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<b>These are the views of:</b>	<i>Welsh Women's Aid (Third Sector) - the national charity in Wales working to end domestic abuse and all forms of violence against women.</i>

### **About Welsh Women's Aid**

Welsh Women's Aid is the umbrella organisation in Wales that supports and provides national representation for independent third sector violence against women, domestic abuse, and sexual violence (VAWDASV) specialist services in Wales. Our membership comprises of 20 specialist support services. These services deliver lifesaving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence against children and young people, men and boys, trans and non-binary people, as part of a network of UK provision. As an umbrella organisation, our primary purpose is to prevent domestic abuse, sexual violence, and all forms of violence against women and ensure high quality services for survivors that are needs-led, gender responsive and holistic. We collaborate nationally to integrate and improve community responses and practice in Wales. We also award the Wales National Quality Service Standards (NQSS), a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as part of a UK suite of integrated accreditation systems and frameworks. (More information on the NQSS can be found [here](#)).

Welsh Women's Aid welcome the opportunity to comment on The Family Justice Council (FJC) draft guidance on responding to allegations of alienating behaviour. In regard to our stance on 'parental alienation' or 'alienating behaviour' which is used interchangeably within the draft guidance, we strongly align with the UN Special Rapporteur, who has urged states to explicitly prohibit the use of 'parental alienation' in judicial proceedings due to the significant vulnerability this place children and

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their mothers in, and that the use of this tactic by a perpetrator allows for gender based violence to continue<sup>1</sup>.

We believe that 'parental alienation' is being used to discredit allegations of domestic abuse and to explain why children may have anxiety or fear about contact with the abusive parent, despite the presence of domestic abuse being a significant reason for the child's reaction<sup>2</sup>. Research on 'Parental alienation' is dominated by few authors and therefore there is insufficient scientific substantiation regarding the identification, treatment and long-term effects<sup>3</sup>. It has been described as a "nuclear weapon" that is exploited within the adversarial legal system in the battle for child custody<sup>4</sup>. We are significantly concerned about allegations of 'parental alienation' shifting the focus away from domestic abuse. Whilst we believe that 'parental alienation' must be banned, if the Family Justice Council are committed to provide guidance on this topic, we want to ensure that guidance is strengthened to ensure the safety of adult and child survivors and therefore will be providing constructive responses. Creation of guidance on this topic alludes to the idea that 'parental alienation' is a legitimate concept. Welsh Women's Aid would like to distance from these terms and will continue to utilise quotation marks in reference to the proposed guidance.

### **The introduction and the scope of the guidance**

Within the introduction of the draft guidance, 'parental alienation' has been described as "vexed and highly emotive concept" and it continues to state how it has gained publicity and political attention with courts more likely having to consider and action upon allegations<sup>5</sup>. The way that 'parental alienation' is presented in the opening sentences gives the misconception that the argument for and against 'parental alienation' are equal. In reality, there are grave concerns internationally, that the use of this concept allows for further violence before and after separation<sup>6</sup>. We believe that the introduction must make clear that there is a lack of evidence on the concept and that there are examples of the harm that these allegations can cause, to ensure the reader is fully informed.

The introduction also addresses that allegations of 'alienating behaviour' may be made alongside other allegations such as domestic abuse, however, it must be made clearer that research highlights

<sup>1</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/070/18/PDF/G2307018.pdf?OpenElement>, page 9.

<sup>2</sup> <https://business.senedd.wales/documents/s74781/13.04.18%20Correspondence%20-%20Welsh%20Womens%20Aid%20to%20the%20Chair.pdf>, page 3.

<sup>3</sup> <https://www.gov.wales/sites/default/files/publications/2018-05/review-of-research-and-case-law-on-parental-alienation.pdf>, page 5.

<sup>4</sup> *ibid.*

<sup>5</sup> <https://www.judiciary.uk/wp-content/uploads/2023/08/For-Consultation-FJC-Draft-Guidance-on-Responding-to-allegations-of-alienating-behaviour-August-2023.pdf>, page 2.

<sup>6</sup> <https://www.ohchr.org/en/press-releases/2023/06/urgent-reforms-needed-protect-women-and-children-violence-custody-battles-un>.

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that claims of 'parental alienation' are 5 times more likely to be against a parent who has stated that they are a survivor of domestic abuse<sup>7</sup>. We strongly believe that the guidance must be reflective of the circumstances in which these allegations are made and how they are often used as a method to distract from the perpetration of abuse<sup>8</sup>.

