**** **Practice Guidance on Private Law**

**Name of Author: Sarah Jenner**

**Name of Senior Manager Approving: Penny Ademuyiwa**

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# Introduction

This guidance is intended to provide detailed information about private law proceedings and the expectations of Social Workers, who are required to write reports under Section 7 or Section 37 of the Children Act 1989.

It will provide information about best practice and signpost to other resources which can provide more detail. In addition, it will provide information and case law direction around alienating behaviours and how to respond to these.

# Acknowledgement

Many thanks to Cafcass for their advice and support with this guidance.

# Glossary

* The main legislation in relation to children remains [Children Act 1989](https://www.legislation.gov.uk/ukpga/1989/41/contents) .
* **Authorised Persons** who are the Local Authority or NSPCC are the only bodies who can apply for Care Orders
* **CAFCASS** stands for **Children and Family Court Advisory and Support Service.** Cafcass represents the interests of children and young people in family court cases in England. Family Court Advisors and Guardians may be asked to work with families and then advise the court on what is considered to be in the best interests of children and young people in private law cases.
* **Parental responsibility (PR)** is the rights and obligations of a person who has parental responsibility for a child. In practical terms, it means the power to make important decisions about a child, for example, where they live, where they go to school, and what health treatment they receive. The term tries to focus on the parents’ duties toward a child rather than their rights. Mothers automatically have PR and Fathers who are married or in a civil partnership with the mother automatically have PR. PR can be granted by agreement or by a variety of court orders for example Special Guardianship Order or Parental Responsibility Order.
* **Care Order Threshold** isset out in Section 31 Children Act 1989 and is met when it is proved that a child is suffering or likely to suffer significant harm as a result of care being given to the child at home or is beyond parents’ control.
* **No Order Principle** is when the Court, when considering making an Order, must consider whether the Order is in the best interests of the child and better for them than making no order at all.
* The **Welfare Checklist** is the overriding consideration in family proceedings to the question of “what is in the best interests of the child/children?”. In answering this question, the Court and other professionals are guided by criteria in Section 1 of the Children Act 1989.

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

* **Residence** (previously known as custody) is the term used to describe where a child will live for the majority of time.
* **Resident parent** is the parent who the child lives with for the majority of time.
* **Non-resident parent** is the parent with whom the child does not reside for the majority of time. When a child spends equal time with both parents, for example one week with one parent and another week with the other the parent, is said to have shared residence of the child.
* **Child Arrangements Programme** applies when a dispute occurs between divorcing or separating parents over the arrangements concerning their children. The purpose of the CAP is to help parents reach child focusses agreements with the aim of resolving cases outside of court. This will include the consideration of a Mediation Information and Assessment Meeting (MIAM). There are exceptions to this notably where there is domestic abuse. [Mediation and dispute resolution | Cafcass](https://www.cafcass.gov.uk/parent-carer-or-family-member/my-family-involved-private-law-proceedings/alternatives-time-and-energy-needed-go-court/mediation-and-dispute-resolution)

# The Family Court and Orders

The Family Court in England make decisions about children where these cannot be made by agreement. The main legislation relating to children remains the Children Act 1989. [Children Act 1989](https://www.legislation.gov.uk/ukpga/1989/41/contents)

Family matters are dealt with in the Family Court or in the Family Division of the High Court. The Family Court judiciary is made up of lay magistrates, District Judge (Magistrates Court), District Judges, Circuit Judges and High Court Judges. The court is based on 43 local centres (each presided over by a ‘Designated Family Judge’) and at the Royal Courts of Justice.

Magistrates undergo specialist training before they sit in the Family Court, where procedures are very different from the criminal courts. For example, the Family Court is private where no members of the public or press are allowed.

Judges of different ranks, from magistrates without legal qualifications to High Court Judges, sit in the Family Court. They are assigned cases based on the type of family dispute, and how complicated this may be.

Appeals against a decision of one judge will often go to a more senior judge within the Family Court. If the original judge was already senior, the appeal will have to be heard by the Family Division of the High Court, or even the Court of Appeal above that.

The Family Court make a variety of orders depending on the circumstances of the particular child and the issue that the court are required to adjudicate and decide on.

