

Intractable disputes: the obstacle course in private law children cases. Will recent guidance and new initiatives flatten the course?

Eléonore Berthelsen and Jennifer Youngs

18 September 2025

Intractable disputes? Long running cases?

1. *Cases where the a is refusing contact:*
 - a. *alienating behaviours, OR*
 - b. *another reason.*
2. *Domestic abuse.*
3. *Repeated applications.*
4. *Delay....*

Alienating behaviours

FJC Guidance, December 2024:

A court would therefore need to be satisfied that three elements are established before it could conclude that Alienating Behaviours had occurred:

- 1) the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer; and*
- 2) 2) the reluctance, resistance or refusal 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 – see Glossary above), or is not caused by any other factor such as the child's alignment, affinity or attachment (AAA – see Glossary above); and*
- 3) 3) the **other parent has engaged in behaviours that have directly or indirectly impacted on the child, leading to the child's reluctance, resistance or refusal to engage in a relationship with that parent.***

See also: Re S (Parental Alienation: Cult): [2020] EWCA Civ 568.

Reluctance, resistance or refusal ('RRR')

Behaviours by a child concerning their relationship with, or spending time with, a parent, which may have a **variety of potential causes**.

Alienating Behaviours

2. Litigation Journey Overview

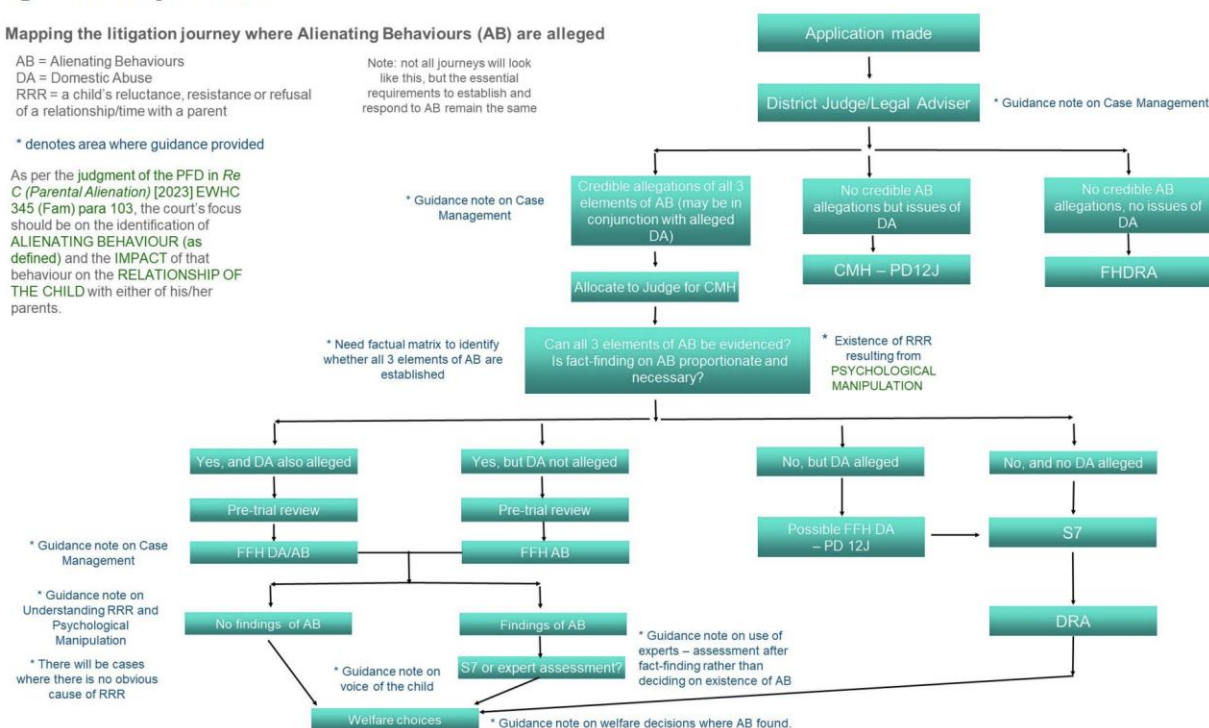
Mapping the litigation journey where Alienating Behaviours (AB) are alleged