The consequences of such allegations have been explored by the UN Special Rapporteur, who has highlighted that these allegations are highly gendered and are largely used against mothers universally<sup>9</sup>. These allegations often result in history of domestic abuse against mothers and children being ignored, biased custody decisions which leave the child and mother in harm<sup>10</sup> and children's voices not being heard. Whilst we appreciate that the draft guidance is written in the scope to assist the family court and to not explore the concept of 'parental alienation', we believe that there must be an understanding of the impact these allegations will have on the court process.

Research from Women's Aid Federation England in 2022, highlighted in some instances women had their children removed following an allegation of 'parental alienation'<sup>11</sup>, with similar instance being recently highlighted by the BBC<sup>12</sup>. Many survivors fear false allegations of 'parental alienation' or have disclosed being instructed by their solicitor to not mention that they had been a survivor of domestic abuse due to the risk of an allegation<sup>13</sup>.

These statements do not come as a surprise following the findings of the Harm Panel Report which highlighted extreme concerns of a pro-culture, adversarial family court system<sup>14</sup>.

Survivors are likely to be re-traumatised or further traumatised following an allegation of 'parental alienation' and are likely to require extra support to navigate the court system. One of the recommendation areas following the Harm Panel Report was safety and security at court, which highlighted access to special measures, specialist domestic abuse advocacy and support services, whilst other areas focus on training on domestic abuse<sup>15</sup>.

Finally, we believe that there must be an onus on the FJC to ensure that this guidance is not used as tool for perpetrators to raise allegations of 'parental alienation'.

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<sup>7</sup> <https://www.channel4.com/press/news/torn-apart-family-courts-uncovered-dispatches>.

<sup>8</sup> [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf), page 27.

<sup>9</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/070/18/PDF/G2307018.pdf?OpenElement>, page 4.

<sup>10</sup> *ibid*, page 3-6.

<sup>11</sup> <https://www.womensaid.org.uk/wp-content/uploads/2022/06/Two-Years-Too-Long-2022.pdf>, page 8.

<sup>12</sup> <https://www.bbc.co.uk/news/uk-66531409>.

<sup>13</sup> [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf), page 29.

<sup>14</sup> <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>.

<sup>15</sup> *ibid*, page 181-184.

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## Recommendations:

- The introduction must make it clear that there is not an equal narrative of those for and against the concept of 'parental alienation' or 'alienating behaviour'.
- The introduction must make clear the frequency of which allegations of 'parental alienation' are made when the other parent has disclosed domestic abuse.
- The recognition within the introduction that allegations of 'parental alienation' are highly gendered towards women.
- Within the robust case management section, ensuring that the impact of an allegation is clearly outlined in order for the court to understand how this may impact survivors.
- Within the robust case management section, ensuring that all measures to safeguard survivors who have been alleged of 'parental alienation' or 'alienating behaviours' can be signposted effectively.

## Understanding of domestic abuse

Within the section on evidence of alienating behaviours, it states that it is on the onus of the person making the allegation to evidence the 'alienating behaviour' and that it must be evidenced like other forms of abuse. Whilst we agree that the onus must be on the individual making the allegation, it must be clear that allegations of domestic abuse must always be explored first, when both domestic abuse and 'parental alienation' are alleged.

This is crucial as many survivors and victims have raised concerns that the perpetrator has used the family court to continue to abuse and control them, by keeping them in expensive, stressful, and adversarial litigation<sup>16</sup>. There must be a wider understanding of how just because the relationship had ended, this does not mean the abuse has stopped as separation can be a highly dangerous period for a survivor.

The Harm Panel Report highlighted how survivors felt that professionals concluded that the child had been 'alienated' rather than fully considering that the refusal of parental contact was a result of the abusive parent's behaviour<sup>17</sup>. Judges may acknowledge the occurrence of domestic abuse; however, they may also regard it as historic and in the past, and therefore there must be a wider

<sup>16</sup> [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf), page 20.

<sup>17</sup> <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>, page 78.





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understanding of how power and control can continue and form post-separation abuse<sup>18</sup> and how the family court can be weaponised. Without this understanding of the tactic's perpetrators use and the psychological manipulation, it is likely to go unnoticed by professionals.

As highlighted by the Domestic Abuse Commissioner, the family court must be robust in its ability to identify and engage with abusive tactics<sup>19</sup>. There must also be an understanding of how this could affect the child and young people's attitudes, outlook, and behaviours. We welcome the sentences which provides clarity that a child's behaviour is not evidence of the behaviour of an adult, however we believe that there must be clarity on what is meant by "demonstrate attachment behaviour (page 5)" as this remains vague and open to interpretation.

