Hence, Meier (2009) and others (e.g. Bala, Hunt and McCarney, 2010; Johnston, Walters and Oleson, 2005; Lee and Oleson, 2005; Clarkson and Clarkson, 2006) have emphasised the need to distinguish parental alienation from justifiable estrangement due to abuse, violence or impaired parenting. and where parental alienation claims can be

far more often used in practice to deny real abuse than to actually reduce psychological harm to children  
(Meier, 2009:250)

Such differentiation would include consideration of the child's relationship with the alienated parent prior to the claims of parental alienation as well as wider family dynamics (Lee and Oleson, 2005). Further, Meier (2009) warns that despite the rejection of parental alienation as a specific syndrome on scientific grounds, the retention of the term 'parental alienation' is still often used in practice to refer to parental alienation syndrome. Whilst the term 'parental alienation' is widely used within the US, Canada and Europe, the courts in England and Wales prefer the term 'implacable hostility' to refer more widely to high conflict cases where one parent may display hostility or reluctance for the other parent to have contact with the child.

In this review, we use the term 'parental alienation', defined as the unwarranted rejection of the alienated parent by the child, whose alliance with the alienating parent is characterised by extreme negativity towards the alienated parent. This happens when the actions of the alienating parent (deliberate or unintentional), adversely affect the relationship with the alienated parent (Baker and Darnall, 2007).

We use the term 'contact' within the original meaning in section 8 Children Act 1989, amended in April 2014 to 'spending time with' a parent under a child arrangements order.

This report begins with setting out the relevant law and the context of the review, followed by a description of the methods used. The research literature is then presented, followed by a case law review.

The report ends with some discussion, conclusions and key messages for practice.

## 2.0 Law and context

### 2.1 Principles applied by the court in decisions about contact

The concept of enduring parental responsibility and the 'no order' principle in s 1(5) Children Act 1989 underpin an assumption that it is primarily the parents' joint responsibility to make contact work safely and beneficially for the child, and not that of the court or agency such as Cafcass Cymru or a local authority (see **Re W (Direct Contact) [2012] EWCA Civ 999**).<sup>1</sup>

The remit of this review is parental denial of contact for no rational or justifiable reason, and therefore focuses on law and practice where there are no other issues, such as abuse or the witnessing of domestic violence.<sup>2</sup> The purpose of this report is to provide an evidence base for responding to disputes where opposition to contact by a resident parent or child is unfounded on any risk and therefore appears irrational. This reflects category (e) in the typology of implacable hostility posited by Sturge and Glaser (2000), set out at 2.3 below.

In making a decision about contact between a child and her parent under s 8, the court will follow the following principles (**Re O (Contact: imposition of conditions [1995] 2 FLR 124**):

1. The child's welfare is the paramount consideration.
2. It is in a child's best interests to have contact with a non-resident parent, where this is safe.
3. The court has powers to enforce orders for contact which it can exercise if this would promote the child's welfare.
4. Where direct contact is not safe, it is normally in the child's best interests for indirect contact to be maintained.

These principles are derived from and reflect the welfare principle in section 1 Children Act 1989, the right to respect for private and family life Article 8 ECHR, and various articles in the UNCRC. The effect of legislation and case law was summarised by the President in **Re C [2011] EWCA Civ 521**, reproduced below. The extract below has been quoted *verbatim* in a number of subsequent cases about contact as the current basis for decision making in the courts.

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<sup>1</sup> However, a proportion of separated parents are not able to agree arrangements and there is a long history of policy development and law reform since the implementation of the Act, notably since *Making Contact Work* (Advisory Board on Family Law, 2002).

<sup>2</sup> As recognised in *Re L & ors* (see 2.3 below) and supplemented more recently in the amended Family Procedure Rules 2010 Practice Direction 12J, there is no presumption against contact taking place with a non-resident parent who has been a perpetrator of abuse. Therefore a resident parent may have ongoing concerns, even where the contact arrangements have been assessed as safe by a court. Opposition to or denial of contact by the resident parent or child where abuse has occurred extends beyond our terms of reference.

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take a medium-term and long-term view and not accord excessive weight to what appears likely to be short-term or transient problems.
- The key question, which requires "stricter scrutiny", is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; "the child's interest must have precedence over any other consideration".

**Re C [2011] EWCA Civ 521 at para 49.**

The summary in *Re C* pre-dates, but has not been varied by, an amendment to section 1 Children Act 1989 from April 2014, which explicitly added a presumption of continuing involvement between a child and both parents:

(2A) A court when it is considering whether to make, vary or discharge a section 8 order on an application which is opposed is to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

(2B) In subsection (2A) 'involvement' means involvement of some kind, either direct or indirect, but not any particular division of a child's time.



A strong example of the reasoning in *Re C* can be seen in the case of **Re M (Children) 2017 EWCA Civ 2164** where the Court of Appeal held that it was wrong to make an order of 'no contact' between five children (aged between three and 13) and their father, who had undergone a sex change and was living as a woman. The facts in that case were that the father had been alienated from the entire (orthodox Jewish) community in which the children had grown up, because he was transgender. The children would also be ostracised if they had direct contact with him. Although this was not a case where it was the children's mother, nor even extended family, who were objecting to contact, Munby P drew an analogy:

Where an intransigent parent is fostering in their child a damaging view of the other parent, and thereby alienating the child from the other parent and denying contact between them, the court does not hesitate to invoke robust methods where that is required in the child's interests. [64]

He went on to set out these robust methods as:

- Transfer of residence (either immediate or suspended);
- Wardship; or
- An order for a s 37 investigation.

These and other methods used by courts are described in the review of case law (Section 5.0 below).

## **2.2. The views of the child**

Practitioners in Wales work within a children's rights and well-being legal framework that pays due regard to a child's right to participate in decision making about them (Children's Rights Measure 2011; Social Services and Well-being (Wales) Act 2014).

As children get older, their evolving capacity means that their UNCRC Article 12 rights to participation gradually increase. As expressed by Thorpe LJ in **Mabon v Mabon [2005] EWCA Civ 634**, the courts, in safeguarding Art.12 rights, have to accept (in that case of articulate teenagers) that the right to freedom of expression and participation outweighs the paternalistic judgment of welfare. Judges need to be alive to the risk of emotional harm that might arise from denying a child knowledge of and participation in proceedings.

However, research on children's views in private law proceedings is sparse, with parental alienation posing a dilemma where adopting a children's right perspective may be unhelpful if the child has been subject to the indoctrination of an alienating parent, yet in breach of their rights if they are forced into reunification with the alienating parent (Bala, Hunt and McCarney, 2010)

Fortin, Hunt and Scanlan's England and Wales retrospective study of grown-up children's views of contact (2012) concludes that there was no evidence of children resisting contact entirely based on pressure from their mothers, but rather for the child's own reasoning often attributing blame to the non-resident parent. Such attributions included a lack of parental interest, rejection by a new partner as well as practical factors such as distance and the non-resident parent's work commitments. Hence, where resident parent manipulation was reported, Fortin *et al* assert that this was only in rare cases and primarily from young children. These findings suggest that before a court takes the draconian step of overriding a child's wishes, the underlying cause of resistance should be very carefully explored to ensure that important information about the child's relationship with the non-resident parent was not overlooked.

The courts have recognised that even where the balance drawn between a child's welfare and their right to express opposition to contact has led to a court decision in favour of contact, it may be unrealistic to make orders that cannot be enforced (**Re G [2013] EWHC B 16**). Trying to coerce an older child into arrangements to which they are opposed can exacerbate the problem. It may be more meaningful to try to provide opportunities for negotiation (**Re S (Contact: Children's views [2002] EWHC 540 (Fam))**).

As noted in *Re C* and *Re A* (above), the welfare analysis undertaken by the court will apply to the child's current wishes and feelings, but the history of their relationships may still be relevant. A sudden unexplained refusal to see a parent should be investigated by the court (**Re T (A Child: Contact) [2002] EWCA Civ 1736**).

### **2.3 Courts and parental alienation / implacable hostility**

Disputes that have become lengthy and/or serious, in the absence of risk of abuse and violence, are often described in a legal context as 'intractable'. Although the term 'parental alienation syndrome' (PAS) has been rejected by the courts, an unjustified denial of contact by the resident parent is occasionally described in a court judgment as 'parental alienation' and/or 'implacable hostility' (See Review of Case Law, Section 5.0).

The leading judicial authority on parental alienation 'syndrome' (as it was then described) is still **Re L, V, M and H (Children) [2000] EWCA Civ 194**, where the Court of Appeal accepted the expert psychiatric evidence of Drs Sturge and Glaser regarding an argument put forward by a non-resident father that his child's expressed fear of him was a result of parental alienation syndrome (PAS). The court judgment includes part of the Sturge and Glaser report as follows:

- PAS was not a helpful concept and the sort of problems that the title of this disorder was trying to address was better thought of as implacable hostility.
- PAS assumes a cause (from a misguided or malign resident parent) which leads to a prescribed intervention.
- Implacable hostility is simply a statement aimed at the understanding of particular situations, for which a range of explanations is possible, and for which there is no single and prescribed solution, depending on the nature and individuality of each case.
- The basic concept in PAS is a 'uni-directional one' of a linear process but factors are, instead, dynamic and interactional with aspects of each parent's relationship to the other interacting to produce 'the difficult and stuck situation'.
- The possible reasons for a resident parent taking a position of implacable hostility to their ex-and to contact were as follows:

“(a) A fully justified fear of harm or abduction resulting from any direct contact with the non-resident parent.

(b) A fear of violence or other threat and menace to herself if the non-resident parent has indirect contact to her through the child, i.e. it could lead to direct contact.

(c) Post-traumatic symptoms in the custodial parent which are acutely exacerbated by the prospect or the fact of contact.

(d) The aftermath of a relationship in which there was a marked imbalance in the power exercised by the two parents and where the mother<sup>3</sup> fears she will be wholly undermined and become helpless and totally inadequate again if there is any channel of contact between herself and the ex-partner, even when that only involves the child. The child can be used as a weapon in such a bid to continue to hold power over the mother. As in (a), (b), and (c) above this can be a *sequelae* of domestic violence.

