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Professional responses to ‘parental alienation’: Research-informed practice

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Abstract

Parental alienation was historically a term rejected by courts in England and Wales, but lawyers and social workers have noted an increase in the incidence of its use, possibly driven by campaign groups and media narratives. The two statutory services that provide independent social work advice to courts in England and Wales, respectively, on children’s best interests in parenting disputes, have taken different approaches to developing practice guidance in response to concerns about the recent use of alienation terminology. A review of international research and domestic case law was undertaken as part of the development of guidance in Wales. This review revealed a dearth of reliable evidence on the concept of parental alienation, its prevalence, effects and measures for intervention. This article builds on that review and recent developments to discuss the progress being made in practice to counter myths about alienation and considers how best to support practitioners in resisting pressures to conform to these powerful narratives.

Keywords: parental alienation; contact disputes; family courts; social work.

Introduction

Campaign groups and the popular media claim that social workers and other professionals who are involved in family justice lack awareness of, and expertise in, parental alienation. The notion that parental alienation is a widespread and damaging phenomenon is bolstered by complaints that social workers do not recognise its existence and prevalence. In England and Wales, this criticism is primarily directed at the services whose role it is to represent children’s best interests in family proceedings: Cafcass (the Children and Family Court Advisory and Support Service) and Cafcass Cymru, respectively. In England, Cafcass worked with nearly 70,000 children in private law proceedings in 2017-2018; 24% were aged ten and over. Cafcass Cymru worked with nearly 6,000 children in 2017-2018; about half were aged six or over.² A substantial proportion of children, subject to parental disputes, are therefore old enough to expect their views to be considered. Drawing on evidence from a rapid review of research literature and case law, we analyse the ways in which these services have responded to the challenges of parental alienation and how social workers can use research to

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² Different age categories are used by the two organisations in their published statistics.

understand and apply evidence to work toward better outcomes for children who are caught up in contact and residence disputes.

Background

In December 2017, a front-page story in the UK mainstream press claimed that parental alienation was a common problem encountered by family court practitioners. According to *The Guardian*, a source from Cafcass (England) had indicated that alienating parents were to be compelled to undertake ‘intense’ therapy and possibly have their children taken into state care (Hill 2017). The most dramatic elements of the story were subsequently disowned by Cafcass (The Transparency Project 2017). Hill quoted a statistic suggesting that 11 – 15% of contact disputes in the UK featured alienation, yet that figure was taken from an editorial published in the US more than six years earlier (Fidler and Bala 2010). Consequently, the high profile unexpectedly bestowed on alienation had a disproportionate impact on welfare services in England and Wales.

In contrast, no reference was made to alienation in a study by Cafcass, in the same year, on the recurrent use of the court in some disputes (Halliday *et al* 2017). Findings revealed that the majority of returns to court were due to conflict between adults, with a key theme of inability of adult parties to communicate about issues, together with chronic mistrust and antipathy. This supports earlier findings from an English study by Trinder *et al* (2013) on enforcement of contact arrangements that had identified a category of ‘implacable hostility/alienation’ as rarely applicable; the majority of cases where contact enforcement orders had been sought involved two parents in mutual conflict over their children, followed by cases where there were significant safeguarding concerns and by cases where older children wanted to stop or reduce contact. In the sample of 212 cases, only nine cases (4%) were identified as implacable hostility/alienation.

In terms of the number of allegations of parental alienation, Birchall and Choudhry (2018) reported a recent increase in allegations made by fathers. Based on their research with 72 women living in England, allegations tended to be made subsequent to the mother raising the issue of abuse as a reason for a child resisting contact. Some participants reported being advised by lawyers that they would be perceived as alienators if they raised their concerns about their child’s safety or did not hide how upset they were in taking a distressed child to a contact visit.

There is no national data collected on reasons for contact disputes, so we cannot accurately estimate the rate of alienation claims and whether this is generally increasing. We do not know whether the attention recently given to this topic represents an unrecorded phenomenon, is hyperbole, or whether the publicity itself is misleading some parents into applying new labels to their relationship problems.

Petitions were organised by pressure groups to both the English and Welsh legislatures during 2017-2018 to 'recognise' parental alienation. Government responded that the current legal framework was sufficient to deal with behaviours that might alienate a child from the other parent (Petitions UK Government and Parliament 2017; Petitions to the National Assembly for Wales 2017). Such campaigns add to pressures on social work agencies, especially those serving the courts.