We welcome the clarification (page 7) that any allegation of alienation will fail if the parent making the allegation has been abusive. However, we believe this could be strengthened by highlighting the number of cases in the family court (49-62%) that have allegations or findings of domestic abuse<sup>20</sup> and added clarity that domestic abuse must be investigated first. Although this is a significant number of cases, there must also be recognition that domestic abuse may not be identified in the fact-finding stage or the survivor may not disclose for many different reasons, therefore there must be assurances that the rest of the court process remains domestic abuse informed through a Change that Last approach – trauma informed, strengths-based and needs-led.

Within page 5, which discusses the evidencing of 'alienating behaviour', we believe that there must be more onus on domestic abuse being a reason that the child does not want to see the parent making the allegation of 'parental alienation'. Under the Domestic Abuse Act 2021 and the Violence Against Women and Girls, Domestic Abuse and Sexual Violence (Wales) Act 2015, children are noted as survivors in their own right, and the guidance must acknowledge the impact and harm caused by seeing, experiencing, or witnessing all forms of domestic abuse. There also has been no mention within the guidance of how the court will attempt to identify reasons why younger children do not want to see the parent, if their verbal comprehension and understanding is limited.

The guidance also mentions that the court may direct Cafcass or a social worker to meet with the child to get their perspective, however it is crucial that all professionals that work within the family court must understand the dynamics of abuse, the tactics that are used by perpetrators and the risk involved. There must be training that is conducted on a multi-disciplinary basis across the family justice system to ensure a consistent approach.

<sup>18</sup> <https://www.theduluthmodel.org/wp-content/uploads/2021/10/Post-Separation-Power-and-Control.pdf>.

<sup>19</sup> [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf), page 26.

<sup>20</sup> *ibid*, page 4 and <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>, page 13.

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## Recommendations:

- It must be made clear in the introduction that allegations of 'parental alienation' or 'alienating behaviours' are often used as a form of post-separation abuse.
- There must be clarity on page 5 on what is meant by 'demonstrate attachment behaviour'.
- It must be made clearer in the guidance that evidence has highlighted that between 49% to 62%<sup>21</sup> of cases on child arrangement/child contact have allegations or findings of domestic abuse.
- The court system must be trauma-informed to ensure that if domestic abuse is not identified in the fact-finding stage or is not disclose by the survivor, that they are not further traumatised by their experience. You can find out more about the Change That Lasts approach which should inform practices when dealing with VAWDASV here: [Change That Lasts : Welsh Women's Aid \(welshomensaid.org.uk\)](https://www.welshomensaid.org.uk/change-that-lasts).
- There must be more recognition within the guidance that domestic abuse is a clear reason why children would not want to see the parent making the allegations of 'parental alienation'.
- Include how to work with younger children who do not want to see the parent making the allegation of 'parental alienation', who may have limited verbal comprehension and understanding.
- As per the recommendation made by the Harm Panel Report, there must be training delivered on a multi-disciplinary basis to ensure that all professionals and agencies within the family justice system have a consistent approach and understanding of domestic abuse.

## Sequence and gravity of allegations

As highlighted previously, we strongly believe that it must be made clearer within the guidance that where there are both allegations of domestic abuse and 'parental alienation', domestic abuse must be explored first. Due to the significant levels of domestic abuse in the family court, domestic abuse must first be explored to ensure that the perpetrator is not using the family court as a further means to control the survivor (by making an allegation of 'alienating behaviours').

The Harm Panel Report has highlighted that survivors often felt that counter allegations of 'parental alienation' were often made and that these were taken seriously, even in circumstances where there was no or little supporting evidence<sup>22</sup>. There were also concerns that there was a lower threshold

<sup>21</sup> <https://consult.justice.gov.uk/digital-communications/assessing-harm-private-family-law-proceedings/results/assessing-risk-harm-children-parents-pl-childrens-cases-report.pdf>, page 13.

<sup>22</sup> *ibid*, page 62.





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when raising allegations of 'alienating behaviour' compared to raising domestic abuse<sup>23</sup>. Within page 11, it discusses findings of harmful behaviour and suggest that both domestic abuse and 'parental alienation' are of equal weighting. Research from Women's Aid Federation England highlights how 19 children in 12 families between 2005 and 2015, had been killed by a parent who was a perpetrator of domestic abuse and where the circumstances related to child contact<sup>24</sup>. Barnardo's have highlighted how domestic abuse can impact children in a multitude of ways, such as poor mental health, using unhealth coping mechanisms or feeling guilt and blame for the abuse happening<sup>25</sup>. It is unclear how these harms caused by being a survivor of domestic abuse are of the same magnitude of the harms that would result from 'parental alienation', which has no scientific basis.

