St.Mary's

Private Law
Conference 2025

CLEAVER & WAKE

Tuesday 9th September 2025

St.Mary's

Welcome

9.00-9.15
Arrival & pastries

9.15-9.30
Welcome Address – Andrew Wren, Head of Private Law

9.30-9.45
Conference Address - Ms Justice Harris (remotely)

09.45-10.30
ABE Interviews - Zoe Henry

10.30-10.45
Coffee break

10.45-11.15
'Costs orders and costs assessments in private law' - DJ Davies

11.15-11.45
'Alienating behaviours' (Carter Brown) – Dr Jyothi Shenoy, Clinical Psychologist

11.45-12.30
Covert Recordings - Sarah Giles & Jennifer Frost

12.30-13.30
Lunch

13.30-14.15
IMARA - Tara Tan, Senior Therapist

14.15-14.45
Case Law Updates - Paula Bloomfield & Victoria Lovett

14.45-15.00
Coffee break

15.00-15.30
Relocation (Domestic and International) - Gareth Anderson

15.30-16.00
Panel Discussion and Q&A

16.00-18.00
Drinks Reception – Binks Yard

St.Mary's

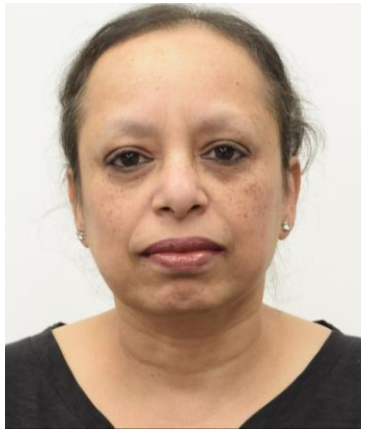
Speakers

The Honourable Ms Justice Harris

Appointed by His Majesty the King as a High Court Judge in September 2024, The Honourable Ms Justice Harris has been appointed as the Family Presiding Judge for the Midland Circuit with effect from 1 October 2025.

District Judge Davies

Appointed as a District Judge in 2011, DJ Davies sits on the Midland Circuit in Derby dealing predominantly with Private Law Children and Financial Remedy cases.



Dr Joythi Shenoy

Dr. Jyothi Shenoy is a Consultant Clinical Psychologist, Chartered Psychologist, and Registered Expert Witness with over 30 years of experience in clinical practice and psychological assessment

Dr Shenoy's work spans complex adult and child mental health, forensic evaluations, and therapeutic interventions, with extensive experience giving evidence in court

St.Mary's

Speakers

Tara Tan - IMARA

Tara is a senior Art Psychotherapist working at Imara. With a previous career in animation, videography and producing, Tara pursued her Masters in Art Psychotherapy 10 years ago. Tara has a Diploma in Creative Approaches to Clinical Supervision from London Centre for Psychodrama and has extensive experience in supporting children, families and adults following trauma.

Andrew Wren

Andrew is both Deputy Head of Chambers and Head of Private Law at St. Mary's. He has a busy practice focussed primarily in Private Law Children and Financial Remedy matters.

Sarah Giles

Sarah specialises in Private Law children work and is regularly instructed in complex matters. Known for her meticulous preparation and fearless advocacy, she combines a straightforward approach with unyielding tenacity, making her popular with both clients and solicitors.

St.Mary's

Speakers

Jennifer Frost

Jennifer has experience of over 14 years of working in family law including private and public law children cases, injunctions and financial remedies.
Jennifer now specialsies predominantly in private law children cases including fact finding hearings and final hearings. She has experience in cases involving allegations of serious domestic abuse and implacable hostility.

Zoe Henry

Zoe is a specialist children law barrister dealing with both public and private law cases and is recognised for her robust and thorough approach.
Zoe acts in complex private law disputes, often in cases which require the appointment of a Guardian to act on behalf the child(ren). Zoe was appointed as a Recorder in 2021 and is deployed to the Midlands Circuit sitting in the Family Court.

Gareth Anderson

Gareth specialises in children cases in both private and public law matters. He regularly acts in contentious private law disputes and is often instructed in contested fact-finding hearings involving allegations of serious domestic abuse, sexual abuse and parental alienation.

St.Mary's

Speakers

Paula Bloomfield

Paula qualified as a solicitor in 1995 and since then, she has practised exclusively in family law with a specialism in public and private law children's cases and domestic abuse. She was a member of the Law Society's Children Panel and Advanced Family Law Panel for many years. She trained as a mediator in 2005, undertook the Higher Rights Advocacy training in 2009 and the Law Society's vulnerable witness training in 2018.

Victoria Lovett

Victoria has developed a busy and broad Family Law practice, particularly in the areas of private law children, domestic abuse and injunctions, and matrimonial finance.

She is renowned for her ability to quickly discern the facts and issues in any case, including complex legal issues, and readily identifies the appropriate solution putting the best interests of her clients at the forefront.

St.Mary's

Welcome Address

Andrew Wren

Speaker

St.Mary's

Conference Address

Speaker

The Honourable Ms Justice Harris (remotely)

St.Mary's

ABE Interviews

Zoe Henry

St.Mary's

Costs orders and costs assessments in private law

District Judge Davies

speaker

Jurisdiction to Make Costs Orders

The law in relation to costs in children proceedings is settled. **Section 51 of the Senior Courts Act 1981** gives the court an absolute discretion as to who should pay costs and in what sum.

Rule 28.1 of the Family Procedure Rules provides that the court may make such order as it thinks just.

28.1 "The court may at any time make such order as it thinks just"

FPR 28.2 then goes on to incorporate CPR 44, but crucially, to exempt all family proceedings from the CPR 'costs follow the event' starting point, so as to leave a clean slate as the starting point in private law proceedings.

What it doesn't say is that the rest of CPR 44 does not have effect. So, in essence, the court retains a discretion to determine whether costs are payable by one party to another and if so, what amount should be paid.

What remains incorporated in the FPR are subsections (4) (5) (6) (7) and (8) of CPR 44.2, which are sometimes overlooked.

"(4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –

a) the conduct of all the parties;
b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and

(5) The conduct of the parties includes –

a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
b) whether it was **reasonable for a party to raise, pursue or contest** a particular allegation or issue;
c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
d) whether a claimant who has succeeded in the claim, in whole or in part, **exaggerated** its claim.

(6) The orders which the court may make under this rule include an order that a party must pay –

a) a **proportion** of another party's costs;
b) a **stated amount** in respect of another party's costs;
c) costs **from or until a certain date** only;
d) costs incurred before proceedings have begun;
e) costs relating **to particular steps** taken in the proceedings;
f) costs **relating only to a distinct part** of the proceedings; and
g) interest on costs from or until a certain date, including a date before judgment.

(7) Before the court considers making an order under paragraph (6)(f), it will consider whether it is practicable to make an order under paragraph (6)(a) or (c) instead.

(8) Where the court orders a party to pay costs subject to detailed assessment, it will order that party to **pay a reasonable sum on account of costs,** unless there is good reason not to do so".

Costs Orders - Rationale and Rarity - The Leading Cases

Though the court clearly has a power to make costs orders, they are still a rarity. Why is that?

Essentially, policy and pragmatic reasons.

The leading case is:

R v R (Costs: Child Case) [1997[2 FLR 95.

In this case, the Court of Appeal explained why the practice of not awarding costs in child cases had grown up:

Hale LJ:

"The reasons why this practice has developed perhaps fall into three categories. The first is general to all family proceedings …. that an order for costs between the parties will diminish the funds available to meet the needs of the family.

The second reason which is given for there being no costs orders in general in children cases, is that the court's concern is to discover what will be best for the child. People who have a reasonable case to put forward as to what will be in the best interests of the child should not be deterred from doing so by the threat of a costs order against them if they are unsuccessful

The third reason is …. the possibility that in effect a costs order will add insult to the injury of having lost in the debate as to what is to happen to the child in the future; it is likely to exacerbate rather than to calm down the existing tensions; and this will not be in the best interests of the child".

Staughton LJ put the three categories of reasons why costs might not be ordered in a slightly different way:

"First, it is said that it would be wrong to discourage parents from putting their views before the court when they may well be helpful to the court. For my part I am not sure that it would be wrong to discourage unreasonable parents from putting unreasonable views before the court…

Secondly, it is said that orders for costs will sour the attitude for future co-operation between the parents. Well, I can see the force of that, but I am not sure that it is of much significance in the present circumstances where there is little prospect of future co-operation.

The third point is that if is an order for costs is made, it may diminish what was called in argument the cake, the total amount of money that is available for the welfare and the support of the child".

Re T (Children) [2012] UKSC 36

This was a public law case but restressed that the general practice of not awarding costs in the absence of reprehensible behaviour or an unreasonable stance accorded with the interests of justice.

But....

