Neutral Citation Number: **[2026] EWFC 38**

Case No: ME25P00554

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/26

Before :

Rt Hon Sir Andrew McFarlane President of the Family Division

Re Y (Experts and Alienating Behaviour: The Modern Approach)

- -

Justin Ageros (instructed by **Beck Fitzgerald**) for the **Applicant Mother**
The Father (who did not attend)
Jo Delahunty KC and Chris Barnes (instructed by **Goodman Ray**) for the **Child Y**

Hearing dates: 29th and 30th January 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20/02/26 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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This judgment was delivered in private [and a reporting restrictions order OR transparency order is in force]. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Sir Andrew McFarlane:

1. In December 2014 the parents of two young children separated and subsequently divorced. Proceedings then followed in 2018 in which the father sought an order for the children to move to live with him. Allegations of abusive behaviour are made by each parent against the other. At a hearing in October 2019 the court heard evidence from a psychologist, Ms Melanie Gill. At the conclusion of Ms Gill's evidence, and without hearing from any other witness, the judge found that the children had been alienated from their father as a result of the mother's highly negative attitude towards him.

2. In December 2019, and without the court having determined the mother's application for permission to appeal that she had lodged at the end of October, the judge made an order directing that the two children should move immediately to live with their father. At that time the eldest, a girl ['X'], was 12 years old and her brother ['Y'] was 9 years old.

3. From the end of 2019 until 2025 the children had no contact of any sort with their mother. In the early part of 2025, the daughter, then aged 18 years, moved to live with her mother for a few months before returning to her father's care. Later in 2025 the boy, now aged 15, unilaterally left his father's home. He travelled to his mother's home but, in the light of the court's previous findings, he was removed into police protection and spent a period of time in foster care before going to stay, following an order made by Lieven J, with a friend of the mother.

4. As long ago as April 2025, the children's mother issued an application under Family Procedure Rules 2010, Part 18 ['FPR'] seeking an order setting aside

the previous findings of fact. Unfortunately, it was not until November 2025 that the first substantive order made by a judge; that order transferred the application to the High Court for hearing. The final hearing of the Part 18 application took place before me on 29 January 2026. At the conclusion of that hearing I announced my decision which was that the key findings of fact made in October 2019, and consolidated in a further judgement in May 2020, were set aside. It was common ground between the parties that no purpose would now be served by relitigating the previous allegations and cross allegations that had been made. This judgment sets out my reasons for making that decision.

5. Before turning to the detail of the case it is necessary to stress that, although the role of Ms Melanie Gill in these proceedings is of some importance, this judgment is not about one person. When the process that was followed in 2019 is held up for audit against the principles of good practice in cases concerning alleged alienating behaviour which are now well established, every agency involved in these proceedings can be seen to have been at fault. By "every agency", I am referring to CAFCASS, the children's solicitor, the local authority and the court. This judgment is not therefore 'about Melanie Gill', it is, much more worryingly, about the failure of the system to act, as it should have done, in discharging its responsibility to protect the children and to prioritise their welfare needs.

The 2019 proceedings

6. In a welfare report in February 2019 a CAFCASS officer noted: "Both parents make extremely serious allegations about the other in terms of suffering from severe domestic abuse and coercive control from the other and I would suggest

it needs to be determined by the court where the truth lies". Whilst the report recorded that its author had used a tool for assessing whether parental alienation was a factor in the case, and found indicators that it was, the recommendation was nevertheless that the court should hold a fact-finding hearing. On the basis of that report, a fact-finding hearing was ordered. The children were joined as parties to the proceedings and a different CAFCASS officer was appointed to act as the children's guardian.

7. At a subsequent hearing, in April 2019, an application was made on behalf of the children's guardian for Melanie Gill to be instructed as a single joint expert psychologist to undertake "a specialist family assessment". The parties have been unable to find any record of a formal application being made to instruct Ms Gill. The wording of the court order indicates that the application was made during the hearing, at which the father and the children were legally represented but the mother acted in person. The order provides that the solicitor for the children was to prepare a letter of instruction to be agreed three weeks later, suggesting that no draft letter of instruction was available at the hearing.

8. The report of Melanie Gill, to which I will turn in some detail shortly, was filed in September 2019. Four days later the father issued an application for an immediate transfer of the children's residence to his home. One week later the mother applied for permission to instruct an alternative psychologist. That application was refused by District Judge G Smith, who had had no previous involvement in the case, but before whom the fact-finding hearing had been listed for the following month. As his subsequent judgment explained, DJ Smith noted that, although the case was listed for a fact-finding hearing, directions had

been given for the preparation of the expert's report and the filing of the children's guardian's final recommendations. The judge, therefore, concluded that the matter had been set down for a combined fact-finding and welfare hearing. In those circumstances he directed that he would consider the expert evidence before he considered anything else, and that the expert would give her evidence first at the main hearing.

9. In the appendix to her report, Melanie Gill describes herself as a 'psychologist, forensic assessor and forensic consultant (to policy makers/media, institutions) with her own practice'. In oral evidence she described herself as 'an assessment psychologist'. Ms Gill does not have a clinical or therapeutic practice in which she sees patients. Whilst her CV lists membership of a range of organisations, Ms Gill is neither a chartered psychologist, nor registered with the Health and Care Professions Council ['HCPC'].

10. Ms Gill's main report is more than 100 pages long. This is not an appeal and, as I have indicated, this judgment is not solely related to Ms Gill's involvement, who has played no part in this recent court process. I will therefore do no more than highlight key aspects of her contribution:

    i) Ms Gill's analysis was undertaken by the application of 'Attachment Science' and through requiring the family members to complete certain bespoke psychological assessment tools (particularly the Adult Attachment Interview);

    ii) Ms Gill found significant psychopathology within the mother's psychological profile and pattern of attachment organisation, so that she was a 'highly vulnerable person' with traits of 'narcissistic' and

'histrionic' thought processing in the way she organised her relationships with others. There was 'unresolved trauma' from emotional neglect arising specifically within her relationship with her own mother at a fundamental level of functioning;

iii) Although the mother loves her children, they were 'hardly present' in her psychological functioning, with the children being 'used in order to support "projected" vengeful anger, from her childhood relationship with her mother, against their father';

iv) The children's behaviour, which was 'directly influenced by their mother's hostile antipathy to the point of hatred of their father', was said to be so challenging to the father and his partner that the father and partner 'are running out of ways in how they can help the children regulate the "alienation" they are being subjected to within their home environment';

v) Ms Gill found 'extensive evidence' that the children were being actively 'alienated' from their father by their mother;

vi) Ms Gill advised that, if the children continued to live with their mother, they would be at significant psychological risk from the decisions that their mother would make about their care and within their attachment relationship with her;

vii) Ms Gill advised that the traumatic nature of the mother's attachment relationships with the children was such that the 'danger' that is inherent within the children's environment was not just to do with the mother's

feelings about the father, but was a result of her fundamental attachment organisation. She recommended that removal of the children from their 'traumatising environment and relationship with their mother' was necessary.