(e) Wholly biased hostility which is not based on real events or experience. This may be conscious and malign or perceived to be true. The latter encompass the full continuum from

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<sup>3</sup> Although note that the literature and the cases focus on the parent with residence as the alienating parent, so this will tend to be mothers, but not always.

misperceptions and misunderstandings through overvalued ideas to delusional states. The former may result from a simple wish to wipe the slate clean and start again and can be seen after relationships that were initially highly romantic or idealised and for the breakdown of which the woman can only account for by vilifying the partner in order to avoid facing the possibility that the breakdown in the relationship was her failure and amounts to rejection.”

Sturge and Glaser used the term 'implacable' for all five categories to describe the intensity and unchanging nature of the hostility which any amount of mediation was unlikely to alter. They noted that implacable hostility is often two-way, with the non-resident parent as hostile to the resident parent as the other way around.

However, in the years since their report and the acceptance of the Sturge and Glaser guidelines on contact and domestic abuse, the term 'implacable hostility' has tended to be used more narrowly by the courts for category (e) above, and sometimes as a synonym for alienation. Categories (a) to (d) can be distinguished from (e) because the former have a rational basis for the opposition to contact, evidence of which should be made available to the court.

Although courts in England and Wales still follow the decision in *Re L & ors* that PAS is not a helpful descriptor, they have accepted that there are extreme situations where such hostility can extend to the child's view of the non-resident parent, to the extent that the child's view of relationships becomes distorted. Direct reference to the term 'parental alienation' in reported judgments is relatively rare, but there are a small number about children who have in effect become alienated from an otherwise 'good' parent. These cases, together with judgments where the term does appear, are included in the Review of case law below (section 5.0).

### **2.3 Current procedure regarding cross-allegations of domestic abuse and parental alienation**

A recently reported Court of Appeal case, ***Re J [2018] EWCA Civ 115*** emphasises that cross-allegations of abuse require identification of the issues at an early stage to determine issues of domestic abuse and whether FPR PD 12J will apply to case management. A failure to determine the underlying facts, including arguments made by a parent about alienation, means the court is not in an informed position to decide which of the range of options that might be available would best meet the needs of the children. A finding of fact hearing should take place before a section 7 report is ordered. PD 12J is intended to improve formerly

inconsistent practice (Hunter and Barnett 2013) by more rigorous attention to early determination of issues about abuse; its effectiveness has not yet been evaluated.

## 2.4 The current context

Nothing in the published judgments suggests that alienation has become more common in England and Wales in recent years. (We deal with the problem in estimating prevalence in section 4.2 below) Nor is there any data publicly available from the Court Service, Cafcass (England), Cafcass Cymru, or agencies concerned with child protection, relating to rates or incidence of alienation.

However, public interest in the topic appears to have increased since *The Guardian* published a front page story:

A. Hill, *The Guardian* 17 November 2017 '*Divorcing parents could lose children if they try to turn them against partner*

*Measures being trialled to prevent 'parental alienation' feature penalties including permanent loss of contact with child'*

This article shortly followed in *Community Care*:

L. Stevenson, *Community Care* 18 December 2017 '*Parental alienation: 'It is critical social workers know how to recognise this'*

*Cafcass is currently developing a high-conflict pathway to manage parental alienation cases'*

Hill's article is based partly on an interview with Sarah Parsons, the Principal Social Worker at Cafcass (England). However, this comment;

*'Parental alienation is estimated to be present in 11%-15% of divorces involving children, a figure thought to be increasing.'*

is not attributable to Sarah Parsons, but to an overview of older US studies (Fidler & Bala 2010) Sarah Parsons has subsequently corrected some aspects of the *Guardian* article (The Transparency Project, 2017).

In a contemporaneous analysis for Cafcass (England) of contact cases that returned to court, there is no reference to parental alienation (Halliday, Green and Marsh 2017). This research found that the majority of returns were due to conflict between adults with a key theme of the inability of adult parties to communicate about issues, together with chronic mistrust and antipathy, leading to use of the court to resolve disputes. It was suggested that children were suffering emotional harm where they felt burdened with responsibility for contact arrangements working or not working. Despite this research being published in the same

month as the *Guardian* article, it contains no reference to alienation as a factor.

The media coverage therefore does not appear to reflect any real increased incidence of alienation cases in England and Wales, although in the absence of any evidence either way, the suggestion can only raise anxieties in an already emotive area of policy.

### **Conclusion**

Law and policy is firmly based on the principle that a child's rights and welfare needs are usually best met by their maintaining contact with both parents, where this is safe. Although terminology has altered since the Court of Appeal guidance in *Re L & ors* dismissed parental alienation syndrome (PAS) in 2000, the concept of implacable hostility – which may be present for a range of reasons – was and is still recognised by the courts. Implacable hostility is, however, not accepted in itself as a barrier to making orders for contact. Indeed, the judiciary emphasise the efforts that should be made to overcome hostility and ensure that meaningful contact takes place. The reasons that underlie the apparent revival in 2017 of 'parental alienation' as descriptive of some children who are subject to contact disputes are far from clear.

## **3.0 Method**

### **3.1 Review of empirical literature on parental alienation**

A rapid review approach was adopted so that a structured and rigorous search and analysis could be undertaken within the limited timeframe of the review (see Thomas, Newman and Sandy, 2013). The search strategy drew upon a range of databases and electronic data sources to ensure coverage of recent policy documents, grey literature and academic evidence published since 2000. Searches were supplemented by internet searching and hand searching of journals, as well as with recommendations from professionals. Appendix B provides a flow diagram and further information on search terms and exclusions.

A total of 45 sources were included for the literature review. In a few places, published commentary has also been drawn upon, where it reflects directly on the reviewed research. Key findings are summarised in relation to themes that emerged (section 4.0).

### **3.2 Review of case law**

A review of case law was undertaken of three databases that hold reported or published court judgments:

- BAILII (freely available at [www.bailii.org](http://www.bailii.org))
- Westlaw and Lexis Library (subscription only)
- HUDOC (freely available for cases published from the European Court of Human Rights at <https://hudoc.echr.coe.int/eng>).

Appendix B includes information on search terms and results, which are analysed in section 5.0.

### **3.3 Limitations of the evidence base**

Our review should not be seen as an exhaustive exploration of all the literature on this topic, rather they represent an attempt to identify and appraise empirical evidence. Despite the apparently large literature on parental alienation, there is a dearth of robust empirical studies. Much of the field appears to be given over to discussion pieces that are dominated by a small number of authors. We offer no opinion on the merits and limitations of these discussion pieces. The overview provided through this review has not identified how the existing evidence base is being used by courts in England and Wales. Court judgments rarely make explicit reference to specific pieces of literature; such discussions are often confined to expert witness reports submitted to the court – these reports do not fall within the public domain.

Much of the literature on parental alienation has focused on debates about its existence and definition. By comparison, there is a relative absence of literature about how the concept is understood, assessed and worked with from a practice perspective. This limited empirical evidence is often plagued by issues of poor sampling, or a focus on specific populations, meaning that the generalisability of the findings is inherently limited. There has also been reliance upon retrospective accounts, which do not allow for the controlling of extraneous variables or identification for a causal relationship between adverse outcomes and alienation to be established. The diversity of different professional roles within practice and court settings means that there is a need for research to be conducted with a range of different stakeholder groups (including the families and children). Further to this, much of the research to date has focused on specific geographical locations, primarily North America (specifically, the US)<sup>4</sup>. Cultural variations in roles, approaches and practice raise further challenges to the applicability of findings in Wales.

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<sup>4</sup> The structure and functioning of courts, health and social care services in the US, and to a lesser extent Canada, are considerably different to those in the UK. Court mandated interventions/therapy for specific interventions (i.e. a specifically named intervention) are more commonly associated with systems used in the US than those in the UK where courts generally refer to public health services who make determinations on appropriate interventions and therapy, a point that should be considered when reading the subsection on interventions.



## **4.0 A rapid review of empirical evidence on parental alienation**

### **4.1 Definition of Parental Alienation**

There is no decisive definition of parental alienation within the research literature. The findings suggest that a child's alignment with one parent over another is a normal consequence of child development, although affiliations will change over time according to the needs of the child (Johnston, 2003). For older children, Art 12 UNCRC recognises their evolving capacity to participate in decision making, even if this outweighs parental welfare judgements (see Section 2.2). Parental alignment or parental alienation can also be a normal reaction to parental separation. However, the extent to which this is a minor, time-limited phenomenon or a more serious issue is controversial (Hands and Warshak, 2011). Such controversy also surrounds the notion of PAS, postulated by Gardner as a sub-category of parental alienation referring to the mental condition experienced by the alienated child, due to its lack of scientific credibility (Rueda, 2004).

It is important to note that neither the DSM-V nor the ICD-10 specifically identify parental alienation or PAS. Both include broad definitions of child psychological abuse (DSM-V 995.53 and ICD-10 T74.3) that may include many of the attributes often identified as being characteristics of PAS but do not identify it as a specific sub-type. The ICD-10 also includes additional classifications that touch on some of the different dimensions described by advocates of PAS, for example: Z62.1 Parental overprotection; Z62.4 Emotional neglect of child; Z62.8 Inappropriate parental pressure and other abnormal qualities of upbringing. None of these classifications specifically identify PAS and the examples given are generally much broader than those used in the wider literature of PAS. The Beta version of the forthcoming ICD-11, at the time of writing, includes a proposal to include parental alienation under the broader grouping of caregiver-child relationship problems. It is not clear if this will be included in the final version, nor is it clear how this might be defined. The inclusion of parental alienation in either the DSM or the ICD classifications has been, and continues to be, contentious (Bernet *et al.*, 2010; Bernet and Baker, 2013; Pepiton *et al.*, 2012).

Nevertheless, there has been some agreement that parental alienation refers to the unwarranted rejection of the alienated parent and an alliance with the alienating parent, characterised by the child's extreme negativity towards the alienated parent due to the deliberate or unintentional actions of the alienating parent so as to adversely affect the relationship with the alienated parent (Baker and Darnall, 2007, Baker and Darnall,

2006; Johnston, 2003). In addition, an alienated child may demonstrate behaviours consistent with aiming to please or avoid recrimination from the alienating parent (Gomicide, Camargo and Fernandes, 2016). Unlike parental estrangement - where there is a basis for rejecting a parent such as neglect, abuse, abandonment or domestic violence - parental alienation refers to unjustified fear, hatred and rejection. However, there is a relative absence of studies that demonstrate methods to differentiate parental alienation from estrangement, leading Gomicide et al (2016) to recommend that parental alienation be considered when there is no real motive for the child's denigration of the alienated parent.