Main types of Family Law Court Orders

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| Type of Order | Location | Description |
| Parental Responsibility Order | Section4(1)(c) Children Act 1989 | An Order which unmarried fathers can apply for when the mother refuses to allow the father to be registered or re-registered on the birth certificate or refuses to sign a Parental Responsibility Agreement with him. |
| Child Arrangements Order | Children and Families Act 2014 | A Child Arrangements Order decides the arrangements for whom a child is to live with, spend time with or otherwise have contact with and where a child is to live, spend time or otherwise have contact with any person. |
| Prohibited Steps Order | Section 8 Children Act 1989 | An Order that can be granted by the court to stop one parent from exercising their parental responsibility in a way that is not in the child’s best interests. |
| Specific Issues Order | Section 8 Children Act 1989 | An Order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child. |
| Special Guardianship Order | Section 14A Children Act 1989 | An Order made by the Family Court that places a child or young person to live with someone other than their parent(s) on a long-term basis. The person(s) with whom a child is placed will become the child’s Special Guardian. |
| Non-Molestation Order | Section 42 Family Law Act 1996 | A Non-Molestation Order prevents the person subject to the order from using or threatening violence against the person applying for the order (and if applicable, their child/children) or intimidating, harassing or pestering. |

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# Definitions and differences between private and public law

**Private Law**

Private Law is when private citizens ask the Family Court to intervene in family life to resolve disputes and protect children. An example of this is divorce where parents may need the help and support of the Court to work out where their children live and what family time arrangements (also known as contact) are between parents that children live with and see or other family members.

It can be more difficult to access Legal Aid in private law proceedings, although it is available in some circumstances. For example, under the Family Law Act 1996 if an application is made for a non-molestation order.

**Public Law**

Public Law is where the State intervenes in family life to safeguard and protect children.

If a local authority believes a child is at risk of significant harm, they can apply to court for permission to take action to protect the child. This can include applying for Emergency Protection Orders, which are used to ensure the immediate safety of a child by taking them to a place of safety, or by preventing their removal from a place of safety.

Public Law cases are also known as Care Proceedings and are brought to court by local authorities or an authorised person (currently only the NSPCC), when they are concerned about the care children receive and whether they are suffering or at risk of suffering significant harm.

Public Law cases are heard by the appropriate level of judiciary in the Family Court and may be reallocated as the proceedings develop. The level will depend on the complexity of the issues, whether there are any criminal investigations, an international element, or if there is complex case law to be considered.

Public Law can often end with a Private Law outcome or disposal, for example, a Special Guardianship Order (SGO) or Child Arrangements Order (CAO). The Children Act 1989 contains various provisions aimed at ensuring that, with limited exceptions, a child is not subject to both private and public law orders at the same time.

# S7 Reports and S37 Reports

If during a Private Law application, the court feels that children’s social care needs to become involved and provide advice to the court they can request a report from a local authority Social Worker under S7 or S37 of the Children Act.

The main difference between a section 7 report and a section 37 report is that a section 7 report is prepared where there is a**private law dispute between the parents and or other family members**, whereas a S37 report **is when the court believes that public law involvement may be needed by way of intervention from the local authority**.

**Section 7 Report**

The Court will direct a social worker to compile a section 7 report. This can either be from the local authority in which the child is residing or a social worker from [Cafcass](https://www.kabirfamilylaw.co.uk/what-is-the-role-of-cafcass/). The author of the report will be a qualified professional social worker with experience in dealing with children and families.

The policy on whether Cafcass or a local authority should prepare a Section 7 report is set out by the Association of Directors of Children’s Services and Cafcass [ADCS Cafcass Section7s](https://adcs.org.uk/assets/documentation/ADCS_Cafcass_Section_7s_FINAL.pdf)

This states:

The court should be advised to order the local authority to complete the section 7 report if:

a) a child is the subject of an open and active statutory social work case with a local authority or

b) in the last 12 weeks, before the section 7 is ordered, there has been a statutory social work assessment of a child’s welfare in accordance with the Children Act 1989 (sections 17 or 47) or

c) in the last 12 weeks, before the section 7 is ordered, the child has been the subject of a child in need or child protection plan.