11. The report of the children's guardian, which was filed after Ms Gill's report, recorded the strongly expressed views of the two children but advised that:

> 'unfortunately, [the children's] wishes and feelings cannot be given much weight in the final decisions made for them due to the negative influence of their mother and the children's alignment with their mother.'

12. In the 'Professional Judgment' section of her report, the guardian endorsed the findings and conclusion of Ms Gill and reported that they accorded with her own experience of the children. In that report, and prior to any evidence being heard at the up-coming fact-finding hearing, the guardian recommended that the children should 'move to the care of their father as soon as possible', with all communication between the children and their mother being prevented during a settling in period.

13. The five day hearing before DJ G Smith commenced with oral evidence from Ms Gill. It was then adjourned for some days in order for counsel to obtain further information. Ms Gill's evidence was concluded on the 2nd substantive day. At the conclusion of her evidence the judge asked whether, if the court were to find the allegations of physical abuse (including marital rape) proved, Ms Gill would want to review or alter her recommendations. Her answer was that she would not, as the factor that was 'carrying on affecting behaviour and emotions … is the hatred for the father [which] is in connection with mainly the projected anger at the [maternal grand] mother'.

14. The judge invited submissions on the question of whether the court should hear from any other witnesses. The submission by Ms Fenella Cooil, counsel for the mother, as summarised at paragraphs 22, 23 and 24 of the judgment, is of note:

> 'For the mother, it is asserted that there should have been a fact-finding before the expert was heard and before the children's guardian made a final recommendation. The allegations made by the mother, if found to be proved, must have an impact upon the shape of the case. It cannot be right, the mother says, that domestic violence and abuse - which she says she has suffered at the hands of the father - does not contextualise the mother's allegations and the effect upon her and the children. Those allegations are, in substance, of attacks and sustained physical and emotional abuse in respect of which there is corroborative police and medical evidence.
>
> … The mother's case is only after the determination of the allegations should there be expert analysis...
>
> The purpose of a fact-finding is to determine the underlying factual matrix. Unless that is determined, how can appropriate interventions be provided for the parties and/or the children? Miss Gill, the mother says, makes much of the mother's hatred for the father. That can only properly - that is my word, "properly" - be contextualised by a fact-finding hearing.'

15. I have highlighted that summary because, in my view, Ms Cooil's submissions to the judge were entirely correct and fully in line with the guidance that has subsequently been given by the Family Justice Council ['FJC'], to which I will turn shortly.

16. Counsel for the father and counsel for the children's guardian both urged the judge to hear no further evidence. The judge recorded the submission for the guardian as including the proposition that 'if the report [of Ms Gill] is accepted, there is no point at all in the fact-finding hearing, because it would not affect the assessment of Ms Gill. Prior to her report, ... it was not apparent that there [was a] psychological reason for the difficulties with contact'.

17. In his judgment on 25 October, the judge summarised the procedural history, the submissions of the parties and relevant parts of the FPR and PD12J, before shortly expressing his conclusions at paragraphs 37, 38 and 39:

> '37. Having heard Ms Gill over 2 days, her evidence was not successfully challenged in cross-examination. Her methods and methodology are explained in the body of her report. In essence, her report indicates that she has assessed the perceptions of the parents and the children and their interactions, and crucially, I find, that assessment was not based upon the allegations but on the unconscious responses to her investigation as explained in her report. … No successful challenge has been made of Ms Gill as to her methodology and how she applied her methods.
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> 38. However, just because she is an expert, does not mean her report finalises all applications. Nevertheless, I accept her evidence concerning the effect of the outcome of any fact-finding hearing upon her assessment of its recommendations, the underlying reasoning being that domestic abuse alleged to be perpetrated by the father or the mother is not the principal cause for the mother's continuing issues. It might have exacerbated it, but rather, the effect of childhood experiences coupled with a difficult relationship with her mother is what is affecting the mother's relationships with the father and children respectively. That being said, and I return to PD12J, paragraph 17(h) - this entitles me to find and I do find that a fact-finding hearing, whether separate or not, is not proportionate, because I have other information, pursuant to 17(d), that provides a sufficient factual basis.
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> 39. Where I to be wrong on that, having accepted Ms Gill's recommendations, even if there were a fact-finding hearing, even if I found either the mother's or the father's allegations proved, or any of them, for the reasons which Ms Gill explained and I accept in her evidence, it would not and could not change the recommendations. Therefore, I need not conduct [a hearing] nor have cross examination, because I find that it will not assist me in dealing with the actual issues which need to be addressed for these children, whose welfare is my paramount concern, neither would it be compliant with PD12J para17. For those reasons, I do not intend to conduct a fact-finding, but I am prepared to move straight onto welfare issues. That may mean that the parties want to have some time to consider that judgement.'

18. The mother's counsel applied to the judge for permission to appeal, which was refused. The mother promptly issued a Notice of Appeal but, as I have indicated, the court did not list it for hearing until 2 February 2020, by which time the

children had been living with their father for two months. Permission to appeal was refused.

19. In the order made on 25 October, the judge made a direction under CA 1989, s 37 for the local authority to file a report. The resulting report, dated 22 November, aligned the local authority with Ms Gill and the children's guardian by recommending that the children should move to their father's care.

20. At a hearing on 18 December, at which both parents appeared as litigants in person, the court made orders under CA 1989, s 8 providing for the children to move 'with immediate effect' to their father's care, and preventing the mother from having contact either child 'until further order'. The matter was listed for a 'review hearing' in January 2020, at which the s 8 orders were confirmed. The relevant court order includes the following recital:

> 'AND UPON the Court reminding the mother that it had accepted the written and oral evidence of Ms Gill at the contested hearing and having found that this evidence had not successfully been challenged and the Court reminding the mother that having made findings, which have not successfully been appealed, it will not revisit those.'

Despite those findings and the orders that had been made, the judge directed that the case be listed for 'Final Hearing' with a time estimate of three days.