Returning to **R v R,** Hale LJ went on to say

"Nevertheless, there clearly are… cases in which it is appropriate to make costs orders in proceedings relating to children…..cases where one of the parties has been guilty of unreasonable conduct…"

Re N (A Child) v A & Ors [2010] 1 FLR 454 Munby J pointed out that the general rule that costs follow the event does not apply, but:

"that principle had always been subject to exceptions, importantly for present purposes where a party has behaved unreasonably in relation to litigation"

Later in the judgment-

"the fact that a parent has litigated in an unreasonable fashion may open the door to the making of an adverse costs order; but it does not of itself necessitate the making of such an order."

Note- both of those cases (and Re T) predate LASPO.

Re A and B (Parental Alienation No 3) [2021] EWHC 2602 (Fam) Keehan J reviewed the authorities and restated

1. Costs are generally exceptional in cases involving children.
2. Courts may deviate from this default if one party's conduct crosses into reprehensible or unreasonable territory.

In this case the mother had engaged in an intentional and sustained campaign of alienating behaviour which caused significant emotional harm to the children and consumed large amounts of court and police resources. Ordered to pay £240,000 costs to father.

C v S [2022] (Fam) EWHC Arbuthnot J.

178. *In terms of grounds one, two and four, I allow the appeal.* ***The Respondent's behaviour was reprehensible and her approach to the fact-finding was unreasonable in a variety of different ways, and this was not the sort of behaviour that many litigants in family proceedings commonly engage in.***

179. ***It would be wrong too for a party to behave in this way with impunity as it comes with a tremendous cost to the privately funded litigant, the legal aid fund when the party is legally aided and to the court in terms of the length of time this case ended up taking.***

St.Mary's

180. ***I consider that not making a costs order may encourage the Respondent to feel that she can raise allegations at will which are later unsubstantiated at no cost to her****. At the same time, an order to contribute towards the Appellant's costs is not made to prevent or deter the Respondent from pursuing reasonable applications.*

183. *The amount of costs I have in mind is most probably less than the costs to the Appellant of the mother's behaviour during the fact-finding but is not so high that it would interfere with the mother continuing with therapy. I make a summary assessment and order that the Respondent shall pay the Appellant the sum of £37,000. I consider this is a just and reasonable amount.*

Re E (Children : Costs) [2025] EWCA 183 Peter Jackson LJ

1. There is still a general practice of not awarding costs against a party in family proceedings involving children, but the court retains a discretion to do so in exceptional circumstances, including reprehensible or unreasonable behaviour.
2. No distinction in this respect between private and public law proceedings.
3. No difference in principle between fact-finding hearings and other hearings
4. Principles are simple, flexible and well established- there is no need to depart from first principles.

In this case the judge at first instance, whilst finding mother's extreme and allegations of sexual abuse of the older children, including handing them over to a paedophile ring were unfounded, declined to make and order that she pay a proportion of father's costs. On appeal, CA held that those particular allegations were so extreme that they ought to have been separated out from her other allegations and a costs order made. CA substituted an order that mother pay one half of father's costs

Two other cases where costs orders made or were not made

HH v BLW [2013] 1FLR. Holman J. Appeal. Order for costs made at first instance against father who withdrew his application for contact to 15-year-old daughter when the CAFCASS officer informed him that the child's wishes and feelings were opposed to any form of contact. Whilst father succeeded on appeal to the High Court, Holman J said that father was entitled to await the CAFCASS recommendation before deciding what course of action to take, that was a reasonable position to take. However, Holman J went on to say that had he decided to pursue the application in the face of the CAFCASS recommendation, that would have been foolish, and a costs order would have been justified.

Re E-R [2016[EWHC 2016. Cobb J. Child's mother had died, and child was living with her friends as he had been with his mother before she died. Father applied for a live with order. He was unsuccessful, and although the judge held that the application overall was not unreasonable, in certain regards, aspects of it were reprehensible and unreasonable. Father order to make a contribution of £10,000 to the friends' costs.

A word of warning.

Re B (A Child)(Unnecessary Private Law Applications)[2020] EWFC B44. HHJ Wildblood

Not a binding authority, but reflects the general judicial distaste at being drawn into micromanagement:

"Do not bring your private law litigation to the Family Court here unless it is genuinely necessary for you to do so…If you do bring unnecessary cases to this court, you will be criticised, and sanctions may be imposed on you."

Examples of types of cases where court may make a costs order in whole or part

1. Holiday/passport applications unreasonably opposed.
2. Refusing mediation or other NCDR.
3. Unsubstantiated allegations of sexual abuse of a child.
4. Failure to attend hearing without reasonable excuse.
5. Running a discrete issue which has elongated either proceedings as a while, or the length of a final hearing.
6. Committal proceedings.
7. C79 enforcements.
8. Running an application on beyond child's 16th birthday absent exceptional circumstances.
9. Pursuing a hopeless appeal (beyond refusal on the papers)
10. Defending an indefensible appeal.

Appeals - Anecdotal evidence that it is sometimes easier to obtain a costs order on appeal than at first instance.

Cook on Costs

"Perhaps the reason is that at first instance nobody knows what the judge is going to find. On an appeal in private children cases both parties have the chance to take stock and make an offer. Accordingly, it is easier to identify conduct meriting an adverse costs order."

Applying for costs

1. **Try to give advance notice to the other side.**
2. **Serve the N260.**

- Must be filed and served 24 hours before the hearing.
- Approach of the court if this requirement is not followed.
- Summary assessment or detailed assessment (with interim payment being directed).
- A case study is attached- how to complete an N260 and how to challenge.

Basis of costs indemnity or standard basis?

Indemnity costs = all costs unless unreasonably incurred or unreasonable in amount

Standard basis = costs which are reasonable and proportionate but remember that reasonable costs can still be disproportionate and proportionality trumps reasonableness if so.

Enforcement of costs orders

D50K procedure. An order for costs is an order to pay money.

- Bailiff/HCEO
- Attachment of earnings
- Third party debt order
- Charging Order

Consider the costs order in respect of any related financial remedy proceedings yet to be concluded. If acting for paying party, consider asking for an order 'not to be enforced until the conclusion of financial remedy proceedings.