Cafcass and Cafcass Cymru took different approaches to addressing concerns to ensure good practice. Cafcass have undertaken a lengthy process developing new guidance, as part of a Child Impact Assessment Framework (CIAF) published in October 2018. Cafcass Cymru commissioned a review of research and case law to provide an evidence base (Doughty et al 2018). The relevant legislation is the same across the two countries but in Wales, stronger duties are placed on government and services to comply with international principles of children's rights. Legislation (Children's Rights Wales Measure 2010) places a duty on Welsh Government to pay due regard to the United Nations Convention on the Rights of the Child in making policy, hence the right of children to participate in decision making about them can be given greater emphasis than in England. The literature and cases indicate that the majority of alienation claims relate to children who are old enough to express a view, as explained below.

The legal framework

Legal decisions in contested contact cases are made according to the welfare principle in section 1 of the Children Act 1989, the child's welfare being the paramount consideration of the court. Leading court judgments have consistently emphasised the obligation on the court to promote contact, as expressed in a Court of Appeal judgment by Munby LJ (who was later appointed President of the Family Division):

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 ... 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.

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

The welfare principle also dictates that contact should only be ordered when it is safe for the child. However, the drastic reduction in eligibility for legal aid for contact cases since 2013 has led to far fewer parents having legal representation, leaving them vulnerable and uninformed about how to present evidence about their child's views (Mant and Wallbank 2017).

The research review

The independent review of research literature and case law was undertaken by associates in Cardiff University Children's Social Care Research and Development Centre (CASCADE). The authors are from different disciplines: law, psychology and social work, and all have experience in training social workers.

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 undertaken in January and February 2018. This was supplemented by internet searching and hand searching of journals and recommendations from professionals. Key search terms included 'parental alienation', 'alienation' and 'implacable hostility'. The review was not an exhaustive exploration of all the literature on this topic, rather it attempted to identify and appraise empirical evidence. A total of 8,464 records were screened resulting in 45 sources included for the literature review (see Doughty et al 2018 Appendix B for details of methods). Records were screened according to the parameters of the review, limited to parental alienation in the sense of unjustified rejection of a parent, because this was how the concept was being presented to Cafcass Cymru by the media and campaigners. The review excluded (so far as possible) the literature that was primarily focused on domestic abuse and/or intimate partner violence

which would have widened the parameters to an impossible degree. The authors pointed out in their introduction that it is important to distinguish parental alienation from justifiable estrangement due to abuse, violence or impaired parenting (Meier 2009). Parental alienation theory is premised on the child rejecting one parent for no rational reason and consequently, it would be logical to assume that parental alienation and domestic abuse are mutually exclusive.

However, the position is not straightforward. As indicated in Neilson's study, published a few weeks after the review, there is a clear intersection between domestic abuse and parental alienation. She analysed 357 Canadian court judgments about parental alienation: 41.5% of these cases involved allegations of domestic abuse or child abuse. In about 60% of the cases where claims and counter claims were being made, the courts made no findings of parental alienation. However she expressed a number of concerns about some case studies where, for example, allegations about alienating mothers were investigated in more depth by courts than the impact on the child of criminal activities of fathers (Neilson 2018). As explained by Joan Meier (this issue pp.....) alienation is widely relied on in the USA when allegations of abuse are made in family courts.

We return to the real-world connections between claims of domestic abuse and alienation in the discussion section below.

Findings from the review

Through the review, it became apparent that much of the field is given over to discussion pieces dominated by a small number of authors. It is very doubtful that any of the studies identified in the review would be sufficiently robust when appraised against the UK's National Institute for Clinical Excellence evidence-based guidelines checklists or similar criteria. As such, caution was urged in reading the findings and their implications for practice and policy.

A considerable proportion of the literature focused on debates about the existence and definition of parental alienation. Whilst there is no single definition, there has been some agreement that the term refers to the unwarranted rejection of the alienated parent and an alliance with the alienating parent, characterised by the child's extreme negativity towards one parent due to the deliberate or unintentional actions of the alienating parent so as to adversely affect the relationship with the alienated parent (Johnston 2003; Baker and Darnall,

2006). This was often accompanied by noting that an alienated child may demonstrate behaviours consistent with aiming to please or avoid recrimination from the alienating parent (Gomicide et al, 2016).