21. At the final hearing, over the course of 4 days, the judge heard each parent and their respective partners, in addition to the social worker and the children's guardian. Arrangements were made more complicated by the intervening COVID lockdown. The judge delivered a reserved judgment on 18 May 2020 in which the focus was upon whether or not any contact should be recommenced between the children and their mother (there having been none for five months). The judge reviewed evidence of events since the children's move to their father,

including evaluating Christmas cards that the mother had sent to the children and a chance meeting in a local shop. He recorded the position of the mother, who was a litigant in person, as continuing the challenge the expert and professional evidence against her and seeking the return of the children to her care.

22. The judge stressed that he was reinforced in his earlier finding as to the validity of Ms Gill's assessment and analysis because it had chimed with the contemporaneous, and in terms of the author of the s 7 report preceding, reports of the two CAFCASS officers and the local authority social worker. The judge made findings as to the recent events that had been in issue and he was critical of the mother for not undertaking Schema therapy. He noted that the mother had told the court that she had been undertaking some form of therapy, but had not given any details of this. He accepted that the children wanted to see their mother, but considered that this could not occur until she had undertaken the form of Schema therapy recommended by Ms Gill.

23. The judge therefore made orders providing for the children to continue to live with their father and to have no contact whatsoever with their mother or her partner. The contact order of 18 May is in plain terms: 'the mother shall not be allowed any contact with the children [names] until further order.' Prohibited steps and specific issue orders were made to consolidate those core arrangements.

24. In a schedule to his order, the judge set out a list of findings. Those from number 6 onwards were specific and related to events following the children's move to their father and are not relevant to this application. Findings 1 to 5 were:

> ‘1. The Mother has caused the children significant emotional harm; the court accepting in full the conclusions of Melanie Gill and findings therein shall stand as the court’s findings.
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> 2. The Mother is unable to meet the children’s needs nor or in the near future and the children’s psychological safely is compromised in turn.
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> 3. [Mother’s partner] is unable to act as a protective factor.
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> 4. The Mother’s vengeful anger from her childhood is imposed on the Father as a result of her maladaptive relationship attachments.
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> 5. The Mother has triangulated the children against their Father and has actively alienated them from him.’

25. In 2021 the mother issued an application seeking to vary the child arrangements order. At a case management hearing, the court directed that the court would ‘not be dealing with any challenge to the report of Melanie Gill upon which the court relied in the last set of proceedings’. After a final hearing in April 2022, the mother’s variation application was dismissed, the existing child arrangements (including the no contact order) were maintained and the court imposed a prohibition on the mother (under CA 1989, s 91(14)) from bringing any further applications regarding the children, without the court’s permission, for the next year. Permission to appeal that order was subsequently refused.

26. In April 2025, the mother issued her current application under FPR 2010, Part 18 to reopen and set aside the findings made in 2019 and 2020 based on Ms Gill’s opinion. It is unfortunate that, for some six months, no active step was taken by the court with respect to the Part 18 application as it was passed between two different Family Court centres. On 10 November 2025, the case was transferred to be heard at High Court level. Thereafter, there were a number of hearings before judges of the Family Division in quick succession in order to meet the needs of the younger child, Y, who had departed from his father’s home on 13 November and travelled to be with his mother (with whom he had

had no contact for over five years). On 14 November, Y was removed from his mother's home at 4.00am, by the police using powers under CA 1989, s 46. He was then placed in a series of foster homes, before moving to stay with a family friend of the mother, whom Y had known in earlier times, pursuant to orders made by Mrs Justice Lieven on 27 November following a full hearing. Lieven J discharged the child arrangements, prohibited steps and specific issue orders made by DJ G Smith in 2020 and directed that the mother's Part 18 application be heard by the President in January 2026.

27. The 27 November order made a s 8 child arrangements order for Y to 'live with' the family friend ['Mrs M']. Provision was made for Y to have visiting contact with his mother on an ever-increasing basis, so that by January he would be regularly spending up to 8 hours with her without supervision. By the time of the hearing before me in late January, Y was keen to move to live full time with his mother. Following the hearing on 29 January, at the conclusion of which I made an order allowing the Part 18 application and directing that the relevant findings made in 2019 and 2020 be set aside, notice was given to the father that the court intended to move on to consider Y's future welfare and, in particular, whether he should now move to his mother's care.

28. I am grateful to the father who responded very promptly, explaining his concern at the situation and describing any final welfare decision as premature if made before obtaining advice from the local authority social services. His overall position was that of neutrality, respecting, as he did, the fact that Y would shortly be 16 years old. The father did not seek to attend the hearing, either remotely or in person.

29. On the 30th January, I was concerned that Mrs M, who currently shared parental responsibility for Y under the 'lives with' order, was not party to the proceedings and was not to be called. In the absence of input from either the local social services department or Mrs M, I made it clear that no final orders would be made. After a short adjournment, Mrs M was located and was able to join the hearing remotely. I am very grateful to her for doing so.

30. Mrs M gave a very positive report of the progress of contact and of Y's clear wish to make this move, which had her blessing. The strength of Mrs M's evidence was such that I did not consider it necessary to adjourn to obtain input from social services. The mother was, naturally, in favour of Y coming to live with her. The father had chosen not to engage directly with the court process, and had, with concern, accepted the reality that, for the present, Y did not want to return to his care. I therefore made orders discharging the s 8 order to Mrs M and replacing it with a child arrangements order providing for Y to live with his mother. It will go without saying, but needs to be said, that the role played by Mrs M by welcoming Y into her home, when he needed a haven apart from the homes of either his mother or his father, has been of crucial importance and of real benefit to this troubled young person. I was very impressed by the wisdom and child-focussed kindness that Mrs M readily demonstrated during the short time that she spoke to me during the recent hearing.

The Part 18 Application

31. The mother has applied under Part 18 for findings numbered 1 to 5 made by DJ G Smith on May 2020 [see paragraph 24 above] and the earlier findings of October 2019 to be reopened and, once reopened, set aside. The application

asserted that ‘very significant new evidence and information’ now existed sufficient to cast doubt on the earlier findings and justify reopening them. The new material was said to include the approach to ‘parental alienation’ taken by this court in the case of *Re C (‘Parental Alienation’; Instruction of Expert)* [2023] EWHC 345 and extensive guidance on alienating behaviours issued by the Family Justice Council in December 2024 [‘the FJC guidance’]. The application drew particular attention to the fact that the FJC guidance is clear that unregulated experts, such as Ms Gill, should not be instructed in cases of alleged alienating behaviour. The advice is that expert evidence should only be directed after any findings of fact have been made and should not be relied upon for the purpose of making such findings. The application further relied upon criticism of Ms Gill within the judgment in *Re C* and in the more recent authority of *P v M* [2023] EWFC 254 [see paragraph 57 below].

