



An Roinn Dlí agus Cirt
Department of Justice

Parental Alienation Policy Paper



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1. Overview

1.1. Introduction

Parental alienation as a concept is difficult to define and to determine. In very general terms, it relates to a process through which a child becomes estranged from a parent as a result of the psychological manipulation of the other parent, or to situations where one parent is wrongfully influencing their child or children against the other parent.

The Minister receives representations and correspondence regarding the concept from various representative groups, TDs and members of the public. Much of this correspondence appears to arise from experience of and/or concerns with the family courts in Ireland, including about court-ordered reports containing the views of a child or about their welfare.

The concept of parental alienation is highly contested and opinions diverge on whether it exists at all. Some argue that it is a concept proposed by abusive parents to further abuse and control the other parent; others argue that it is a real and painful experience of estrangement from a child for no established reason or explanation. Most experiences relate to families separating and associated matters, such as custody, access and guardianship. Incidences of alleged domestic violence can also be a feature.

In 2019, the Oireachtas Joint Committee on Justice and Equality held hearings on the family law system in Ireland. The subsequent report observed that parental alienation was recognised as a serious problem, and contained the following recommendation:

“...that consideration be given as to whether laws should be amended to take into account situations where one parent is wrongfully influencing their child or children against the other parent, thereby creating unfair and unwarranted alienation that can be destructive and life lasting.”¹

Irish courts, similar to other courts internationally, appear to be encountering increasing claims of parental alienation by parties in family law proceedings, particularly in custody and access disputes and child abduction cases. Internationally, it is cited in courts in many jurisdictions and has been presented in cases before the European Court of Human Rights (ECtHR). However, little is known about the concept in an Irish context; how prevalent it is; how often it arises in family courts; and what impact it has on families. This is why, in response to the Joint Oireachtas Committee recommendation, the Minister for Justice committed in Justice Plan 2021² to undertake research into the concept of parental alienation and subsequently conduct a public consultation on the matter.

¹ Joint Committee on Justice and Equality, Houses of the Oireachtas. Report on reform of the family law system. Dublin: Houses of the Oireachtas 2019, pg. 50.

² Justice Plan 2021, Action No. 76.

The researchers were tasked with examining academic literature on parental alienation, as well as considering examples of its presentation and discussion in legal settings, both in Ireland and abroad. It was also charged with identifying areas for consideration in addressing the issues that can arise from claims of parental alienation.

The public consultation was designed to gather a broad view of how organisations and individuals viewed the issue of parental alienation, if they had experience of it and how they thought it could be responded to in the future.

1.2. Background

1.2.1. The Origins of Parental Alienation

The term ‘parental alienation’ was first coined in 1985 by Richard Gardner, a US based practitioner working in the field of psychiatry and psychology.

Two definitions by Gardner form the basis for almost all classifications relating to parental alienation and/or parental alienation syndrome. These definitions include characterisations, behaviours and actions of the child, alienated parent and alienating parent. One academic author, for example, reports that Gardner defined parental alienation as

*“...a damaged or severed relationship between a child and a targeted parent, caused by the alienating parent”.*³

Gardner’s definition of ‘parental alienation syndrome’ is generally presented as:

*“...a disorder that arises primarily in the context of child-custody disputes. Its primary manifestation is the child’s campaign of denigration against the parent, a campaign that has no justification. The disorder results from the combination of indoctrination by the alienating parent and the child’s own contributions to the vilification of the alienated parent.”*⁴

While there are many proponents of the parental alienation concept, many others have challenged its authenticity and perspectives range from complete acceptance of the concept through to total denial of its existence. Even among proponents there is divergence as to its precise definition.⁵

³ Harman JJ, Biringen Z, Ratajack EM, Outland PL, Kraus A. Parents behaving badly: Gender biases in the perception of parental alienating behaviors. *Journal of Family Psychology*. 2016;30(7):866-74.

⁴ Whitcombe S. Psychopathology and the conceptualisation of mental disorder: The debate around the inclusion of parental alienation in DSM-5. *Counselling Psychology Review*. 2013;28(3):6-18.

⁵ Whitcombe S. Powerless to parent; powerless to protect: The experiences of alienated parents in the UK. *Maltrattamento e Abuso All'Infanzia: Rivista Interdisciplinare*. 2017;19(1):47-66.

Notwithstanding the lack of definitional consensus, it is generally understood to refer to the negative influence of one parent over a child's perception of the other parent, usually in the context of custody and access disputes.

1.2.2. The Controversial Nature of Parental Alienation

While references to parental alienation appear to have increased, particularly in academia, the concept has been controversial since its inception. The main areas of dispute to be considered in respect of parental alienation are:

A. Its Gendered Nature

The gendered nature of the debate has been a feature since the concept first emerged, fuelled by the fact that Gardner's work on parental alienation syndrome emerged as a response to his perceptions of an "epidemic" of false accusations about sexual abuse being made mainly by mothers against fathers in custody proceedings.⁶ Generally, when discussing cases of alleged parental alienation, the mother is most likely to be subject to claims of alienating and the father is more likely to be identified as the alienated parent. This pattern was reflected in the results on the public consultation, discussed further in chapter 3, section 2.1.

B. Its Scientific Basis

The scientific basis for parental alienation has been subject to considerable debate. Those who support the parental alienation concept claim there is a strong scientific evidence base to prove its existence, pointing to hundreds of articles in peer-review journals in support of this view. Those who call the scientific basis for parental alienation into question offer three main critiques. These are that:

- i. the scientific basis for parental alienation does not meet the legal standards for evidence in court in the United States.⁷ It would also appear that a weak methodological base of the concept of parental alienation also has implications when considering it in the Irish courts;⁸

⁶ Adams MA. Framing contests in child custody disputes: Parental alienation syndrome, child abuse, gender, and fathers' rights. *Family Law Quarterly*. 2006;40(2):315-38.

⁷ In 1993, the US Supreme Court ruled that judges are obligated to scrutinize scientific evidence. The Federal Rules of Evidence require judges to "...ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." The Court provided a four-step process that courts should use in determining the scientific basis of expert testimony:

1. Is the theory or technique at issue testable, and has it been tested?
2. Has the theory or technique been subjected to peer review and publication?
3. In the case of scientific techniques, what is the known or potential error rate, and are there standards controlling the technique's operation?
4. Does the technique enjoy general acceptance within the scientific community?

The concept of parental alienation is deemed by critics not to meet this criteria.

⁸ Parental Alienation: A Review of Understandings, Assessment and Interventions, Department of Justice Research, pg. 77.

- ii. that there are significant methodological limitations in the existing literature; and
- iii. that despite a number of attempts parental alienation syndrome has not been included in the World Health Organization's internationally agreed disease classifications (the International Classification of Disease (ICD)) or the Diagnostic and Statistical Manual of Mental Disorders (DSM) authorised by the American Psychiatric Association and accepted worldwide.

C. **Domestic Violence**

The issue of domestic violence and abuse repeatedly emerges in literature examining parental alienation.⁹ It has been argued that a lack of understanding of domestic violence or child abuse can lead to abused parents and children being disbelieved and discredited when parental alienation is claimed. In these cases parents being falsely accused of parental alienation are presented as being psychologically abusive towards their child. It has also been suggested that perpetrators of domestic violence use parental alienation as a tactic to discredit reports of abuse by mothers and children.

D. **Assessment**

It has been highlighted that there may be multiple reasons for the child's rejection of one parent. These include, but are not limited to, rejection as a result of being victim of, or witness to Domestic, Sexual and Gender-Based Violence (DSGBV) and as a result of post-separation trauma. Further to this, many academics in Ireland and internationally have raised concerns regarding hearing children's voices in cases where claims of parental alienation have been made.¹⁰ From a children's rights perspective, courts have many obligations in respect of children, ensuring that their best interests are of paramount consideration, while balancing their right to contact with their parents as well as their right to be protected from harm. These competing requirements are highly complex and challenging to establish where claims and counterclaims are made.

1.3. The Research Report

In 2021, the Department of Justice commissioned Research Matters to conduct an analysis of academic and other literature, as well as case law relating to the topic of parental alienation.

The following questions were the focus of the research:

⁹ Johnston JR, Sullivan MJ. Parental alienation: In search of common ground for a more differentiated theory. *Family Court Review*. 2020;58(2):270-92.

¹⁰ Fitzpatrick K. Parental alienation, domestic abuse and the views of the child. *Irish Journal of Family Law*. 2020;23(3):64-72.