In addition, if the local authority has had extensive historical involvement with a child and their family Cafcass may also request that the S7 Report is completed by them.

The Family Procedure Rules Practice Direction Report 12B requires the Court’s direction to be sent to the local authority’s legal department (as well as the allocated Social Worker if known).

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| **Practice Direction 16A requires that a Social Worker writing a S7 should:**   * Carry out necessary investigations. * Contact and seek to interview such persons as the court directs or as appear appropriate to the officer. * Obtain appropriate professional assistance or any assistance directed by the court. * Explain to the child, in an age-appropriate manner, the contents of the report. * Attend court if directed to do so. * Advise the court of the child’s wishes and feelings. * Advise the court if they think that the joining of a person as a party to the proceedings would be likely to safeguard the interests of the child. * Consider whether it is in the best interests of the child for the child to be made a party to the proceedings, and if so, notify the court of that opinion together with their reasons. |

There is a standard template to be used for a [Section 7 Report](file:///C:\Users\HilleA02\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\DMJ60ZKE\Forms\Practice%20Guidance%20(proceduresonline.com)).

**Section 37 Report**

A section 37 direction requires a local authority to investigate a child’s circumstances (section 37(1), Children Act 1989).

The court must believe that there is a realistic prospect that a child is or may be likely to suffer significant harm to request a report under section 37.

The relevant local authority for section 37 purposes is the authority in which a child is ordinarily resident (section 37(5), Children Act 1989). If the child does not have an ordinary residence, it is the local authority area where the circumstances giving rise to the direction arose.

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| **When writing a S37 report a Social Worker for the local authority must consider whether it should take any of the following actions:**   * Apply to the court for a Care or Supervision Order under section 31 of the Children Act 1989. * Provide services or assistance for the child or the child’s family. * Take any other action with respect to the child. |

The local authority must provide a written report to the court in the first instance, and it is then the duty of the court to send it to the relevant parties, e.g., parents. It is good practice for the social worker to share the report, including their findings and recommendations, with parents prior to filing the report with the court. This ensures that any inaccuracies are rectified swiftly. The social worker should inform the child of the recommendations.

The court cannot compel an authority to apply for a Care or Supervision Order (see above). If a local authority decides not to apply for an order, section 37(3) requires it to inform the court of:

* The reasons for deciding not to apply for an order.
* Any services or assistance it has provided, or intends to provide, for the child or the child’s family.
* Any other action it has taken or proposes to take.

The timescale for providing this information is eight weeks from the date of the court’s direction, although the court may shorten or extend the deadline (section 37(4), Children Act 1989).

If the authority decides not to apply for a Care or Supervision Order, it is required by section 37(6) to consider whether it would be appropriate to review the child’s circumstances and if so, arrange a date to review their decision. All this should be recorded in the child’s file.

**The Family Court’s power to make an Interim Care Order**

[Section 38](https://www.ccinform.co.uk/legislation/children-act-1989-14/section-38-interim-orders/) of the Children Act 1989 permits a court, when making a section 37 direction, also to make an Interim Care Order or Supervision Order. The court can only do so if it is satisfied that there are

1. reasonable grounds for believing that the child concerned is suffering, or is likely to suffer significant harm, and
2. that the harm is or would be attributable to the care given (or likely to be given) to the child, not being what it would be reasonable to expect a parent to give to him. In other words, reasonable grounds for believing the public law threshold criteria in section 31 of the Children Act 1989 is met.

The court will then make a date for a further hearing for review to consider the next steps. In these circumstances, a Legal Planning Meeting should be considered to obtain legal advice.

There is a standard template for a [Section 37 Report](https://kentchildcare.proceduresonline.com/local_resources.html).

# Good Practice points to consider when writing a S7 or S37 Report

The following good practice points have been identified from case law D v E (2016):

* Assess the parenting and analyse the ability to meet the child’s needs.
* Speak to parents, carers (including proposed), other members of the household, and any other people who have important information about the child’s welfare needs.
* Set out what was done to obtain the views of relevant people and what observations have been undertaken.
* Complete work with the child to understand their genogram and important people.
* Address and set out the factors set out in the welfare checklist at S1 of the Children Act 1989.
* Police and DBS checks
* Where possible, the child must be seen, without delay and their views obtained.
* The report should set out information that demonstrates the author is suitably qualified and experienced.
* Proofread for grammatical and factual errors.