The lack of a single definition makes determining the prevalence of parental alienation a difficult task. The diversity of associated behaviours and the complexity of assessment mean there is little to no reliable data within existing literature (Saini et al, 2016; Lavadera et al, 2012).

This difficulty is continued in discussions in the research literature on multiple determinants of parental alienation, including the behaviours and characteristics of the alienating parent, alienated parent and the child (Saini et al, 2016; Johnston et al, 2005). A wide range of behaviours and characteristics are claimed (Doughty et al 2018, pp 18-21)

From the small number of empirical studies that were reported, both gender and age appear to be significant. Girls are more likely to be involved than boys (Balmer et al, 2017; Baker and Darnall, 2006) as are 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).

In the studies reviewed, long-term effects of parental alienation on children were linked to a range of adverse outcomes, including: lower self-esteem; depression; manipulative behaviour; attachment and identity issues; and relationship problems (Lavadera et al, 2012; Godbout and Parent, 2012). However, many of these studies used self-reported retrospective samples which do not allow a causal relationship between adverse outcomes and alienation to be established. The subsequent long-term impact of parental alienation cannot be validated. It is therefore unsurprising that the concept is promoted by organisations representing parents and therapists, rather than by those that represent or advocate for children. As we note below, the voice of the child is missing from this discourse.

Practice

In addition to a lack of clarity about methods to identify parental alienation, the review found that the role of professionals was often similarly unclear. The diversity of different professional roles within practice and court settings, combined with the predominance of North American studies within the literature, made it difficult to determine the applicability of study findings to the legal system of England and Wales. In the absence of any research with Cafcass officers or expert witnesses about their understanding of the topic, and the legal

restrictions on accessing their reports to courts, the only published information is that available in court judgments.

In terms of practitioners' awareness of parental alienation in the US, Bow *et al.* (2009) conducted a survey of mental health and legal professionals ($n=448$). The results indicated that the majority of practitioners had not been taught about parental alienation in their initial or subsequent training, but had learnt about the concept through the course of their practice. Participants in the study were identified through internet searches, giving rise to concerns about the representativeness of the sample. Whilst there was general acceptance of the concept amongst respondents, the majority (71%) reported that they were aware that the term was controversial.

The use of scales and tests to measure parental alienation in practice appears to lack a credible evidentiary basis. There is 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 Gomicide (2016) and Lavadera (2012), amongst others, have looked at Gardner's Parental Alienation Scale. However, the methodology and sampling strategies employed vary considerably, and often seem to lack sufficient rigour to draw any meaningful results.

There were few to no high-quality evaluations of interventions for children and families. Those that do exist, such as Templer et al (2017) are small scale and thwarted by a lack of clear quantitative data capture.

Conclusions of the literature review

No reliable mechanism for identifying parental alienation was found to exist. Similarly, studies into the intervention and treatment of parental alienation tended to be small scale and lacked effective evaluation. The tools that do exist are unhelpful, poorly validated and serve to undermine the focus on the child. There is a risk that the assessments, and debates about them, might serve to mislead the court and practice generally.

In summary, despite the apparently large literature on parental alienation, there is a dearth of robust empirical studies. The limited empirical evidence available is often plagued by issues of poor sampling, or a focus on specific populations, meaning that the generalisability and transferability of the findings is inherently limited. Further to this, there has 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.

Case law

The review also identified court judgments in England and Wales and the European Court of Human Rights between 2000 and 2018 that directly considered parental alienation. Four ECtHR cases cited alienation. Only 28 relevant cases were found in England and Wales but, given that only a small minority of all family court cases in the England and Wales jurisdiction are ever reported this is unsurprising (Doughty et al 2017). Of those identified, 21 were in the Court of Appeal or High Court so amongst the most complex of cases and do not provide an overview of day-to-day decisions in the lower courts. The judgments tended to be fact-specific with limited scope for wider application but the following points were 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 disputed facts, or risk an unnecessary appeal.
- Judicial determination of allegations and disputed facts is required before a Cafcass welfare report can advise the court on the child's welfare.
- 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; and early consideration of separate representation for the child as a party in the proceedings.
- An order for transfer of residence will entail very close attention to the Children Act 1989 welfare checklist.