- How has parental alienation been defined within a European and international context? Is there an agreed definition of parental alienation used internationally? How is it defined legislatively?
- What attempts, if any, have been made to establish what parental alienation is understood as in Ireland? What is the nature and extent of parental alienation in Ireland? How has that nature and extent been measured? Has the nature and occurrence levels changed over time? What are the main social and economic factors that underpin parental alienation?
- What is understood by parental alienation in Europe, particularly within the EU/EEA and internationally, with particular emphasis on common law jurisdictions? Has this understanding changed over time? What is known about its extent and nature in Europe and how has this changed over time?
- What can be learned from an international context that can help us understand and deal with the issue of parental alienation in Ireland?

These questions were answered throughout the report in the discussion of specific areas of law and parental alienation. They were:

- The definitions and characteristics of parental alienation;
- Parental alienation in the Irish context;
- The wider nature of parental alienation and its relevance to the Irish context;
- A comparative understanding of assessment of parental alienation and what can be learnt from other jurisdictions; and
- A comparative understanding in how parental alienation is dealt with across jurisdictions.

The report then defined areas of consideration for addressing parental alienation in Ireland. These were primarily concerned with reforms to the Irish family law system, as well as areas identified for further research. These are further discussed in Chapter 2, section 5.

1.4. The Consultation

The Department of Justice also committed to undertake a public consultation on the issue of parental alienation as part of the Justice Plan 2022. For the purposes of the consultation, the Department described parental alienation as

“...a process through which a child becomes estranged from a parent as the result of the psychological manipulation of the other parent. It may also refer to

situations where one parent is wrongfully influencing their child or children against the other parent.”

The consultation was presented as an opportunity for individuals and organisations to offer their views on parental alienation. They were asked to express their views and experiences of parental alienation, its impact and how it could be responded to in the future.

One State body, Tusla, and 18 other organisations or groups sent submissions as part of the consultation. They are listed at [Appendix 1](#).

When considering submissions made from these organisations, it is important to note that a large number of them work in the area of DSGBV. It is unsurprising therefore, that parental alienation is considered within this context in many of the submissions received from organisations.

In addition, 352 individual submissions were received from Ireland along with the 85 submissions received from individuals outside Ireland.¹¹ The following is an overview of the types of responses received in the Irish submissions:

- The majority of these submissions indicated that they were male.
- The majority of these submissions indicated that they had direct experience of parental alienation in Ireland.
- Of the submissions that described their personal experience of parental alienation, the majority of the authors were fathers. A large number of submissions also described themselves as relatives of father who had experienced alienation, increasing the total of father’s experiences detailed in the submissions.
- The overwhelming majority of the submissions suggested acceptance of parental alienation as a concept.

What was evident in both the organisation and individual submissions is that many people currently involved in family disputes and situations involving DSGBV can have very difficult experiences. Where children are involved there is often a necessity for parents, who can be involved in highly contentious disputes, to continue some form of civil relationship for the purposes of co-parenting when it is safe to do so. In the majority of cases, this is done successfully, although not necessarily perfectly, and the child has the opportunity to maintain healthy relationships with both parents, spending the desired amount of time with both.

However, in a minority of situations this is sadly not the case. Parental alienation can be accused in these cases where the child has rejected one of the parents without any identifiable justification. In some of the experiences described in the personal submissions the term ‘parental alienation’ has been cast even wider to encompass

¹¹ The call for submissions resulted in over 500 responses, but included in this figure are multiple submissions originating from some individuals. When multiple submissions from the same source were stripped out, a total of 456 remained.

situations where there was no rejection by the child, but a refusal to comply with access by the other parent.

While the frustration of the parent, wider family and even the court can be understood where a child is seemingly refusing contact without an identifiable cause it must also be noted that these scenarios are occurring within what appears to be a minority of family law cases (as can be seen in the discussion of relevant Irish case law in chapter 2, section 1) and that parental alienation is just one possible factor at play.

1.5. Children's Rights

It has been already noted that there is a concern among academics regarding hearing the child's voice in custody and access cases where parental alienation is claimed. Given the importance of this issue and the frequency at which it appears throughout the discussion in this paper, it is important to set out the rights of the child in this context both internationally and within Ireland.

Article 9 of the UN Convention on the Rights of the Child states that a child should not be separated from a parent against their will, unless separation is necessary for the best interests of the child. Where the parents reside separately, decisions will be made in accordance with local law and procedures as to where the child's primary place of residence should be. As part of these proceedings, all interested parties should be given an opportunity to participate and make their views known. The rights of the child to maintain personal relations and direct contact with both parents should be protected, unless this is not in the child's best interests.

In Irish law, section 31(2)(a) of the Guardianship of Infants Act 1964, as inserted by s. 63 of the Children and Family Relationships Act 2015 provides that the court must consider:

“the benefit to the child of having a meaningful relationship with each of his or her parents and with the other relatives and persons who are involved in the child's upbringing and, except where such contact is not in the child's best interests, of having sufficient contact with them to maintain such relationships”.

Further, s. 31(2)(j) provides that the court must consider;

“the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent, and to maintain and foster relationships between the child and his or her relatives”.

However, it must further be noted that Section 31 also sets out a wide range of factors that the court is required to take into account when making a determination in such proceedings. These factors include, where applicable, any harm which the child has suffered or is at risk of suffering, including harm as a result of household violence, and the protection of the child's safety and psychological well-being (section 31(2)(h)).

Article 42A (4) (2°) of the Constitution also imposes a set of requirements in relation to particular family law proceedings which the State is required to uphold:

Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section [child protection and welfare proceedings, and proceedings concerning the adoption, guardianship or custody of, or access to, any child] in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

In considering the matter of parental alienation, it is important to ensure that the needs and best interests of children are and continue to be of paramount importance, that their voices are heard and their views considered.

1.6. Structure of the Report

Following this introduction, section two outlines parental alienation in the contemporary Irish context. In doing so, it is informed by the research commissioned for this work. Section three presents an overview of the submissions received through the public consultation while section four presents recommendations to address the matter. Section five concludes the report.

2. Parental Alienation in the Current Irish Context

This chapter identifies how parental alienation is currently understood and measured in an Irish context. Informed by the commissioned research, it will describe how parental alienation is currently being considered in Irish legal literature and in case law. It will also consider ways in which parental alienation has been assessed in the Irish courts and identifies interventions adopted by the courts.

2.1. Prevalence of Parental Alienation in Ireland

Assessing the prevalence of parental alienation is problematic as there is a lack of data relating to the Irish family courts. In as far as it can be established in the preparation of the research, there has not been any systematic attempt to measure the extent of parental alienation in Ireland and neither has there been any attempt to quantify the demographic or other characteristics of families where allegations of parental alienation have been raised. The absence of such data for the Irish population understandably limits our understandings of parental alienation. This gap in understanding, however, is not unusual, as no nationally or internationally representative studies on this area were identified in the research report.

Table 1 Irish High Court cases where parental alienation has arisen

AB v. CD [2012] IEHC 543	
LD v. CD [2012] IEHC 582	
SS v. KA [2018] IEHC 795	
AMQ v. KJ [2017] IEHC 342	
BB v. ZS [2018] IEHC 15	
CG v. BG [2019] IEHC 15	
SH v. JC [2020] IEHC 686	

Material relating to Ireland which does exist stems from High Court judgements and some small scale studies of cases at other jurisdictional levels. One such recently published study of custody and access cases in the District Courts between 2017 and

2019 observed of 360 cases across five districts over a period of 14 days between 6 March 2017 and 9 April 2019. This study reports that in 13 out of 77 cases (about 17%), evidence was heard of parental estrangement and in 25 out of 77 cases (32.5%) evidence was heard of parental alienation by the Court.¹²

2.2. The Definition of Parental Alienation in the Irish Legal System

The lack of consensus internationally regarding a definition of parental alienation is also reflected in Ireland. The research report noted that while the term parental alienation has arisen in family law cases in Ireland there is not a commonly used definition, although it is clear that the core element identified by Gardner, the rejection of a parent by the child, has been incorporated to a varying degree.¹³

Similarly, the legal literature examined by the researchers each defined the concept of parental alienation differently. However, each did identify a rejection of a parent by a child and the role of the other parent in this. The legal literature also differentiated between parental alienation and 'estrangement' noting that parental estrangement is defined as:

“a situation where there is conflict between the parents and the family law system contributes to the breakdown of the relationship between one parent and a child, or estrangement has occurred for a good reason”¹⁴

The contested nature of the concept and how to define it has also been reflected in Irish court proceedings. For example in *LD v. CD* [2012] IEHC 582¹⁵ the Court stated that an appellant “*consciously and unconsciously criticises her in the presence of the children. He has engaged in parental alienation of the children from their mother which is not in the best interests of the children.*” In stating that the criticism occurred “consciously or unconsciously” the Court raises an issue that has been contested around parental alienation in the international context, as some proponents of parental alienation would argue that parental alienation could only take place in a conscious way.