Much of the literature has sought to identify the behaviours and strategies employed by alienating parents (Johnston, 2003; Baker and Darnall, 2006; Baker and Ben-Ami, 2011; Hands and Warshak, 2011; Baker, Burkhard and Albertson-Kelly, 2012; Verrocchio and Baker, 2015; Bernet, 2016a). It has been suggested that,

There appear to be endless permutations and combinations of alienating behaviors. Looked at from this perspective, it is clear that parental alienation syndrome is more a goal or an outcome rather than a specific set of behaviors or actions on the part of the alienating parent (Baker and Darnall, 2006: 118)

Adopting the existence of a set of behaviours or actions negates Gardner's (2002) assertion that the child must exhibit most of the eight symptoms he posited. There is some support for Gardner's distinction between alienation by the parent and alienation by the child. Hence, Sprujit et al (2005) found four main constructs with two focused on alienation behaviours by the parent (1, 2) and two based on alienation by the child (3, 4)

1. Exclusion of the non-resident parent based upon claims from the resident parent (e.g. 'bad-mouthing' the parent);
2. Exclusion of the non-resident parent by the resident parent (e.g. false accusation of abuse against the non-resident parent)
3. Child's idealisation of the resident parent (e.g. has only positive assertions about the resident parent)
4. Child's rejection of the non-resident parent (e.g. the child has no respect for the non-resident parent).

## **4.2 Prevalence of parental alienation**

The lack of a single definition makes determining the prevalence of parental alienation a complex task. The diversity of associated behaviours and the complexity of assessment mean there is little to no reliable data

within existing literature (Saini, Johnston, Fidler and Bala, 2016; Lavadera, Ferracuti and Togliatti, 2012; Johnston, 2003). This is further complicated by changing demographics within the wider population; specifically, increasing rates of cohabitation, increasing rates of marital breakdown, and the rise of 'blended' families. These might give rise to instances where alienation might occur (a potential increase in frequency) but this would not necessarily reflect a proportionate increase.

### **4.3 Determinants of parental alienation**

The research evidence demonstrates that there are multiple determinants of parental alienation including the behaviours and characteristics of the alienating parent, alienated parent and the child (Saini, Johnston, Fidler and Bala, 2016; Hands and Warshak, 2011; Johnston, Walters and Oleson, 2005; Johnston, 2003). This section will discuss each party in turn.

#### *4.3.1 The alienating parent*

Whilst it has been suggested that mothers are more likely to alienate (Johnston, 2003; Vassilou and Cartwright, 2001), parental alienation appears more reflective of child residence arrangements, with the resident parent – regardless of gender - more likely to alienate the child (Beebe and Sailor, 2017; Bala, Hunt and McCarney, 2010). No gender differences have been found in the number of alienating strategies employed by alienating mothers and alienating fathers (Baker and Darnall, 2006). However, the research evidence suggests that there are gender differences in the alienating strategies used, for example alienating mothers are more likely to denigrate fathers to the child whilst alienating fathers are more likely to encourage child defiance towards the mother (Balmer, Matthewson and Haines, 2017).

Alienating parents have been described as having narcissistic injuries, blaming the alienated parent for their suffering and humiliation (Godbout and Parent, 2012; Baker 2006). Findings suggest that alienating parents are psychologically maltreating their children as they attempt to form a pathological alliance with the child, lack of empathy for the child and inability to separate the child's needs from their own (Lavadera, Ferracuti and Togliatti, 2012; Baker and Ben-Ami, 2011; Baker and Darnall, 2006; Johnston, Walters and Oleson, 2005). Hence, alienating parents will manipulate the child's thoughts and feelings, offering them warmth provided they receive unquestioned loyalty in return (Gomide et al, 2016; Lavadera, Ferracuti and Togliatti, 2012). In some cases, this may also involve the parentification of the child, either as the child becomes a confidant or is relied upon for emotional support (Godbout and Parent, 2012).

### *4.3.2 The parent who is alienated*

According to Johnston's (2003) study of clinicians' ratings, alienated parents' deficits in parenting capacity play a role in parental rejection, although it is unclear whether such deficits are due to poor parenting or the powerlessness experienced in light of the alienating parent-child alliance against them. Parental alienation can limit the alienated parent's relationship with the child creating triangulation where the child is drawn into parental discord forming a parent-child alliance resulting in the loss of the parental role for the alienated parent, and a shift in power towards the alienator and the child (Whitcombe, 2017; Baker and Eichler, 2016; Godbout and Parent, 2012; Avitia, 2011; Vassiliou and Cartwright, 2001). Consequently, alienated parents may be wary of upsetting, angering or disciplining the child for fear that they will reject further contact.

The presence of parental alienation did not appear to be related to marital conflict prior to separation but was associated with a general decline in communication between separated parents over time. Several studies suggest that parental alienation is associated with parents who have shared, or joint custody (Whitcombe, 2017; Avitia, 2011) and where alienated parents perceive alienating parents to be preventing or disrupting contact due to hatred, anger or revenge. In addition, close family members have been found to engage in alienating behaviours denigrating the alienated parent (Vassiliou and Cartwright, 2001).

Research findings have shown that alienated parents experience frustration, fear, stress, anger and helplessness (Whitcombe, 2017; Avitia, 2011; Baker and Darnall, 2006; Vassiliou and Cartwright, 2001). Further, alienated parents experience negative emotional and financial costs (Vassiliou and Cartwright, 2001; Balmer, Matthewson and Haines, 2017). As a result, alienated parents may adopt a passive stance or withdraw, which can fuel alienation as it reinforces negative messages to the child that the alienated parent never loved them or was a bad parent (Balmer, Matthewson and Haines, 2017; Godbout and Parent, 2012; Hands and Warshak, 2011; Baker, 2006).

### *4.3.3 The child*

The characteristics of the child are an important consideration in parental alienation as not all children become alienated, and for those who do, there are variations in the severity of alienation (Hands and Warshak, 2011; Baker and Darnall, 2006). Following Gardner (2002), alienation can vary from mild, which is not perceived to be problematic, to moderate and severe;

In mild cases the child is taught to disrespect, disagree with, and even act out antagonistically against the targeted parent. As the disorder progresses from mild to moderate to severe, this antagonism becomes converted and expanded into a campaign of denigration (Gardner, 2002:96)

Variance also occurs in the internalisation of alienation, where some children experiencing conflicting emotions of anger and resentment alongside feelings of love, sadness and guilt about their actions towards the alienated parent (Godbout and Parent, 2012; Baker, 2006).

Both gender and age appear to be significant, with more likely involvement of girls than boys (Balmer, Matthewson and Haines, 2017; Baker and Darnall, 2006), and older children and young people who have the cognitive and emotional ability to participate in family dynamics but whose thinking remains malleable (Lavadera et al, 2012; Baker and Darnall, 2006; Johnston, 2006). Alienated children tend to display age-inappropriate alliances with the alienated parent (Balmer, Matthewson and Haines, 2017), exhibiting extreme polarisation where the alienating parent is perceived idealistically whilst the alienated parent is denigrated (Baker, Burkhard and Albertson-Kelly, 2012). Further, alienated children may act-out for alienated parents and be resistant to any forms of intervention aimed at addressing parental alienation (Baker, Burkhard and Albertson-Kelly, 2012). There is some indication that alienated children have identity difficulties, with some developing a false sense of self as a coping strategy for the alienation, which enables them to present as well adapted (Lavadera et al, 2012). Further, when compared with a control group, alienated children were found to have a tendency towards manipulative behaviour, low respect for authority, feelings of abandonment, adversarial, and ambivalent affectivity, relationship difficulties and a distorted perception of family dynamics (Lavadera et al, 2012; Johnston, 2003).

#### **4.4 Long-term effects on the child**

Whilst the research proposes a range of negative long-term effects of parental alienation, the studies reviewed are based upon retrospective reports which do not allow a causal relationship between adverse outcomes and alienation to be established. As such, the following summary of results should be treated with caution.

Baker's series of studies have found that alienation may lead to lower self-esteem in adulthood (Verrocchio and Baker, 2015; Ben-Ami and Baker, 2012; Baker and Ben-Ami, 2011; Baker, 2005) and depressive symptoms where it has been suggested that the lived experience of

coping with the apparent rejection of the alienated parent and inability to seek comfort from the alienating parent regarding this loss has been linked to depression in adulthood (Ben-Ami and Baker, 2012; Baker and Ben-Ami, 2011; Baker 2005). It has also been posited that alienated children may have lower levels of self-sufficiency in adulthood, where it has been hypothesised that the strong alliance between the child and alienating parent may adversely affect the child's later independence (Ben-Ami and Baker, 2012; Godbout and Parent, 2012; and Johnston, Walters, and Olesen, 2005). The manipulative nature of this alliance has also been linked to difficulties surrounding attachments and relationships, where the alienated adult may either seek constant approval from partners or display distrust (Beebe and Sailor, 2017; Balmer, Matthewson and Haines, 2017; Ben-Ami and Baker, 2012). However, there are some research findings which suggest that older children may seek reunification, sometimes following a pivotal event such as witnessing the alienating parent's negative behaviours (Godbout and Parent, 2012). Moreover, it has been suggested that such reunification can result in the 'backfire effect' (Moné and Biringen, 2006) whereby the child rejects the alienating parent and re-establishes a relationship with the alienated parent.

#### **4.5 Practice orientated research**

In terms of practitioners' awareness of parental alienation, Bow *et al.* (2009) conducted a survey of mental health and legal professionals in the US ( $n=448$ ). The sampling for this study was skewed towards experienced practitioners who often worked on private cases. Participants were identified through internet searches, giving rise to concerns about the representativeness of the sample. The results indicated that the majority of practitioners had not been taught about parental alienation in their initial or subsequent training, as 50% were noted to have learnt about the concept through the course of their practice. While there was general acceptance of the concept, the majority of respondents (71%) reported that they were aware that the term was controversial. Further to this, 75% did not feel that parental alienation was a syndrome, as the evidence base on this was felt to be lacking.