32. In the course of an impressively clear and full skeleton argument, Mr Justin Ageros, counsel for the mother, set out a summary of the law insofar as it is relevant to an application to reopen findings of fact in Family proceedings. This summary is accepted by those who act for Y, and I, too, agree that the law in this area is well settled and accurately described by Mr Ageros. It is not therefore necessary to do more than summarise the approach that the court must take.

33. It is agreed that the judgment of Peter Jackson LJ in *Re CTD (A Child) (Rehearing)* [2020] EWCA Civ 1316, having reviewed the existing authority, described the three stages of the court’s approach:

(1) The court asks first whether the applicant has shown that there are solid grounds for believing that the previous findings require revisiting.

(2) If that hurdle is overcome, it decides how the rehearing is to be conducted.

(3) It then rehears the matter and determines the issues.

34. At the first stage, the applicant must satisfy the court that there are solid grounds for believing that a rehearing will result in a different finding; mere speculation or hope are not enough. At the third stage there is no pre-ordained 'starting point' or 'evidential burden' based upon the earlier findings. What is required is a re-determination of the facts with the court looking at all the evidence afresh and reaching its own conclusions, requiring the party seeking the relevant findings to prove them to the civil standard in the normal way.

35. The present application is focussed on the first stage only. In a more recent judgment of Peter Jackson LJ (*Re J (Children: Reopening Findings of Fact)* [2023] EWCA Civ 465) described the first stage in some detail:

> '[7] In relation to the first stage: (i) the court should remind itself at the outset that the context for its decision is a balancing of important considerations of public policy favouring finality in litigation on the one hand and soundly-based welfare decisions on the other; (ii) it should weigh up all relevant matters, including the need to put scarce resources to good use, the effect of delay on the child, the importance of establishing the truth, the nature and significance of the findings themselves and the quality and relevance of the further evidence; and (iii) above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any a different finding from that in the earlier trial. There must be solid grounds for believing that the earlier findings require revisiting.
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> [8] As Mr Aidan Vine KC rightly submitted, the requirement for 'solid grounds' is a part of the evaluation that the court must carry out. It is not a shorthand substitute for it.

[9] In *Re W (Children: Reopening: Recusal)* [2020] EWCA Civ 1685, at [28], I said this:

> 'It is rare for findings of fact to be varied. It should be emphasised that the process of reopening is only to be embarked upon where the application presents genuine new information. It is not a vehicle for litigants to cast doubt on findings that they do not like or a substitute for an appeal that should have been pursued at the time of the original decision. In *Re E (Children: Reopening Findings of Fact)* [2019] EWCA Civ 1447 at [16] I noted that some applications will be no more than attempts to reargue lost causes or escape sound findings. The court will readily recognise applications that are said to be based on fresh evidence but are in reality old arguments dressed up in new ways, and it should deal with these applications swiftly and firmly'.

36. Relying on the approach taken by Judd J in a similar case (*O v C* [2025] EWFC 334), the mother submits that, if the previous findings are set aside, the court should not embark on stages 2 and 3 in the present case as there is now no benefit in the court undertaking a fact-finding of the parties allegations and cross-allegations, as they were in 2019, and, indeed, it would be impracticable to do so. The mother's goal is, therefore, simply to achieve the setting aside of the earlier findings. Mr Ageros described how the mother has never accepted Ms Gill's analysis, or the underlying assertion about her relationship with her own mother upon which it was based, and that the mother has undertaken a sustained and tenacious quest to have them set aside. Her refusal to accept the findings, and to engage in the recommended therapy, which would involve her acceptance of the findings, has led to her being estranged from her children for the past five years.

37. Soon after the Part 18 application was set down for hearing, the father sought the court's permission to withdraw entirely from the court process relating to it. Rather than discharging him as a party to the proceedings (as he sought), I directed that he was released from any requirement to file documents or attend

the Part 18 hearing, whilst stressing that he was free do so should he change his mind. In the event the father sent a substantial letter to the court shortly before the hearing, in which he set out his account of the history and maintained that the mother had 'consistently abused and bullied' him throughout the marriage and thereafter. Whilst he did not purport to follow recent legal proceedings regarding Ms Gill, he reported that her analysis in this case accorded with his own experience of the mother. He stressed that the judge's decision to remove the children into his care was not based solely upon Ms Gill's evidence, but that of 'multiple CAFCASS officers and local authority social workers', who were all of the same view. The father stressed that his son, Y, would be welcome back at any time, but he appreciated that that may not be possible until he 'has seen this through', a situation that caused the father a great deal of worry. He complained that there was an inequality of arms, as he is a litigant in person and the other parties are fully represented. He understood that the approach to psychological reporting may have moved on, but he held to the validity of Ms Gill's assessment in this case.

38. On receipt of the father's letter, the court, noting that although he had been released from any requirement to submit evidence or other material with respect to the Part 18 application he had now done so, asked him to clarify his position. My clerk's message to the father was:

> 'Do you wish to oppose the application to have the 2019 findings of fact set aside? If so, you will need to engage with the court process and attend tomorrow's hearing. If, on the other hand, you do not oppose the Part 18 application, the President is likely to regard your letter as being relevant to any future decisions concerning [Y]'s welfare, but not relevant to determination of the Part 18 application.'

The father replied:

> ‘In answer to your question I believe the part 18 process is irrelevant and any objection I make futile, particularly the inequity of arms here. My position is neutral and I will therefore not be in attendance for this coming hearing.’

39. Y has had the benefit of being represented by a most experienced children’s solicitor, Ms Peggy Ray, since November and, in turn, by counsel Ms Jo Delahunty KC leading Mr Christopher Barnes. Y attended the hearing before me and, through his counsel, fully supported his mother’s application for the previous findings to be set aside.

The modern approach to ‘parental alienation’

40. The full title of the FJC Guidance[1] issued in December 2024 is

> ‘Family Justice Council Guidance on responding to a child’s unexplained reluctance, resistance or refusal to spend time with a parent and allegations of alienating behaviour’.

In a Foreword to the guidance, I endorsed the content and encouraged its application in all cases to which it is relevant. The guidance, which is clear that there is no evidential basis for what had become known as ‘parental alienation syndrome’, focuses on cases where a child is reluctant to see or have a relationship with one or other parent. Whilst, if the final stage of evaluation is reached, the court will determine whether or not the other parent has exhibited alienating behaviour with respect to the children, it is very clear that, before that question can be addressed, the court must determine any relevant allegations of domestic abuse that have been made. There is an obvious difference between a case where a parent and/or child are the victims of domestic abuse and then go on to approach the other parent, being the perpetrator of that abuse, in a negative

[1] https://www.judiciary.uk/wp-content/uploads/2024/12/Family-Justice-Council-Guidance-on-responding-to-allegations-of-alienating-behaviour-2024-1-1.pdf

manner, on the one hand, and a case where the other parent has not been abusive and a child's reluctance, resistance or refusal to relate to that parent has arisen for other reasons.