St.Mary's

Alienating behaviours

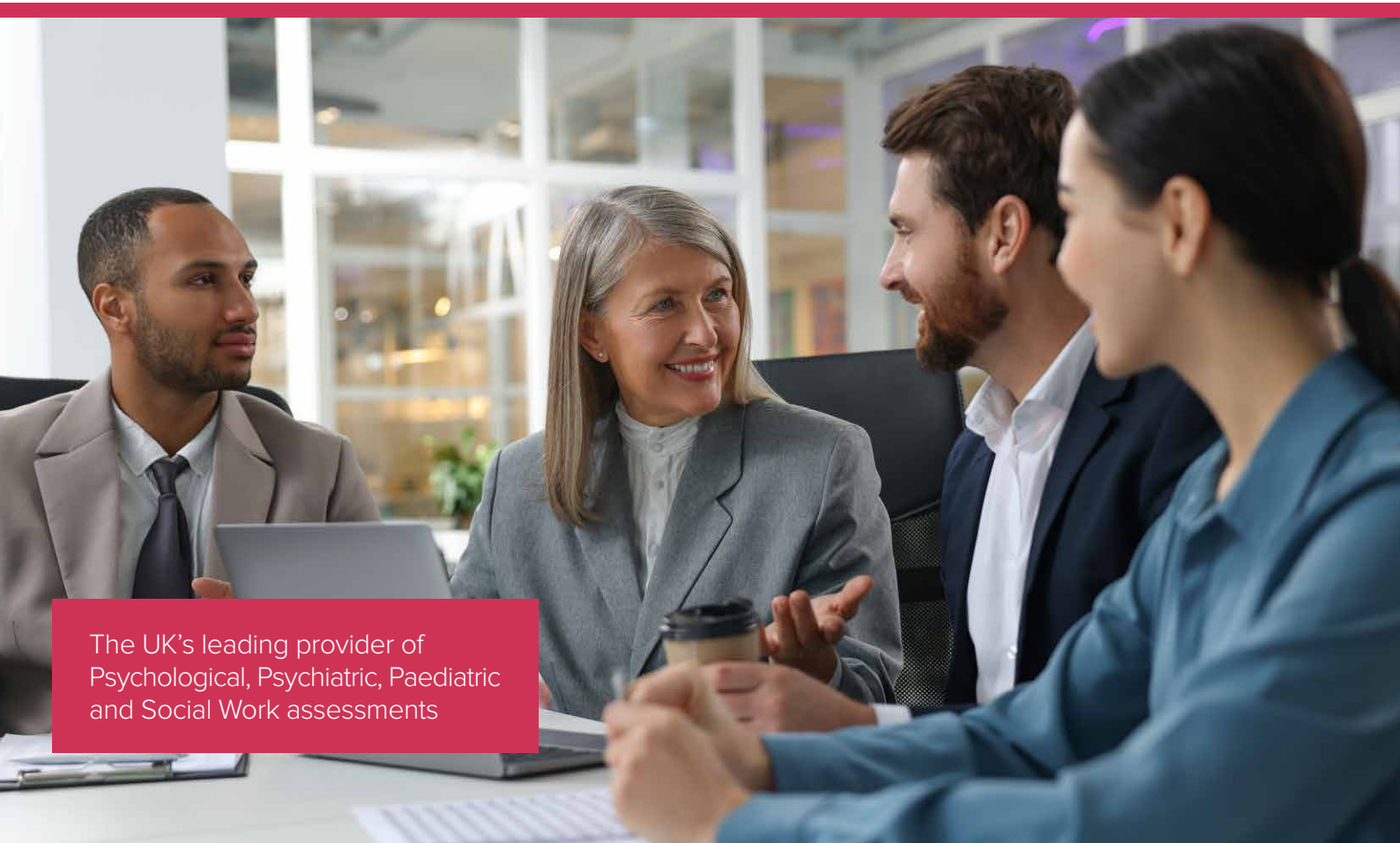
Dr Jyothi Shenoy, Clinical Psychologist

Speaker

carterbrown

your reliable source for expert assessments

part of the Antser Group



The UK's leading provider of Psychological, Psychiatric, Paediatric and Social Work assessments

WELCOME TO CARTER BROWN

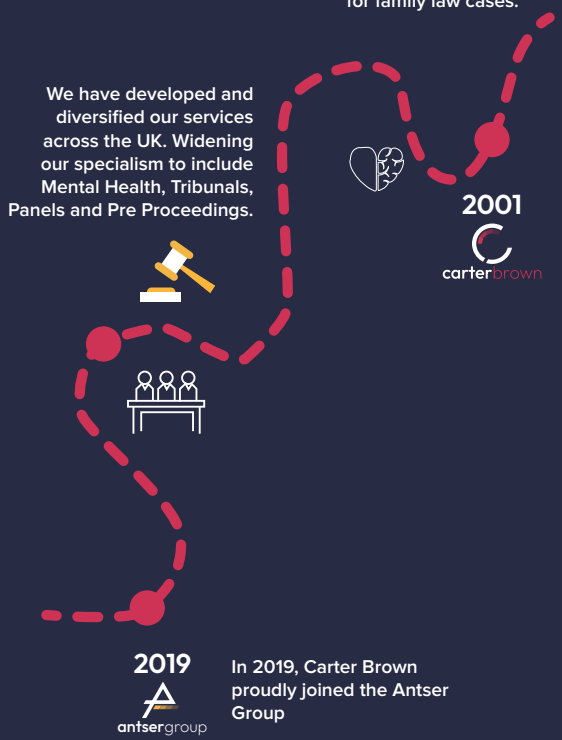
OUR JOURNEY

Our roots are enshrined within children and families work; Carter Brown was set up by two Children's Guardians in 2001, capturing the demand for a high quality service by offering specialised expert witness assessments within family law.

Since this time, we have expanded our service providing assessments directly to local authority teams, within criminal law cases, mental health, tribunals, fitness to practice, prison and parole boards and court of protection.

Aside from our established brand and market-leading reputation, which grew when we became part of Antser in 2019, what really differentiates us are our 3 core USPs: a supremely efficient end to end operating model; access to a nationwide pool of assessors and expert witnesses; and the use of data science for an optimised service.

We are the UK's leading provider of psychological, psychiatric, social work and paediatric assessments, completing over 4,000 reports each year for solicitors, courts, local authorities, panels and other organisations.



MARKET LEADERS ACROSS THE UK

- **WE ARE MARKET LEADERS**
- **700+ EXPERTS ACROSS THE UK**
- **4,000+ REPORTS DELIVERED EACH YEAR**
- **WE ARE ISO9001 ACCREDITED**

WHY CARTER BROWN?

Whether you are a legal professional looking for an expert witness, a local authority needing assessment support or an individual / organisation requiring specialist support, Carter Brown, the largest provider of independent experts across the UK, will ensure you receive a professional and timely service at a reasonable cost.

WHAT WE CAN OFFER THE COURTS

- Independent Expert Witnesses including; psychologists, psychiatrists, paediatricians and social workers
- Expert Witnesses that work within the Legal Aid Agency's rates and guidelines
- Assessments that are in line with our own quality standards
- A robust expert recruitment process

WHAT WE CAN OFFER LOCAL AUTHORITIES & INDEPENDENT PROVIDERS

- Independent social work assessments undertaken on behalf of your in house team to support with capacity. These include fostering, adoption, special guardianship, connected persons and viability assessments delivered to your procedures.
- Specialist psychological, psychiatric, paediatric and independent social work assessments completed in Edge of Care, Pre Proceedings or Care Proceedings
- International social work assessments
- Stage 2 and 3 Complaints independent persons and investigators
- Fixed fee and cost and volume discounts

QUALITY

We provide a variety of in built systems to support our experienced experts, this includes active case management through one point of contact, an in house quality assurance team and professional consultation. Our robust safer recruitment process validates relevant expertise, excellent practice and compliance including DBS checks, references, professional registration and insurances.

CONVENIENCE

Each referral is managed individually; we match the specific needs of an assessment to the expertise and experience of our experts. From the first point of contact we will manage the referral and assessment process for you. Our aim is to save you time by providing an accessible and flexible service that immediately meets your assessment needs.

BEST VALUE

Our costings for assessments are completely transparent we provide expert witness assessments within the Legal Aid Agency guidelines, and other assessments are completed within a fixed fee. When you make a referral to us, you'll always receive a full estimate of costs, including a breakdown of time and expenses.

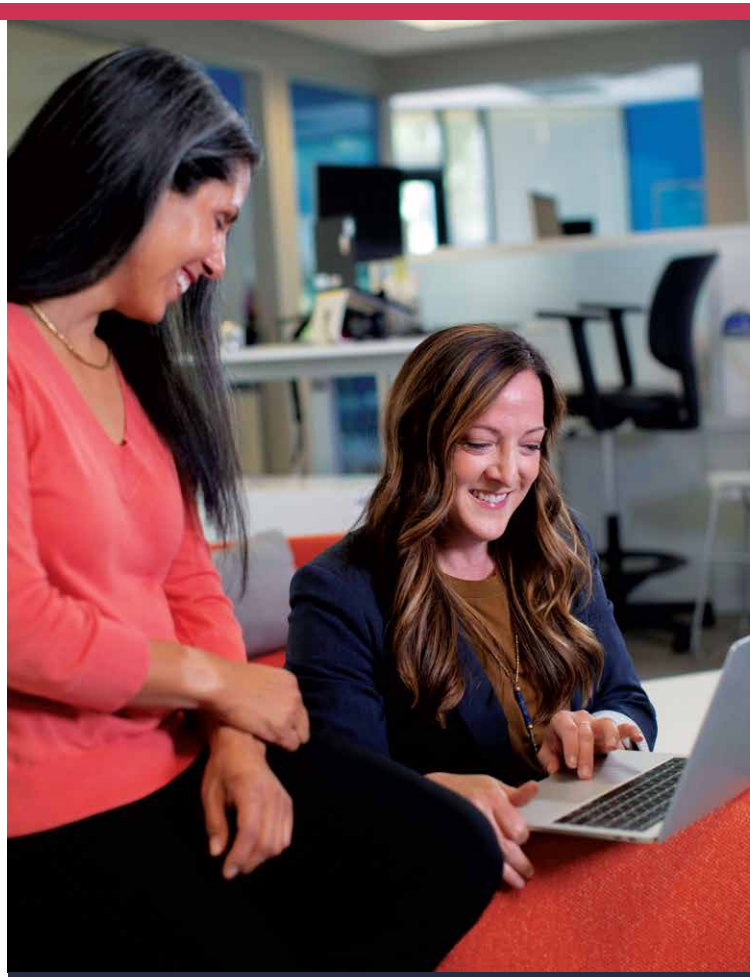
OUR SERVICES
EXPERT WITNESS ASSESSMENTS

With over 700 experts based nationwide, we are able to provide psychological, psychiatric, paediatric and independent social work assessments at legal aid rates and assessments are completed to court timescales.

Our referrals team can provide you with CVs, costs and timescales for suitable experts in as little as 30 minutes or sooner where you are at Court.

Our assessments cover an extensive range of issues, including:

- Assessments of Adults and Children
- Cognitive, Capacity and Fitness to Plead Assessments
- Neglect
- Domestic Abuse
- Substance Misuse
- Learning Difficulties/Disabilities
- Forensic Risk
- Attachment
- Behavioural issues
- Capacity to change
- Non Accidental Injury
- Developmental difficulties
- Mental Health
- Diminished Responsibility
- Sentencing and Parole Board Reports
- Court of Protection



Follow us across our social media channels and visit the website by scanning the QR code

OUR SERVICES
CARER-BASED ASSESSMENTS

We understand the importance of completing robust, evidence-based and supportive assessments of prospective carers, which assess and demonstrate their ability to be resilient, caring and adaptable.