Despite this, when professionals were asked to identify their confidence (Likert scale of 1 to 7 – 1 being low and 7 being high) in different factors from Gardner's (2004) Parental Alienation Scale, values ranging from 4.01 to 5.34 were noted (see table 3 of Bow *et al.*). While attorneys and judges were consistently more sceptical of the factors than evaluators and court facilitators, the different professions were consistent in their broad agreement about which factors were more important (i.e. while mean scores varied by profession, the same factors were generally ranked

higher or lower across professions). Child custody evaluators<sup>5</sup> were asked about the assessment approaches they favoured for parental alienation; interviews and observations were noted to be preferable to testing children and/or parents. These professional differences did, however, dissipate when it came to proposed interventions, with therapy for the parents and children being the preferred option.

The use of scales and tests to measure parental alienation in practice appears to be lacking a credible evidentiary basis. Indeed, there appears to be a range of potential tools/measures: Bernet (2016a; 2016b) examined the Parental Acceptance-Rejection Questionnaire (PARQ); Baker *et al.*, (2012) have developed the Baker Alienation Questionnaire (BAQ); and Gomide (2016) and Lavadera (2012), amongst others, have looked at Gardner's (2004) Parental Alienation Scale. The methodology and sampling strategies employed vary considerably, and often seem to lack sufficient rigour to draw any meaningful results.

All of the studies identified thus far relate to research outside the UK. Trinder *et al.*'s (2013), study of enforcement applications in England constitutes a rare example of domestic research. While the focus of this study was on court outcomes, the study drew on Cafcass (England) records. The findings from this study identified that implacable hostility is a rare phenomenon:

Contrary to public perceptions and our own expectations, very few of the cases involved implacably hostile parents who unreasonably refused all contact. Instead the majority of cases involved two parents involved in mutual conflict over their children, followed by cases where there were significant safeguarding concerns that were impacting upon contact and by cases where older children wished to stop or reduce contact.

(Trinder *et al.*, 2013:36)

Implacable hostility cases were noted to be more time consuming and costly, with the courts generally taking a punitive approach with enforcement orders and transfers of residence occurring at a disproportionate level. Indeed, a new order was made in all implacable hostility cases. However, the low prevalence of implacable hostility within the sample (a total of nine cases, 4% of the sample, were identified in a sample of 212) means that caution should be exercised in generalising from their findings.

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<sup>5</sup> A court appointed mental health expert who evaluates the family and child to determine what is in a child's best interest. The role, experience, qualifications and existence of these evaluators varies between US states.

## 4.6 Interventions and treatment

Interventions and treatments for alienation appeared to vary in form and style, but a common theme is a consistent lack of robust evaluation. Templer *et al.* (2017), in their systematic review of responses to parental alienation noted that there is lack of clarity about outcome measures, a regular failure to use control groups and no attempt made to match cases. While this review did identify 10 studies, these were predominately small scale and relied on qualitative measures. Only one study, Toren *et al.* (2013), sought to utilise a control group in a quasi-experimental design study design. The approach of the review was broad and there does not seem to have been any attempt to use robust appraisal criteria as might be expected in public health trials, even those utilised for early development. It is very doubtful that any of the studies identified by Templer *et al.*, or by this review, would be sufficiently robust when appraised against National Institute for Clinical Excellence (NICE, 2012) checklists,<sup>6</sup> or similar criteria.

The interventions were often small in scale; none of those identified in this study had a frequency higher than 100. Indeed, many were often below 50. Sampling approaches were often based on a convenience approach with cases being identified by researchers from their own practice, or through recruitment with colleagues. Follow-up data was obtained but this was rarely in excess of a year or two. Johnston and Goldman (2010) were the exception here, utilising follow-up data from a previous study and their own clients from the past ten years. However, their results were (as was self-identified) preliminary and hypothesis-building. It seems that the long-term effect of interventions is not being sufficiently measured.

Interventions tended to focus on psycho-educational approaches working with children and estranged parents. What this entailed was not always clearly articulated, and much of the discussion of the interventions often focused on descriptions of stages and characteristics of the approach in the form of a general overview. Some took the form of retreats (Sullivan, 2010). Others looked at intensive therapy sessions (Toren, *et al.*, 2013) and some used a combination, with different populations receiving different forms of support (i.e. the alienating parent having therapy remotely or in person while the child and alienated parent might be on a retreat) (Reay, 2015). A summary of some of the interventions identified are given in the table below:

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<sup>6</sup> Specifically, Appendices F and H of NICE (2012)



**Table 1.0 – Summary of Parental Alienation interventions and therapies<sup>7</sup>**

<i>Name and reference</i>	<i>Summary of intervention/therapy</i>
Baker Alienation Questionnaire (BAQ) (Baker <i>et al.</i> 2012)	<p>A 28-point questionnaire regarding the thoughts and feelings a child possess about a parent. The questionnaire is built around four key principles:</p> <ol style="list-style-type: none"> <li>1. Is there evidence of a positive relationship between the child and the now rejected parent prior to the divorce?</li> <li>2. Is there lack of a substantiated finding of abuse or other credible information about the abuse or neglectful behaviours of the now rejected parent?</li> <li>3. Is there evidence that the favoured parent employed many of the 17 primary parental alienation strategies as identified in Baker and Fine (2008)?</li> <li>4. Does the child exhibit behavioural characteristics or report ideas and feelings characteristic of alienation (e.g., a score of 7 or above on the BAQ)?</li> </ol>
Family Bridges (Warshak, 2010)	<p>A workshop-based intervention for families (not groups of families). The intervention is designed for: (i) children whose rejection of a parent, or relative, is unrealistic; (ii) the child refuses contact with the parent; (iii) the child needs support adapting to living with an alienated parent as a result of a court order made in favour of this parent. The workshop is based on ten principles ranging from a focus on the future and education, through to recognising human fallibility and conflict management. Workshops are led by psychologists and lasts for four days. Each day of the workshop is characterised by a phase of work: (i) basic concepts and information; (ii) divorce-related concepts and integration of learning; (iii) application of learning; and, (iv) acquisition and practicing of conflict-resolution and communication skills.</p>
Family Reflections (Reay, 2015)	<p>Designed for working with children aged 8-18. Children attend a retreat facility away from the both parents. Psycho-educational work is then undertaken with the child before the alienated parent then joins the child at the retreat where they both engage in activities and further psycho-educational work. The child and alienated parent then share the same living quarters to build on their relationships. Therapy is also undertaken with the alienating parent at a location close to their home or via remote therapy. The final phase includes the formation of a long-term plan for promoting positive relationships.</p>

<sup>7</sup> Templer *et al.*, (2017) found a wider range of interventions/therapies than those in our review. This is likely to be due to differing criteria and focuses. Specifically, this review focused on literature published since the year 2000.

<p>Group Treatment (sixteen session) (Toren <i>et al.</i>, 2013)</p>	<p>Children and their families aged between 6 and 16 with a 'diagnosis' of PA were eligible. Weekly group-therapy sessions undertaken for sixteen weeks with two groups: (i) children (group size between six and eight); and, (ii) adults (group sizes between 12-14). Both groups had two therapists. A dynamic approach was undertaken with a focus on cognitive behavioural modules, interpersonal skills and coping strategies. The parents group focuses on separation, co-parenting and a range of associated factors. The children's group focuses on separation, divorce, 'new' life-story work and expressing feelings.</p>
<p>Overcoming barriers family camp (Sullivan <i>et al.</i>, 2010)</p>	<p>A five-day, four-night, family camp that includes both parents and children. The camp is designed to provide intensive therapy to high-conflict families through: (i) camp-based experiences and activities; (ii) pro-bono clinical psychologist providing clinical interventions and support; (iii) co-parenting sessions; and (iv) interventions that focus on promoting reconnection between the alienated parent and child(ren).</p>

Many of the interventions were also noted to take place under court direction; this was specifically identified as a criterion for entry in (Baker, *et al.*, 2012; Reay, 2015; Toren *et al.*, 2013), or was noted to be a common factor in others (Sullivan *et al.*, 2010; Warshak, 2010). The rationale was explicitly linked to the need to compel the alienating parent by Reay (2015). However, this need for compulsion for separation away from the alienating parent does not necessarily result in the alienated parent being receptive to support and therapy. Recent research by Balmer *et al.*, (2017) demonstrated that target parents perceived their situation to be moderately within their own control, but unlikely to be controllable by anyone else, suggesting that external help and support will be rejected.

One study, Darnall and Steinberg (2008), explored spontaneous reunification and the motivational mechanisms that underlie this. This study primarily looked at the motivation for children seeking out alienated parents and utilised a theoretical framework devised by Zartman and Aurik (1991) to group the children. The sample used here was predominately self-selecting, giving rise to concerns about selection bias and motivation for participation. This said, further criteria were employed in the form of Gardner's Parental Alienation Scale (as described by Kelly and Johnson, 2001). The small-scale nature of the research, and uncertainty about its purpose do give rise to questions about how this might be important for interventions.

In summary, there are few to no high-quality evaluations of interventions for children and families in relation to parental alienation. The Templer *et al.* (2017) review does provide a useful summary of the current approaches to intervening in instances of alienation. However, caution is suggested in drawing too much from their recommendations/findings. More stringent criteria for appraising the quality of studies should have been employed and it is likely that none of the studies identified would stand up to robust scrutiny from established NICE (2012), and equivalent, appraisal tools. The lack of clear quantitative data capture utilised in the evaluation of these interventions, combined with the small scale of the interventions, makes any comparison and any meta-analysis unviable. In short, intervention and treatment seem to be in the formative stages of development; we have not identified any robust evidence for validated interventions and treatments around parental alienation.

#### **4.7 Conclusion**

There is a paucity of empirical research into parental alienation, and what exists is dominated by a few key authors. Hence, there is no definitive definition of parental alienation within the research literature. Generally, it has been accepted that parental alienation refers to the unwarranted rejection of the non-custodial parent and an alliance with the alienating parent characterised by the child's extreme negativity towards the alienated parent due to the deliberate or unintentional actions of the alienating parent so as to adversely affect the relationship with the alienated parent. Yet, determining unwarranted rejection is problematic due to its multiple determinants, including the behaviours and characteristics of the alienating parent, alienated parent and the child. This is compounded by the child's age and developmental stage as well as their personality traits, and the extent to which the child internalises negative consequences of triangulation. This renders establishing the prevalence and long-term effects of parental alienation difficult.