41. Paragraph 10 of the guidance advises:

> 'A court would therefore need to be satisfied that three elements are established before it could conclude that Alienating Behaviours had occurred:
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> i) the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer; and
>
> ii) 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'), or is not caused by any other factor such as the child's alignment, affinity or attachment ('AAA'); and
>
> iii) 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.'

42. In order to make full sense of paragraph 10(ii) it is necessary to refer to the definition of AAA in the Glossary of Terms section of the guidance:

> 'Attachment, affinity and alignment ('AAA') – reasons why children may favour one parent over another, or reject a parent, which are typical emotional responses to parenting experiences and not the result of psychological manipulation by a parent.'

Element (ii) in paragraph 10 requires the court being satisfied that a child's reluctance, resistance or refusal is not the result of (a) the actions of the estranged parent towards the child or other parent, or (b) the typical emotional response of a child attaching, feeling affinity towards or aligning with one parent as opposed to the other, rather than the result of psychological manipulation of the child by that parent.

43. Paragraph 18 is in direct terms concerning cases of domestic abuse:

> ‘Given the relative impact of domestic abuse, the harms that flow from it and the importance of protecting children, Alienating Behaviours will not be found in cases where findings of domestic abuse are made which have resulted in a child’s appropriate justified rejection (AJR), or in protective behaviours (PB) or a traumatic response on the part of the victim parent.’

It advises that children may withdraw from wanting a relationship with a parent for a range of reasons (for example abuse or neglect). Simply pointing to that withdrawal does not establish that it has been caused by alienating behaviour on the part of the other parent. Paragraph 44 explains:

> ‘Children who show reluctance, resistance or refusal to maintain or build a relationship with a parent who has been abusive towards them or towards the other parent, may be found to have a justified response to that parent. The allegation of Alienating Behaviour will thus fail.’

44. It is for the court to determine whether a fact-finding hearing is required in cases where domestic, or other, abuse is alleged. In making that decision, the court will apply the guidance applicable to any other case where domestic abuse may be alleged [*Re H-N (Children) (Domestic Abuse: Findings of Fact Hearings)* [2021] EWCA Civ 448; *K v K* [2022] EWCA Civ 468].

45. The factual matrix around allegations of alienating behaviour is a matter for the court alone; it is not a matter for expert psychological evidence. Any findings of fact once made will then, but only then, be important material for an expert or CAFCASS officer tasked with advising the court on issues of welfare [FJC guidance paragraph 76].

46. Chapter 7 of the guidance gives more detail of the approach to be followed:

> ‘**Use of experts**
>
> 108. It is inappropriate for experts to be asked to step into fact-finding or determination of Alienating Behaviours – as such, the timing and type of expert evidence needed is crucial. In determining the welfare outcome,

when the presence of such harmful behaviours has been identified, it may be necessary to have expert evidence from a psychologist expert.

109. Determining the appropriate type of psychologist expert should be in accordance with the Family Justice Council (FJC)/British Psychological Society (BPS) guidance for Psychologist expert witnesses. This updated guidance includes additional points in relation to the instruction of psychologist expert witnesses, specifically the scrutiny of their regulation, their qualifications, and their access to psychological tests, given in *Re C ('Parental Alienation')*.

110. These assessments should not be undertaken by academic psychologists or psychological researchers in the field of alienation. The guidance from the BPS is that only HCPC registered psychologists have the relevant clinical experience and training to conduct psychological assessments of people and make clinical diagnoses and recommendations for treatment or interventions, whereas, academic psychologists, who should be Chartered, but who are not registered with the HCPC, would not normally have the clinical experience and training in order to complete psychological assessments or make clinical diagnoses.

111. Given the complexity of these cases and the often interacting psychological factors at play in the adults and the children, it is likely that assessments which will assist the court in determining welfare outcomes are those offered by HCPC regulated Practitioner Psychologists with competence in assessing adults and children, e.g., Clinical Psychologists/Counselling Psychologists. Although there are differences in their training competencies, both are trained to assess both adults and children. The training proficiencies and proficiency exclusions of different types of practitioner psychologists are set out in Appendix 2 of the FJC/BPS guidance for Psychologist expert witnesses.

112. There is an inherent risk of confirmatory bias if instructions and assessments are framed solely in terms of allegations of Alienating Behaviours. It is important that the instructions for psychological evidence when there are findings of Alienating Behaviours are not narrowed in focus but retain the breadth and scope typical to holistic psychological assessments of parents and children in the family courts.'

The FJC/BPS Guidance on psychologist expert witnesses

47. In September 2023 the 2nd edition of guidance was issued by the FJC and the British Psychological Society ['BPS'] on '*Psychologists as Expert Witnesses in the Family Courts in England and Wales: Standards, Competencies and*

Expectations'. The guidance is for use by those in the family justice system who may be involved in the process of instructing an expert witness in the field of psychology. It is relates exclusively to practitioner psychologists working within the remit of the Health and Care Professions Council ('HCPC') or academic psychologists chartered by the BPS. It would not, therefore, relate to an individual such as Ms Gill, who holds herself out as a psychologist but is neither registered with the HCPC nor chartered.

48. The guidance explains that [paragraph 3.1]:

> 'Practitioner psychologists who have the qualifications necessary to meet the stringent criteria for statutory regulation with the HCPC, are registered with the HCPC with one (or more) 'protected' titles. The legislation protects seven titles: Clinical Psychologist, Health Psychologist, Counselling Psychologist, Educational Psychologist, Occupational Psychologist, Sport and Exercise Psychologist, and Forensic Psychologist. In addition, the two generic titles – Practitioner Psychologist and Registered Psychologist – are available to registrants who already hold one of the seven 'specialist' titles.'

It is of note that registration is only open to 'practitioner psychologists' and would not be open to a non-clinical psychologist, that is one, like Ms Gill, who does not work with patients.

49. At paragraph 3.5 the guidance points to the loose use of the formal sounding title 'psychologist', which may, in fact, be used by an individual who is neither registered nor regulated as a psychologist:

> ‘A lack of understanding and awareness has resulted in the use of various titles in the Family Court system. Such titles have no specific meaning, nor are they protected or regulated by the HCPC. Examples of such titles include ‘psychologist’, ‘child psychologist’, ‘consultant psychologist’, ‘assessment psychologist’, ‘developmental psychologist’ and ‘attachment psychologist’. The HCPC does not protect these titles and their use does not indicate statutory registration.’

