



Neutral Citation Number: [2026] EWHC 783 (Fam)

Case No FA-2026-000039

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

-

Date: 31/03/2026

Before :

MR JUSTICE POOLE

A MOTHER

Appellant

-and-

(1) A FATHER

(2) P AND Q (By their Children's Guardian)

Respondents

Re A Mother (Appeal: Alienating Behaviours: Fair Procedure)

**Luke Eaton (instructed by Creighton and Partners) acting pro bono for the Appellant
Dominic Brazil and Seema Kansal (Direct Access) acting pro bono for the First**

Respondent

**Ami Bartholomew (instructed by TV Edwards Solicitors) for the Second and Third
Respondents**

Hearing date: 18 March 2026

JUDGMENT

This judgment was delivered in public but 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 including the parties 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.

Mr Justice Poole :

Introduction

1. At a finding of fact hearing on the appellant mother's allegations of abuse against the father, the Recorder ("the Judge") not only dismissed her allegations but also found her to have fabricated them and to be guilty of 'parental alienation' in respect of both the parents' twin children, P and Q. The mother appeals the findings on three grounds:
 - 1.1. The Judge was wrong to make findings of alienating behaviour against the mother.
 - 1.2. The Judge erred in his approach and determinations in respect of the mother's credibility/untruthfulness.
 - 1.3. In any event the Judge failed to provide sufficient reasons to support any findings in respect of alienating behaviours.

In his skeleton argument in support of the appeal, Mr Eaton for the appellant mother divided ground one into two elements:

- (a) Procedural unfairness: the Judge made a preliminary decision not to try the father's allegations of alienating behaviour but then made findings against the mother of 'parental alienation'.
 - (b) The finding of 'parental alienation' was substantively wrong because, having recognised and purported to adopt the three stage approach first set out by the Family Justice Council Guidance, December 2024, the Judge failed to apply that guidance and/or made findings which were unsustainable given the evidence.
2. Mr Eaton did not appear at the hearing below, nor did his instructing solicitors, Mr Brazil, or Ms Bartholomew. I am very grateful to Mr Eaton, his solicitors, Mr Brazil and Ms Kansal for acting pro bono for their respective clients in this appeal.
3. This appeal was issued well out of time. The finding of fact judgment was given on 9 July 2025, the subsequent order was approved on 31 July 2025, and further case management hearings have taken place leading to an intended final welfare hearing this Spring. On 5 February 2026, on consideration of the papers only, I refused a stay but granted an extension to allow the appeal to be brought out of time and gave permission to appeal, fixing the substantive appeal hearing before me on 18 March 2026. The final welfare hearing in the Family Court was subsequently adjourned with a case management hearing listed for 23 March 2026.
4. Mindful of the imminent case management hearing in the Family Court, I announced my decision to the parties on 18 March 2026 but reserved my reasons to be given in a written judgment. This is that judgment.

Background

5. The parties dated briefly in October 2015 and the mother became pregnant. In early 2016 they started a relationship and co-habited from April 2016 but separated a month or so after the children were born, the mother alleging domestic abuse against the father. The children are now ten years old. They have been involved in litigation for many years.

Under a child arrangements order made in March 2023 the children were to live with both parents under a shared care order but, in March 2024 following allegations that the mother says the children had made, she stopped contact with the father. The children then gave evidence in interviews: P, a girl, in a video recorded interview in July 2024, and Q, a boy, in an interview in November 2024.

The Judgment

6. The Judge gave an ex tempore judgment on 9 July 2025 but then provided a written judgment to “save costs” and “avoid delay” rather than causing the parties to have to apply for a transcript. He began his written judgment by saying that it had “been prepared at speed as a result”.
7. The family proceedings were listed before the Judge as a final hearing on 7 July 2025 in the Family Court at Barnet but the Guardian had been unable to file her final analysis and the Judge decided to use the hearing days to conduct a finding of fact exercise. Both the mother and the father had drafted detailed schedules of allegations but the Judge summarised them and made a preliminary determination as follows:

“3. This case was listed for a final hearing to include fact-finding. It was reduced to a fact-finding hearing as guardian could not provide final analysis due to late filing of evidence and her own ill health.

4. I decided as a preliminary matter that I was not dealing with father’s allegations in his Scott schedule or recast allegations of:

(a) The mother is making the children adopt her narrative which is causing them to be in conflict and to suffer emotional harm (particulars in 3 of his Scott schedule).

(b) Since birth of children mother has persistently sought to restrict relationship with father (particulars in 5).

(c) Psychologically manipulative behaviours towards Q and P which have resulted in reluctance/resistance/refusal to be with respondent.

5. However I said I would deal with the general issue of why allegations have come up which might feed into parental alienation.

6. I am therefore dealing with mother’s allegations. These are on page 360. (Page references in this decision are to the main bundle unless otherwise stated). I do not need to repeat them in full. I summarise them as:

(a) Deep sleeps (1)

(b) Sexual abuse of P and sexual use of Sudocrem (2(a) to (e))

(c) Naked touching of both children (2 (f) and (g))

(d) Having and sharing inappropriate images (3).”