As noted above, another limitation on research on cases is that there is no direct access to the social work and expert witness reports presented to the judge. The nature and extent of research on alienation on which Cafcass report writers and psychologists have relied is unknown, although new methods of assessment have recently been introduced, discussed below. A highly influential report commissioned by the Court of Appeal in *Re L, V, M and H* [2000] EWCA Civ 194 (Sturge and Glaser 2002) led to the rejection by senior judiciary of ‘parental alienation syndrome’. The recommendations in that report are now reflected in guidance on procedure in domestic abuse cases in Family Procedure Rules 2010 Practice Direction 12J (FPR PD 12J). Since then, only one judge in published cases appears to have cited research literature about alienation (HHJ Bellamy in *Re S (A Child)* [2010] EWHJ 3721 and in *Re D (A Child: Parental alienation)* [2018] EWFC B64. Since 2013-2014, however, a combination of lack of legal aid and restrictions on instructing psychologists has led to Cafcass reports on the welfare, wishes and feelings of the child becoming more central to decision making than clinical reports.

Children’s rights, welfare, wishes and feelings

As noted above, Welsh legislation requires due regard to be paid to the rights of the child, but the voice and perspective of the child is neglected in the literature on parental alienation. This omission is particularly pertinent because children are active participants in family dynamics as they must adapt to the family environment, prompting some to become, “‘chameleon children’” chang[ing] their emotional colors so as to fit in to each of two very disparate environments’ (Garber 2014). Many children can adapt; in one follow-up study of children who had aligned with one parent, hostility toward the other parent was in every case temporary, and resolved of its own accord, mostly within one or two years (Wallerstein 2000).

A retrospective study in England and Wales of grown-up children’s views of contact (Fortin *et al* 2012) concluded that there was no evidence of children resisting contact based entirely on pressure from their mothers; the child’s own reasoning often attributed 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. 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 is not overlooked.

An Australian report (Carson et al 2018) found that, whether changes were temporary or longer term, children and young people expressed an ongoing need to be listened to by their parents when it came to the workability of their parenting arrangements, and wanted continuous open communication to better understand their post-separation situation. In many cases, the children and young people who participated felt that their opinion was not heard where their living arrangements were unsafe or unworkable. Neilson (2013) noted that conflict can be inevitable for parents discussing childrearing issues and is highest in a relationship during the period of separation and when contact and residence issues are discussed. She suggested that more attention needs to be given to allow the child to settle into the new family structure, and keeping communication open.

There does not appear to be any research in England and Wales into the experiences of children who refuse contact, while they are still children. Macdonald's (2017) study of Cafcass reports to court written in 2006-2007 suggested that children's views on contact tended to be ignored, unless the child was of an age where coercing them was unrealistic. The only overview we currently have of children's views is in court judgments, where they have of course been mediated by Cafcass and lawyers. Since Macdonald's research, both Cafcass and Cafcass Cymru have, as organisations, become more open about the processes used to assess the impact on children of parental conflict. Assessment processes are explained on their public websites. While this greater transparency might lead to greater public confidence, it is competing with voluminous misinformation from aggrieved individuals and pressure groups online.

Since Sturge and Glaser (2002), there has been legal critique of using untested theory in family courts. Bruch (2002) argued that we need to be realistic about children's wellbeing and the limitations of dispute resolution techniques, therapy and legal compulsion in high conflict cases. She believed that overly ambitious efforts with only small chances of success did not help to reduce the child's emotional burdens, respect their fears, and enhance their child's emotional stability. More recently, Neilson (2018) questioned whether parental alienation theory responds to current scientific knowledge (about adverse childhood experiences, for example) of the importance of reducing child stress and supporting child resilience or whether it leads us in the opposite direction. In the UK, mental health problems

in young people are becoming a matter of public concern, and there is a call to recognise that some distressed children feel alienated from parents' conflict and behaviour during and after separation, rather than developing irrational views (Cantwell 2018). Simply labelling a child as alienated denies their agency in expressing their feelings about seeing a parent.

Current safeguarding processes should be sufficient to protect children in the few instances of implacable hostility that create a dangerously false image of the alienated parent, or instil unjustified fears. Emotional/ psychological abuse is now the largest single reason for children's registration on Child Protection Plans, or the Child Protection Register in Wales (Welsh Government, 2018). This reflects the increasing importance that social care agencies attach to emotional welfare of children.