Other points to consider are:

* Remember the primary purpose of the report is to tell the child’s story, their lived experience, wishes, feelings and views, and to advise the court how the child can best be helped in the future. It is really important to focus on the ‘so what’ and impacton the child. Think of it as an **impact report**.
* All relevant children should be considered individually in the report, remembering different children may be impacted differently by the same circumstances. Each child will have different views too and different relationships with the non-resident parent.
* Consider who will be reading the report, the court, parties including parents, but most importantly, the child who may read the reports now or in the future.
* Speak to both parents and all interested parties, including professionals.
* All assessments need to be undertaken in person and houses and bedrooms viewed, apart from exceptional circumstances. For example, where children are living abroad. In these circumstances, consideration needs to be given to social work services in that country or a referral to [Children and Families Across Borders](https://www.cfab.org.uk/) (CFAB).
* Use respectful language that explains the concerns and the impact on the child.
* Parents and other adults should be referred to formally with their title (Ms, Mr, Mrs, etc.). Children should be referred to by their full names initially and thereafter, by their first names. Professionals should be referred to by their title (Dr, Ms, Mr, Mrs, etc.) with their professional role identified. If a party requests to instead be referred to in a certain way, for example gender neutral language, this should be respected and noted within the statement.
* Confusion can arise if there is more than one family member with the same name so care will need to be taken to identify the right person e.g., Mrs Smith (mother), Mrs Smith (Maternal Grandmother), Mrs Smith (Maternal Great Grandmother). First names could be used instead of full names in these circumstances but there needs to be a rationale and clarity, as well as full names at the beginning.
* A balanced argument with strengths, concerns, evidence and analysis will fully inform the Court of the issues in dispute and potentially limit the cross examination of evidence. This will avoid delay for the child and reduce the length of time for any anxiety they may be experiencing about the outcome.
* Be mindful of the ‘no order’ principle. It is always important to consider if the order under consideration is better for the child than making no order at all.
* Consider the balance between the wishes and feelings of a child weighed against their best interests. If any decision is made against the child’s wishes, a clear rationale, which can be understood by the child, must be given and clearly evidenced.
* Be succinct and do not repeat information. The use of a chronology which focuses on key points to the issues should be considered. This could be referred to, thereby avoiding duplication of information.
* The report should reflect the social work knowledge gathered for the child(ren) and their family.

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| **Evidence used in the report can be:**  Primary – the direct knowledge of the social worker, for example through observation of the family members, observation of the child’s environment(s) and discussions with the child(ren)/ family members during your own social work assessments. Provide selected, specific examples from your observations and assessments to support your analysis and recommendation, making sure these are relevant to the specific order for which you are applying.  Secondary – information from other professionals, e.g., the Health Visitor or the child’s teacher; analysis of this information and of evidence from relevant previous assessments.  Third party information – a statement from the third party (such as a neighbour) is the best way to present third party information to the court, where this can be obtained. ‘Hearsay’ evidence, such as a report by a neighbour, or a family member, is admissible in the Family Court, but it is then a matter for the court as to how much weight is placed upon it. |

* Facts should be confined to those relied upon in the report. Ambiguous language or phrases such as “it is thought that...”) should be avoided.
* An indication of whether the facts are accepted or contested by the parties should be given, where possible, although any decision or agreement on disputed facts is a function of the Court.
* Avoid using terminology such as the child “disclosed” or “alleged”, instead use the “child said/stated”.
* Only include relevant events and information about the family, which can be supported by primary, secondary or third-party evidence, as outlined above. There may have been previous concerns that are no longer relevant, or that can be summarised within the chronology.
* Analyse and explain what, in your opinion, the information you have gathered means for the child(ren), and the impact it has had on their lived experience and/or wellbeing and how this information has been considered in your assessment of risk for the child(ren).