Assessments are completed to panel and court deadlines and are set at fixed fees, which include all travel and panel attendance. Our teams fully manage the assessment from referral through to panel.

Our carer-based assessments include:

- Form F
- Adoption (PAR and Annex A)
- Connected Persons and SGO Assessments (Including Dual assessments)
- Carer Supervision
- Viability and Initial Visits
- International Assessments
- Initial visits

carterbrown
your reliable source for expert assessments

Have a question about our services?
We're here to help, email

referrals@carterbrownexperts.co.uk

OUR SERVICES
LOCAL AUTHORITY ASSESSMENTS

We work directly with a number of local authorities nationwide, providing assessments through early intervention, edge of care, pre proceedings and care proceedings.

We are able to offer a range of assessments to support decision making and intervention at each stage and can offer both fixed fee and legal aid rates

Our local authority assessments include:

- Assessments of Adults and Children
- Parenting Assessments
- PAMS / Parent Assess
- Viability Assessments
- Sibling and Attachment Assessments
- Age Assessments
- Immigration Assessments
- Section 7 Assessments
- Specialist Cognitive, Psychological, Psychiatric and
- Paediatric Assessments
- Therapeutic Needs Assessments
- International Assessments
- Adult Needs Assessments

Stage 2 & 3 Complaints

Our team of experienced investigators will undertake the role of investigator/independent person in a professional and transparent manner, and will provide an evidence based, clear and comprehensive report. Additionally, we can provide panel members and panel chairs to facilitate stage 3 panel reviews.

Follow us across our social media channels and visit the website by scanning the QR code

MEET THE CARTER BROWN TEAM

AMY CALLAGHAN
MANAGING DIRECTOR

With a background in Psychology, Amy has over 14 years' experience within the expert witness sector, working directly with solicitors, local authorities and independent service providers to ensure high quality service provision to support vulnerable individuals. In her role, Amy leads the service to ensure we meet our core value of delivering high quality, meaningful assessments.

amy.callaghan@carterbrownexperts.co.uk

RINISHA TAILOR
PRACTICE LEAD

Rinisha is a qualified children's and families social worker with over 17 years of experience in providing high quality care and support to vulnerable individuals. Rinisha has a consistent track record of working successfully with individuals, families or groups, all within a variety of settings and a vast expertise by dealing with a range of cases and currently delivers expertise as Practice Lead as part of the Carter Brown team.

rinisha.tailor@carterbrownexperts.co.uk

CHERYL MUSGROVE
OPERATIONS MANAGER

As Operations Manager at Carter Brown, Cheryl is responsible for ensuring our clients and expert associates receive a professional and time sensitive service, continually looking for ways to improve and build upon the same. Her experience within this sector spans more than 20 years, underpinned by a background career within the legal sector.

cheryl.musgrove@carterbrownexperts.co.uk

PAIGE HOGG
RECRUITMENT MANAGER

As a passionate Recruitment and Training Manager, Paige is responsible for recruiting the service's expert psychologists, psychiatrists, independent social workers and paediatricians to complete assessments on behalf of courts, local authorities and panels. Paige also leads on our comprehensive Training Calendar providing a range of excellent courses to our associate expert base.

paige.hogg@carterbrownexperts.co.uk

carterbrown

your reliable source for expert assessments

part of the Antser Group

CONTACT INFORMATION

Phone: 01623 661089
Web: www.carterbrownexperts.co.uk
Email: referrals@carterbrownexperts.co.uk

Suite 8, Enterprise Court, Oakham Business Park, Mansfield

Follow us across our social media channels and visit the website by scanning the QR code

Providing Psychological, Psychiatric, Paediatric and Social Work expertise to the family courts and Local Authorities since 2001, capturing the demand for a high quality service, offering specialised expert witness assessments.

Since this time, we have developed, diversified, and expanded our services across the UK to become on of the largest providers of multidisciplinary assessments, widening our specialism to include reporting directly to Local Authorities and within Criminal Law, Asylum and Immigration, Mental Health Tribunals, Panels and Pre Proceedings.

St.Mary's

Covert Recordings in Family Law Proceedings

Sarah Giles & Jennifer Frost

Speakers

St.Mary's

Follow this link to access the Family Justice Council Guidance on Covert Recordings:

https://www.judiciary.uk/wp-content/uploads/2025/05/Covert-recordings-in-Family-Law-proceedings-concerning-children-Family-Justice-Council-Guidance.pdf

St.Mary's

IMARA

Tara Tan, Senior Therapist

Speaker

St.Mary's

Case Law Update

Paula Bloomfield

A, B and C (Child Arrangements: Final Order at Dispute Resolution Appointment) [2005] EWCA Civ 55

This was an appeal against a Deputy District Judge's decision to make final orders at a Dispute Resolutions Appointment in the absence of a Section 7 report, which serves as a reminder of the wide discretion the court has to control the evidence.

Lord Justice Baker gave judgment on 31st January 2025.

The Facts

The children were aged 11, 9 and 7. The parents were married and lived in Ireland during their marriage. Prior to their separation, they relocated to England. Following their separation in 2018, divorce and Children Act proceedings were initiated.

Mother applied for a Specific Issue Order seeking permission to relocate back to Ireland with the children. Father applied for a Prohibited Steps Order to prevent her from removing the children from the jurisdiction of England and Wales. Within those proceedings, the court had the benefit of an ISW report. The ISW recommended that the mother's application for permission to relocate should fail and that a shared care arrangements should be implemented. There was a contested final hearing during which mother withdrew her relocation application, and a shared care arrangement was ordered.

Both parents made applications to vary the child arrangements 9 months after the final orders were made. Mother reinstated her application for permission to relocate. There was a further report from an ISW and again, there was a recommendation that mother's application should be dismissed. A 3-day contested final hearing took place in June 2021. Mother's application to relocate was dismissed and the previous shared care arrangement was maintained, with some minor alterations.

A third application was lodged by mother in 2023. Within those proceedings, father applied for an order pursuant to Section 91(14) of the Children Act 1989 preventing mother from making any further applications without leave.

The matter was listed before the DDJ who had made the original Child Arrangements Order. She directed that Cafcass produce its safeguarding letter (in accordance with para 13 of PD12B) and that both parents should produce narrative statements. Within mother's narrative statement, she made a number of allegations about the father's care of the children.

Cafcass, in its safeguarding letter, recommended that it was not proportionate for there to be a further welfare assessment in the case and the court could resolve the matter without the need for a Section 7 report.

At the adjourned DRA, the DDJ heard submissions from both parents. She went on to dismiss the mother's applications and made an order against the mother pursuant to Section 91(14) for a period of three years.

The mother filed notice of appeal submitting that the judge was wrong summarily to dismiss the mother's application to vary the child arrangements order; the judge was wrong to refuse a Section 7 report, thus resulting in a gap in the evidence particularly in respect of the children's wishes and feelings and the judge was wrong to make a Section 91(14) order against the mother for three years when the Cafcass safeguarding letter did not recommend this.

The appeal was heard by a Circuit Judge in July 2024 and mother's appeal was dismissed. The Circuit Judge found that the Deputy District Judge had acted within her discretion and there was no material change in circumstances that warranted further investigation.

In August 2024, mother filed a notice of appeal to the Court of Appeal and in November 2024, permission to appeal was granted by Baker LJ.

The appeal was dismissed for the following reasons:

- The purpose of a DRA is to try and resolve the issues without the need for a contested hearing. Within PD 12B, paragraph 19(3), the court is required to identify the key issues to be determined and the extent to which those issues can be resolved or narrowed at the DRA. The court is also required to consider whether the DRA can be used as a final hearing.
- Even if the parties are unable to reach an agreement, the court has the power to bring the proceedings to an end if satisfied that such a course is consistent with the children interests of the children.
- Unnecessary professional intervention in a child's life can be harmful, and the court was entitled to conclude that a further Section 7 report was not necessary.
- Fact finding hearings should only be heard if necessary to resolve child arrangements, not to air grievances.
- The Section 91(14) order was justified because of the mother's conduct and the need to give the children a break from litigation.

Conclusion

In this case, there had been 2 sets of previous proceedings, and the court was therefore already armed with a wealth of evidence and assessment.

In this sort of situation, the court may well conclude that there should be no further assessment unless there has been a significant or material change in circumstances.

The judgment from paragraph 43 onwards in this case is helpful reading in terms of the looking at the court's case management powers under the Family Procedure Rules.

