FAMILY Law Week

February 2026- Private Children Law Update on practice and procedure following the case law developments throughout 2025

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Notes

Please note that since the recording of this webinar, additional guidance on the topic of parental alienation has been delivered by the President of the Family Division in the case of ***Y (Experts and Alienating Behaviour: The Modern Approach)*** **[2026] EWFC 38**. As stated by Sir Andrew McFarlane at paragraph [75] of his judgment:

> *"Turning to alienating behaviour, having set out the ground in the early parts of this judgment, it is possible to summarise the modern approach in short terms:*
>
> *"i) As the full title to the FJC guidance makes plain, the reason for the court's investigation should be 'a child's unexplained reluctance, resistance or refusal to spend time with a parent', rather than the allegations that one or other parent may be making against the other;*
>
> *(ii) Where a child is reluctant, resisting or refusing to engage in a relationship with a parent or carer (element (i) of the three elements in paragraph 10 of the guidance), then the court's focus will move to element (ii) to consider whether that reluctance, resistance or refusal is a consequence of the action of the estranged parent, where it is alleged that that parent has been abusive to the child and/or caring parent;*
>
> *(iii) If it is found that the estranged parent has not behaved in a way in which the child's reaction can be seen as an 'appropriate justified reaction' [AJR] to such behaviour, or, for other reasons, it is found that the child's reaction is not caused by any factor such as a child's ordinary alignment, affinity or attachment [AAA] to the parent with care, then the court will move on to element (iii);*
>
> *(iv) It is only at the stage of element (iii) that the court will focus on whether the caring parent has engaged in alienating behaviours that have directly or indirectly impacted on the child, leading to the child's reluctance, resistance or refusal to engage with the estranged parent.*
>
> *(v) Thus, where domestic abuse is alleged, and there is a cross-allegation of alienating behaviour, if a fact-finding process is required, the focus of the fact-finding must be to first determine the issues of domestic abuse and secondly to consider whether the child's refusal to engage with the estranged parent is an 'appropriate justified reaction' to any abusive behaviour, or that what has occurred is the result of protective behaviour or a traumatic response on the part of the victim parent.*
>
> *(vi) Courts should not follow the route adopted by the judges in O v P and the present case in determining the issue of alienating behaviour on its own and without determining the underlying facts and, where it is alleged, the primary issue of domestic abuse;*
>
> *(vii) Courts should not appoint an expert to advise in cases where a child is reluctant, resistant or refusing to engage with a parent unless and until there is clarity and, if necessary, facts that have been found, as to the parents' past behaviour towards each other and the child and, if domestic abuse is proved, whether the child's reaction to that behaviour is an appropriate one."*