With no clear accepted definition or agreement on prevalence, it is not surprising that there is variability in the extent of knowledge and acceptance of parental alienation across the legal and mental health professions. The research has however, provided some general agreement in the behaviours and strategies employed in parental alienation. This has led to the emergence of several measures and tests for parental alienation, although more research is needed before reliability and validity can be assured. Many of the emerging interventions focus upon psycho-educational approaches working with children and estranged parents, but more robust evaluation is needed to determine their effectiveness.

## 5.0 Review of case law

This section analyses parental alienation as a term and a concept when it appears in case law. The review begins with the most relevant recent Court of Appeal cases. These were reported between 2013 and 2018. Other relevant cases (reported since 2000) are then set out in two sections: where parental alienation was alleged but not found by the court and, second, where parental alienation/implacable hostility was identified by the court and how this was addressed. Further description of the facts, issues and outcomes in the individual cases are contained for reference in the table at Appendix A.

### 5.1 Recent Court of Appeal cases

**Re A (A Child) [2013] EWCA Civ 1104:** This judgment relates to implacable hostility ('alienation' is not mentioned). McFarlane LJ cited the authoritative case law as follows: Where there is an intractable contact dispute, the court should be very reluctant to allow the implacable hostility of one parent to deter it from making a contact order where the child's welfare otherwise requires it (*Re J (A Minor) (Contact)* [1994] 1 FLR 729). In such a case, contact should only be refused where the court is satisfied that there is a serious risk of harm if contact were to be ordered (*Re D (Contact: Reasons for Refusal)* [1997] 2 FLR 48).

In *Re J*, Balcombe LJ had stated that two principles: that it was the right of the child to have contact with the parent with whom he did not reside, and that very cogent reasons were required for denying the child this right, were well established. There were strong policy reasons for saying that a recalcitrant parent should not be allowed to frustrate what the court considered the child's welfare required. In *Re D*, the resident mother's refusal to agree to contact was justified, because she had genuine fear of violence against herself and the child.

In both these cases from the 1990s,<sup>8</sup> McFarlane LJ explains, the Court of Appeal had upheld a 'no contact' outcome, making the judges' comments *obiter* (not binding on a court in subsequent cases). However, his citing them with approval in 2013 confirms their longstanding influence:

- that children have a right to contact
- compelling reasons are required to deny this right
- policy dictates that a parent should not flout a court's decision on a child's welfare

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<sup>8</sup> Decided before 2000, so prior to the period searched.

- where there is a judicial finding of fear of violence, it may follow that the welfare decision is for no contact.

His Lordship also noted that in *Re J*, Balcombe LJ had acknowledged that affording paramount consideration to the child's welfare (under s 1 Children Act 1989) may, in some cases, produce an outcome which is seen as 'an injustice' from the perspective of the excluded parent.

An example of such a perceived injustice might be seen in a more recent case, **Re A [2015] EWCA Civ 969**, where there were no adverse findings against the non-resident father, but the evidence before the court was that enforcing contact would harm the child.

Several options had been attempted by the stage proceedings had reached the Court of Appeal in **Re Q (A Child) (Implacable contact dispute) [2015] EWCA Civ 991**. Although the term alienation does not appear, the judgment is clear that the resident mother was hostile to contact and was responsible for directly influencing the child. The President applied the principles he had listed in **Re C [2011] EWCA Civ 521** (section 2.1 above) but concluded that the judge had been correct in making an order to attempt therapy and defer further court involvement.

**Re L-H (December 2017, unreported: Westlaw summary only)** arose from originally private law proceedings which had led to an interim care order and removal of the children into foster care because of emotional harm.

The most recently published, and highly relevant, judgment is **Re J [2018] EWCA Civ 115**. As noted (section 2.1), the President indicated by analogy the current proactive approach to alienation by a parent he would expect a court to take in the Haredi case, *Re M* [2017] EWCA Civ 2164, although this was not an issue in that case itself. This proactive approach was cited by McFarlane LJ in *Re J*, where he emphasised the importance of an early fact-finding hearing if there are allegations of parental alienation. He stated that a section 7 welfare report should be ordered only after a finding has been made by the court on whether or not one parent had manipulated the children (although in this case there were cross-allegations of domestic abuse):

As paragraph 22 of the current version of PD12J advises, it is not usual for a s 7 welfare report to be ordered prior to any fact-finding hearing being concluded. It is obvious that this should be so; where there is a polarised factual dispute, how can the report writer form an informed view on welfare. In the present case, at its extreme, the welfare reporter would need to know if the children had been exposed to a sustained pattern of domestic abuse emanating from their father, or,

conversely, whether the mother had manipulated the children so as to alienate them from an otherwise loving parent. [84]

## **5.2 Court of Appeal and High Court cases where allegations of parental alienation were made but not upheld**

There are eight reported cases where alienation was alleged by a father and one case where the allegation was made by a mother; in all these cases the allegations were not proved. (The cases here are listed in reverse chronological order.)

### ***Re ER (A Child) (no. 2) [2017] EWHC 2033 (Fam)***

This was a recent appeal (to the High Court) by a father against an order for supervised contact only. The Court found that allegations of parental alienation were unjustified and supervised contact had been the right order.

### ***C v D [2017] EWHC 807 (Fam)***

In this relocation dispute, the Cafcass evidence of the children's preferred country was clear. The father failed to prove that they had been coached.

### ***Re M v L (Children) [2016] EWHC 2535 (Fam)***

In another recent Hague Convention case, the mother alleged that the father had alienated the child and that the courts and professionals in her home country were better able to address this issue than English courts. The High Court rejected this argument.

### ***Re D (A Child) [2015] EWCA Civ 829***

The father alleged alienation by the mother. The court found no evidence of coaching.

### ***PM v MB & Anor [2013] EWCA Civ 969***

The father alleged he was a victim of parental alienation, but was found to be a risk to the child. No order was made for direct contact although this was stated to be a rare and exceptional case because the court will strive to maintain a meaningful relationship for a child with both parents.

### ***Re W (Children) [2007] EWCA Civ 786***

The father appealed against an order for supervised contact, alleging parental alienation. The court had made the right order, which he was refusing to take up.

### ***Re B (A Child); Re O (A Child) [2006] EWCA Civ 1199***

The father alleged parental alienation and systemic corruption because the court would not commission an assessment by a named psychologist of his choosing. Unusually, the High Court judge had met the children himself and concluded that their views were independent of the mother's.

***Re O (A Child) (Contact)* [2003] EWHC 3031 (Fam)**

Although the father's allegations were rejected by Wall J, he distinguishes this by saying at para 91: 'Parental alienation is a well-recognised phenomenon'. He went on to give an example of a case where a mother had persuaded her children that they had been sexually abused by the father – ***Re M (Intractable Contact Dispute: Interim Care Order)* [2003] EWHC 1024 (Fam)**, where he had invited the local authority to make a care application which resulted in a residence order to the father. However, he also stated that he agreed with Sturge and Glaser that 'parental alienation syndrome' was a misnomer because PAS assumes a cause leading to a prescribed intervention rather than the concept of 'implacable hostility' as a statement aimed at understanding particular situations for which a large range of explanations is possible, with no single solution.

***Re L, V, M and H (Children)* [2000] EWCA Civ 194<sup>9</sup>**

This case is still the leading authority on contact between a child and a parent where there have been convictions or findings of domestic violence. In one of the four conjoined cases, *Re M*, the expert witness had concluded that this was typical case of PAS. Butler-Sloss LJ held that the existence of PAS was not universally accepted. Although there was no doubt that some parents, particularly mothers, were responsible for alienating their child for no good reason, this was well known in family courts and a long way from a recognised syndrome requiring mental health professionals to play an expert role. The judge had been right to reject the unproven theories and coercive treatments being put forward.

**5.3 Court of Appeal and High Court cases where an issue of alienation was identified**

There are also a small number of reported cases where alienation is identified as an issue, although had not been explicitly alleged.

In an unusual judgment, ***Re L and M (Children: Private Law)* [2014] EWHC 939 (Fam)**, the judge in an interim hearing had stated that the children's actions when having contact with their father suggested parental alienation at the hands of their mother or her parents. This was not an allegation that the father had specifically made. However, the

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<sup>9</sup> The relevant aspects of the Sturge and Glaser report are set out in section 2.3 above.

court concluded that both parents were intractably set on pursuing their own respective agendas and would brook no compromise.

In the following cases, judgments identify alienation, in the sense of implacable hostility by one parent influencing the child, as an issue for determination. The methods used by the courts to address this were: making the child a party and appointing a guardian under FPR r 16.4; s 37 directions; enforcement; transfer of residence – or a sequence of these.

### **5.3.1. Family Procedure Rules 2010 r. 16.4 orders (formerly r 9.5 orders under FPR 1991)**

The application of r 16.4 to appoint a guardian for the child is discussed in the section on options at 6.3 below.

#### ***Re T (A Child) (Contact: Alienation: Permission to Appeal)* [2002] EWCA Civ 1736**

The appeal by the father was allowed because the judge had failed to make a finding one way or the other on alleged alienation. The Court of Appeal emphasised that where such an allegation is in dispute, a specific finding on the issue needs to be made.

FPR 1991 r 9.5 was also suggested as a way forward in ***Re C (Children)(Prohibition on Further Applications)* [2002] EWCA Civ 292**, where Butler-Sloss LJ gave directions to Cafcass 'with a view to looking at the entire family to see whether there is any way out of the problems'.

***Re Q* [2015]** (5.1 above) and ***Re J* [2017]** in the Family Court (5.5. below) are more recent examples of the use of r 16.4.

### **5.3.2 Section 37 Children Act 1989 direction:**

Where it appears to the court, in any family proceedings, that it may be appropriate for a care or supervision order to be made, the court may direct the local authority to investigate this under s 37. An example is ***Re M (Intractable Contact Dispute: Interim Care Order)* [2003] EWHC 1024 (Fam)**. This was an extreme case cited by Wall J in ***Re O* [2003]** (5.2 above) as an example of true alienation. There was expert psychiatric evidence and Cafcass evidence of emotional harm caused by the mother. It is clear from the judgment that this was child protection matter. A s 37 direction was also made in ***Re J* [2017]** (5.5 below).