2.3. Assessing Parental Alienation in the Irish Courts

The lack of consensus on the definition of parental alienation creates a complex and challenging issue around assessing claims of parental alienation in the Irish courts.

¹² Conneely S, O’Shea R, Dempsey S. Custody and access in the district court. *Irish Journal of Family Law*. 2021;24(4):84-92.

¹³ Parental Alienation: A Review of Understandings, Assessment and Interventions, pg. 41.

¹⁴ *Ibid.*, pg. 42.

¹⁵ *LD v. CD* (2012) Irish High Court, case 582. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5da057d14653d07dedfd5edb>

How does the court determine what constitutes alienating behaviours and how do they identify these in a legal setting?

The research report points to a number of cases where the Court identified what it believed constituted alienating behaviours in Irish family law cases. In *CG v. BG [2019] IEHC 15*¹⁶ the Court listed behaviours that could be construed as being ‘alienating,’ which had been claimed by the father in this case.¹⁷ These included unfounded allegations of sexual abuse, obstacles to obtaining the child’s passport, the respondent seeking a protection order following “*no more than a very unpleasant, if also very intense, family row in a public place*” and emails sent by the child that “*are quite adult in character and expression.*” However, the Court also found evidence of positive behaviours, which encouraged the child to have contact with the respondent. In this case, the Court determined that it was very difficult to form a definitive view on this issue.

The research report also noted an instance where the Court rather than either parent suggested the incidence of parental alienation. In *BB v. ZS [2018] IEHC 15*¹⁸ the Court described the behaviour of both parents with regard to facilitating access to the child and noted that the applicant had previously facilitated regular access while “*the respondent appears to be supportive of a position whereby the child is effectively alienated from the applicant.*”¹⁹

An intersection between parental alienation and domestic abuse has also been identified in the Irish family courts, matching an international trend. There are complexities involved in balancing children’s rights to contact with their parents as against their rights to be protected from abuse, and potential abuse of one of the parents. It is made clear throughout the research that it is essential that in any case which presents allegations of abuse, these allegations must be thoroughly investigated.

2.3.1. Expert Reports in the Family Courts

Judges in Irish courts have commented on the need for expert evidence when considering claims of parental alienation. For example, in the previously mentioned *CG v. BG [2019] IEHC 15*²⁰ the Court followed that a definitive view on this issue could not be formed without a professional opinion.

As has been previously noted it is well established in both domestic and international law that children’s views should be ascertained in court proceedings affecting their lives. In Ireland, one way in which children are currently being heard and their welfare and best interests considered in private family law cases is via the commissioning and provision of expert reports. These reports can be ordered either by the court itself or

¹⁶ *CG v. BG* (2019) Irish High Court, case 15. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5da061ef4653d07dedfd6d7c>

¹⁷ Parental Alienation: A Review of Understandings, Assessment and Interventions, pg. 46.

¹⁸ *BB v. ZS* (2018) Irish High Court, case 15. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5da060164653d07dedfd6b1e>

¹⁹ Parental Alienation: A Review of Understandings, Assessment and Interventions, pg. 49.

²⁰ *CG v. BG* (2019) Irish High Court, case 15. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5da061ef4653d07dedfd6d7c>

on application of one of the parties to the proceedings. The main pieces of legislation under which reports are applied for in private family law are as follows:

- a. Section 32 of the Guardianship of Infants Act 1964: a provision inserted into this legislation by the Children and Families Relationship Act 2015 provides that the court can request two types of reports: one relating to an expert determining and conveying the child's views (section 32(1)(b) report); and one on any question affecting the welfare of the child (section 32(1)(a) report).
- b. Section 27 of the Domestic Violence Act 2018: in certain civil proceedings under this Act where an order is sought on behalf of a child, the court may appoint an expert to ascertain the views of the child.
- c. Section 47 of the Family Law Act 1995: this provides for a report affecting any aspect of the welfare of a party to proceedings or any individual to whom they relate. The provision is thus not exclusive to children, but is often used in relation to their welfare in family law cases.

The Minister for Justice, with the consent of the Minister for Children and Youth Affairs (as then titled), introduced regulations in 2018 which govern the provision of child's views reports (section 32(1)(b) reports) under the Guardianship of Infants Act 1964 (one of the types listed under a. above). These regulations were extended to reports ordered under Section 27 of the Domestic Violence Act (b. above).

Under these regulations the following can conduct these reports: psychiatrists, psychologists (in due course)²¹, social workers, social care workers (in due course)²² or teachers, all of whom are required to have worked in their area for at least 5 of the previous ten years. They are also required to be registered with the relevant regulatory authorities (e.g. the specialist division of the list of medical practitioners for psychiatrists, the Teaching Council for teachers, CORU for social workers). The regulations also set out a range of requirements of experts, including that they must act independently, facilitate the child to express their views freely, and have their own professional indemnity insurance.

The research report noted that Section 32 reports were only ordered in 5% of cases they had access to. This low percentage was attributed to the costs involved to have such a report compiled.²³ The 2018 regulations set the maximum fees that may be charged by an expert for the performance of the functions carried out by them at €325.

The report further stated that the court was also sometimes critical of what was being presented in said reports, particularly in relation to the methods used by the assessors to gather information. It was found in a number of cases, that where the reason for rejection by the child of the parent was not adequately probed and developed by the assessor, less weight was placed on the voice of the child. Some of the cases

²¹ Once a register for psychologists is established under section 36 of the Health and Social Care Professionals Act 2005 and the individual is entered in that register;

²² Once a register for social care workers is established under section 36 of the Health and Social Care Professionals Act 2005 and the individual is entered in that register;

²³ Parental Alienation: A Review of Understandings, Assessment and Interventions, pg. 43.

referenced in the report demonstrated that the Irish courts have attached less weight to children's views in circumstances where they believe that one of the parties is influencing the children.

2.4. Current Interventions

Two main interventions to address allegations of parental alienation were identified in the research report as having been used in the Irish context. These were referrals for therapy and directions to parent/s to promote good relationships. A third - the transfer of custody to the alienated parent – was also discussed.

2.4.1. Therapy

In general, the interventions identified in relevant cases related mainly to therapy for parents, for the children and/or for parents and children together. In *SH v. JC [2020] IEHC 686*²⁴ an expert psychological report had been prepared and found that there was evidence of parental alienation. It was recommended that the family “engage in a mixture of individual and joint therapy with the children having continued contact with both parents.”

2.4.2. Directions to Parents to Promote Good Relationships

An example of the court directing parents to promote good relationships between children and parents was highlighted in *CG v. BG [2019] IEHC 15*²⁵, where, although the court did not make a finding in relation to parental alienation, it found that its priorities under Irish law are the child's welfare and best interests. In this case, the Court granted that access should be on such basis as may be recommended by the professionals engaged to assist in the restoration of the relationship between the applicant and his child. The respondent in this case was also informed that they were expected to cooperate fully with whatever measures may be put in place to facilitate this.

The research report also identified case law where mediation had been recommended to the parents, particularly in cases where they also had a protracted history of court applications.²⁶ In *AB v. CD [2012] IEHC 543*²⁷ the court ordered the parties to attend mediation first in the event of further issues, rather than immediately resorting to court.

²⁴ *SH v. JC* (2020) Irish High Court, case 686. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5fe96d414653d00a567b1b6c>

²⁵ *CG v. BG* (2019) Irish High Court, case 15. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5da061ef4653d07dedfd6d7c>

²⁶ Parental Alienation: A Review of Understandings, Assessment and Interventions, pg. 52.

²⁷ *AB v. CD* (2012) Irish High Court, case 543. Courts Service of Ireland. Available at: <https://www.casemine.com/judgement/uk/5da0562e4653d07dedfd5c3e>

2.4.3. Transfer of Custody

The research report notes that a number of texts have been published in recent years by Irish academic authors recommending the transfer of custody to what they describe as the “alienated parent.”²⁸ One such example relates to a recommendation for transfer of custody in conjunction with therapy.

However, it also identifies research that would suggest that in some cases there is a risk of custody of a child being granted to an abusive parent. In these cases, where custody is transferred despite a child’s objections, serious questions could arise in respect of the weight afforded to the views of the child and to expert reports.