Using research in practice

The review was well-received by Cafcass Cymru and was cited in evidence given by its Chief Executive Officer and by the Minister in Welsh Government as authoritative on developing best practice on a child by child, case by case basis (Irranca Davies 2018). It was also considered in the consultation process in England during which the original 'parental alienation pathway' was revised into the more nuanced and balanced CIAF. The original draft 'pathway' document had erroneously stated that it was the Cafcass practitioner's task to determine whether the child is alienated. Lawyers expressed concern that Cafcass was usurping the forensic role of the court in testing the evidence. This suggestion has been removed from the English guidance; the new Welsh guidance is explicit that any determination of disputed facts is to be made by the court. In the research review, the correct procedure is explained with reference to guidance given by McFarlane LJ in *Re J* [2018] EWCA Civ 115. Where there are allegations of domestic abuse, the court process regarding disputed facts is set out in detail under FPR PD 12J. This includes an early 'finding of fact' by the judge, before decisions can be made about the child's welfare. McFarlane LJ clarified that the PD12J process should be applied to allegations of emotional harm through parental alienation in the same way. However, the authors are aware, through discussions with practitioners, that often courts do not identify and resolve factual issues early enough, because of systemic delays. Despite the guidance in *Re J*, judges in the lower courts are not inclined to make findings of fact on disputed claims of alienation.

The authors of the review delivered two practitioner workshops and published a four-page briefing by way of updating the messages from research, supplementing the review with

important new findings on case law in Canada (Neilson 2018). This briefing is publicly available through CASCADE Exchange which aims to bring researchers into direct contact with workers, managers and those who use services so that they can learn from one another (Doughty et al 2019). Two new sets of practice guidance were issued by Cafcass Cymru in spring 2019 on, respectively, domestic abuse and children resisting or refusing to spend time with a parent. The latter endorsed the review as crucial reading for all their practitioners. The authors were also invited to speak at a very well-attended all-staff training day in June.

Communication has been two-way, with social workers explaining the practical difficulties of working with parents who have entrenched beliefs and polarised views, in a justice system that makes decisions about children's welfare based on 'facts' that have or have not been 'proved'. For example, some parents who are victims of abuse can find it too traumatic to revisit this by giving evidence in a fact-finding hearing, so remain unheard. Court advisers in the workshops emphasised the importance of direct work with the child to understand the impact of parental behaviours on them, rather than focusing on the adults' narratives.

Social workers, whether working in local authority child protection services or in Cafcass, should have the experience and skills to listen to children but, in the current fevered environment, when they are faced by allegations or concerns that a parent or child is suffering psychological damage, it can be difficult for them to know when they should recommend that an independent expert is appointed. Parents or lawyers doing some internet research on parental alienation can read that social workers lack expertise because it is a psychological condition. Indeed, this alleged professional ignorance was central to the petition submitted to the Assembly, mentioned above. In order to respond with confidence to such accusations practitioners want to be able to discern which research findings are reliable.

The different legal and health environments restrict the application of US parental alienation theory in the UK. Baker's work, for example, is prolific and often cited (even in the Cafcass CIAF), but her practice is quite different to that in the UK. When a psychologist is appointed by the court in England and Wales, they are expected to meet and assess the family, whereas in America, experts in parental alienation can identify alienating behaviours on the papers and recommend therapies based only on reading court documents (Neilson 2018). As noted above, the legal aid situation prevents the appointment of psychologists in

many cases and Cafcass advisers are relied on by the court. However, in some cases, parents can spend large amounts of money on proceedings, as in *Re D* [2018] (above) (paras 260-261). It is useful for social workers to be aware of the benefits and limitations of such expert evidence and the potential problem of confirmation bias in appointing a ‘specialist in parental alienation’, of which some English judges are becoming aware (*Re D* [2018]; *PA v CK* [2018] EWHC 2004 (Fam) (para 22).

In summary, this continuing interaction between the researchers and court social workers is mutually beneficial in enabling evolving research messages to be distilled and conveyed. For example, in May 2019, parental alienation was mentioned in a high-profile campaign about protecting children from forced contact with dangerous fathers, with a call by parliamentarians for a public inquiry into family courts (Ailes and Furst 2019). In this context, it is important that researchers are able to source and update practitioners with the most recent publications (for example, Neilson et al 2019; Mercer 2019) to support child-focused practice amidst the tangled complexity of adult behaviours. Findings from the review revealed a lack of credible research. Further, ongoing debates surrounding the definition and assessment of parental alienation can serve to impede practice and mislead family courts. This renders it paramount that practitioners have access to objective research findings so that they may increase and consolidate their knowledge to support children through family change.

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