### **5.3.3 Transfer of residence:**

#### ***Re S (A Child)* [2010] EWHC 3721 (Fam)**



After ten years of litigation (almost the child's lifetime), the judge had ordered a transfer of residence from the mother to the father. This hearing was to settle the handover arrangements after the mother had been refused permission to appeal. The judge cited research in the *Family Court Review* special edition (Warshak; Jaffe *et al*; Bala 2010).<sup>10</sup>

A transfer of residence supported by a Family Assistance Order (s 16 Children Act 1989) was made in **Re A (A child) [2007] EWCA Civ**. The orders (in favour of the non-resident father) were upheld by the Court.

#### **5.3.4. Enforcement of contact**

New methods of enforcement of contact orders were introduced by the Children and Adoption Act 2006 (Trinder *et al*, 2013). However, attempts to enforce contact may be counter-productive, for example in **Re L-W [2010] EWCA Civ 1253**, described by the High Court judge as a parental alienation case, where enforcement proceedings were being taken by the mother against the resident father.

#### **5.4 European Court of Human Rights**

With regard to contact disputes in general, the President summarised the ECtHR decisions on any interference with Article 8 (right to respect for private and family life) through limiting contact as requiring this to objectively be in the best interests of the child, balancing the rights of the parents against the best interests of the child and demonstrably striving to re-establish the parent-child relationship (**Re C [2011] EWCA Civ 521 at para 42**).

There are four ECtHR cases that cite alienation.

**Sommerfeld v Germany 31871/96** and **Sahin v Germany 30943/96** both concern complaints by unmarried fathers under Art 8 about German courts not making contact orders.

In *Sommerfeld*, the majority decision was that the local judge had sufficient evidence because he had met the child three times over three years and was in a position to assess whether or not she could be forced to see her father. PAS and Gardner are cited as in a dissenting judgment, which did not agree with the majority decision that a 13-year-old could state her real wishes. In *Sahin* the father alleged PAS. The Grand Chamber made no finding on this point but decided that the contact

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<sup>10</sup> This is the only judgment featuring alienation apart from *Re L & ors* that cites research. The papers were supplied by the expert witness but were read and analysed by the judge, specifically on the transfer of residence question.

decisions had been made on insufficient evidence from a psychologist's reports about a five year old.

In ***Elsholz v Germany 25735/94*** the father argued that the German authorities should take notice of US research on PAS. The Grand Chamber did not make any specific finding on PAS but held there had been violations of Art 6 and 8 because decisions had excluded him, had been made on paper submissions only and there had been no expert evidence.

Much more recently, in ***K.B. v Croatia 36216/13*** (Unreported, Casenote EHRLR 2017, 4, 409-412) the Court held that the state authorities should examine the reasons behind a child's resistance to contact rights very carefully before determining which measures will be most effective in restoring contact. However the casenote concludes that the complexities of contact rights and parental alienation remain ill-clarified by the judgment.

### **5.5 Family Court**

Family Court judgments do not have any status beyond being binding on the parties, but some are published on BAILII for public legal education purposes under the President's transparency guidance since February 2014. All those found to have cited alienation (7) are listed in Appendix A Table 4, as they may be useful for case study purposes.

Additionally, in a Family Court judgment that does not use the word alienation, ***Re J (A Child - Intractable Contact) [2017] EWFC B103***, proceedings had been ongoing for seven years. The court had made a r. 16.4 direction; there were psychological assessments and therapy sessions and a finding of fact that the mother was emotionally abusing the child by denying contact. The court then made a s 37 direction, resulting in a local authority Children in Need plan, but the father withdrew his applications.

### **5.6 Conclusion**

Court of Appeal authority stresses the importance of both promoting safe contact and determining any allegations or appearance of alienation as early in the proceedings as possible.

There are insufficient numbers of reported or published judgments on alienation to identify any patterns in decision making. Furthermore, the older cases (until 2013/14) were conducted in a different environment to the present day, where legal representation and expert witnesses are less likely to be available. Another difference is that most private law cases are currently conducted by district judges and magistrates, not circuit judges. Judgments below circuit judge level are not reported, nor are they

subject to the transparency guidance and published on BAILII. Research on hearings at this level would make a substantial contribution to the knowledge base, which at present is very limited.

A number of the reported cases relate to dissatisfied non-resident parents who made unsubstantiated and unproven allegations against the resident parent as a means of contesting the terms of a court order. These claims were more often, but not always, brought by fathers against mothers. In light of the small number of reported cases, this does not necessarily indicate wider rejection by courts of fabricated alienation claims.

Where contact was not taking place because of alienation/hostility, and the court had decided that it would be in the child's best interests for contact to begin or to resume, a range of methods have been tried. Although the advice of expert witnesses has on the whole been valued, a therapist who made diagnoses of parental alienation that required his own therapeutic treatment was not accepted as helpful. In some cases several types of intervention had been tried over a period of years.

The judgments tend to be fact-specific but the following points can be drawn:

- Courts will not allow the implacable hostility of one parent to deter them from making a contact order where the child's welfare otherwise requires it. In such a case, contact should only be refused where the court is satisfied that there is a serious risk of harm if contact were to be ordered.
- In some very exceptional cases, where the non-resident parent's behaviour cannot be criticised, the effect on the child of ongoing contact proceedings is such that the court will decide those proceedings should not continue.
- Where allegations of parental alienation are made, the court will need to record a determination of the facts, or risk an unnecessary appeal.
- There is no blanket solution, but outcomes are more likely to meet the child's needs where there is:
  - Early resolution of disputed facts about domestic violence.
  - Early intervention where alienation appears to be an issue.
  - Early consideration of r 16.4 orders

- As spelt out in **Re J [2018] EWCA Civ 115**, judicial determination of allegations is required before a s 7 report can advise the court on the child's welfare.
- An order for transfer of residence will entail very close attention to the welfare checklist.

## 6.0 Discussion and conclusions

### 6.1 Parental alienation, PAS and implacable hostility

Parental alienation has become a loaded term since its origins in Wallerstein and Kelly's research into the impact of divorce in the 1970s. Children may become estranged or alienated from a parent for a range of reasons and if this occurs when parents are separating, it may lead to a more serious and longer-lasting impact on relationships than in an intact family.

On the other hand PAS, as devised by Gardner, has been largely discredited or, even where still cited in American literature, has been subject to considerable modification (Warshak, 2006). The issue of PAS as a diagnosable condition may have more relevance in the USA, where it sits largely within a psychotherapeutic discipline, than it has in Wales and England. However, the argument appears to have created confusion in attaching an unnecessary label to the very rare instances of a parent instilling false beliefs in a child which is a form of emotional abuse. While such extreme cases are rare, they clearly fall within definitions of significant harm in statutory guidance. What is far less clear is the level of risk of emotional harm to a child who is refusing contact when there are no real or fabricated allegations of violence or abuse, and how the reasons for the child's resistance can be identified and resolved so as to resume what had been a positive relationship prior to separation.

Although lawyers may prefer to use the term implacable hostility to parental alienation, they are not entirely synonymous, because children may experience general feelings of alienation that are not encouraged by or targeted at one parent or the other.

One problem is the lack of a definition. This review has also identified that there appears to be no consensus on methods to differentiate parental alienation from justifiable estrangement<sup>11</sup>; a lack of reliable data on prevalence of alienation and a causal link between characteristics and effects; no meaningful results from the existing measures and tests; and a lack of robust evaluation of intervention models. Furthermore, the administration of such tests and interventions require an element of compulsion which would raise funding difficulties in the England and Wales jurisdiction.

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<sup>11</sup> The focus of the review is on refusal of contact in the absence of domestic abuse, so searches were narrowed to exclude these issues, but it was not always possible to know whether the studies themselves had entirely excluded them.

Nevertheless, it is clear from the reported and published judgments that courts in England and Wales acknowledge that there are instances of a previously positive relationship between a child and his/her parent being damaged by the implacable hostility of one or both parents following separation. Attaching a label of parental alienation does not appear to assist in analysing the complex family dynamics at such a time.

## **6.2 Dealing with allegations of parental alienation in court proceedings**

Where domestic abuse has been alleged, an early finding of fact under PD12J is essential before the section 7 report writer can analyse the reasons for a child's opposition to contact. In the same way, allegations of serious parental alienation, amounting to child abuse, need to be resolved by the court before the s 7 report can begin.

Sir Andrew McFarlane has expressed concern, in recent weeks, that the necessary time, resources and judicial concern are not being given to potentially intractable contact cases:

the guidance in PD12J is both clear and correct in stating that, where such a hearing is necessary, it must be undertaken and undertaken very promptly in the early stages of proceedings. Not to do so simply stores up problems which become more and more difficult to unpick as the months, and years, go by. The interests of the children are not served and those who may be called upon to advise the court as to the children's welfare, whether as CAFCASS officers or guardians, have no factual bedrock from which to work.

However, he goes on to say:

It is, in my view, unhelpful to look in every such case to see if it is possible to identify a formal label of "Parental Alienation Syndrome". In such cases, that there has been 'alienation', with a small 'A', will normally be a given; it is that factor which will often render the case 'intractable'. (McFarlane, 2018: 7-8)

This view, perhaps, signals that although allegations of parental alienation are rare, closer attention is being paid by the judiciary to resolving these by a finding of fact hearing at an early stage, before the situation becomes entrenched.

It is the judge who is responsible for determining disputed facts, not the family court adviser (**QS v RS & Anor [2016] EWHC 1443 (Fam)**). Although mediation and alternative dispute resolution can be appropriate and encouraged in family law, section 8 applications are still subject to the adversarial legal process and disputed facts about what a non-

resident parent may describe as 'parental alienation' are for the court to settle, not a family court adviser. As Baker J said in **A London Borough Council v K [2009] EWHC 850 (Fam)**

No expert, however experienced and however well briefed about the case, will be in a position to say where the truth lies. Only the judge sees and hears all the evidence. [162]

Accordingly, care should be taken not to pre-judge or label a parent or a child as a perpetrator, victim or conspirator in parental alienation in the absence of a court decision to that effect.

### 6.3 Options for the court

Some examples of the range of options are given in the cases in section 5.3 above.

1. A direction for a **s 37** investigation – the local authority will be directed to investigate whether it should consider applying for a care or supervision order. Such an application will only be made by the local authority if it finds evidence of significant harm. While in some reported cases, there is evidence of significant emotional harm, such an order would only achieve a meaningful outcome for the child if the local authority exercised its parental responsibility to remove the child into foster care. A supervision order would require an element of co-operation by both parents.
2. Family Assistance Orders under **s 16** have been mentioned but these also require co-operation and can be made only if all parties and the Cafcass Cymru officer agree.
3. There is specific provision in the court rules (Part 16) for the child to be made a party and be separately represented under **FPR r 16.4**. The associated Practice Direction states that this appointment is only to be made after considering further work by the Cafcass family court adviser; a s 37 referral; or obtaining expert evidence (PD 16 para 7.1). However, the reported cases indicate that a r.16.4 appointment is more likely to precede a s 37 direction than the other way round.