2.5. Recommendations Arising from the Research Report

The report that arose in 2019 from the Oireachtas Joint Committee on Justice and Equality regarding the family law system recommended that consideration be given as to whether laws should be amended in relation to claims of parental alienation. The areas for consideration identified in the commissioned research did not include any suggestion of legislative change. Instead, they mainly centre on three areas:

- improving the existing family law system,
- developing accurate terminology and assessment tools for the courts, and
- identifying further areas of research.

There are eleven areas of consideration presented in the research report which are detailed below.

2.5.1. Improving the Existing Irish Family Law System

The research report recommended a number of areas that could benefit from improvement in the existing family court system to address claims of parental alienation.

i. Conduct a review of expert reports in Irish family law

Issues were identified in the report in relation to expert evidence in the current family courts and highlighted that where parental alienation claims are made, judges in Irish courts have ordered reports to ascertain the child’s views. The value of judges speaking with children directly themselves, to assess if a report is necessary and if it is, what the focus should be for the assessor was also raised. Internationally, concerns around the use of expert evidence include that it is important to be alert to the possibility of confirmation bias in appointing a

²⁸ Parental Alienation: A Review of Understandings, Assessment and Interventions, pg. 52-53.

“specialist in parental alienation”. Therefore, an examination of how these reports are conducted, what they contain and how assessors are appointed, their qualifications etc. was recommended.

ii. *Training for professionals involved in family law*

The Houses of the Oireachtas Joint Committee on Justice and Equality Report on Reform of the Family Law System in 2019 identified training for key personnel involved in family conflict. The research report recommended that this training should include a focus on understanding the complexities and polarised nature of parental alienation to assist in ensuring appropriate decisions are made.

iii. *Improve judges’ ability to refer families for interventions*

The research report suggested that the ability of family law judges to refer families to skilled professionals for a range of interventions that are relevant to parental alienation would greatly assist in reducing the number of protracted cases where issues of parental alienation are raised. This is also relevant to the Houses of the Oireachtas Joint Committee on Justice and Equality Report on Reform of the Family Law System and in Head 5 of the General Scheme of the Family Court Bill 2020.

iv. *Prompt responses to legal interventions*

The report recommended that legal interventions, including court-ordered assessments and therapy, must be promptly attended to, in order to comply with obligations under the European Convention on Human Rights.

2.5.2. Developing Accurate Terminology and Assessment Tools for the Courts

The lack of defined terminology of parental alienation in the Irish legal system was identified by the research report as an area that needs further consideration in this discussion. This is of particular importance when gauging how the Irish courts could develop assessment tools when presented with parental alienation accusations.

v. *Use greater precision when adopting the terminology of parental alienation in legal settings*

It is suggested in the research report that greater precision is required when adopting the terminology of parental alienation in legal settings. Alienating behaviours by one parent may not necessarily lead to the rejection by a child of the other parent and in those circumstances the term parental alienation should not be used. In situations where a child rejects contact with a parent the report suggests the term ‘estrangement’ is more accurate, and the term “parental alienation” should only be used in those circumstances where all other reasons for the rejection have been investigated and excluded.

vi. *Develop comprehensive assessment strategies to react to claims of parental alienation in a wider context*

The areas of disagreement identified throughout the report in respect of parental alienation make for significant challenges and a requirement for comprehensive assessment procedures that take account of the different standpoints. In cases where claims of parental alienation are made, they conclude that while such claims can be valid and are one factor for a court to consider, it is important that any such claims should not dominate a case as there may also be other, complex issues involving a risk of harm to the child(ren) and other parent emanating from DSGBV.

vii. *Development of government sponsored guidelines to aid in in the assessment of high-conflict custody and access cases*

In carrying out a child custody evaluation where an allegation of parental alienation has been made, the research report states that it is essential that the individual family dynamics, history, and context are all included and taken into consideration in the assessment of parental alienation. The report identified government-sponsored guidelines in the UK, Canada and Australia and it recommended that consideration be given to the development of a similar type of guidance in Ireland for use in the assessment of high-conflict custody and access cases, including those where parental alienation is a feature.

2.5.3. Identifying Further Areas of Research

As well as the areas outlined above the research report also noted a number of areas that could benefit from further research.

viii. *Conduct research on DSGBV allegations in the courts in relation to parental alienation claims and analyse research on the relationships between children and parents in family law proceedings*

Given the low level of available data within the courts system, more research to ascertain how prevalent the co-incidence of DSGBV allegations and parental alienation allegations is suggested. The research report also suggests that longitudinal research, based on existing research through cohort analyses of the datasets of the National Longitudinal Study of Children in Ireland. would allow for the relationships between children and parents before, during and after separation and divorce to be described. This would in turn aid the process of hearing the true authentic voice of the child in court proceedings.

ix. *Conduct research into children's views and experiences of Irish family law*

The voice of the child was identified as a contested area in the research report. It highlighted the impact that claims of parental alienation can have on the weight that is attached to children's views. It states that it is important to draw

attention to this issue from a children's rights point of view, given that children's participation in decisions affecting their lives is enshrined in both domestic and international law, and the expressed concern by many authors that children are being silenced in such cases.

Therefore, further research in this area was recommended, preferably directly with children who have been involved in such cases, about their views and experiences.

x. *Conduct research into interventions*

The research report suggested that identification and collation of parental alienation interventions, including those relating to the enforcement of custody and access orders, could improve knowledge about the existing interventions. It suggests that this then has the potential to assist in assessing and implementing an appropriate course of action to address issues arising relating to parental alienation

xi. *Consider research from other jurisdictions*

The research report identified a pilot project underway in Quebec, Canada, developed in response to the need to fast-track cases where family violence has been identified, including allegations of parental alienation. The report suggested that the findings from the evaluation of this pilot project should be considered for their relevance in the Irish context where protracted court applications, that include references to parental alienation, are identified.

3. The Public Consultation

3.1. Who Responded to the Consultation?

For the purposes of analysing the submissions they were broken into three groups;

1. Irish Groups or Organisations,
2. Individuals in Ireland and
3. Submissions from other jurisdictions.

3.1.1. Groups and Organisations

In total there were 19 submissions in this category, they are listed at [Appendix 1](#). As previously noted, many of the organisations had a DSGBV remit, working either exclusively or partly in this area. All of these particular organisations expressed concern regarding any adoption of the concept of parental alienation in an Irish legal setting or advocated for rejection of the concept entirely.

Due to the background of many of these organisations the issue of DSGBV presented itself as a dominant focus, being discussed in some element across all the submissions in this category.

3.1.2. Individuals in Ireland

352 submissions were received from individuals in Ireland. The majority of the respondents were male. The submissions, regardless of gender, mostly discussed their personal experience of parental alienation and the majority of these identified themselves as the father in the situation. A large number of submissions were also received from family members other than the parents. They mostly represented aunts and uncles, followed by grandparents. When extended family members' recounted experiences of parental alienation were taken into account, father's experiences of parental alienation accounted for 73% of all the submissions. The majority of the individual submissions indicated that they accept parental alienation as a concept.

Due to the dominant numbers of those stating they had direct experience of parental alienation, the effects of this appeared as the main topic within these submissions. There were also extensive discussions of personal experience of the Irish family courts.

3.1.3. Submissions from other Jurisdictions

85 submissions were also received from other jurisdictions. The majority of these recounted personal experiences of parental alienation in other countries. There was also a number of submissions from NGOs, legal professionals and researchers, offering advice based on their work and experience in other jurisdictions.

The majority of these submissions also indicated that they accept parental alienation as a concept.

What follows is an overview of the analysis of submissions received.

3.2. Parental Alienation and the Family Law System

Despite aforementioned issues regarding definition and assessment of parental alienation, it remains that the majority of submissions from individuals in Ireland claimed that they had direct experience of parental alienation as a parent or other family member. These individuals predominantly used the consultation to describe how alienating behaviours had been displayed, and the effects that alienating behaviour or false claims of alienation have had on the family as a whole.

The effects of parental alienation were also a strongly discussed topic among Irish organisations and submissions from other jurisdictions that were proponents of the concept of parental alienation.

3.2.1. Experience of Claimed Parental Alienation

As previously mentioned, a large majority of the respondents indicated that they had direct experience of parental alienation, either as a parent or as a close family member. Only two submissions were received from individuals who believe they were alienated as children.

The individuals that recounted personal experiences of parental alienation raised the multiple impacts that parental alienation had on them, their children and other family members such as grandparents and aunts and uncles. However, there was also a range of perspectives on the exact definition and terminology of parental alienation in these responses. This included a range of perspectives on what types of behaviour could be construed as being 'alienating.' It should also be noted that in a number of the experiences recounted there was no evidence presented of any rejection from the child, but instead discussed issues regarding access and custody of their children.