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| For example (names would be used):  “on the three visits to the family home in March, mother was asleep on my arrival and the three youngest children were eating breakfast prepared by their older brother. This level of caring responsibilities and other caring roles he does for his brothers, are not appropriate for his age and this could have a detrimental impact on his time to be a child himself and his educational and social development and attainment. His siblings will become confused about his role in the family and will look to their brother as a parent.” |

# Use of experts

Children’s Social Care Social Workers and Managers are not generally involved in the appointment of experts in Private Proceedings.

However, should the need to consider an expert arise, guidance around their use including deciding whether to give permission to appoint an expert can be found in Part 25 Family Procedure Rules subsection (1), (3) or (5). [The Family Procedure Rules 2010 (legislation.gov.uk)](https://www.legislation.gov.uk/uksi/2010/2955/part/25/made)

Research in Practice provides additional information regarding the instruction of experts [Use of expert evidence | Court orders and pre-proceedings (rip.org.uk)](https://coppguidance.rip.org.uk/pre-proceedings/use-of-expert-evidence/), which is aimed at restricting the use of experts and reducing the number of experts.

# Use of research

When using any research to inform your decision-making ensure that:

* It informs, not dictates, decision-making and is appropriately applied to the child’s/family’s circumstances.
* Avoid simplistic or sweeping statements, instead using the research to help illustrate the advantages and disadvantages of an argument.
* Use it from the start and throughout your report.
* Avoid seeking research to support your opinion but instead use it to widen and inform your perspective.
* Ensure the research is up to date, and you explain how it is relevant.
* The research can be explained and understood, without using jargon.
* Any research used is clearly referenced and sources are available to the court and parties.
* Look for any opposing arguments to the research so you give a balanced view.

(Baynes and Cook, 2017)

# Working with conflict and hostility between parents

When parents decide to separate or no longer live together, this represents a significant change in the lives of everyone in the family, which can involve strong feelings triggered by loss and grief. Even in circumstances where there is consensus around this decision this can result in conflict and hostility while everyone comes to terms with their new situation.

It is important not to lose sight of the presence and impact of domestic abuse, which is harmful to children. There is specific guidance from the Family Procedure Rules Practice Direction 12 about how the courts and Cafcass are required to respond to concerns around domestic abuse in private proceedings, including coercive control. [PRACTICE DIRECTION 12J - CHILD ARRANGEMENTS & CONTACT ORDERS: DOMESTIC ABUSE AND HARM (justice.gov.uk)](https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12j)

The Domestic Abuse Act (2021) has provided further protection to people who experience domestic abuse and strengthened measures to tackle abuse. The definition of domestic abuse now incorporates a range of abuses beyond physical including emotional, coercive or controlling behaviour and economic abuse. It states that it does not matter if there is a single incident or ‘course of conduct’ and includes a child who sees, hears or experiences the effects of the abuse.

Further information can be found in the Domestic Abuse Guidance [Practice Guidance – Domestic Abuse Assessment Tool](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fsway.office.com%2F4KETDuC7IHHGtVq2%3Fref%3Demail&data=05%7C02%7CSarah.Jenner%40kent.gov.uk%7C4c42003b14ca4f56131408dc20bb0407%7C3253a20dc7354bfea8b73e6ab37f5f90%7C0%7C0%7C638421234790903057%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=2zYD%2Fiswl2fQil9KNmVI3Ou9YWcIhn3bfcjCMNAFNck%3D&reserved=0), and the [Cafcass](https://www.cafcass.gov.uk/grown-ups/professionals/ciaf) website.

The further guidance and Domestic Abuse Tool provides support to understand how to recognise different types of abuse and are underpinned by the Duluth Model which helps to understand the use of power and control.

The guidance and Tool provide space to consider what impact the domestic abuse is having on the family and puts the focus clearly on the child, that the change in law now recognises as being victims in their own right.

Social workers can support parents to reduce children’s exposure to hostility and conflict in the following ways.

1. Help parents to put their children first and understand how distressing it can be for their children when they hear their parents criticising or blaming each other and that the impact is greater when the conflict is frequent, intense or poorly resolved.

Getting caught in the middle of two warring parents can affect children’s emotional well-being and then impact on their own peer relationships, academic achievement or getting into trouble at school and physical health.