50. The guidance, which has the backing of the FJC, advises that only psychologists who are registered with the HCPC or/and chartered by the BPS should be instructed as ‘psychologists’ in Family Court proceedings.

Re C (Parental Alienation: Instruction of Expert)

51. In *Re C (Parental Alienation: Instruction of Expert)* [2023] EWHC 345 (Fam), I heard an appeal against a judge’s refusal to reopen a fact-finding decision in a case in which Ms Gill had been the expert witness (Ms Gill was referred to as ‘Ms A’ in the judgment). The Association of Child Psychologists [‘ACP’] were permitted to intervene in the appeal but, in a manner that I described as fundamentally unsound, unfair and wrong, sought to abuse their position by mounting a root and branch critique of Ms Gill and her involvement in the proceedings. Part of the ACP submission was to assert that Ms Gill was not qualified to call herself a ‘psychologist’ or to act as an expert witness. In respect of that submission, I concluded that it was not supported by any firm legal authority, such as a statute, statutory instrument or regulation and that it could not be sustained.

52. On its own facts, the appeal failed and was dismissed, but in the course of the judgment I made a number of more general observations about the use of unregistered or unregulated experts in Family Court proceedings (paragraphs 86-102). I will not burden this judgment by repeating that extensive passage

here, but, I hope, that it remains a detailed account of the legal and regulatory landscape, or lack of it, surrounding the use of the title 'psychologist' and the relevant regulatory scheme.

53. In short terms, whilst many, if not most, of those offering to provide psychological expertise are registered with and regulated by one or more of the relevant professional bodies, the reality is that anyone may call themselves a 'psychologist'. The consequence is, as I recorded at paragraph 96:

> '[96] The court must, therefore, work with the current, potentially confusing, scheme, but must do so with its eyes wide open to the need for clarity over the expertise of those who present as a psychologist, but who are neither registered nor chartered.'

54. The result was that the approach in 2023 to the instruction of a non-registered or regulated individual as an expert must, necessarily, be nuanced:

> '[98] It is not, however, for this court to prohibit the instruction of any unregulated psychologist. The current rules and guidance are clear and contain an element of flexibility. The question of whether a proposed expert is entitled to be regarded as an expert remains one for the individual court, applying, as it must, the principles reiterated by the Supreme Court in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6, [2016] 1 WLR 597, [2016] ICR 325 (at para [46]) (adopting the approach in *Daubert v Merrell Dow Pharmaceuticals Inc* (1993) 509 US 579 at 588) that:
>
> > 'if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.'
>
> This is not, however, an open house and there is a need for caution. In every case the court should identify whether a proposed expert is HCPC registered. A sensible practice, where the expert is unregistered, is for the court to indicate in a short judgment why it is, nevertheless, appropriate to instruct them.'

In light of the opaque nature of the qualification of non-registered or regulated psychologists, I stressed the need for rigour in identifying an expert who may be instructed in any particular case.

55. With regard to 'parental alienation', I made the following short, but hopefully very clear, observation:

> '**Parental Alienation**
>
> [103] Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:
>
> > 'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact.'
>
> It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of 'parental alienation', and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can be applied.'

56. One final matter relating to *Re C* requires clarification. At this hearing, the court was told that Ms Gill has used social media to claim that she was 'exonerated' by the judgment in *Re C*. If such a claim has been made by Ms Gill, she has fundamentally misunderstood the court's judgment in *Re* C which was critical of her claim to any form of expert qualification and which strongly cautioned any court in the future from instructing an expert, such as Ms Gill, who is neither registered nor regulated. For the reasons that I have summarised, the hearing in

Re C simply did not embark upon any detailed evaluation of Ms Gill's involvement in that case; in lay terms, the question of whether or not she was open to criticism was simply 'not put'. That situation obviously falls a good deal short of exoneration.

The case of *P v M*

57. In *P v M* [2023] EWFC 254, Mrs Justice Judd conducted the final hearing relating to the future welfare of two children of secondary school age. The couple had separated when the youngest child was just 2 years old. The father then moved abroad, but had some contact back in England. Problems however soon developed and, following a fact-finding hearing, adverse findings were made in 2017 about the father speaking in a vile and unpleasant manner to the mother in front of the children. Contact had, however, improved, and orders for continuing contact were made at that time.

58. The arrangements soon failed and proceedings were re-commenced in 2020. The children were joined as parties, represented by a children's guardian. Ms Melanie Gill was instructed to provide a global psychological assessment. The parents made cross-allegations, the mother claiming that he had been abusive to her and had behaved abusively to the children during contact, the father asserted that she had undermined his relationship with the children.

59. Judd J's description of Ms Gill's report and analysis is in similar terms to the present case, including identifying that the mother had unresolved traumatic loss with respect to her maternal grandmother, and complex unresolved trauma from life-event concerning her own mother. These factors were said to continue to

influence her relationship with her children, and how she manages contact with their father.

60. Ms Gill concluded that the mother was 'projecting the traumatic fear from her childhood onto the children within her current functioning' and believed that the children were being harmed by almost any sort of contact with their father. The children have been affected vicariously. Ms Gill states that S is becoming 'alienated' from her father as a result of a combination of the mother's unconscious behaviour and some negative experiences with the father. Ms Gill found that the father, also, was affected by unresolved trauma arising from emotional neglect by his parents.

61. Judd J was critical of Ms Gill's approach, which based primarily on her assessment process, rather than an holistic overview of all the circumstances:

> 'Notwithstanding Ms. Gill's assurances that she had read all the papers and took all the evidence into account, I consider that her assessment was narrowly based on her own interpretation of the results of the structured attachment based interviews she carried out rather than upon the evidence as a whole.'

62. Although counsel for the mother (Mr Ageros) was critical of Ms Gill in cross examination and in submissions, Judd J, taking the lead from my judgment in *Re C*, declined to embark upon a critique of Ms Gill's qualifications and standing as an expert. Judd J determined the issues in the case without giving any weight to Ms Gill's analysis and directed that Parenting After Parting therapy should be provided to the parents, but by someone other than any recommended by Ms Gill and on the basis of the judge's findings rather than any reliance on the assessment of Ms Gill.