Generally, in cases alleging the occurrence of parental alienation, the father is named as the 'alienated' parent in the majority of cases and the mother as the 'alienator.' This was reflected in the individual submissions where fathers were represented as the parent who experienced being alienated in the majority.

Most of those describing personal experience of parental alienation stated that the mother was the 'alienator' in their case. Few submissions were received from parents

who believe they have been wrongly accused of parental alienation; almost all of them were women.

Proponents of the parental alienation concept across all categories of submissions referred to the effects parental alienation had on those involved. The majority of these referenced the effects parental alienation has on an alienated parent. Common impacts discussed included depression, career issues, suicidal thoughts and financial implications.

Slightly fewer respondents discussed what impact parental alienation has on an alienated child. Common themes here were depression, suicidal thoughts, academic failure and violent or bad behaviour. A minority of the organisations viewed parental alienation as a form of emotional child abuse.

Less than half of the submissions referred to the negative impact parental alienation can have on wider family members.

Very few of the individual submissions discussed the impact a false claim of parental alienation can have on a parent but it did arise more frequently in the submissions from organisations. They primarily discussed issues relating to coercive control, domestic violence, fear of loss of access to children and continuing abuse. These same organisations also discussed the impact false claims of parental alienation can have on a child. These included ignoring children's voices and running the risk of subjecting them to further abuse through forced contact.

3.2.2. Experience of the Irish Family Law System

A dissatisfaction with the current Irish family law system was evident across the submissions received in the consultation. Over 200 of the individual submissions discussed negative experiences within the courts. A very small amount recounted a positive experience. This negative opinion was also reflected in the majority of submissions from organisations.

One particular area of dissatisfaction identified on both sides of the parental alienation debate was that professionals working within the Irish family court system do not have adequate training and experience to identify evidence of domestic abuse. Training legal professionals in identification of DSGBV was seen as a primary goal by opponents of the parental alienation concept across the consultation. They raised that this was of vital importance in reducing the number of parental alienation claims being accepted when, in fact, they were being made in response to evidence of DSGBV. Proponents of the parental alienation concept also recommended this training but as a means to aid identification of false claims of DSGBV, made to facilitate alienation. This is discussed further in the section below.

3.3. Domestic, Sexual and Gender Based Violence

As previously discussed, the theme of DSGBV was a frequent feature in the submissions from organisations, but also appeared in the individual responses. Critics

of the parental alienation concept argued that parental alienation is frequently claimed in family courtrooms where there is evidence of DSGBV. In these instances, the abuser uses a claim of parental alienation to discredit reports of abuse from the victims. In contrast to this, many proponents of the concept see false claims of DSGBV as an alienation tactic.

3.3.1. Accusations of Parental Alienation as a Response to Evidence of DSGBV

All of the submissions from organisations referenced the topic of DSGBV in relation to parental alienation in some manner and the importance of fully investigating any claims of DSGBV was recognised across most submissions.

Organisations working in this area maintained that protection from DSGBV should be at the forefront of any assessment or decision related to custody, access and related matters. They claimed that the Irish family courts are already a site of danger for victims of DSGBV, and that if the concept of parental alienation was legitimised by the State, this situation would deteriorate further, putting off more victims from coming forward.

Accusations of parental alienation were presented by these organisations as being a live issue for victims of DSGBV in Ireland, particularly those who subsequently have found themselves in family law proceedings. They stated that accusations of parental alienation against a non-abusing parent have become common in the Irish courts as response to evidence of DSGBV where custody, access and related matters are contested and at least one of the children has expressed reluctance to participate in access. It was submitted that in these cases, the accusation of parental alienation against a non-abusing parent could have the effect of reversing, silencing and devaluing the actual evidence of the real abuse.

A smaller number of submissions from individuals also recounted cases where children are alienated from the abused parent. This was usually presented in conjunction with a pattern of coercive control where it was alleged that the abusive parent employs alienation as an emotional abuse tactic as part of their overall coercive control pattern. This was also raised in a small number of the organisation submissions.

3.3.2. Accusations of DSGBV as an Alienation Tactic

In contrast to this, a minority of the organisations submitted that false allegations of DSGBV were being made in the courts to facilitate parental alienation. They raised concerns that false allegations of DSGBV are being used as weapons in the family courts to “game the system.” They claim that parents are making false allegations of DSGBV to better their chances of obtaining their desired outcome in the courts, including primary parental care and favourable financial decisions.

One organisation raised false accusations of sexual abuse as a separate issue concerning parental alienation. As previously discussed, Gardner’s work emerged as a response to his perceptions of an “epidemic” of false accusations about sexual

abuse being made mainly by mothers against fathers in custody proceedings in the 1980s, although this has now been largely rejected by most credible professionals.²⁹ Due to the considerable amount of time it can take for investigations into these accusations to be concluded this organisation claimed that there is potential to decrease or remove any contact between the child and the accused parent thus facilitating parental alienation. However, this accusation was refuted by Rape Crisis Network Ireland who cited international in-depth studies of disclosures in their submission that determined that false allegations of sexual abuse occur at a rate of 2% – 8% with the lowest rate of false allegations being detected for the child who discloses themselves.

The topic of DSGBV was referenced in less than half of the personal submissions with the majority of these referring to accusations against a father. The majority of these individuals claimed that the accusations of DSGBV in their experience was false, unfounded and being employed as an alienation tactic.

These individuals raised concerns that the relevant authorities were accepting allegations of DSGBV, without being backed by facts or evidence. They stated that this has led to barring orders being made against them, which also cover their children, resulting in losing all contact with their children without due process. They maintain that this loss of contact facilitates the custodial parent to engage in alienating the child.

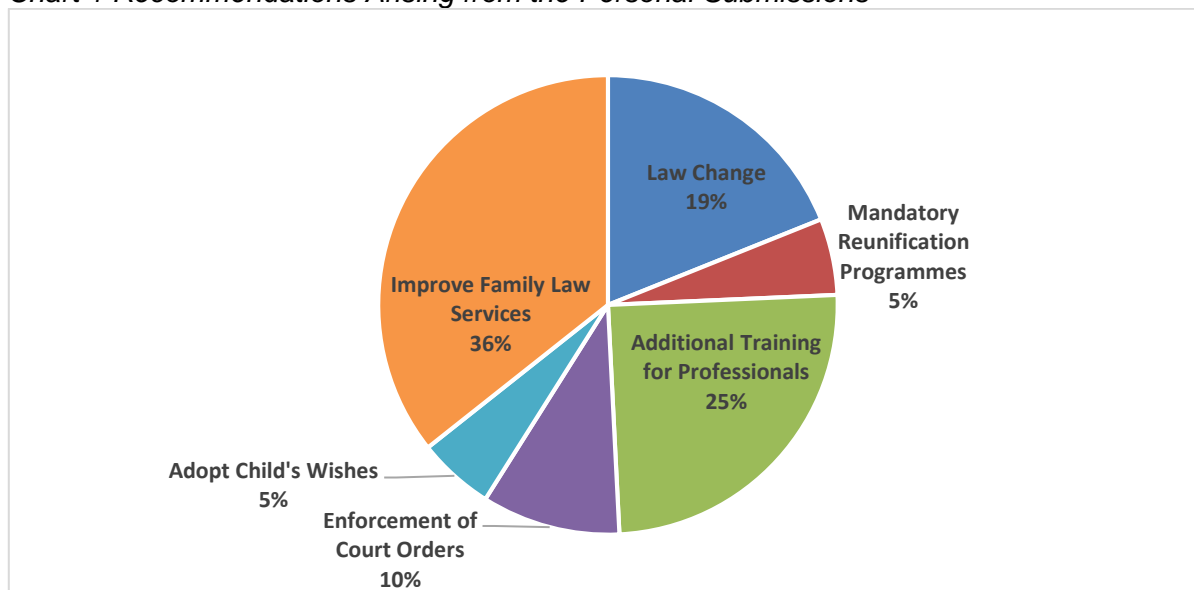
3.4. Recommendations Arising from the Public Consultation

The public consultation displayed a marked difference in a recommended approach to addressing parental alienation between the individual and organisation submissions. This divergence of opinion was also evident in the majority of arising recommendations. However, there were areas of convergence.

251 personal submissions offered suggestions as to how parental alienation could be best dealt with in the future, with a number of these offering multiple suggestions. The breakdown of the areas they dealt with are displayed in the chart below.

²⁹ Ibid., pg., 24.