Explaining to parents both the short- and long-term impact of being exposed to hostility or conflict including psychological difficulties shown as behavioural difficulties including aggression, anxiety and depression, feelings of tiredness or becoming ill more frequently can help improve parents understanding of the impact of parental conflict on their children.

Parents may be unaware of the impact of hostility and conflict on their children, they may think their children are unaware or do not care and simply raising awareness and retaining a focus on the children can be helpful.

Cafcass Family Forum has compiled some information on the impact of parental separation and court proceedings on children, which include some helpful tips about the impact on children. [Cafcass-Family-Forum-top-tips-for-parents-on-the-impact-of-parental-separation-and-court-proceedings-on-children (5).pdf](https://www.cafcass.gov.uk/sites/default/files/2023-06/Cafcass-Family-Forum-top-tips-for-parents-on-the-impact-of-parental-separation-and-court-proceedings-on-children%20%285%29.pdf)

The Family Justice Young People’s Board have compiled some top tips for parents to help them think about matters from their child’s perspective. [Top Tips for Parents Who Are Separated](https://www.gov.wales/sites/default/files/publications/2021-02/family-justice-young-peoples-board-top-tips-for-parents-who-are-separated.pdf)

1. Supporting parents to make clear arrangements and plans that will reduce the areas for conflict. This can be done where appropriate through the Child Arrangements Process or there is a helpful guide from Cafcass to help parents put together a clear plan. [How a Parenting Plan Can Help](https://www.cafcass.gov.uk/parent-carer-or-family-member/applications-child-arrangements-order/resources-help-you-make-arrangements-are-your-childs-best-interests/how-parenting-plan-can-help)

Having a formal written plan will support clear communication, ensure that there is a shared understanding of the care children need when living in different households and provide a basis for recognising differences and agreeing compromise. This can be effectively used as a supplement to safety planning to reduce conflict.

There are other useful tools such as Apps which can be used support indirect communication to facilitate shared care arrangements such as pocket money, school runs or after school clubs. These can have several helpful features such as private numbers not being shared or a “tone meter” which provides an alert if the tone is not helpful. The Apps are likely to require a fee although there may be options for a fee free period that could be explored.

1. Consider undertaking some restorative work to help parents understand different perspectives and reach compromises. Some useful questions using this approach might be:

* What happened
* Who has been affected/upset
* What do you need to make things better
* How can we move forward

Training on using [Restorative Approaches](https://www.delta-learning.com/course/view.php?id=2055) can be accessed via Delta.

1. Consider signposting to family mediation. Further information can be found on the Government website. [Get help with child arrangements](https://helpwithchildarrangements.service.justice.gov.uk/)

For most people, these strong feelings will resolve over time, and with some support or restorative work. However, for others the feelings remain very intense and do not resolve over time and the conflict remains harmful to their children.

Cafcass define harmful conflict as “conflict between parents or those adults important to the child that is detrimental to their welfare. Unlike domestic abuse, harmful conflict is the responsibility of both parents”. ['Harmful conflict' | Cafcass](https://www.cafcass.gov.uk/parent-carer-or-family-member/applications-child-arrangements-order/how-your-family-court-adviser-makes-their-assessment-your-childs-welfare-and-best-interests/harmful-conflict)