8. The Judge then reviewed the legal framework adopting a note provided by Counsel for the Guardian. He set out his impression of the witnesses, the only oral evidence he had received being from the parents, then the background in some detail before turning to his analysis of the four allegations made by the mother which he had summarised.

9. Under the heading “1. Deep Sleeps” the Judge set out the detailed allegations:

“The Respondent has on multiple occasions, including specifically during the Christmas contact in 2023, become incapacitated due to excessive alcohol consumption whilst directly responsible for the care and safety of the children.

“a) On 7th January 2024, upon returning from the Respondent’s home, the children allege they were so terrified by the Respondent’s unresponsiveness (“deep sleeps”) that they put on their shoes intending to seek help from a neighbour, thereby placing them in a vulnerable and dangerous” [sic].

10. The Judge noted some inconsistencies in Q’s accounts of the alleged incident on 7 January 2024 and November 2024 and recorded that accounts from both children and the mother on 1 February 2024 had not mentioned that specific incident. P’s accounts contained no specifics. He concluded:

“Looking at all the evidence in the round I find that there are times when [the father] sleeps when the children are in his care. But the incident of him putting the children in danger is not proven. It appears to have developed over time, and been given its detail long after it is claimed to have taken place.

It has not been shown that he was ever incapacitated due to excessive alcohol when caring for the children.”

11. The Judge then gave the details of the second group of allegations under the heading “2(a) to (e) Sexual Abuse of P Sudocrem.”

“The Respondent has subjected the children to or engaged in concerning behaviour of a sexual nature. Specific instances include:

a) On an occasion when P was aged between 12 and 18 months, concerns were raised she had blood in her nappy following unsupervised contact with the Respondent (witnessed by the mother and grandmother).

b) In approximately April 2021, whilst the children were in the bath, Q stated to P, "no one should touch your fanny, only daddy." When [the mother] subsequently spoke with P about [the father] touching her private parts, P became very upset and cried.

c) Around April 2021, P informed [the mother] that the [the father] was applying Sudocrem and talcum powder to her bottom and vagina after she had showered, despite her expressing discomfort with this practice directly to him.

d) On 1st May 2024, P disclosed to [the mother] that [the father] continues to apply Sudocrem to her and that, during this process, [redacted for publication].

12. The Judge conducted a detailed analysis of the evidence regarding these allegations. He noted that allegations (a), (b), and (c) were raised for the first time on 30 April 2024 by a "family friend" GH. He found that allegation 2(a) was vague, made late, and that there was no evidential link of any blood found to any action by the father: "The evidence comes nowhere close to showing that this incident involved worrying sexual behaviour by the father."
13. He found that the evidence regarding 2(b) and (c) was strikingly inconsistent and that there was nothing inherently wrong in a parent applying sudocrem to a child.
14. As to allegation 2(d) the Judge concluded, "I find that the mother's testimony on this is untrue." He gave a number of reasons for that conclusion. He found that the child, P, had never made the allegation that the mother claimed she had made.
15. The Judge then addressed the third set of allegations which he put under the heading: "2(e) and (f) Naked touching." These two specific allegations concerned incidents on 1 and 2 May 2024 respectively. They involved the father making or causing the children to touch him. In relation to 2(e) the Judge found that there was no evidence of it "except [the mother's] testimony. It is not credible as it stems from the same source as (d). He then said that "(f) is different. On this I have Q's evidence." However he found that Q had not made the allegation set out by the mother and "I find mother's testimony that Q said this to be, on balance, false."
16. The third set of allegations under the heading, "3. Inappropriate images" had three elements all concerning allegations made by Q to the mother about pictures on the father's mobile phone. The Judge held that Q's "explanation of the photos is fantastical" and "I find it difficult to believe that [the mother] believes that [the father] actually has these photos... I consequently find that she is not telling the truth when she says that she believes [the father] has these photos."

17. The Judge then began a new section of his judgment under the heading “Parental Alienation”. He began by quoting from paragraph 10 of the Family Justice Council’s guidance:

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

1) the child is reluctant, resisting or refusing to engage in, a relationship with a parent or carer; and

2) the reluctance, resistance or refusal is not consequent on the actions of that parent towards the child or the other parent, which may therefore be an appropriate justified rejection by the child (AJR – see Glossary above), or is not caused by any other factor such as the child’s alignment, affinity or attachment (AAA – see Glossary above); and

3) 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.”

18. The Judge dealt with this issue in six short paragraphs:

“98. Parental alienation finding is not sought because father does not believe children are in fact reluctant, resistant or refusing to engage in relationship. I am afraid this is based more on hope that evidence. I therefore look at the three elements.

