

Cafcass response to [Family Justice Council Consultation: Draft Guidance on responding to allegations of alienating behaviour](#)

Cafcass (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. Cafcass is the largest employer of child and family social workers as Family Court Advisers and Children’s Guardians. Cafcass has a statutory duty to safeguard the welfare of children in family law proceedings in England. We make sure that their wishes and feelings are heard and advise the courts about what is in their best interests. We are independent of the courts, local authority children’s services, education, and health authorities.

Cafcass welcomes this draft guidance to help guide judges and practitioners in responding to allegations of alienating behaviours. The practice guidance is largely consistent with Cafcass’ own guidance as set out in our [Child Impact Assessment Framework](#), in particular the use of the term ‘alienating behaviours’ rather than ‘parental alienation’ and the importance of viewing alienating behaviours on a spectrum with varying impact on individual children. We agree that alienating behaviours are one of many reasons why a child may not want to see a parent/carer during or after separation and believe it is essential first to consider whether this might be as a result of domestic abuse. Cafcass has contributed to the development of the guidance as a member of the working group and therefore our comments are minimal. However, we would like further consideration to be given to the following points:

1. Considering the high numbers of litigants in person who access the family courts, we suggest that the language throughout the guidance is reviewed, ensuring plain English is used throughout to make it more accessible to litigants in person.
2. In section 3 of the guidance, page 4, it states: *“This guidance will use the terms ‘non-resident parent’ and ‘resident parent’ when referring to alienating behaviours. While it is accepted that either parent can engage in alienating behaviours, for the sake of brevity this Note will assume the allegations are made against a resident parent. The court must however remain mindful that examples of a non-resident parent engaging in alienating behaviour can and do occur.”* This assumption used throughout the guidance should be amended as it may create an unconscious bias of the reader. It also relies on the reader having read the guidance from the beginning to take this paragraph into consideration. From Cafcass’ experience, alienating behaviours can take on many forms be that from the parent / carer a child lives with or not. The guidance should also reflect the most up to date terminology used in the family court – for example, instead of ‘resident parent’ and ‘non-resident parent’, the terms ‘parent/carer the child lives with’, and ‘parent/ carer the child does not live with’ should be used.
3. In the case management process in the ‘First Steps’ section (page 5) of the guidance, it refers to the triaging that will be done by *“the legal advisor / judge on receipt of the application”*. This presumes that those acting in person will properly set out any allegations of alienating behaviours which are relevant in the application itself. More thought needs to be given to how, particularly litigants in person, will be made aware of the need to set out this type of allegation in their initial application to court. And the guidance should ideally better recognise that allegations may first surface during safeguarding enquiries, finding of fact hearings or in further assessments undertaken as part of a Section 7 report.

4. In the case management section at the top of page 7 it states “*Cafcass has a series of practitioner tools that can be used to assist in identifying support for children where the parent/child relationship has been disrupted*”. Cafcass’ practice tools, now referred to as practice aids, are used by practitioners to support them in carrying out their assessment, to identify the reasons why a child does not want to see a parent/ carer and to recommend the best way to bring about positive change for the child, not specifically for identifying support for children as the guidance currently states. This sentence needs amending in the guidance to reflect this, we propose the following revised sentence: ‘*Cafcass’ guidance and practice aids as set out in the Child Impact Assessment Framework, are used by practitioners to support them in carrying out their assessment, to identify the reasons why a child does not want to see a parent/ carer and to recommend the best way to bring about positive change for the child.*’ The final sentence on this page implies that the court needs the agreement of Cafcass to appoint a Guardian. This sentence should reflect Practice Direction 16A which states at para 7.2 that “*The decision to make the child a party will always be exclusively that of the court, made in the light of the facts and circumstances of the particular case*”.

5. In the interim measures section (page 12, para 4), it states for Cafcass to offer a short-term piece of work under the Improving Child and Family Arrangements (ICFA) Programme. ICFA is commissioned by Cafcass on behalf of MoJ to help families agree safe, beneficial and sustainable child arrangements when they are finding it difficult to do so on their own. The ICFA work is short term, for private law cases only, and a referral can only be made by Cafcass if it is court ordered. We do not believe that it is appropriate for ICFA to be routinely recommended as an interim arrangement in cases where findings of alienating behaviours have been made. Before recommending to the court a referral to the ICFA service, a Family Court Adviser will first undertake an assessment using Cafcass’ Child Impact Assessment Framework (CIAF) to determine any risks and whether conflict between parties is preventing safe and beneficial arrangements being achieved. It may not be an appropriate intervention where findings of alienating behaviours have been made, which should be considered as a form of emotional harm. We recognise that there is a lack of available and effective interventions to support families once alienating behaviours have been found. We agree that identifying who will deliver any work with the children and parents must be considered with reference to the children’s welfare and the reality of the lives of the family. The section on interim measures should also include a reminder that if there have been associated findings of domestic abuse, any arrangements must have regard to PD12J, and the child’s welfare is paramount.

Cafcass is in the process of updating the [Child Impact Assessment Framework](#) (CIAF), specifically the guidance on child resistance/ refusal to spending time with a parent/carers, and this is due to be published in January 2024. We will ensure the Family Justice Council’s guidance and the relevant case law is referenced within the CIAF for our practitioners to refer to in their work.

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