One ground for making a r 16.4 appointment is in the Practice Direction at para 7. 2 (c):

where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where

the child may be suffering harm associated with the contact dispute.

The advantages are that the child is given separate party status and a children's guardian will be appointed by Cafcass to ascertain the child's wishes and feeling and advise the court on the options available to it in respect of the child and the suitability of each such option, including what order should be made in determining the application (FPR 16.6 (e)). A solicitor will also be appointed by Cafcass who the child, if old enough, will be able to instruct direct.

This 16.4 model, clearly envisaged as appropriate in this type of case, may lead to a swifter resolution than continuing the more conciliation-focused role of the family court adviser.

4. The effectiveness of directions for **independent expert evidence and/or therapy** will depend on availability and funding, as well as acceptance by both parties.
5. The **enforcement** provisions of the Children and Adoption Act 2006 have not been shown to be very effective (Trinder & Hunt 2013; Halliday et al 2017).
6. **Transfer of residence**, either immediate or suspended, may be the best outcome for some children but the limited amount of information about how such cases are approached by the court indicate that this is a complex solution requiring intensive support and management (see *Re S* [2010] in Appendix A Table 3).
7. **Wardship** was mentioned as an option in *Re M* [2017] (section 2.0 above) but not found in any reported cases.
8. In the Wales context, a further option may be a request by the court to the local authority for an assessment under Part 3 Social Services and Well-being (Wales) Act 2014, where it appears that the child may need care and support (s. 21). This approach is suggested by the case of *Re J* [2017] (see 5.5 above).

#### **6.4 Recent media attention**

This review of the research literature and judgments has not produced any evidence of new sources underlying the attention paid to parental alienation by the press during November 2017. This media coverage tended to focus on alienated parents as victims, rather than on the rights and welfare of children. It may therefore be based on information from



pressure groups who believe that social work and legal professionals do not recognise parental alienation as a genuine grievance felt by some non-resident parents. Dissatisfaction amongst litigants in family courts is a long-running issue, now exacerbated by a lack of support following the withdrawal of legal aid. However, no recent studies or cases have been found to suggest that the child-centred approach of legislation and practice is obscuring any rise in cases of alienation. The prospect of a child losing a valued relationship with a parent remains one that troubles legal and social work practitioners and policy makers. In some cases, the task of differentiating between short-term difficulties in adjusting to family change, justifiable estrangement, and manipulation of a child's views, appears to require considerable time and expertise that may not be readily available, and this is possibly creating concerns. Research on practitioners' understanding of and families' experiences of reasons for resisting contact would assist in identifying whether such concerns exist and how they might be addressed.

## **6.5 Conclusions**

This review has found the evidence base for parental alienation to be very limited because of a lack of robust empirical studies. There is an absence of literature about how the concept of alienation is understood, assessed and worked with from a practice perspective. The limited empirical evidence suffers from poor sampling, or a focus on specific populations, so cannot easily be generalised. There is a reliance on retrospective accounts, which do not allow for the controlling of extraneous variables or identification for a causal relationship between adverse outcomes and alienation to be established. Research is needed with a range of different stakeholder groups (including families and children). Another problem is that most of the research has focused on specific geographical locations, primarily the USA, where legal and clinical environments are different to those in Wales. Direct references to research in reported court judgments in England and Wales are very rare.

As there is no clear accepted definition or agreement on prevalence of alienation, knowledge and acceptance of the concept varies across the legal and mental health professions. There is some general agreement on the behaviours and strategies employed, which has led to the emergence of several measures and tests for parental alienation, although more research is needed before reliability and validity can be assured. These interventions focus on psycho-educational approaches to working with children and parents, but evaluation is needed to determine their effectiveness. It is not clear which, if any, of the models described in the literature are applied or available in England and Wales.

Reported court judgments emphasise a proactive approach to ensuring that children have continuing contact with their non-resident parent. Where allegations or issues of alienation arise, early determination of the facts is seen as the essential factor in achieving the best outcome for the child.

## 7.0 Key implications for practice

- A survey of family court advisers' experience of allegations or issues of alienation, how these were addressed, the strength of evidence relied on in cases, impact on children and any training needs would help inform practice development.
- Good practice in intractable contact disputes needs to include clear processes to investigate and analyse reasons where a child is him or herself refusing or resisting contact. Cafcass Cymru has at its disposal a number of validated assessment tools including the Child & Adolescent Welfare Assessment Checklist (CAWAC) which can assist in this area.
- Where the basis for refusal appears irrational, the practitioner will be aware that the court will strive to maintain or resume safe contact arrangements.
- Research literature and judicial guidance is clear that early identification of the issues is important in preventing positions becoming entrenched. Cafcass Cymru family court advisers need to feel confident in requesting a hearing on findings of fact or consideration of appointment of a r 16.4 guardian, where appropriate, at an early stage. Allegations of parental alienation made by one party, or disputed facts that amount to unjustifiable denial of contact, should be referred to the court as early as possible, before a s 7 report setting out the options can be filed.
- Any advice given to the court by a family court adviser before a finding of fact is made about abuse allegations will need to consider the range of orders available on the basis that allegations may be found to be true, partly true or not true.
- There is the potential for Cafcass Cymru to look more closely at r16.4 appointments, their effectiveness in high conflict cases, and explore whether there are any opportunities for clarity of approach.
- Where there is evidence to suggest that a child is subject to significant harm, or is at risk of this happening, as a result of alienation which may amount to emotional abuse, a referral should be made to the local authority in accordance with safeguarding procedures.
- Where a court does make a finding of parental alienation that amounts to a risk of emotional harm (short of significant harm),

family court advisers need to be cautious in assessing or recommending a particular intervention because the evidence base for interventions is very limited.

- There appears to be some mis-information in the media and amongst pressure groups on this topic, which suggests that it would be helpful to promote awareness of the evidence base for parental alienation amongst Cafcass Cymru staff, children's services and mental health services generally.

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## Appendix A

**Table 1. Recent Court of Appeal cases**

Case	Summary	Outcome
<p><i>Re A (A Child)</i> [2013] EWCA Civ 1104</p> <p>Judge: McFarlane LJ</p>	<p>There were protracted proceedings throughout the child's life. At 13 years old, he expressed a wish that the recurrent proceedings would stop, that had been accepted by the High Court. The non-resident father argued that this was a result of the resident mother's implacable hostility and not the child's true feelings.</p>	<p>The Court of Appeal found the father to be irreproachable and remitted the case to the High Court for re-hearing. (No further High Court report was found.)</p>
<p><i>Re A</i> [2015] EWCA Civ 969</p> <p>Judge: Ryder LJ</p>	<p>The 12-year-old child was adamantly opposed to contact. Both the Cafcass report and a psychologist's report had concluded that the child would be harmed by having contact forced upon him. There were, in this case, psychological reports that the mother had severe depression and anxiety amounting to post-traumatic stress disorder, but that she was not motivated to receive treatment if she perceived that its purpose was to make way for the father to have contact.</p>	<p>No contact was ordered</p>
<p><i>Re Q (A Child)</i> [2015] EWCA Civ 991</p> <p>Judge: Munby P</p>	<p>The court concluded that the child had suffered significant emotional harm which continued unaddressed, living in an atmosphere which was so hostile to his father. A clinic and the r 16.4 guardian now advised that the only option was therapy for the child, but that this could not begin while proceedings continued. The impact on the child of being subject to court applications precluded therapy working. The father sought a child arrangements order, but the judge instead made a specific issue order that the child attend a therapy clinic.</p>	<p>Appeal dismissed. The judge had been realistic in his appraisal, securely founded in the materials before him, that any further attempt to enforce contact by force of law was almost bound to fail and, at the same time, be harmful to child.</p>

<p><i>Re L-H</i> (December 2017, unreported: Westlaw summary only)</p>	<p>This case originated as private law proceedings, but the local authority became involved because animosity between the parents was having a negative impact on the children. An application was made for care orders. A psychologist recommended that the children be placed in foster care while awaiting assessments. Newcastle Family Court agreed, and made an interim care order to that effect. The mother appealed. (The children were aged four and six. There is no detail in the case summary about their actual views.)</p>	<p>The ICO was upheld by the Court of Appeal; immediate removal had been necessary because of the emotional harm being caused to the children by their mother's view of father</p>
<p><i>Re J</i> [2018] EWCA Civ 115  Judge: McFarlane LJ</p>	<p>Three teenage children expressed strong feelings against seeing their father. There was a two-year non molestation order made against the father which he was now contesting. The FLA 1996 proceedings were consolidated with his application for s 8 orders. The father had made his applications in January 2015 but there were concerns that the parties were unrepresented and the hearing would entail cross examination of the mother and oldest child. The matter reached a final hearing in July 2016 without findings on facts having been made. At that stage the judge accepted the r. 16,4 guardian's view that the children were trenchant in their view and that a finding of fact would not change that.</p>	<p>The judges' decision regarding the s 8 applications was upheld. It was simply too late, and contrary to welfare interests of either of the children, to contemplate a re-hearing.</p>

**Table 2. Unsuccessful claims of parental alienation – Court of Appeal and High Court**

Case	Summary
<i>Re D (A Child)</i> [2015] EWCA Civ 829	Father alleged alienation by the mother. The Court of Appeal upheld a Family Court finding that the mother had not coached the child although the child had picked up on her anxiety and negative perception of the father. There was no order for contact.
<i>PM v MB &amp; Anor</i> [2013] EWCA Civ 969	The Court of Appeal concluded that the father was a risk to the child and had not been misrepresented by the resident mother or the expert evidence. The barrier to contact was that the father would continue to pose a risk to the child until he realised he needed help and would accept the un-contradicted expert evidence about his behaviour.
<i>Re W (Children)</i> [2007] EWCA Civ 786	The Court of Appeal found that the children had previously gone to contact sessions which they had enjoyed, and that the mother was not obstructing, but was encouraging, contact. The High Court had made an order in the father's favour which he was refusing to take up. This original order for supervised contact was upheld.
<i>Re B (A Child); Re O (A Child)</i> [2013] EWCA Civ 1199	The father was insisting on an assessment of his children by Dr Lowenstein (a psychologist) but the High Court judge had met the children himself and concluded that their views were independent of the mother's. There was no need for further assessment. The Court of Appeal agreed that the breakdown of relationships was entirely a result of the father's behaviour.
<i>Re ER (A Child) (no. 2)</i> [2017] EWHC 2033 (Fam)	The father argued that the judge did not recognise parental alienation. Baker J agreed with the Family Court judge that allegations of parental alienation were unjustified and that the father's behaviour was causing the child emotional harm. Supervised contact was required until he could focus on doing his best to make contact a positive experience for her.
<i>C v D</i> [2017] EWHC 807 (Fam)	This was a case about relocation and international abduction. The father alleged that the children were subject to parental alienation. The Cafcass evidence was that they felt isolated in the UK, missed Canada and wanted to return there. Although the court could not rule out the possibility that they had been coached, the father had failed to prove that this had occurred.