AB = Alienating Behaviours
DA = Domestic Abuse
RRR = a child's reluctance, resistance or refusal of a relationship/time with a parent

Note: not all journeys will look like this, but the essential requirements to establish and respond to AB remain the same

* denotes area where guidance provided

As per the judgment of the PFD in *Re C (Parental Alienation)* [2023] EWHC 345 (Fam) para 103, the court's focus should be on the identification of ALIENATING BEHAVIOUR (as defined) and the IMPACT of that behaviour on the RELATIONSHIP OF THE CHILD with either of his/her parents.



Alienating Behaviours

ie.

1. On allocation, allocate to a Judge for CMH. IF all three elements established.
2. Consider at that hearing if on the basis what is alleged, can the elements of AB be established.
3. Consider if allegations of domestic abuse also made.
4. Is a fact-finding proportionate/necessary?
5. PTR.
6. FFH.
7. If findings made – s7, or expert assessment. NOTE. Expert assessment AFTER fact-find.

Domestic Abuse

Re HN.

PD12J.

K v K [2022] EWCA Civ 468

Cafcass Domestic Abuse Practice Policy, January 2025.

Costs – discouraging spurious allegations?

‘There is a general practice of not awarding costs against a party in family proceedings concerning children, but the court retains a discretion to do so in exceptional circumstances. These include cases in which a party has been guilty of reprehensible or unreasonable behaviour in relation to the proceedings. This practice applies equally in public law and private law proceedings, and irrespective of whether a party is legally aided. Nor is there any difference in principle between fact-finding hearings and other hearings.’

Re E (Children: Costs) [2025] EWCA Civ 183 *per Jackson LJ*

Enforcement – encouraging obedience?

Cases that continue post final orders...

S.11J – orders enforcing existing child arrangements orders

- court has to be satisfied beyond reasonable doubt that a person has failed to comply with the provisions of a CAO, and the person did so without reasonable excuse.

S.11O – orders to compensate for financial loss

- court has to be satisfied beyond reasonable doubt that a CAO has been breached, and that the applicant has suffered financial loss as a result.

Discouraging parties from coming back - S91(14)

CA 1989 s.91(14):

'On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.'

CA 1989 s.91A – the court may make a s.91(14) order if it is satisfied an application would put the child concerned or another individual at risk of harm.

Harm Report

2020

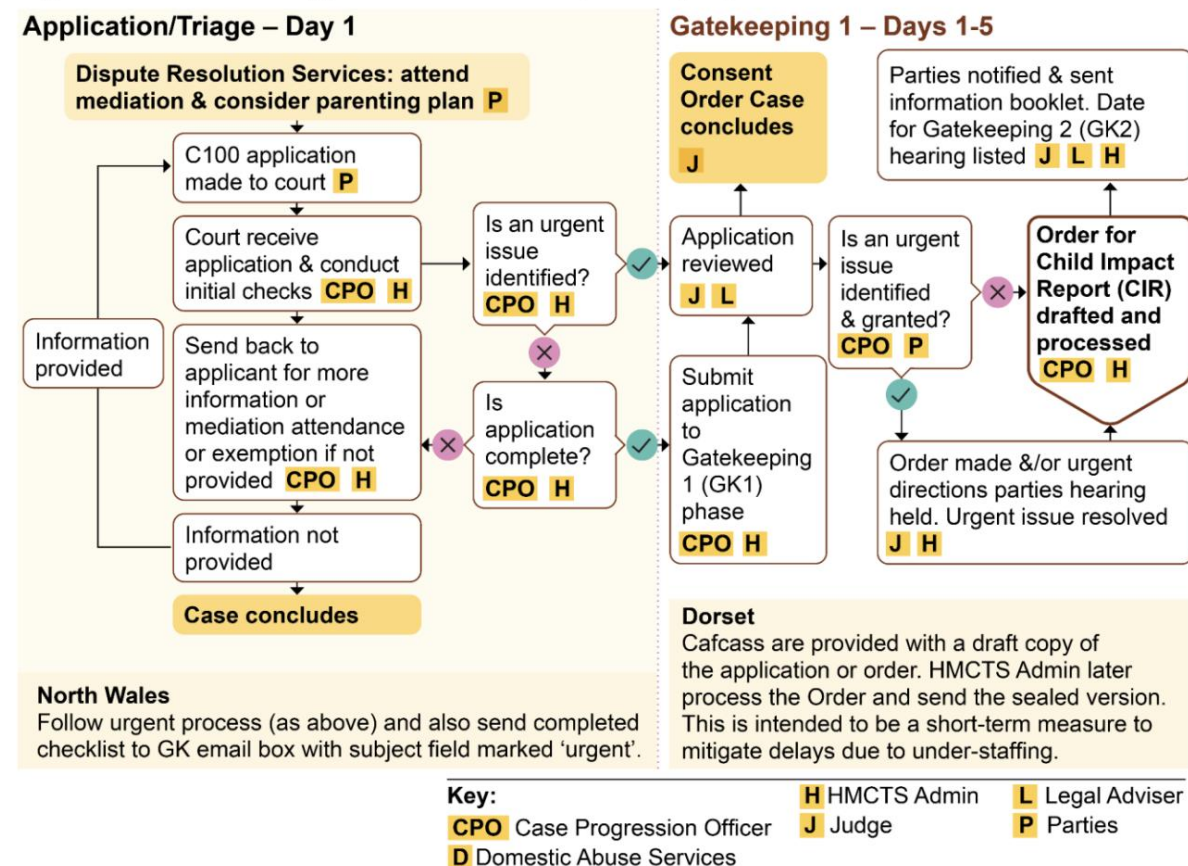
Reform to the Child Arrangements Programme:

Family courts should pilot and deliver a reformed Child Arrangements Programme in private law children cases, that is safety-focussed, trauma aware and takes a problem solving approach.

- The Child Arrangements Programme should incorporate a procedure for identifying abusive applications and managing them swiftly to a summary conclusion.*

New Pathfinder Pilot

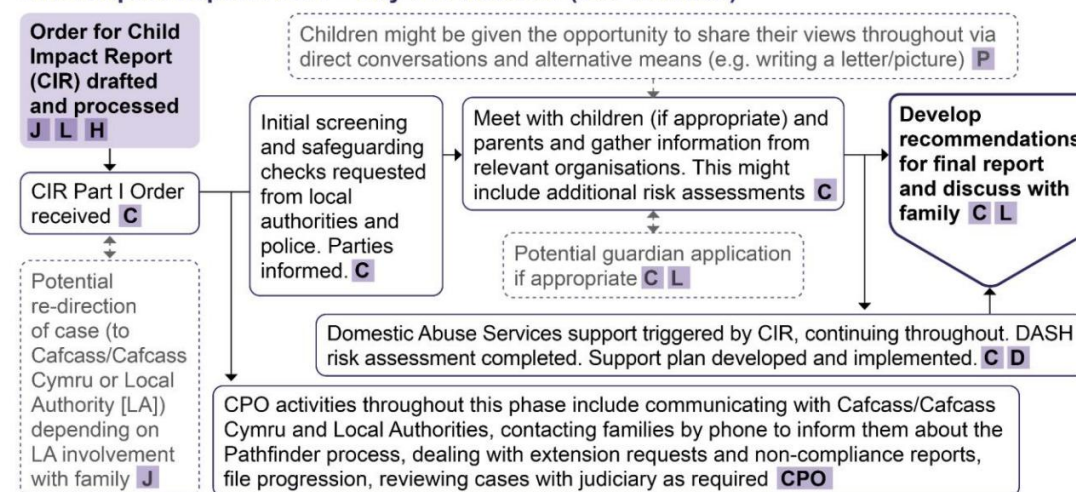
Figure 5. Pathfinder: Application and initial gatekeeping



New Pathfinder Pilot

Figure 6. Pathfinder: Information gathering and assessment

Child Impact Report Part 1 – Day 5 to week 6/8 (site variation)



North Wales

c. 6-7 weeks for completion of CIR 1
CPOs aim to contact families within 10-20 days of the application being filed through a dedicated phone line. Only litigants in person are contacted (not those with solicitors). DA services use an additional risk assessment tool for male victims (Dyn)

Dorset

c. 8 weeks for completion of CIR 1
CPOs aim to contact families within 5 days of documents being sent. 3 attempts are made via phone and if unsuccessful a letter is sent. Only litigants in person are contacted (not those with solicitors).