### **Recommendation:**

- Remove all references which equate domestic abuse and 'parental alienation' in terms of risk, relevance and weight in decision making.

### **Children as survivors of domestic abuse in their own right**

The guidance must assure that the voice of the child is not lost, and that they are rightfully seen as survivors in their own right. Whilst we recognise that the guidance makes it clear that the behaviour of the child is not evidence of the behaviour of an adult, we believe that more can be done to ensure that the voice and experiences of the child are at the forefront of any decision made. There is often prioritisation of a pro-contact culture regardless of the wishes of the child or the existence of domestic abuse<sup>26</sup>, which leads to unsafe contact. As highlighted in some of our previous discourse on this area, we believe that it is a mistake to assume that a child's reluctance to have contact with a parent is down to 'parental alienation' and the rejection of the abusive parent is often a coping strategy to try and keep themselves and their non abusive parent safe<sup>27</sup>. When decisions are made in favour of the parent who claims 'parental alienation', the child is likely to be exposed to further harm<sup>28</sup>. Under the United Nation Convention on the Rights of the Child, Article 12 states that parties must make sure that children who are capable of forming their own view, have the right to express this freely on matters affecting them and to be given due weight<sup>29</sup>. We believe that the guidance must

<sup>23</sup> *ibid.*

<sup>24</sup> <https://www.womensaid.org.uk/wp-content/uploads/2016/01/Child-First-Nineteen-Child-Homicides-Report.pdf>, page 7.

<sup>25</sup> <https://www.barnardos.org.uk/get-support/support-for-parents-and-carers/child-abuse-and-harm/children-affected-domestic-abuse-violence#:~:text=Long%2Dterm%20effects%20of%20domestic,lowered%20sense%20of%20self%2Dworth.>

<sup>26</sup> [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf), page 24.

<sup>27</sup> <https://business.senedd.wales/documents/s74781/13.04.18%20Correspondence%20-%20Welsh%20Womens%20Aid%20to%20the%20Chair.pdf>.

<sup>28</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/070/18/PDF/G2307018.pdf?OpenElement>, page 6.

<sup>29</sup> <https://www.unicef.org.uk/wp-content/uploads/2016/08/unicef-convention-rights-child-uncrc.pdf>, article 12.

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have more focus on promoting and ensuring the voice of the child, their safety and their best interest.

### **Recommendations:**

- Children must be seen as survivors in their own right, throughout the family court process, and this must be made clear within the guidance.
- The guidance must make clear that the voice of the child is promoted and ensured within the family court, and that their safety and best interested is at the forefront of any decision made.
- The impact of domestic abuse on children must be understood by all professionals and agencies within the family court.

### **Use of experts**

Following recent findings which have highlighted concerns around the use of experts, such as the use of unregulated experts which can cause further harm with poor quality reports, inappropriate diagnoses and recommendations for child removal<sup>30</sup>, we believe the guidance must reiterate the high standards which the court should adhere to. This is not only necessary to ensure the courts fairness and ability to keep children safe, but to prevent any further poor practise.

We strongly believe that Health and Care Profession Council (HPCP) registered psychologist must be used and that they must have an in depth understanding of domestic abuse, the signs of trauma, the tactics of perpetrators and how to work in a trauma-informed way. This is essential as domestic abuse is not always disclosed or is identified during the fact-finding stage.

### **Recommendations:**

- The use of Health and Care Profession Council (HPCP) registered psychologists and the monitoring of this.
- In the section on the use of experts, it must be highlighted that the professionals must have an in depth understanding of domestic abuse, the signs of trauma, the tactics of perpetrators and how to work in a trauma-informed way.

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<sup>30</sup> [https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC\\_Family-Court-Report-\\_2023\\_Digital.pdf](https://domesticabusecommissioner.uk/wp-content/uploads/2023/07/DAC_Family-Court-Report-_2023_Digital.pdf), page 64-66.







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## Conclusion

We remain significantly concerned on the use of 'parental alienation' in the family court and that the creation of this guidance may seem to increase the legitimacy of this concept even though it has no scientific basis. We have constructively commented on the guidance to ensure that the dynamics of domestic abuse are understood and that children are understood as survivors in their own right.

Whilst we strongly believe that 'parental alienation' must be rejected completely, we believe that the FJC must ensure that the voice of the child is present throughout the guidance and that the prevalence of 'parental alienation' as a counter allegation to domestic abuse is known and fully understood.

The family justice system must move away from an adversarial pro-contact culture; however, it is unclear if this can be achieved if 'parental alienation' continues to be a concept that is allowed to exist.

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