It is worth re-reading the provisions set out in Practice Direction 12B – Child Arrangements Programme. It is clear at paragraph 19.3 that the Dispute Resolutions Appointment can be used as a final hearing. Therefore, always be prepared to deal with contested issues at the DRA!

A (A Child) (Appeal: Finding of Rape) [2025] EWHC 1500 (Fam) (17 June 2025)

This was an appeal against findings of fact made in private law proceedings by a Recorder. The findings were made in March 2022, but the appeal was not heard until April 2025, largely due to delays in the appeals system in the Royal Court of Justice and the difficulties in obtaining an approved transcript of the judgment.

Mr Justice Hayden gave judgment on 22nd May 2025.

The Facts

The children were aged 15, 12 and 10 at the time of the appeal. The parents were married in 2008 and separated in 2017.

Following separation, the parents were involved almost continuously, in Children Act proceedings with both parents making allegations against the other of verbal, physical and sexual abuse.

By the time the case was listed for a finding of fact hearing, there were over 70 allegations and cross allegations made by the parents and the case had been heard by 9 different judges.

Following a 5-day finding of fact hearing, the Recorder hearing the case made a finding that father had raped mother on at least one occasion when she slept in the marital bed.

Father lodged his notice to appeal in May 2022. Four grounds of appeal concerned complaints that the Recorder had shown procedural unfairness and was biased against the father.

Those grounds were dismissed as they were considered to be unarguable. Permission to appeal was permitted on one ground, namely the Recorder had failed to give sufficiently cogent reason in making this finding.

The appeal was allowed. The court note that the judgment did not set out an analysis of the evidence or any reason which underpinned the Recorder's ultimate decision. It was concluded that the Recorder's findings were "rationally unsupportable" and must be set aside.

Conclusion

Appealing findings of fact is challenging. There were several helpful observations made by Hayden J in the judgment. He made it clear that "an Appellant Court will not interfere with findings of fact made by the trial judge unless it is constrained to do so".

At paragraph 18, he summarised the legal principles applicable to an appeal against a finding of fact:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

The judgment also dealt with the approach the family court should take when dealing with allegations of rape. It is worth reading the case of A v B and C [2023] EWCA Civ 360 if you are faced with a case involving 'rape', 'sexual assault' and 'consent'.

St.Mary's

ED v MG [2025] EWHC 1876 (Fam) (22 July 2025)

This is an interesting case involving a declaration of parentage under Section 55A of the Family Law Act 1986 (or in this case a declaration of non-parentage) and parental responsibility. The case was heard in the High Court before Mr Justice McKendrick on 10th July 2025.

The Facts

The child was aged 3. The parents commenced a relationship in 2018. After unsuccessfully attempting to conceive naturally, the underwent IVF. This was again unsuccessful. Therefore, mother began researching the possibility of using donor sperm through a clinic in Northern Cyprus.

They agreed to proceed, and the procedure was undertaken in September 2021. Mother became pregnant and the child was born in June 2022. The child's birth was registered in August 2022, and the 'father' was registered on the child's birth certificate.

The parties separated in June 2023 and 'father' issued an application for a Child Arrangements Order in August 2024. The case proceeded on the usual basis with a FHDRA being listed and a Cafcass safeguarding letter being prepared.

In November 2024, mother applied for a Declaration of Non-Parentage pursuant to Section 55A of the Family Law Act 1986 and an application to remove 'father' from the child's birth certificate. In March 2025, 'father' applied for a Declaration of Parentage.

The court heard evidence from an ISW who recommended that a joint lives with Child Arrangements Order should be made to prevent mother from minimising the 'father' in the child's life. The child had a good relationship with his 'father' and mother did not respect his role in the child's life.

The court determined that 'father' could not be the child's parent. The court therefore made a declaration of parentage pursuant to Section 55A(1) of the Family Law Act 1986 that 'father' was not the parent of the child.

The court also determined that 'father' did not acquire parental responsibility when his name was entered on to the child's birth certificate. A father obtains parental responsibility pursuant to Section 4(1)(a) of the Children Act 1989 if he is named on the birth certificate.

A person who is not a father does not obtain parental responsibility because they are named on a birth certificate.

The court went on to make a shared lives with Child Arrangements Order, thus conferring parental responsibility upon the 'father' in any event (by virtue of Section 12(2) of the Children Act 1989).

Conclusion

There is an interesting summary of the ways in which a person may be or become a parent of a child at paragraph 17 onwards of the judgment. It is stated that there are parents, who are neither genetic, nor gestational, who have become the psychological parents of the child and therefore, have an important contribution to make to their welfare.

The law relating to declarations of parentage is also helpfully summarised at paragraph 19 onwards.

O (Domestic Abuse: International Relocation) [2025] EWCA Civ 888 (14 July 2025)

This was an appeal by a father against a decision allowing mother permission to relocate with the children to the United Arab Emirates. This is the first case in the Court of Appeal to consider the interplay between international relocation and Practice Direction 12J.

Lord Justice Cobb gave judgment on 14th July 2025.

The Facts

The children were aged 10 and 5. The parents were in a relationship between 2012 and 2021. Mother was a medical consultant working within the NHS. Father was a dentist. Both parents were nationals of other countries and neither of the parents had any family in England. The children were both British nationals.

Following separation, mother made allegations of domestic abuse and sought a non-molestation order against father which concluded with father giving undertakings.

In October 2021, mother made an application for a Child Arrangements Order and given her domestic abuse allegations, the court directed there should be a finding of fact hearing.

Several very serious findings were made against the father at the conclusion of that hearing, including physical assault resulting in her sustaining injuries. The court also found that father had physically chastised the older child by smacking him. It was determined that the abuse would have had a significant harmful impact on the children.

Father was charged with several offences arising from the domestic abuse incidents. His trial date had been deferred several times and as a result, he did not want to discuss the court's findings with the Family and Court Advisor citing privilege against self-discrimination (see the case of Re P(Children)(Disclosure) EWCA Civ 495).

However, it was held by the court that his privilege against self-incrimination did not prevent him from advancing a case in the Children Act proceedings.

Father's contact with the children was being supervised by a social worker and it was described as extremely positive. The children appeared comfortable with him and the older child wanted to spend longer periods of time with his father.

In February 2023, the court made a live with Child Arrangements Order in favour of mother and a spend time with order in favour of father.

Mother subsequently made an application for permission to remove the children from the jurisdiction of England and Wales to UAE for a period of 5 years.

She was getting little financial support from father and argued that the move would provide the children with financial stability. Mother also argued that she needed to distance herself and the children from the trauma of the domestic abuse she had suffered.

The final hearing took place in November 2024 and mother's application for permission to relocate was granted.

Father appealed on five grounds. He submitted that the court was wrong to allow mother to relocate to a non-Hauge country when there was no prospect of enforcing any English Child Arrangements Order for contact. It was further submitted that mother did not have a proper plan in place and undue weight had been given to mother's assertion that she needed to relocate to distance herself from the father.

The court dismissed the appeal, upholding the order granting mother permission to relocate to the UAE.

Conclusion

The judgment is helpful to read as there are summaries of the law relating to international relocation (particularly to a non-Hague country) and domestic abuse. In paragraph 93 and 94 of the judgment, Cobb LJ states:

> 93. If domestic abuse is proved, the court will consider its orders in an international relocation case in just the same way as it would in a domestic private law case, namely, to protect "the safety and wellbeing of the child and the parent with whom the child is living, and … not expose either of them to the risk of further harm" (PD12J, para.5).
>
> 93. However, the judge will need to factor in additional characteristics of an international relocation case which will include (but not be limited to) the geographic distance between the perpetrator parent and the subject child, the availability of measures to protect the victims of domestic abuse, and a likely change of legal jurisdiction post-relocation.
>
> 94. Thus, in such a case, and when considering what will be the appropriate order in the best interests of the child, it seems to me that the court may well find it appropriate to consider (specifically in relation to 'harm' or 'risk' of harm in section 1(3)(e) CA 1989):
>
> i) Whether the abuse is in any respect ongoing, and how the victim(s) can be in each jurisdiction;
>
> ii) The extent to which, if at all, the abuse has informed or influenced the applicant's decision to issue an application to relocate;
>
> iii) What support (family or professional) will be available to the victims of abuse (abused parent and/or child) in this country and in the country to which relocation is sought?
>
> iv) How the abused parent and/or child can be protected from further abuse from the perpetrator while living in this country and in the country to which relocation is sought. What, if any, orders would be available from the court in the country to which relocation is sought? What other protective measures are likely to be available in the country to which relocation is sought?

v) How ongoing risk to the abused parent and/or child from the perpetrator of the abuse can be assessed, and/or managed, if the abused parent and/or child is living in this country or abroad ("the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm": PD12J, para.35); this is likely to be relevant to child arrangements ('time spent with') orders;

vi) What professional (or other) supervision of contact is available both in this country and in the country to which relocation is sought? How can indirect contact be managed and/or (if relevant) supervised?