<p><i>Re M v L (Children)</i> [2016] EWHC 2535 (Fam)</p>	<p>In another recent Hague Convention case, the mother wanted to live in Norway. She alleged that the father had alienated the child and that Norwegian courts and professionals were better able to address this issue than English courts. Baker J held that the English courts are able to analyse a contention of parental alienation as well as a Norwegian court.</p>
<p><i>Re O (A Child) (Contact)</i> [2003] EWHC 3031 (Fam)</p>	<p>This is an older High Court case where Wall J agreed with the judges in the lower courts that this was not a case of parental alienation but an attempt by the father to absolve himself of responsibility for the poor relationship.</p>
<p><i>Re L V H and M</i> [2000] EWCA Civ 194</p>	<p>The parties had agreed to instruct a child psychiatrist to advise on contact but they had difficulty in finding one and eventually instructed Dr Lowenstein who concluded that this was a typical case of PAS. Lowenstein recommended at least six sessions of therapy, to be conducted by himself. This created a funding problem for the parties because legal aid covered assessment only, not therapy. The judge had been unhappy about Lowenstein's findings and conclusions.</p> <p>The judge had given reasons for rejecting Lowenstein's evidence that the child and parents should be subjected to treatment by way of therapy with direct threats to the mother in the event of non-co operation. He had also rejected the idea that long term psychoanalytically informed therapy was the treatment of choice and the literature that advocated immediate removal of the child and a period of no contact with the resident parent.</p> <p>Butler-Sloss LJ commented that, unfortunately, the parents' lawyers had instructed the wrong sort of expert and, more seriously, not someone in the mainstream.</p>

**Table 3. Cases where alienation was identified – Court of Appeal and High Court**

Case	Summary
<p><i>Re M (Intractable Contact Dispute: Interim Care Order)</i> [2003] EWHC 1024 (Fam)</p>	<p>The children were at risk of suffering significant harm because the mother was instilling in them false beliefs they had been abused by their father and paternal grandparents, as a result of which the father and his parents had been denied any contact with the children. Having regard to the expert opinions of Dr Weir and the guardian that the children were suffering significant and avoidable emotional harm by their mother which was likely to lead to them growing up as emotionally damaged adults, it had been in the best interests of the children to make a s 37 order. The local authority had then reported that they would continue to suffer significant harm living under her influence. The court made an interim care order removing the children from the mother's care to foster carers where they could be fully assessed in her absence. As a result of that assessment, a residence order was made in favour of the father with a two year supervision order, with contact between the children and mother to be in the discretion of the local authority.</p>
<p><i>Re L and M (Children: Private Law)</i> [2014] EWHC 939 (Fam), Macur J cited by Pauffley J.</p>	<p>This was a complex Hague Convention case. In an earlier hearing on evidence about the children's objections to moving to Israel, Macur J had said: <i>the children " 'searched' the father for recording equipment as a result of something said in their present home shared with mother and grandparents. This, suggests parental alienation at the hands of the mother or her parents. It is reprehensible behaviour. I note that the mother has amassed support for her cause from the ranks of many friends and acquaintances. There is a danger that the father becomes demonised in the child's eye to his / her ultimate detriment."</i></p>
<p><i>Re T (A Child) (Contact: Alienation: Permission to Appeal)</i> [2002] EWCA Civ 1736</p>	<p>The Court of Appeal held that an inference of parental alienation must arise from the evidence about the child's behaviour. Although the Court did not agree with the father that the <i>only</i> explanation was that this was caused by the mother, the appeal was allowed because the judge had failed to make a finding as to whether there had been alienation by the mother or not. The case was remitted to the High Court with suggestion that conditions can be put in place for contact to resume and that the child should have separate representation.</p>

<p><i>Re C (Children)(Prohibition on Further Applications)</i> [2002] EWCA Civ 292</p>	<p>The father was found by the court to be preoccupied with 'PAS 'and this was obscuring his understanding of the child's distress. Butler-Sloss LJ suggested to the High Court that his claims should be taken into account but only in the context of a full investigation into the facts. She did not stipulate that PAS be ignored, but that the father's allegations were to be seen as only one factor in the mix.</p>
<p><i>Re S (A Child)</i> [2010] EWHC 3721 (Fam)</p> <p><i>Re S (A Child)</i> [2010] EWHC 192 (Fam)</p>	<p>There are also four unpublished judgments in this case.</p> <p>The detailed reasoning may be useful as a guideline in considering transfer of residence, but the arrangements did have the benefit of considerable input by the child psychiatrist. Dr Weir had reported that the child had been alienated by mother, without genuine reason, but he had recommended against moving him. HHJ Bellamy disagreed and made a residence order for father for carefully explained reasons.</p> <ol style="list-style-type: none"> <li>1. S had already suffered emotional harm. There was evidence from Dr Weir of the risk of long term consequences of behavioural difficulties, academic under achievement, and relationship difficulties.</li> <li>2. The court accepted Dr Weir's evidence that S's expressed views (saying that he hates his father) were a result of alienation, irrational and unbelievable. There was video evidence footage of S happy and relaxed in the father's company. S's expressed wishes and feelings may not reflect his genuine wishes and feelings.</li> <li>3. The father bore no malice or ill-will towards the mother and was better able to maintain S's relationships.</li> <li>4. The father and his family could meet S's educational and physical needs to the same standard as the mother.</li> <li>5. The mother had made some progress between 2007 and 2009 but her actions were possibly intended to mislead, and the concerns about her had only lessened slightly.</li> <li>6. Previous court orders had been ineffective. A new order for indirect contact would not lead to resumption of a relationship. The most likely possibility was no relationship at all, unless S sought his father out an adult.</li> <li>7. It was too late for the mother to encourage S to see his father and the judge doubted she was motivated to do so.</li> </ol>



<i>Re A (A child)</i> [2007] EWCA Civ	Orders for transfer of residence and a family assistance order had been made by the recorder on the basis of firm recommendations by a psychologist and an independent social worker. Although the 8-year-old had not yet been harmed by the level of conflict generated by the mother, the continued parental alienation likely to be visited by the mother upon him and the attendant emotional pressure upon him would lead to significant psychological difficulties.
<i>Re L-W</i> [2010] EWCA Civ 1253	Although there was some evidence in the Cafcass report of the father's influence, the Court of Appeal found that the child's refusal to comply with contact was independent, and based on his own anger at his parents' separation. Sedley LJ concluded that punishing the father would not achieve any improvement in the child's outlook and might lead to the opposite outcome than that intended.

**Table 4. Family Court cases.**

<b>Case</b>	<b>Court</b>
<i>Q v R (Intractable Contact)</i> [2017] EWFC B35	Oxford
<i>Re B (A 14 year old Boy)</i> [2017] EWFC B28	Newcastle
<i>Re B (Change of residence: parental alienation)</i> [2017] EWFC B24	Norwich FC
<i>Re C (Prohibited steps order)</i> [2016] EWFC B97	Central London
<i>Re MB (Experts' Court Report)</i> [2015] EWFC B178	Medway
<i>Re J (Discharge of a Care Order)</i> [2014] EWFC B199	Chelmsford
<i>London Borough of Barnet v M/F</i> [2014] EWFC B152	Barnet

## Appendix B

The literature review was undertaken in January to February 2018. The search used multiple key word searches to identify the most relevant empirical studies on parental alienation in high conflict disputes over child care arrangements. Whilst the term 'parental alienation' is widely used within the US, Canada and Europe, the United Kingdom has also adopted the term 'intractable hostility' to refer to high conflict cases where one parent may display hostility or reluctance for the other parent to have access of contact with the child. Hence, the main terms used were "parental alienation", "alienation" and "intractable hostility" (Figure one)

Table one: Search terms

MAIN	"Parental alienation" OR "alienation" OR "intractable hostility"
AND	Residenc* OR contact OR child custody OR court
LIMIT TO	2000 – current English language

Multiple searches were conducted across four Social Science databases (Applied Social Sciences Index and Abstracts, International Bibliography of the Social Sciences, Social Services Abstracts and SCOPUS), Google Scholar, and five Law databases (Westlaw, BAILII, Lexis Library, HeinOnline and Hudoc). Grey literature was sought from seven organisations (Cafcass England, Fathers 4 Justice, Families Need Fathers, Women's Aid, Gingerbread, Resolution and Association of Lawyers for Children). Snowballing techniques, where references of relevant publications are sought and reviewed for relevance was also adopted. The initial search generated 8,464 papers (Figure one), where 106 papers were retained once screened for relevance based on title and abstract. Of the 106 papers, 61 papers were rejected primarily on the basis that the papers were not empirical, lacked detail as to methodology or were not relevant to the aims of the research (e.g. papers which focused upon domestic abuse and parental alienation). Hence, 45 papers were retained.

The search terms 'alienation' and 'alien' were applied on the case law databases between 2000 and 2018 (with the addition of other significant judgments that were cited or applied in the first set of results).

No judgments were found from the Supreme Court (formerly House of Lords). Relevant judgments by the Court of Appeal and the High Court were reviewed. At this level, statements of law may set precedent for decisions in later cases. There were 4 ECtHR judgments; these are persuasive only. Only 7 Family Court judgments were found have been published on BAILII in the past 4 years; these judgments are published for public legal education purposes only.

Figure one: Literature search results