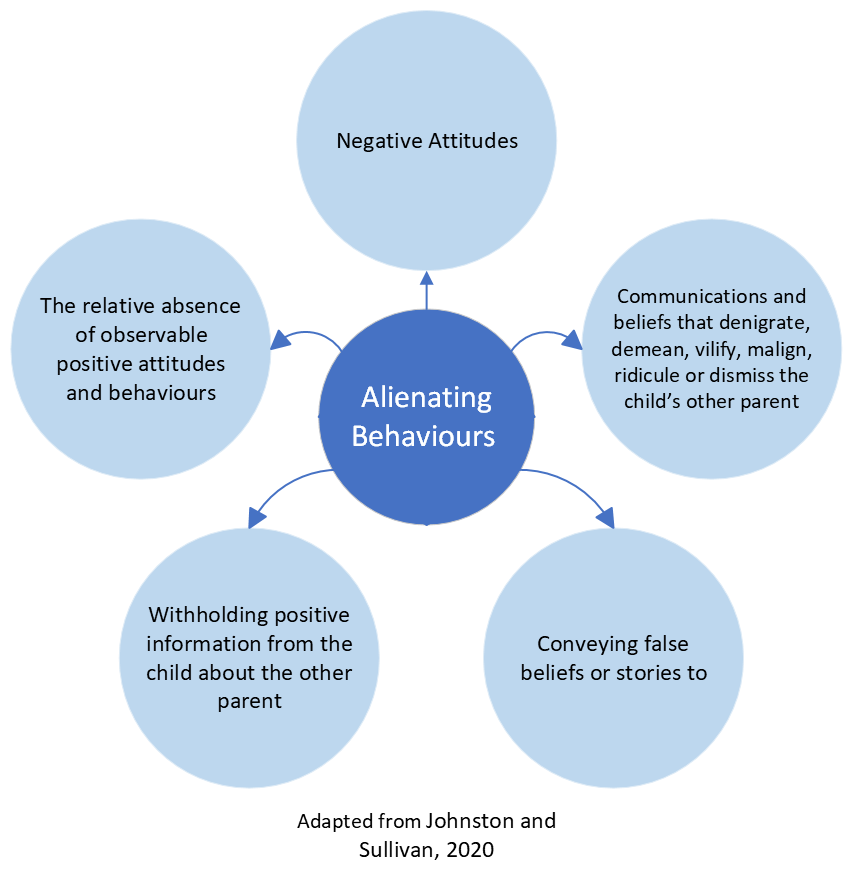
It can be short or long term and vary in its intensity and impact. Cafcass identify the following as indicators of harmful conflict:

* a high degree of mistrust
* difficulty in managing thoughts and feelings of hurt and anger
* the sense of a threat that things will get out of control
* ongoing difficulties in communication and co-operating positively in the interests of the child
* loss of focus on the child
* prolonged and repeat court proceedings.

# ‘Alienating behaviours’

On occasions concerns about the nature and impact of the enduring hostility can give rise to questions about alienating behaviours.

The view of Cafcass is that there is no single definition of alienating behaviours, but they use the term to describe behaviours where one parent or carer expresses an ongoing pattern of negative attitudes and communication about the other parent or carer that have the potential or intention to undermine or even destroy the child’s relationship with their other parent or carer. These behaviours can result from a parent’s feelings of unresolved anger and a desire, conscious or not, to punish the other parent or carer. Alienating behaviours range in intensity and their impact on children.



It may be helpful to focus on considering the impact of the parent’s behaviour and how this is affecting the child, notably in hostility or refusal to have a relationship, speak to or see their parent. The signs of distress are the same as emotional abuse and can manifest in different ways. An example could be a child anxiously scratching their skin.

It can be helpful in the first instance to be naming with the parent displaying the alienating behaviour that their refusal to give emotional permission to have an ongoing relationship with the other parent is impacting on their child. It may be that they are unaware of the impact and failure of parental responsibility, and raising awareness gives an opportunity for parents to change.

Conversely, it is also important to consider that the child is not wanting to see or have a relationship with a parent for their own clear and understandable reasons.

Alienating behaviours can include (but are not limited to) one parent:

* repeatedly or constantly criticising or belittling the other.
* unjustifiably limiting or restricting contact or undermining contact.
* forbidding discussion about the other parent.
* creating the impression that the other parent dislikes or does not love the child or has harmed them or intends them harm.
* denying emotional responsiveness to the other parent or spurning, terrorising, isolating, corrupting, or exploiting them.

Consideration should be given to the need for a Fact-finding Hearing in order for the court to hear evidence and reach a judgement about this.

**Recent guidance on the need to consider the impact of alienating behaviours in the context of the welfare needs of a child:**

Working with families where alienating behaviours are identified can be complex and sensitive and present themselves on a spectrum with varying impact on individual children which requires careful nuanced and holistic assessment.

Recent case law has provided some guidance for how to respond where parental alienation is felt to be a feature in the case of [Warwickshire County Council v The Mother and Ors [2022] EWHC 2146 (Fam)](https://www.bailii.org/ew/cases/EWHC/Fam/2022/2146.html).