O v C

63. In her judgment in *O v C* [2025] EWFC 334, Judd J determined a Part 18 application made, in similar circumstances to the present case, to set aside findings of fact that had been made by a district judge in reliance upon expert evidence from Melanie Gill. In her assessment, Ms Gill stated that the children had suffered emotional and psychological harm as a result of the mother's parenting and would continue to do so if they returned to her care without the mother receiving significant and specific therapy. Ms Gill specifically found that the children were being actively alienated from their father by the mother. She recommended that the mother should engage in Schema therapy and that, until she had done so, there should be no unsupervised contact. In like manner to the present case, the judge had found that Ms Gill was correct in her evaluation. The children were removed from their mother's care at an interim hearing and had had only limited contact over the ensuing five years.

64. Judd J summarised the legal context regarding an application to re-open findings, together with the decision in *Re C* and the relevant FJC guidance relating to allegations of alienating behaviour, which applied to her decision as they do in the present case. Judd J correctly made a distinction between any findings of fact made before the instruction of Ms Gill, which could be relied upon, and findings of alienation purported to have been made by Ms Gill, which:

> 'cannot have that status, nor, following that, can any findings that have been made by the judge'.

No criticism was made of the judge, who was determining matters prior to *Re C* and the FJC guidance, but, with the benefit of knowledge of the approach that must now be taken:

> ‘we can see that, in fact, the findings of fact that the judge said he was making at paragraphs 50 and 51 of his judgment were based on an uncertain and, indeed, mistaken foundation.’

65. Judd J concluded:

> ‘29. In all those circumstances, the finding that the judge said he made in paragraphs 50 and 51 cannot be regarded as a finding that has proper status today. He had not embarked on a factual investigation of the mother’s specific behaviours including the three necessary elements that had been considered as being required by the Family Justice Council as set out above.
>
> 30. The matters set out at paragraph 10 (i) and (ii) of the Guidance were not determined, nor was (iii), namely that the other parent has engaged in behaviours that are directly or indirectly impacted on the child. Ms Gill carried out an assessment of the mother which included her own attachment and other behaviours, ***but that does not form a finding of fact about how the mother actually behaved***.
>
> 31. Therefore there are no findings with a solid foundation that the mother alienated the children even though the judge expressed it as such, and accordingly no findings to actually set aside. For the avoidance of doubt, I make it clear that what the judge expressed to be findings based on Ms Gill’s assessment should not stand as such in any further assessment going forward.
>
> 32. I would go a step further and say that Ms Gill’s report is based very much on attachment science and her assessment of the parents is through that prism. It makes it very difficult to retain any of what she says as a base for future decision-making. Accordingly that report should be left out of account by anyone going on to carry out a further assessment of the children, which includes any observation the judge made about it. Everyone agrees that it should be Cafcass who should now investigate and prepare a section 7 report for the court.’ [emphasis added]

66. I have given emphasis to the absence of any findings ‘about how the mother actually behaved’ because, in so holding, Judd J’s approach was entirely correct in pointing out the lack of any sound foundation for the expert’s evaluation. This is a good example of the approach required by the FJC guidance, which makes plain that findings on significant and relevant allegations of domestic abuse might provide an understandable context for ‘a child’s appropriate justified rejection (AJR), or in protective behaviours (PB) or a traumatic response on the part of the victim parent’.

67. Before Judd J, no party was suggesting that the issue of alienating behaviour should be relitigated, and the case therefore went forward for future decisions concerning the children's welfare to be determined without reference to Ms Gill's analysis or the judge's findings that had been based upon it.

Proposed rule change

68. The final element that is topological note in this review of the current landscape surrounding the issue of the instruction of experts in cases such as the present is not yet fully formed, but has progressed sufficiently towards becoming part of the procedural law by the middle of 2026 so as to require at least passing reference in this judgment.

69. In the middle of 2025 the Family Procedure Rule Committee consulted on proposed changes to the FPR 2010 relating to the instruction of unregulated experts. In essence the proposed change restricts the court's jurisdiction to give permission for the provision of expert evidence under Children and Families Act 2014, s 13 so that, in children proceedings, the court may only give permission to instruct a 'regulated expert', unless there is no regulated expert available. The proposed rule change defines 'regulated expert' as an expert who is:

a) regulated by a UK statutory body; or

b) on a register accredited by the Professional Standards Authority for Health and Social Care; or

c) regulated by an approved regulator under the Legal Services Act 2007.

70. Although consultation on the proposed rule change has concluded, the results have yet to be reviewed by the Rule Committee and it would, thus, be premature to assume that it may pass into law. I refer to it therefore as no more than an indication of the possible direction of travel and to note that that is a direction which is entirely at one with the guidance that already exists and with this court's judgment in *Re C*. If the proposed rule change were to be enacted, a prospective expert witness, such as Ms Gill, who calls themselves a psychologist, but who is not registered with a UK statutory body, such as the HCPC, could not be instructed as an expert in children Family Court proceedings unless it were established that no registered expert was available.

The modern approach to the instruction of unregulated experts and the assessment of alienating behaviour

71. Regarding unregulated experts, the judgment in *Re C* strongly encourages courts to favour the instruction of regulated experts, and only to turn to an unregulated expert where there are good reasons for doing so, which are to be set out in a short judgment. The need for rigour on the part of the court in identifying and approving the instruction of an expert is stressed; this being particularly so given the potentially confusing use of the title 'psychologist'.

72. Whilst it is for the Rule Committee and the relevant minister to decide whether to promote any amendment to the FPR 2010 by a statutory instrument, I am sufficiently concerned by the instruction of an expert such as Ms Gill in *Re C*, *P v M, O v P* and the present case, now to go further than I did in *Re C* and give firm guidance on the instruction of an expert psychological witness in children proceedings in the Family Court.

73. In future, permission should not be given under CFA 2014, s 13 for the instruction of an expert 'psychologist' who is neither registered by a relevant statutory body, nor chartered by the BPS. It would be good practice, before a potential expert is appointed, for them to be asked to state whether they hold an HCPC protected title, and if so what that is, before any order is made appointing them as an expert. The 'registered or chartered' requirement should only be departed from where there are clear reasons for doing so (for example no registered or chartered expert is reasonably available); where that is so, those reasons should be set out in a short judgment.

74. The issue of alienating behaviour will, predominantly, arise in private law proceedings but, as this case demonstrates, a finding may lead to a radical dislocation of family relationships that is sustained over a period years. The expectation should be that the degree of rigour that is applied by professionals and the court in managing the instruction of an expert in public law proceedings, is similarly applied in private law proceedings of this nature.

75. 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.

Part 18 or Appeal?