Key:

C Cafcass/Cafcass Cymru or Local Authority

CPO Case Progression Officer

D Domestic Abuse Services

H HMCTS Admin

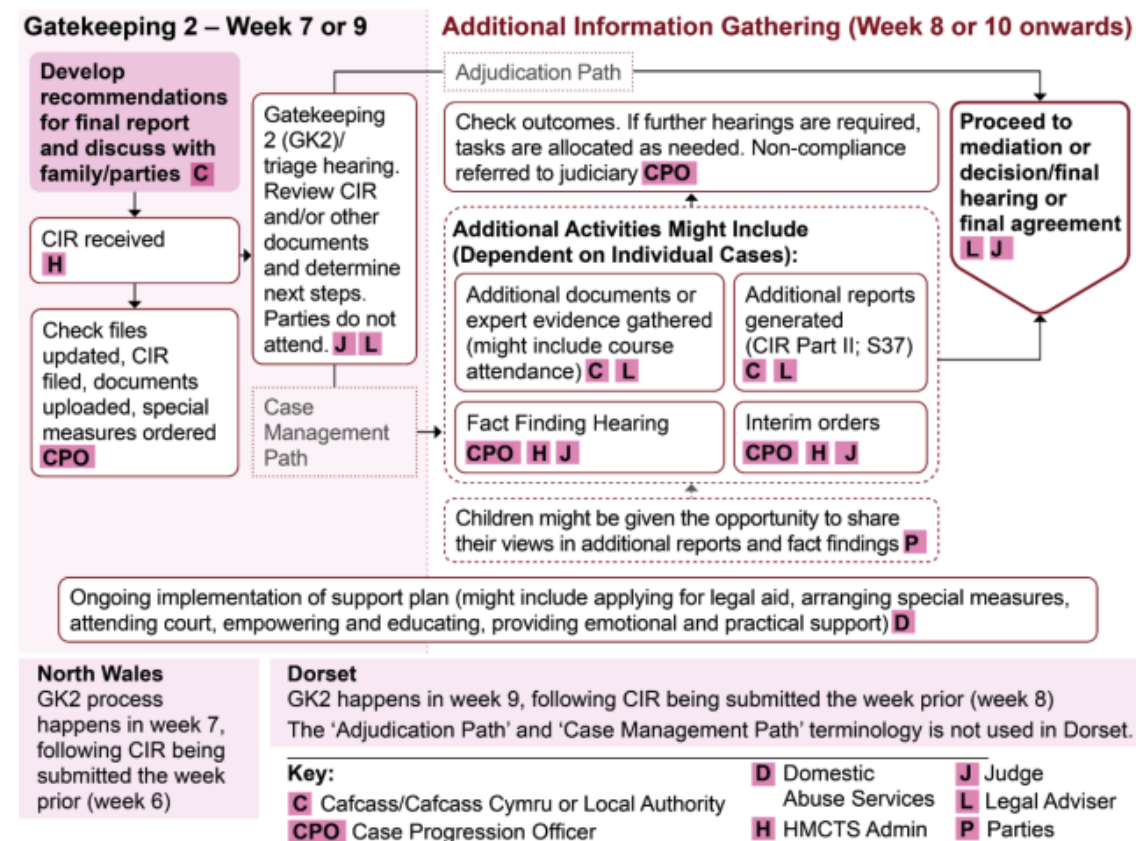
L Legal Adviser

P Parties

J Judge

New Pathfinder Pilot

Figure 7. Pathfinder: Interventions and decision hearing



New Pathfinder Pilot

1. Urgent issue – straight for case management
2. If not urgent: Child Impact Report.
3. Gatekeeping:
 - a. Case Management Path [*query. if that happens with parties in attendance*]
OR
 - a. Final Decision Hearing.

Further reform?

Public Accounts Committee.

Questions?

events@42br.com