Mother's relocation plan lacked the detail that we would usually expect to see in an international relocation case. However, the court noted that the serious nature of the domestic abuse, and father's lack of remorse and insight, had an ongoing impact on mother and the children.

An interesting postscript - at the time of the final hearing, the parents had been involved in litigation for over three years and the aggregate costs incurred were in in the region of £400,000.

St.Mary's

Case Law Update

Victoria Lovett

St.Mary's

"Alienating Behaviour": Post-FJC Guidance (December 2024)

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

Reported: 30th January 2025

District Judge Cockayne presided over a final hearing concerning the living arrangements of two children, T (14) and G (12).

Quite nuanced judgment to show that just because there are alienating behaviours that does not mean that is the reason for the lack of contact or that it is intentional.

Overview

Following a protracted breakdown in contact arrangements, T was living with the father and his partner, while G resided with the mother.

Over the course of the hearing, the court addressed concerns regarding alleged "alienating behaviours," educational decisions, and contact for both children, including their relationship with each other.

The mother argued that G should remain in her care, while the father, supported by the Children's Guardian, proposed that G should immediately move to his household and transfer schools.

The court ultimately declined to order a transfer of residence, instead maintaining the *status quo*, but set out detailed provisions to restore the children's relationships and address the needs arising from G's autistic spectrum diagnosis.

Factual Background

T and G had previously been the subject of a final Child Arrangements Order made by consent in January 2023, providing for equal shared care between the parents. Less than six months later, T refused to see the mother, moving permanently to the father's home. In the same period, G stopped attending contact with the father and began living solely with the mother.

Each parent applied to the court, raising cross-allegations of "parental alienation" and contending that the other had frustrated contact. The father maintained that the mother's actions had alienated G from him, while the mother insisted that G's refusal to attend contact was rooted in the father's conduct.

Following interventions by CAFCASS, including a Section 16A risk assessment and subsequent reporting, the children's reluctance to see the respective non-resident parent persisted. T remained steadfastly opposed to the mother, and G's initial reservations about the father solidified into an outright refusal of overnight stays.

The Children's Guardian eventually recommended that G's best interests required a move to the father's home, coupled with a school transfer. The Guardian also alleged that the mother exhibited alienating behaviours that undermined G's relationship with the father. The father supported this recommendation, while the mother strongly opposed it.

Legal Background

The court's primary focus was to determine whether alienating behaviours had occurred and how any Child Arrangements Order should be shaped in light of the children's welfare.

District Judge Cockayne referred to the recent Family Justice Council ('FJC') Guidance (from Dec 2024) on responding to a child's unexplained reluctance, resistance or refusal to engage with a parent or carer ('RRR') and allegations of alienating behaviours, summarising at **[S19]** that:

"a) "Alienating Behaviours", which range in intensity and impact on children, can affect a child's emotional, social and psychological development. Severed relationships and growing up with a false narrative can have a harmful impact on a child's identity, self-worth and sense of safety. The effects of influence can be long lasting and will affect their ongoing attachments […]

b) Whilst allegations of Alienating Behaviours should therefore be identified and responded to, and the impact of those behaviours considered on the relationship with either parent and the child, the terms 'parental alienation syndrome' and 'parental alienation' have no evidential basis and are considered by the Family Justice Council (FJC) a harmful pseudo-science.

c) To establish Alienating Behaviours, 3 elements must be evidenced: Re C (Parental Alienation) [2023] EWHC 345:

the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer;

the RRR is not consequent on the actions of that parent towards the child or the other parent, which may therefore be an appropriate justified rejection by the child (AJR), or is not caused by any other factor such as the child's alignment, affinity or attachment (AAA); and

the other parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's RRR to engage in a relationship with that parent. It is not important to decide whether the alienation is deliberate or not. It is the process that matters, not the motive: Re S (Parental Alienation: Cult) [2020] EWCA Civ 568."

Additionally, the court weighed the important principle under s.1(2A) of the Children Act 1989, that involvement of parents in a child's life is in the child's welfare interests. On this, the court noted at **[§21]** that:

"…there is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact. However, the positive obligation on the State, and therefore on the court, is not absolute. Whilst authorities must do their utmost to facilitate the co-operation and understanding of all concerned, any obligation to apply coercion in their area must be limited since the interests, as well as the rights and freedoms of all concerned must be taken into account and, more particularly, so must the best interests of the child."

Judgment

In summary, the judge concluded:

1. There was evident reluctance, resistance or refusal (RRR) on the part of the children, ranging from a refusal to speak to the other parent, to actively demonstrating anger and negative reactions.
2. G's RRR was initially grounded in G's own experiences, later reinforced by M's behaviours and learning of the Guardian's recommendation. M did not cause but reinforced G's rejection of F.
3. G was settled with M, particularly due to M's understanding of G's autism and educational needs. M had also promoted relationships with F's extended family.

4. The judge stated that even if some alienating behaviour had been found, it did not necessarily follow that residence would be transferred. The judge found that the potential trauma of disrupting G's home, school, and relationships outweighed the benefits of change.

5. The judge referred to Munby P in *Re H-B (Contact)* [2015] EWCA Civ 389, stating that M could not hide behind G's wishes and feelings. M's passive approach to contact between G and F (i.e. that she could not physically make G go) was not adequate.

6. While the Guardian's position was that shared care did not work and that M would not promote contact with the paternal family, the judge believed a carefully managed reintroduction of time with F would benefit G and allow reconnection with T. In respect of G, contact was ordered to be agreed by the parents with assistance from the Guardian.

7. The Judge considered reintroduction should be gradual, starting with sibling contact and progressing to time with F. All contact should exclude M's presence or direct involvement, including with handovers.

8. The Judge ordered that T shall continue to live with their father and G with their mother, under a CAO and maintaining the *status quo*.

The court did not order contact between T and his mother but recited this needed to be encouraged.

9. The court directed the Guardian to make a referral to the local authority for therapeutic and practical support, including a neutral professional to aid in reestablishing contact and a possible family mediation.

10. The judge committed to writing each child a personal letter to explain the importance of maintaining relationships with both parents and the reasons for directing contact between G and F. In relation to T, the judge left the option for a relationship with M open, given their age and strength of feelings.

11. A s91(14) order was made against both parents, limiting further applications (excluding enforcement) for three years.

Key sections from judgment: -

Notably, the Judge identified at **[S30]** the following as having a significant basis for the RRR of T:

"Regrettably, T also saw a social media Tik Tok post that the mother posted showing G with the third party with a caption indicating that having your children with the wrong person doesn't prevent you raising them with the right person. In her written evidence the mother explained she did so as she was brought up by her stepfather, however in oral evidence she distanced herself from that explanation and said she had simply seen a template and modified it as she liked the sentiment. The post has a picture of G with the third party. To my mind it is clearly meant to get at the father.

In oral evidence she told me that she did not understand why T does not want to see her and did not think they had any valid reason not to. Focused on causing emotional harm to the father, the mother's behaviour has clearly not been helpful in repairing that relationship with her eldest child having been oblivious to the wider harm that causes them."

At **[S36]**, the judge held that:

"None of the children's RRR behaviours can in themselves be taken to indicate evidence of exposure to psychological manipulation by the other parent in their own right. In this case I am satisfied on the balance of probabilities that G has had negative experiences in the care of their father such as demonstrated in the video of their father arguing with his partner and their father's admitted name calling."

The Judge rejected the father's application for an immediate transfer of G's residence and a school move. Although the Children's Guardian contended that the mother's alienating behaviours necessitated drastic intervention, the judge found there was insufficient evidence of systemic or deliberate alienation.

Acknowledging that the mother had acted in ways detrimental to G's contact with the father, such as hovering during sibling get-togethers or failing to encourage G to join overnight stays, the court determined that those actions, while unhelpful, did not amount to "alienating behaviours" so severe as to justify a fundamental shift in living arrangements. The judge observed at **[S40]:**

"On balance I am not satisfied that the mother has used, or is using, alienating behaviours to sabotage G's contact with the father and T, just as I am not satisfied the father has used, or is using, alienating behaviours to sabotage T's contact with the mother and G. I note the Children's Guardian within her first Section 7 report through to her oral evidence concludes that the children's own personalities affect the parent to whom they align; T a "lad" responsive to their father's more stern parenting style and G quieter and more sensitive as their mother. I am satisfied that it is more likely than not that both children's alignment, affinity and attachment (AAA) is at the root of both children's RRR, and no alienating behaviours beyond the parents' unhelpful and counter-productive actions as I have already identified have led to either child's rejection of their mother or father for the reasons I have given."