76. One additional observation on process can be made. Those in the position of the mother in the present case may have a choice as to which procedural avenue should be used in an attempt to bring their case back to court in order to challenge findings of alienating behaviour made some years earlier. Whilst applying for permission to appeal, and an extension of time for doing so, is one option, it will in many cases not be the most appropriate. Firstly, there is the need to obtain an extension of time. Whilst in circumstances such as the present case, an extension of time should normally be granted, if it is refused then that is the end of the road for the application. Secondly, an appeal is something of a blunt instrument as, essentially, the appellate court can only allow or dismiss the appeal. It is not in a position to conduct any rehearing or any revised welfare evaluation. Thirdly, where the appeal fails then the prospect of an appeal against that decision, which would be a second appeal, faces a higher permission threshold.

77. For those reasons, it would seem that the better course is likely to be for those seeking to challenge such a finding to go back to the first instance court either under FPR 2010, Part 18, or to apply for past findings to be reopened as part of

a substantive application to discharge or vary existing orders. Where an application of that nature is received by the first instance court, a decision will then be made as to allocation. There is no requirement that the application should be heard at the same level of judiciary, although there may well be benefit in going back before the original judge if he or she is available. In other cases, the course followed here, with the application being transferred to the High Court tier may be appropriate.

Decision on the Part 18 application in the present case

78. Turning to the first stage of the Part 18 application to set aside the 2019 and 2020 findings, the mother must demonstrate that there are solid grounds for believing that the previous findings require revisiting. I must be mindful of the need to balance the important public policy considerations one the one hand favouring finality in litigation, and on other making welfare decisions for children which are based on sound factual foundations. I must weigh up all relevant matters, including the nature and significance of the findings and the relevance of the new material that is now available. The question of whether a rehearing would result in a different outcome is not relevant here, where all concerned agree that a rehearing of the original allegations would be neither practical nor of value to Y's future welfare. It all boils down to whether there are solid grounds for believing that the previous findings should be set aside.

79. I regard the approach of Judd J in *O v C* to be a correct working through of the required evaluative process when an application to set aside findings is made in the context of a case of this type. In like manner to the judge in *O v C*, I regard

the findings of 'fact' made by the judge in the present case, which were in reality a finding that he accepted Ms Gill analysis, was based on a mistaken foundation.

80. The essential substance of the grounds on which the mother now relies in support of her set aside application are not 'new'. They did not drop from a clear blue sky in 2023 and 2024 with the publication of guidance or the decision in *Re C*. Much of what is contained in the 'new' material was known of, or was part of developing good practice over the preceding period. What is new is the fact that that material, in particular the FJC guidance, has now been brought together, set out in a coherent form, been the subject of consultation and then endorsement by a multi-disciplinary group and the President of the Family Division.

81. Against the yardstick of the approach which is now clearly set out, explained and justified within the FJC guidance, the process adopted in 2019 was fundamentally flawed.

82. Having written the previous paragraph, I am driven to add a caveat which is that, new guidance or not, the fundamental flaw at the centre of this case is in reality a breach of basic and long established principle. Like Judd J in *O v C*, who found that the judge acted on a 'mistaken foundation', the judge in the present case fell into a basic error by not establishing the factual matrix first, in particular whether there had been domestic abuse, and before considering any expert evaluation. The submissions of mother's counsel that that was what should have happened were spot-on. They were based on the long established principle that judges decide the facts and experts advise on the basis of those facts, and not the other way around as was, unfortunately, the case here.

83. Turning to detail, when held up against the modern approach to cases where there are cross-allegations of domestic abuse and alienating behaviour, together with the approach that should now be taken to the appointment of an expert psychologist in the Family Court, it can be seen that the course adopted in the present case, both as to case management and by the judge in making his core findings of fact, was fundamentally flawed and must be set aside for the following reasons:

i) In circumstances where the court had decided that a fact-finding hearing was necessary to determine the 'extremely serious' cross-allegations of 'severe domestic abuse and coercive control' [as described in the initial welfare report], any question of instructing an expert psychologist or filing a final s 7 report should have been postponed until the conclusion of the fact-finding process;

ii) In any event, it is now clear that an individual, such as Ms Gill, who holds themselves out to be a psychologist, but who is neither registered with the HCPC nor chartered by the BPA, should not have been instructed to provide a psychological assessment at any stage of Family Court proceedings relating to children;

iii) Ms Gill had no clinical practice, and she did not, therefore, see any children or families in circumstances other than contested court proceedings. It is, therefore, a matter of concern, notwithstanding that these proceedings took place prior to the decision in *Re C* and publication of the FJC guidance, that the proposal that Ms Gill should

be appointed as the expert psychologist was made by the children's guardian and the solicitor for the children, and endorsed by the court;

iv) The submissions of the mother's counsel, as summarised by the judge (see paragraph 14 above), that the fact-finding should have preceded the expert evidence in order to 'contextualise the mother's allegations and the effect upon her and the children', were correct and fully in line with the modern approach. Those submissions should have been accepted by the judge;

v) The court, supported by the children's guardian and the solicitor for the children, was in error in directing that the expert and the guardian should file final reports, making recommendations, prior to any fact-finding hearing

vi) The decision by the judge at the fact-finding hearing (a) to hear the evidence of Ms Gill first, and (b) to hear no other evidence before deciding that he accepted her analysis and recommendations, was a fundamental error.

84. For the reasons that I have now given, I directed that the key findings made in October 2019 and May 2020 should be set aside and not re-determined. Any future consideration given by a court as to the welfare of Y, are to be evaluated without any reference to the report and evidence of Ms Gill or to those findings.

Proposals for an alternative procedural approach

85. At the court's request, the legal teams representing the mother and Y have proposed that the Family Justice Council be invited to establish a working group

to investigate whether a more proportionate and less costly alternative to a full Part 18 application may be provide a more appropriate procedural vehicle for cases of this nature. The hope is that this process would address gatekeeping (for example by a High Court judge), allocation, funding (in light of difficulties in accessing 'exceptional funding'), procedure and potential remedies. I am grateful for this proposal, which has my support and which I will now pass on to the FJC for consideration.

Final observations

86. Although Melanie Gill has featured to a significant degree in this judgment, and in the three previous cases to which I have made reference, she has done so as the representative of a category of expert, rather than as an individual. I have said that this judgment is not 'about Ms Gill', and that is right. It is about those individuals who hold themselves out as 'psychologists' and are willing to be instructed in Family Court cases, but who are neither registered, nor chartered as psychologists. I have been very conscious that Ms Gill has not had formal notice of these proceedings and has not had any opportunity to play a part in them. That is so because the mother's Part 18 application is not about Ms Gill, it is about the failure of the whole process, which was undertaken in a manner which is now to be seen as fundamentally unsound for the reasons that I have given.