Chart 1 Recommendations Arising from the Personal Submissions



3.4.1. Improve Family Law Services

Most of the organisations who responded to the consultation raised that the mechanisms for addressing claims of ‘alienating’ behaviours are already at the courts disposal, for example through repercussions for breaching court orders or through measures related to coercive control. Improvements to services supporting these methods was seen as a potential way to address accusations of parental alienation.

While not reflecting this exact position 36% of the personal submissions also saw measures that the court could improve on or adopt as a means for addressing parental alienation. There was a number of suggestions made in this area which are detailed below.

i. Improving fairness in the granting of access and custody

Gender bias in the family courts appeared to be the primary concern in this area. However, whether the bias was against men or women was a contradictory factor.

The majority of the personal submissions that raised gender as an issue were men, who believed that their custody or access had been influenced by their sex. These submissions suggested that custody should be initially set at a 50:50 basis. This, they suggested, would defer attempts to initiate alienation and ensure fairness regardless of gender.

The Men’s Development Network stated that changes are required in relation to the interpretation and application of family law to ensure it does not reinforce traditional gender norms, which can prove harmful to fathers in court proceedings. However, they believe that parental alienation is not an appropriate entry point to such a conversation and that the introduction of a Family Law Court with appropriate mechanisms and judicial training is a best practice for future law reform with regards to gender bias in family law.

ii. Granting legal aid to all parties

It was suggested in a small number of the personal submissions that legal aid be granted to both parties going through the family courts to ensure fairness and decrease the chance of one party being unrepresented. The suggestion of granting legal aid to the child, in order to be represented and their voice protected in the proceedings, was also suggested.

iii. Shorter waiting times

The considerable amount of time it can take for cases to go through the court was raised on both sides of the debate. Submissions argued that this has the potential of increasing the effects of alienation and on the other side can prolong the trauma for victims of DSGBV. Increasing the efficiency of the court was provided as an area for consideration.

iv. Regulation of the court assessors

Regulation of the court assessors was recognised as an area of concern across all categories of submissions. Topics for consideration that were raised in this area included the cost of obtaining a report, the qualifications and regulation of the assessors and the lack of appeals or complaints mechanisms.

For opponents of the parental alienation concept this concern was compounded with a seemingly rising amount of 'parental alienation experts' working in the area.

Overall, there was a consensus that there needs to be a greater regulation of assessors with supervisory oversight to ensure consistency of reports and expertise. Concerns were voiced with regard to the potential influence court assessors have over the outcomes of family court cases with no mechanism in place to make a complaint. The Nemo Forum further submitted that there should be penalties imposed on assessors who are found to have not conducted the reports fairly. It is worth noting here that over 100 of the personal submissions referred to personal experience of expert reports or dealing with court assessors. The majority of these involved a negative experience.

v. Reviewing the 'in-camera' rule

Family law cases are heard in private (*in camera*) to protect the privacy of the family. Only officers of the court, the parties to the case and their legal representatives, witnesses and such other people as the judge allows will be in the courtroom while the case is being heard. However, this has been a contributory factor to the lack of data currently available with regards to the prevalence of claims of parental alienation and how they are currently being dealt with by the courts. A small number of both the organisations and the individuals raised this as an area of concern and suggested it be reviewed.

vi. Introduction of counselling and mediation services

Co-parenting was seen as the ultimate goal in the suggestions put forward by the individuals in many submissions. One method identified to support this was

access to counselling and mediation services for families going through the family courts.

3.4.2. Additional Training for Professionals

25% of the recommendations made in the individual submissions called for additional training for professionals, particularly those working in a family law related field, such as judges, court assessors, solicitors and social workers. The types of training suggested were specific to recognising DSGBV and identifying examples of alienating behaviours. Some submissions called for training to be extended to doctors and teachers as well as family justice professionals.

The need for specialised training for professionals, such as the dynamics and impacts of DSGBV, was seen by many of the organisations as fundamental to the assessing parental alienation claims and to address more directly the needs of children who have experienced violence and/or abuse in the home.

For the organisations, regardless of whether they were a proponent or opponent of the concept of parental alienation, there was a consensus that there is a lack of understanding about the concept in Ireland, which could also be rectified through the training of professionals.

3.4.3. Legislative Change

The majority of organisations did not call for any legislative changes to address parental alienation claims in the courts. An issue that was raised throughout the consultation was the already litigious nature of the Irish family courts. Treoir stated that legislating for parental alienation ran the risk of increasing this litigiousness, especially in cases that were already highly contentious.

Recommendations for amending the law regarding parental alienation arose mainly in submissions from individuals. Approximately 27% of all submissions received from individuals called for changing legislation to address the issue. The majority of these were fathers, and other family members of a father who had made claims of alienation in their submission. The types of legislation called for ranged from basic recognition of the concept through to criminalisation.

3.4.4. Enforcement of Court Orders

10% of the recommendations made by the individual submissions were in relation to enforcing court orders, particularly in relation to breaches of custody and access. Organisations with a parental alienation remit argued that breaches of court orders are often treated with gender bias before the courts. They claim that mothers openly defy court orders, particularly in respect to access orders, but do not suffer the same penalties as fathers. It was recommended in all these submissions that stronger repercussions for breaches of court orders could be seen as a deterrent and would reduce potential alienation.

The majority of the organisations discussed the rights of both parents to custody and access. A small number of organisations, namely those that worked in a parental alienation remit, submitted that the rights of alienated parents in this regard are being infringed and parental alienation is being facilitated, through breaches of custody orders. These organisations named mothers in particular, of being guilty of these breaches of access. However, other organisations, such as Women's Aid, claimed that the Irish family courts have a pro-contact assumption, which often trumps the wishes of the child, and they are forced to go on access visits against their will. This reluctance is then, they claim, misconstrued as evidence of parental alienation.

3.4.5. Mandatory Reunification Programmes

5% of the recommendations in the individual submissions pointed to the use of reunification programmes in other jurisdictions for parents and children who have been subject to alienation. Tusla also recommended that in cases where access and contact in relation to children who have been alienated from the other parent have been court-ordered, these cases should include a plan for supporting the child who will be at least ambivalent and at most frightened about re-engaging with the alienated parent.

3.4.6. Acknowledge the Voice of the Child

A large number of the organisations called for improvements in the family law system to give the appropriate weight to the voice of the child in their custody and access hearings. Suggestions here intersect with other areas of consideration including granting legal aid to the child and improving the system of expert reports. It was also suggested that courts give priority to the 'voice of the child' rather than the 'best interest of the child.' The best interest was seen as problematic as it raises questions as to who 'the best interests' actually serve.

The majority of organisations proposed that the child should have primary input into any decisions regarding access and custody. Spark stated that the right to access a non-custodial parent should be seen as the child's right and not the parent's. Putting the focus on the parent's rights, they stated, skews the understanding of the best interest of the child. Tusla stated that this needed to be balanced by taking the child's age and understanding of the situation into account. While Tusla maintain that the child has the right to be involved in all matters and decisions they also submitted that the rights and needs of parents and families should be respected. This position was echoed by We are Fathers who submitted that as parents they have a right to be part of the lives of their children, but also that the child has a right to have the parent by their side.

3.4.7. Reject the Concept of Parental Alienation

Among the majority of the organisations, particularly those with a DSGBV remit, there was a general agreement that the concept of parental alienation should not be accepted by the family courts and/or legitimised by the State. They argued that there

is no scientific evidence for its existence and that the fact that there is no settled or agreed definition should be taken as a strong indication that no weight be given to it as a real phenomenon. These organisations argued that it was neither a useful or valid concept, being largely used as a tool of abuse, where the victim is being further traumatised and threatened through their children. For the majority of organisations, it was felt that a child's rejection of a parent was often justified due to other mitigating factors in the family dynamic. In these cases 'estrangement' could be adopted as a more accurate terminology, as suggested in the research report.

It should be noted that this was not a suggestion presented through all of the organisations and was only presented in a minority of the individual submissions. In some submissions it was submitted that parental alienation should be recognised to an extent, for example Men's Aid suggested that Tusla update their Children First, National Guidelines to inform the reader and those impacted regarding the definition and actions required when parental alienation is identified.

A small number of organisations recommended that parental alienation should be redefined as a form of domestic coercive control. Organisations, such as the Men's Network, suggested that the family courts already have means to address what may be termed as 'alienating' behaviours, for instance in relation to breaches of custody orders, without directly adopting the terminology of parental alienation. Tusla also submitted that their general approach is to see behaviours that could be identified as parental alienation as indicators of emotional abuse, thus avoiding labelling or diagnosis issues and leaving a path for intervention and safety planning.