This legal case considered the consequences of ‘parental alienation’ in circumstances where an Interim Care Order had been made but the child remained implacably hostile to her placement and the interim Care Plan aimed at re-establishing her relationship with her father.

This caselaw indicates that even where the presence of alienating behaviours is established a carefully balanced and nuanced approach needs to be taken when responding and considering long term care options for a child.

In this case, Judge Leven concluded that “in some cases there is no solution to a problem, only a choice between two not good outcomes, and the need to choose the “least worst outcome”. [Parental alienation and care proceedings: Warwickshire County Council v The Mother & Ors [2022] EWHC 2146 (Fam) - Childrens (ccinform.co.uk)](https://www.ccinform.co.uk/case-law/parental-alienation-and-care-proceedings-warwickshire-county-council-v-the-mother-ors-2022-ewhc-2146-fam/)

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| The case of Warwickshire County Council v The Mother & Ors [2022] EWHC 2146 (Fam) established the following practice points:   * In cases of alleged parental alienation, early fact finding is important. * Any protection measures need to avoid an outcome which places the child at greater risk of harm. * Practitioners should consider whether reunification plans have a reasonable prospect of being achieved. |

The President of the Family Court, Sir Andrew McFarlane has issued interim guidance to judges to ensure that only regulated experts should be appointed by the court so that psychological assessments of these behaviours are based on a “robust” and “reliable body of knowledge or experience” and the Court should particularly scrutinise assessments carried out by experts where there is a conflict of interest with a recommended treatment package.

[FJC interim Guidance use of experts in cases with allegations of alienating behaviours](https://www.judiciary.uk/wp-content/uploads/2022/05/FJC-interim-Guidance-use-of-experts-in-cases-with-allegations-of-alienating-behaviours.pdf)

Guidance from the Family Justice Council on responding to allegations of alienating behaviour which is currently in draft [For Consultation - FJC Draft Guidance on Responding to allegations of alienating behaviour (August 2023) (judiciary.uk)](https://www.judiciary.uk/wp-content/uploads/2023/08/For-Consultation-FJC-Draft-Guidance-on-Responding-to-allegations-of-alienating-behaviour-August-2023.pdf) advises that:

*“The court must remind itself that the welfare of the child/children remains paramount. A parent from whom a child might be moved is highly likely to perceive the prospect of a transfer of care as punitive. It may affect their presentation in court as well as their mental health. Whilst non-compliance with a court order is a serious matter the court must not conflate non-compliance with welfare. Non-compliance with a court order is not, of itself, a reason for a transfer of care albeit non-compliance and capacity to take up and act on professional support and guidance may be relevant factors in the welfare determination.”*

# Management Oversight and Supervision

Working with conflict, hostility and alienating behaviours is complex and emotionally laden. It may bring up issues from worker’s own experiences or unconscious bias that may require time in supervision to reflect on the complexities and provide opportunities to rehearse difficult conversations with managers and supervisors using practice shaping questions.

It is important to have support to ensure any assessment remains dynamic, an open mind is kept, and workers are not drawn into one parent’s particular narrative. This will help to keep that the child or children at the centre of the work, including considering cultural factors and impact on identity.

Consideration could be given to group or joint supervision or undertaking an appreciative inquiry to support understanding of what is really happening for the child.

# Further resources

Communities of Practice on Impact of Parental Alienation and Conflict Communities of Practice Teams Channel held on 26.01.2023

Cafcass [Child Impact Assessment Framework](https://www.cafcass.gov.uk/professionals/our-resources-professionals/child-impact-assessment-framework-ciaf)

Cafcass [How-it-looks-to-me.pdf](https://www.cafcass.gov.uk/sites/default/files/2023-09/How-it-looks-to-me.pdf)

Cafcass [Childrens-resistance-or-refusal-to-spending-time-a-parent-guide](https://www.cafcass.gov.uk/sites/default/files/2023-09/Childrens-resistance-or-refusal-to-spending-time-a-parent-guide%20%282%29.pdf)

ADCS and Cafcass Private law/Section 7 template resource pack [Section7\_Template\_Resource\_Pack\_web.pdf (adcs.org.uk)](https://adcs.org.uk/assets/documentation/Section7_Template_Resource_Pack_web.pdf)