Take away points

- The judgment highlights the high bar required to prove AB, particularly in light of the FJC Guidance.
- Deals with nuances of allegations and judge makes findings regarding mixed causes of RRR, bearing in mind children's ages.
- Finding of inappropriate behaviour of a parent did not amount to AB.
- A measured approach to accusations of "parental alienation," highlighting the need to get to the bottom of whether a parent's actions truly constitute a concerted effort to undermine the child's relationship with the other parent or if, instead, those actions arise from defensive, at times misguided reactions to conflict.
- The FJC Guidance and above judgment encourages practitioners and the Family Court to take a less than 'black and white' approach to cases where AB may be a relevant feature. Often parents will raise the issue of 'alienation' to explain what may, at first blush, appear to be inexplicable refusal of a child to engage with their parents on an equal footing.

- It can be tempting for practitioners to view allegations of AB as a 'black and white' concept, but the guidance encourages a more elastic approach to the issue, and that lack of an immediately obvious answer to a child's RRR does not necessarily lead to a single conclusion of AB.
- Further, where AB is alleged, or even proved, the guidance is clear that the Family Court should not automatically view a change of residence as the headline solution. The impact on the child of a change of residence, even where AB is found, cannot be underestimated, and the court should be cautious to view this as the solution to parental intransigence to contact with the other parent.

Other cases to review

- *Re H (Parental Alienation)* [2019] EWHC 2723 (Fam) (*the effects of 'AB' on children)*
- *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521 & *Re M (Children)* [2017] EWCA Civ 2164 (*Always in the interest of a child whose parents are separated that he/she should have contact with non-resident parent. Positive obligation on the State and the judge to take measures to promote contact, before concluding no contact*)

CP v M & Ors [2025] EWFC 39

Reported: 25th February 2025

Overview

Considering the recent Family Justice Council Guidance on allegations of "Alienating Behaviours", Poole J made no order on an application by a former civil partner to spend time with four children born during her civil partnership with the biological mother.

Background

CP and M (both women) were civil partners from November 2006 to June 2016. The five children subject to the proceedings were all born in England as British Citizens during the currency of CP and M's civil partnership.

M and all the children moved to a Gulf State over the 2014-2015 period where they are now habitually resident and live with M and her new partner.

The parties arranged, which lasted until 2019, for the children to stay with CP in England for six or seven weeks each summer, and in the Gulf for one or two weeks over every Christmas and New Year period when M was abroad.

From 2019 onwards, CP's time with the children reduced. She had not seen any of the children since 2021 save for some disputed interaction with the eldest child when he was at boarding school in England.

CP v M & Ors [2025] EWFC 39 (25 February 2025)

Procedural History

On 22 February 2022, CP made an application for a CAO in the Family Court and on 30 March 2022 she made an application for the High Court to exercise *its parens patriae* jurisdiction in respect of the children.

On 2 December 2022, Christopher Hames KC sitting as a Deputy High Court Judge determined that whilst the court had jurisdiction in relation to the eldest child based on his presence (at boarding school) in England and Wales, it had no jurisdiction in relation to the other four children. He also determined that CP was not the legal parent of the children.

CP appealed those decisions and on 27 July 2023 the Court of Appeal handed down judgment allowing the appeals and declared that CP is the legal parent of the four younger children and that the courts of England and Wales have jurisdiction to consider CP's applications and to make s8 orders under the Children Act 1989 ("CA 1989") in respect of those four children.

The applications were remitted to Poole J. The children were joined as parties and a Children's Guardian was appointed.

The parties' positions

CP's case was that M had prevented her from having contact with the children. CP sought an order that the four younger children spend time with her. She proposed that the Court should timetable the application to a two-day hearing in order to determine the facts of CP's involvement in the children's lives with a view to then directing family psychological therapy which might bring about change and open the door to the contact restarting between CP and the four younger boys.

M's position was that the children refused to have contact with CP and did not wish to spend any time with her.

M was happy to facilitate memory boxes for each child so that CP could send letters, cards, and photographs, for them to access in their boxes as and when they wished.

M and the Guardian submitted that the Court should conclude the application without a finding of fact hearing or any directions for family therapy or psychological evidence. It was contrary to the children's best interests to prolong proceedings which, as the Guardian advised the Court, were distressing to them and positively harmful to any prospect of a relationship developing between CP and the boys in the future.

Judgment

Poole J noted the boys had steadfastly expressed strong wishes not to have contact with CP and "*attempts to change their minds or to encourage them to adopt a different understanding of their life stories, will be resented by them and will be very likely to fail*" **[S22].**

Having regard to the FJC "*Guidance on responding to a child's unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour*" from December 2024, Poole J determined that the boys (i) give reasons for their resistance to spending time with CP which stem from their perception of CP's own conduct and (ii) they deny that M has influenced them to adopt a negative attitude towards spending time or having any contact with CP.

There was "*no clear evidence that the boys' resistance is rooted in manipulation by M as opposed to their own experiences*" **[S23].**

Poole J determined there was no purpose to be served in holding a finding of fact hearing as "*Whether or not the Court found that M has engaged in alienating behaviour, the boys' positions in relation to spending time with CP would be very unlikely to change*" and the fact-finding process would be likely to cause emotional harm to the children **[S25].**

Poole J concluded that the continuation of the proceedings will be **[S27]:**

a. highly unlikely to achieve any useful purpose;

b. counter-productive to the prospects of a positive relationship between CP and the boys in the future; and

c. detrimental to the children's welfare.

The court made no order on CP's application save for allowing for memory boxes and the provision of updates about the children by M to CP at suitable intervals.

Points of note

- Considers FJC's guidance on AB.
- Affirms the high bar required to prove allegations of AB.
- Niche case on the facts, but a helpful example of when it may not be worth determining allegations of AB.

Section 37 Directions in Private Law Proceedings

Re E (Section 37 Direction) [2025] EWCA Civ 470

Overview

The question arising on this appeal as set out at **[S3]** was whether Section 37(1) of the Children Act 1989 ('CA 1989') allows courts to direct investigations by a Local Authority and make interim orders only for children involved in proceedings, or also for non-subject children.

Background

The subject child in these proceedings was E. The Local Authority was involved with E's Mother prior to the baby's birth and had a range of concerns arising from her lifestyle, excessive drinking and behaviour.

Arrangements were made for the Mother and E to move to a mother and baby foster placement.

In January 2025, while waiting for the placement to become available, the Mother arranged for E to stay at the home of her sister – E's aunt, "A" – and her partner, "B", and their three children aged 4, 2 and 12 weeks. Social workers visited the property on several occasions and were concerned about the untidy, unhygienic and unsafe condition of the property.

On the day that E and the mother were due to move into the mother and baby placement, the , mother changed her mind and refused to go. The Local Authority then issued urgent care proceedings, and the court made an interim care order in respect of E. Concerns were raised at this hearing about the conditions of A's home and further safeguarding issues in respect of her three children.

At the case management hearing the Judge made a section 37 direction in respect of A's three children – the maternal cousins – which was supported and sought by the Guardian and made directions for a further hearing on 4 April 2025.

The judge's stance on section 37 was unwavering, asserting with confidence that its application was "straightforward and settled," and that section 37 allowed him to direct an investigation in respect of non-subject children.

The Local Authority acknowledged concerns about A's family but opposed interim supervision, as they were still working with the family, but would not stand in the way of a section 37 direction. They also expressed serious concerns about making orders for non-subject children without notifying their parents.

Notwithstanding, the judge directed a Section 37 investigation into E's cousins, made interim supervision orders and appointed a guardian. A further hearing was scheduled 8 weeks later; A and B were invited, M and her lawyer excluded.

E's Guardian was appointed as guardian for the three maternal cousins.

The Appeal

The Local Authority appealed on the following grounds which was supported by the mother, but not the Guardian (which were distilled by the COA as follows):

(1) The judge was wrong in law to make an order under s.37(1) and/or an interim supervision order under s.38(1) of the CA 1989 in respect of the three non-subject children in the proceedings in which the orders were made, nor the children of any party to the proceedings.

(2) The judge was wrong in law to make the orders in respect of the three children under s.37(1) and/or an interim supervision order under s.38(1) of the CA 1989 without notice to their parents or allowing them the opportunity to make representations.

The Court of Appeal allowed the appeal and set aside the section 37 direction and interim supervision orders. Lord Justice Baker delivered the leading judgment, with Lady Justice Elisabeth Laing and Lord Justice Underhill concurring.

Legal principles

The Court of Appeal considered the following:

Statute **[S21-33]**

– The CA 1989 including sections 1, 7, 8, 31, 37, 38 (1), s38 (10) 41, and 44–45

The Family Procedure Rules 2010 (FPR) **[S34-41]**

– rules 12.17, 12.3, 12.16, 16.3, 16.4, and 22.2.