4. Recommendations for Reform

It is clear from the research and the public consultations that the issue of parental alienation is complex and challenging, and one where there is little, if any, common ground. It is a concept which can be intertwined with perhaps the most rancorous – and in some cases dangerous – family breakdowns and disputes before the courts. Some view it as a tool to control access and custody by non-resident parents with their children. Others see it as a pernicious way in which to minimise other issues, such as claims of domestic violence.

Since the Oireachtas Committee's report in 2019 and the Minister's commitments in Justice Plan 21 and 22 to commission research and undertake a public consultation respectively, much has changed in the family law space. In December 2022, the Family Courts Bill was published. The Bill will provide for the establishment of dedicated family courts divisions. It also provides a set of guiding principles for the family court system to make the best interests of the child a primary consideration in all family law proceedings, to operate in an efficient and user-friendly manner and to encourage active case management by the courts. The courts, legal practitioners and parties to family law proceedings will be required to have regard to these principles in the conduct of family law proceedings.

Preceding the publication of the Bill was the launch of the Family Justice Strategy. While foundational in nature, the Strategy contains a number of actions which are directly relevant to the issue of parental alienation, including review and reform of assessment reports, greater awareness and information relating to necessary supports for families, and training for judges and other legal professionals. A key focus of the strategy is to put children at the centre of the family justice system, ensuring that they are safe, protected and heard.

Reflecting on the areas of consideration raised in both the public consultation and the research report it would appear that the majority of areas of consideration when assessing how to address parental alienation lie within improvements to the Irish family law system.

Six recommendations have been made below, all of which are also reflected in the Family Justice Strategy 2022-2025.³⁰ The main area of focus is on expert reports, which appears, in some form, in half of the recommendations. This is due to the weight that is afforded to these reports, first in determining the voice of the child and in any assessment of a parental alienation accusation. Other recommendations detail the provision of support services for families, training for legal professionals and improvements to the collection of data relating to this area.

³⁰ The Strategy was developed by a Family Justice Oversight Group chaired by the Department of Justice and made up of representatives across the family justice system. Similar to parental alienation it was also informed by a wide ranging consultation process where relevant stakeholders, the public, children and young people who engage with the family justice system gave their views on how a modernised family justice system should look.

4.1. Ensure that the Needs of the Child are at the Centre of All Decisions Made in the Family Justice System

The voice of the child was identified as a contested area, particularly in the organisation submissions and in the research report. They highlighted the impact that claims of parental alienation can have on the weight that is attached to children's views in the courts. It is important to draw attention to this issue from a children's rights point of view, given that children's participation in decisions affecting their lives is enshrined in both domestic and international law. At the same time, children have a right to protection and safety, and to maintain contact with their parents unless it is contrary to their best interests.

Recommendation 1

Give priority to children's voices being heard and considered by the court, and support them in their journey through the system.

This recommendation can be implemented through actions already agreed under the Family Justice Strategy. Goal 1 of the Family Justice Strategy clearly reflects this recommendation, by aiming to place the child at the centre of matters which affect them in the Family Courts and ensuring their voices are heard and considered. The specific actions are outlined below and involve the establishment of a Working Group to review current arrangements as well as developing and trialling new ways for hearing the voice of the child.

Actions	Start Date	Delivery Date
A Working Group will be established with an aim to review the effectiveness of the current arrangements for hearing the voice of the child in private family law cases and alternative dispute resolution (ADR) processes (if appropriate).	Q2 2023	Q2 2024
If required pilot mechanisms will be developed to enhance hearing the voice of the child in all family justice matters, ensuring children's welfare and best interests are considered in conjunction with their constitutional rights.	Q3 2024	Q1 2025
If pilot mechanisms are developed they will be evaluated and recommendations made as to how they should be presented across all proceedings –	Q2 2025	Q3 2025

Actions	Start Date	Delivery Date
<p>private, public family law as well as ADR proceedings and how they should be overseen and quality assured.</p> <p>All of these actions are in line with Goal 1, action 1 of the Family Justice Strategy.</p>		

4.2. Conduct a Review of Expert Reports in Irish Family Law

There is a recognition across this paper that the current system of expert reports has problems. This was reflected across the full spectrum of submissions and the research report. Internationally, concerns around the use of expert evidence include that it is important to be alert to the possibility of confirmation bias in appointing any “specialists in parental alienation”.

Concerns around expert reports was also raised in the consultation that informed the drafting of the Family Justice Strategy. Similar to the consultation on parental alienation the main issues highlighted concerned the qualifications of those appointed to undertake reports and the lack of a standardised system.

Recommendation 2

Examine how these reports are conducted, what they contain and how assessors are appointed. Provide additional training for those tasked with compiling assessments, particularly in relation to the dynamics of family breakdown.

This recommendation can be implemented through actions already agreed under the Family Justice Strategy which involve a review of expert/assessment reports and establishing a Working Group to review the training needs of all involved in family justice, including researching the minimum standards and recommended training required for professions across the family justice sector. Standardised training of those working on expert reports was raised by stakeholders consulted in the Family Justice consultation and would also reflect the outcomes of the parental alienation consultation. This Working Group will be established this year, with the first phase of its work due for completion by Q3 2024. The Working Group will involve the Department, Courts Service, Legal Aid Board, DCEDIY, Judicial Council, LSRA, Law Society, Bar Council, MII and Tusla.

Actions	Start Date	Delivery Date
<p>Undertake a review of assessment reports in family law, including voice of the child reports, to examine their commissioning, content and use in proceedings. This will then lead to the establishing of recommendations with regard to their future application and function.</p> <p>This is proposed in Goal 1, action 8 of the Family Justice Strategy.</p>	Q1 2023	Q4 2023
<p>Establish a Working Group to review existing training needs for those working within family justice, including those working with children and parents.</p> <p>This Working Group should research the minimum standards and recommended training required for those working in this area.</p> <p>It should identify professional development opportunities to address identified gaps relevant to those in this line of work.</p> <p>Finally it should engage with educational and professional bodies and associations to develop and implement training for professionals in this field in core family justice areas e.g. child-centred approach, dispute resolution, trauma-informed practice</p> <p>This action is in line with Goal 5, action 1 of the Family Justice Strategy.</p>	<p>Q3 2023</p> <p>Q4 2024</p> <p>Q2 2025</p>	<p>Q3 2024</p> <p>Q1 2025</p> <p>Ongoing</p>

4.3. Develop Comprehensive Assessment Strategies in Family Law

The areas of disagreement identified throughout the report and submissions in respect of parental alienation make for significant challenges and a requirement for comprehensive assessment procedures that take account of the different standpoints. It is also important that any such assessment does not allow a claim of parental alienation to dominate a case where there may be other complex factors at play, which could result in risk to the child(ren) and parents where DSGBV could be a factor.

As we have identified in this paper the Courts often require expert reports as methods of assessment in cases where Parental Alienation has been accused. We have also

already noted that expert reports were raised in the open Parental Alienation consultation, the research report and in Family Justice Strategy as an area of concern.

Development of specific training for Judges, as was outlined in the Strategy, will also assist in ensuring that they have enhanced skills to assess all issues on a case by case basis.

Recommendation 3

Review assessment tools currently available to the courts, with a view to making recommendations to improve them, as well as identifying how to assist judges in considering issues on a case-by-case basis.

Actions	Start Date	Delivery Date
Review assessment reports in family law as is described in Recommendation 2	As above	As above
Provide training for judges, as is proposed in Goal 5, action 4 of the Family Justice Strategy, as well as dedicated judges being listed for family law cases. This will be an important element of reform to provide enhanced skills and greater space for consideration of issues on a case-by-case basis	Q4 2023	Ongoing

4.4. Strengthen Support Services for Families Going Through the Family Courts

The research report and the submissions point to a range of potential interventions in the area of parental alienation. These include changes to custody and access arrangements, assessments and therapeutic interventions for children and a range of parenting and family support initiatives specifically targeted at those who are experiencing conflict in family life. While there are limitations to some of these interventions, there is potential in the parenting and family support initiative suggestion. A clear finding from the consultation process for the Family Justice Strategy was the absence of knowledge amongst judges and legal professionals about what services and supports are available in a locality to which families can be referred. In many cases, families require interventions that are not legal or judicial in nature, but rather more social and/or psychological.

Work in this area is already planned to commence this year under the Family Justice Strategy, which has two clear goals related to improving services and supports for families. Goal 2 of the Family Justice Strategy also aims to improve the experiences of those engaging in the family justice system by enhanced signposting of services

and supports, and identifying gaps in service provision and existing needs to build a better model for service delivery in the future.