Case law explaining the purpose of s.37 and proportionality in public law orders **[S42-47]**

- *Re CE (Section 37 Direction)* [1995] 1 FLR 26, **[at page 36H to 37A]**
- *CDM v CM and others* [2003] EWHC 1024 (Fam) **[at S123]**
- *Lambeth LBC v TK and KK* [2008] EWCA Civ 103, **[at S28]**
- *Re K (Children)* [2012] EWCA Civ 1549, **[at S22-25]**
- *Re K (Children)* [2014] EWCA Civ 1195 **[at S33]**
- *Re H-W (Children)* [2022] UKSC 22 **[at & 45].**

Legal Analysis/COA Judgment

The Court of Appeal shared the learned judge's concerns about A's children however, having considered the key legal provisions, they held that the judge's interpretation of section 37 was legally incorrect and that the procedural deficiencies rendered the orders unfair **[s64]** for the following reasons:

1. The judge misunderstood the scope of section 37, which applies only to children who are the subject of the proceedings. The phrase "*any family proceedings in which a question arises with respect to the welfare of any child"* means proceedings in which a question arises for determination about the welfare of a child, not proceedings in which the court becomes aware of a concern about the welfare of a child **[68].**

2. Section 37 is intended to assist the court in assessing options for dealing with the child who is the subject of the proceedings. It provides a "jurisdictional bridge" between private law proceedings and public law provisions, enabling the court to obtain a report about the subject child's circumstances **[69].**

3. The underlying principles of the 1989 Act delineates the boundaries between the court's powers and the local authority's responsibilities, emphasising the least interventionist approach consistent with the child's welfare. Section 37 and section 38 powers are exceptions to the general principles and should be interpreted narrowly **[71-72].**

4. The FPR and the earlier 1991 Rules do not provide for service of section 37 directions or section 38 interim orders on persons who are not parties to the proceedings. The absence of procedural safeguards for non-subject children indicates that section 37 does not extend to children who are not the subject of the proceedings. **[S79-80]**.

5. **Procedural Unfairness and/or incorrect**

No notice was given to A and B about the court's intention to make a section 37 direction or section 38 interim order. **[S84-85].**

"I have concluded that there is no power to make such an order in respect of a child who was not the subject of the proceedings. But if there were such a power, save perhaps in wholly exceptional cases, the parents of that child would have to be given notice. In the present case, no circumstances have been identified to justify making the interim supervision order without notice to the parents. As a result, A or B had no opportunity to respond to the allegations raised by the guardian or make representations on the proposed orders." **[S85]**

a. The judge failed to list the matter for an early hearing after making the order without notice, depriving A and B of an opportunity to respond promptly **[§86]**.

Further, the judge did not consider the requirement under section 38(10) to assess whether any party opposed to the order was able to argue their case fully **[S87]**.

b. The judge relied on oral submissions based on instructing solicitor had read from the computerised social services records and insufficient evidence, rather than proper written evidence, to make the interim supervision order **[S89]**.

c. The judgment lacked analysis of the welfare checklist under section 1(3) of the 1989 Act and proportionality considerations, essential when making public law orders **[S90, 92]**.

d. Even though the judge made ISOs rather than ICOs, the orders still constituted an interference with parental responsibility. The broader interpretation of section 37 proposed by the guardian would have allowed for even more intrusive orders, such as interim care orders or directions under section 38(6) **[S92].**

e. The appointment of the guardian to represent the three children was outside the scope of the law because the proceedings were not "specified proceedings" under section 41(6)(b) of the Act. The children had not been joined as parties to the proceedings, and the appointment was not made under FPR rule 16.4 **[S91]**.

The court allowed the appeal on both grounds and set aside the section 37 direction and interim supervision orders [S94].

The Court of Appeal stated that the judge should have notified the relevant Local Authority about the concerns regarding A's children and allowed disclosure of information from the proceedings to the social work team involved, rather than making a section 37 direction or interim orders.

<u>Take away points</u>

- The significance of this judgment extends well beyond the interpretation of section 37. It serves as a vital reminder of the importance of judicial adherence to statutory frameworks, procedural fairness, and proportionality in decisions affecting parental responsibility and children's welfare. Fairness must be upheld even in cases involving urgent child protection concerns.
- This judgment also reinforces the principle of the least intervention consistent with a child's welfare and highlights the need for collaboration between courts and local authorities in child protection matters.
- Counsel for the Local Authority made excellent appellate submissions **[S48-58]**, offering a clear and compelling legal framework that ultimately guided the Court of Appeal's decision. While it may be easy to criticise the guardian and the judge for their actions, the arguments presented in defence **[S60-62]** were equally compelling, highlighting the other side of the case. Both counsel's submissions are worth reading for a comprehensive understanding of the positions taken by both sides.

- The Court of Appeal also expressed sympathy with the judge's concerns **[S63],** acknowledging the difficult position he was in when trying to protect the welfare of the children.
- The context of this matter is rooted in public law, but its impact is pertinent in private law cases concerning a child where there may be other connected children who are not subject to proceedings.

Costs in Children Act Proceedings

RC v FP (No. 2: Costs) [2025] EWFC 124

Reported 8 May 2025

Overview

- The latest case on the issue of costs in family proceedings.
- Judgment explores the issues of costs specifically relating to FP's application for costs after RC was given permission to withdraw his applications for child arrangements and parental responsibility orders.

Background

The parties were in a relationship from 2016. In 2019, whilst pregnant with the father's child, the mother discovered the father was in a relationship with another woman, whom he had another child with, and this partner was very shortly to give birth to that second child. The relationship thereafter ended.

On 22 September 2022, the father applied for child arrangements and parental responsibility orders. An independent social worker was instructed. Contact was instigated in April 2023, with the last contact in April 2024.

On 29th August 2024, the father applied for permission to withdraw his applications. The mother did not oppose the application to withdraw for parental responsibility but did in relation to the child arrangements order. Permission to withdraw was given for both.

The mother raised an application for costs. In the mother's N260, she evidenced costs incurred of **£514,115.97.** It was accepted by mother's counsel that this was an "extraordinary amount" but was a product of the unreasonable approach taken by the father, prior to and during the proceedings. The father argued his conduct was not unreasonable and that the only costs he should pay were in relation to the mother's application for declaration of paternity.

Judgment

In coming to his conclusion, the Judge stated:

"This is not a straight-forward application to determine. It goes without saying that F's conduct towards M was dishonest and reprehensible. She was grossly deceived. Parts of F's behaviour have been rightly characterised as controlling, as by his deception he engineered M to behave in a way she would not have done otherwise. M is the victim of domestic abuse and F was the perpetrator of the same.

However, this is not the question I have determine.

The applicable costs rules require me to consider whether F's conduct within the meaning of CPR r44.2(4) justifies a costs order and where that conduct "includes" the matters set out in sub-rule (5) – and which are matters principally directed towards how a party has approached/pursued/defended the litigation (before as well as during the proceedings) and the extent to which they have succeeded in their application. In the context of private law children's proceedings my discretion is to be exercised if this conduct has been "reprehensible or unreasonable". This reflects Re T (Order for Costs) [2005] 2 FLR 681 in which Wall LJ emphasised the 'unreasonableness' must relate to the conduct of the litigation rather than the welfare of the child." **[S58-59]**

The court considered the father's conduct, including the timing of his applications, his attempts to seek confidentiality agreements, his late withdrawal of applications and his non-attendance at hearings.

The court considered that there were certain aspects of the father's conduct which did amount to unreasonable behaviour and justified the departure from the usual position of not awarding costs in private law children cases. However, such conduct did not amount to warrant an indemnity costs order. Accordingly, the father was ordered to pay 75% of the mother's costs, subject to detailed assessment on the standard basis (i.e. 50% of 75% of the full amount claimed) by mother. The father was ordered to make a payment on account of **£192,793.50** within 14 days.

St.Mary's

Points of note

- A case where F's 'unreasonable and reprehensible' behaviour/ conduct pre-action and during the proceedings justified a costs order.
- This case reiterates the key principles under s51 Senior Courts Act 1981, FPR 28 and PD28A, along with providing a helpful summary on a number of key cases including *R v R (Costs: Child Case)* [1997] 2 FLR 95; *RE R (A minor)* [1996] EWCA Civ 1120, *Re T (Order* R (A Minor) [1996] EWCA Civ 1120 (5th December, 1996) *for Costs)* [2005] 2 FLR 681; [2005] EWCA Civ 311 and more recently in *Re E (Children: Costs)* [2025] EWCA Civ 183 **[S27-57 of judgement].**
- Basis of assessment of costs: standard or indemnity basis? Legal principles outlined and considered by the court **[§98-109]**
- *RC v FP* [2025] EWFC 123 (first judgement) is worth a read. Court preserves anonymity to child's 18th birthday, on F's application to extend Transparency order. Court considered applications from BBC and a reporter to publish details regarding the case including parties' names. Useful summary of the statutory restrictions on publishing reports of proceedings concerning children.

St.Mary's

Relocation (Domestic and International)

Gareth Anderson

Speaker