Goal 4 of the Family Justice Strategy also looks at promoting more co-operative, less adversarial ways for people, children and families to try to resolve disputes, where it is deemed appropriate.

Recommendation 4

Support and extend family support services, including ADR, and make them more accessible.

Actions		Delivery Date
<p>Develop mechanisms to improve signposting for available services and supports for families, to which families can be referred. Working with DCEDIY and Tusla, this process will include:</p> <ul style="list-style-type: none"> • Engaging with State funders and commissioners of services to collate information on services available on a regional basis; • Creating a directory of services; and, • Developing ways to share information and promote awareness about services amongst all those engaging with the family justice system. <p>Engagement with related groups has commenced and initial work on this Action is due to start this quarter.</p> <p>This Action is in line with Goal 2, action 1 of the Family Justice Strategy.</p>	<p>Q2 2023</p> <p>Q1 2024</p> <p>Q3 2024</p>	<p>Q1 2024</p> <p>Q2 2024</p> <p>Q4 2024</p>
<p>Increase awareness and promotion of ADR among professionals, families and service users and develop mechanisms to support it.</p> <p>This is reflected in Goal 4 of the Family Justice Strategy.</p>	<p>Q1 2023</p>	<p>Ongoing</p>

4.5. Introduce training for legal professionals to accurately use terms and language associated with parental and other behaviours

The research report identified that professionals in the Irish legal system are already using the term ‘parental alienation,’ despite the fact that the term remains undefined and controversial. The majority of the submissions from the organisations raised this as a concern, particularly in relation to how the use of the term could affect victims of DSGBV who now find themselves accused of parental alienation before the family courts in custody and access hearings. Given that there are a wide range of reasons for the behaviour of a child towards their parent, especially during a separation or divorce, more training of legal professionals is needed to ensure the most appropriate term is used. It is particularly important that judges, legal professionals and assessors ensure that the term is only used in legal settings where it is appropriate in the specific context to do so.

Training for legal professionals working across the Family Justice Sector was also highlighted as a point of focus in the Family Justice Strategy.

Recommendation 5

Improve the training and awareness amongst legal professionals and others involved in high-conflict proceedings to increase their understanding of concepts and descriptors associated with behaviours of parents and children in these situations.

Work to implement this recommendation is due to commence in terms of the actions outlined below – engaging with the Judicial Council and other legal bodies to identify required skills and training as well as the establishment of the Working Group already highlighted in Recommendation 2 above.

Actions	Start Date	Delivery Date
<p>Engage with the Judicial Council (JC) and professional legal bodies regarding training in a number of areas relating to children, including child-sensitivity training and engaging/communicating with children directly. This action is covered by Goal 1, action 5 of the Family Justice Strategy.</p> <p>Engagement is due to start in Q3 this year and will be ongoing to identify required skills and deliver training.</p>	Q3 2023	Q1 2025

Actions	Start Date	Delivery Date
Engage with JC about the development of guidance and protocols for members of the judiciary when speaking with children as is set out in Goal 1, action 6 of the FJS.	Q1 2023	Q1 2023
As was referred to in Recommendation 2 above, the establishment of a working group to identify training needs and establish a training programme for professionals involved in family justice is recommended.	As Above	As Above
Provide training opportunities for judges and identify a set of training requirements as is proposed in Goal 5, action 4 of the Strategy. Section 59 of the Family Courts Bill (FCB) also requires judges to take courses of training and education as so directed by the President of the relevant courts.	Q4 2023	Ongoing

4.6. Improve Data Collection in the Irish Family Court System

The lack of data on the prevalence of parental alienation accusations and how they were being currently dealt with has been raised as an issue throughout this paper.

There are also a number of specific areas which could benefit from more data collection to increase understanding around the issue in an Irish context. This includes the co-incidence of DSGBV allegations and parental alienation allegations

The need for improved systems that better manage, collect and share information within the family justice system was also identified in the Family Justice Strategy as necessary for better case management, statistical reporting and evidence based decision making.

Recommendation 6

Actions should be implemented with regards to establishing, and in some areas improving, data collection on family justice issues.

Actions	Start Date	Delivery Date
Establish a working group, to develop better statistical data and reporting on family justice	Q1 2023	Q2 2025

Actions	Start Date	Delivery Date
<p>matters, including scoping what new areas are required to be reported on and how these can be achieved.</p> <p>This working group should identify areas of misunderstanding or roadblocks in collecting, processing or sharing data between family justice bodies and make recommendations to improve processes, systems and amend or develop legislation to enable sharing, improve efficiencies and reduce duplication of effort.</p> <p>It should also scope requirements for either a new or improved data collection methods across the sector and make recommendations.</p> <p>This action is outlined in Goal 6, action 1 of the Family Justice Strategy.</p>	<p>Q1 2023</p> <p>Q2 2024</p>	<p>Q2 2024</p> <p>Q2 2025</p>
<p>Examine the feasibility of establishing a family law case reporting system (akin to the Child Care Law Reporting Project), involving the piloting of an approach to analyse case decisions and outcomes.</p> <p>This is proposed in Goal 6, action 3 of the Family Justice Strategy.</p>	<p>Q4 2023</p>	<p>Q4 2025</p>

As the majority of the recommendations involve actions under the Family Justice Strategy, implementation of each could be overseen and monitored within the existing oversight structure of the Family Justice Implementation Group.

5. Conclusion

So many aspects of the concept of parental alienation are contested: its existence, its relationship with allegations of DSGBV, its prevalence, and significance in the family justice system and how the system should deal with it. The Oireachtas Joint Committee Report on the family law system (2019) observed that parental alienation was recognised as a serious problem. This observation is problematic if seen as a formal recognition of PA as a defined condition when discussing any potential policy recommendations for many reasons – the lack of systematic data available from the courts system on the incidence of PA allegations, the lack of a clear definition, the challenges in assessing it and in assessment reports generally, and the potential impact it has on limiting the voice of children and victims of DSGBV in family justice proceedings. Notwithstanding this, parental alienation, for those who claim they are experiencing it first-hand, does present a serious problem in terms of the effects it can have on parental relationships with children and the relationships children have with their wider family members.

What is evident, particularly from the individual submissions, is that many people dealing with issues regarding custody and access to their children are in challenging situations, and for many, the perceived cause of this is parental alienation. In this regard, it is understandable how some might see the answer to addressing this issue in the amendment of legislation, as suggested in the Oireachtas Report. What has emerged from the research and the consultation is that legislative change is not supported by many; there is no clear consensus amongst those advocating legislative change as to what that change might be; and that it could not provide a simple panacea for the complexity of the challenges facing courts dealing with family law disputes.

Legislating for a concept that is so contested about whether it even exists, and bearing in mind its close proximity to issues like domestic abuse and coercive control, would be premature and ill-advised. It could have a number of consequences, including potentially create dangerous implications for victims of DSGBV as well negatively impacting on our legal obligations to consider the voice of the child and their best interests in legal proceedings that concern them. It is clear further sociological research is needed on it, and the role it plays in family breakdown and its aftermath.

Ultimately, it is the impact on the children and families going through the family justice system that this report is most concerned with and how any recommendations arising from both the research and the consultation can be taken forward to reduce the conflict from which allegations of parental alienation usually arise

While some proponents of the parental alienation concept might argue that amendments to the family law system may not go far enough in addressing their concerns, the lack of consensus regarding an exact definition or means of assessment risks any policy initiative or legislation being interpreted or applied inconsistently. As has been previously stated in this paper actions which could be attributed to being 'alienating' can be addressed by the State through other means, such as through measures relating to addressing coercive control, emotional abuse and more consistent enforcement of custody and access orders. Supporting services, as

detailed in the recommendations for reform, to adequately assess and address these issues at the earliest stage possible, is a better way forward.

The majority of the key issues that have been raised can be addressed through the implementation of the Family Justice Strategy 2022-25, particularly in the areas of reform proposed in relation to expert reports, training provisions, family supports and data collection.

Appendix 1: List of Groups and Organisations that responded to the Public Consultation

1. Tusla
2. Alienated Children First
3. Donegal Domestic Violence Services
4. Haven Horizons
5. Men's Aid
6. Men's Development Network
7. Nemo Forum
8. Offaly Domestic Violence Support Services
9. One Family
10. Protect Children Now
11. Rape Crisis Network Ireland
12. Safe Ireland
13. SiSi
14. SPARK Ireland
15. Treoir
16. We are Fathers
17. Women's Aid
18. Women's Collective – Clare
19. Women's Collective – Limerick