99. Looking at stage 1, there is evidence that Q’s attitude to his father has changed since [the mother] stopped contact in March 2024. Even in June 2024 he wanted to see dad ... However he now thinks dad should be in prison and, according to [the mother], fears him. His reaction in December and comments in the interview in November show a real change in his view.

100. Turning to stage 2, it is clear that this is not based on the father’s behaviour. The evidence already discussed shows that Q was generally happy seeing his father until March 2024.

101. Dealing with stage 3, the only person who has been able to influence this is the mother and those who she lets Q have contact with. She deliberately kept the children off school to frustrate contact, saying this was based on advice by professionals. But that advice was premised on her claims against the father made to those professionals. Those claims were not true.

102. The situation with P is less clear and I would need up to date information about her actual view of her father.

103. Nevertheless, the elements of a finding of parental alienation are made out. The unthinkable thought, to adopt the mother's language, is that I find she made up an allegation of sexual abuse by P against her father in order to prevent contact, and encouraged Q to make a detailed disclosure about deep sleeps which did not happen."

The Order and Subsequent Case Management Hearing

19. The Judge approved an order dated 31 July 2025 in which it was recorded that:

"(v) The Court made no findings on the allegations as set out in the mother's Schedule of Findings and found each of the allegations as set out in the Applicant mother's Schedule of Findings not to be proved. In summary, the Court found that the mother had fabricated the allegations to frustrate the father's contact with the children.

(vi) The Court found that each of the three elements as per the Family Justice Council Guidance on Parental Alienation was met. The Court found that the mother had engaged in parental alienation and the allegations were fabricated to frustrate contact. The Court is concerned about the emotional harm to the children as a result of this."

20. In a later case management order dated 11 September 2025 the Judge recorded:

"In the event that there is the slightest appearance of the Mother trying to frustrate the development of the children's contact with their father, the matter is to be restored back to Recorder Brannan on an urgent basis at which time the court will have no option but to change residence to the father and require the contact with mother to be supervised."

The Law on Appeal

21. FPR 30.12(3) provides that an appeal may be allowed where either the decision was wrong or it was unjust for serious procedural or other irregularity. The court may conclude a decision is wrong because of an error of law, because a conclusion was reached on the facts which was not open to the judge on the evidence, because the judge clearly failed to give due weight to some significant matter or clearly gave undue weight to some other matter, or because the judge exercised a discretion which "exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong": *G v G (Minors: Custody Appeal)* [1985] FLR 894.

22. The appellate court must consider the judgment under appeal as a whole. In *Re F (Children)* [2016] EWCA Civ 546 Munby P summarised the approach as follows:

"22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law...

23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in *Piglowka v Piglowki* [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):

"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case ... These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".

23. The appellate court should be slow to interfere with findings of fact. As Lewison LJ said in *Fage UK Ltd & Anor v Chobani UK Ltd & Anor* [2014] EWCA Civ 5, at paras 114 to 115:

"Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those

facts and to inferences to be drawn from them....The reasons for this approach are many. They include,

- i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
- ii) The trial is not a dress rehearsal. It is the first and last night of the show.
- iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
- iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
- v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence).
- vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.

115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted."

24. More recently Lewison LJ set out the principles to be applied again in *Volpi and ors v Volpi* [2022] EWCA Civ 464 at [2], principles cited by Baker LJ in *T (Fact-Finding: Second Appeal)* [2023] EWCA Civ 475:

- "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

Submissions

25. The mother does not seek to appeal the dismissal of her own allegations against the father. Mr Eaton draws the court's attention to *Re C (Parental Alienation: Instruction of Experts)* [2023] EWHC 345 (Fam) in which Sir Andrew McFarlane P approved the submission that "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." In his very recent judgment, *Re Y (Experts and Alienating Behaviour: The Modern Approach)* [2026] EWFC 38, the President returned to that theme. He endorsed the 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', December 2024. He highlighted not only the extract from paragraph 10 of the FJC Guidance quoted by the Judge (above) but also the definition of AAA within the Glossary of Terms:

'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.’

26. The President then concluded:

[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."

27. Mr Eaton submitted that in the present case, the Judge legitimately considered the mother's allegations of abuse by the father but decided as a preliminary issue that he would not determine the father's allegations which included the allegation of "manipulative behaviours towards P and Q which have resulted in reluctance/resistance/refusal to be with the father". That allegation was in effect an allegation of parental alienation against the mother. His caveat that he would "deal with the general issue of why the allegations have come up which might feed into parental alienation" did not negate his decision not to make determinations about parental alienation (as alleged by the father). Evidence and submissions were directed to the issues which the Judge had decided he would determine not to those he had decided not to determine. It was therefore incompatible with the mother's article 6 ECHR right to a fair trial to proceed to make a finding of parental alienation against her.

28. Paragraph 56 of the FJC Guidance states:

"Where alienating behaviours is alleged the court should require those making the allegation to identify the evidence upon which they rely. Such behaviours must be evidence just as other acts of abuse must be evidenced.

The Judge recorded that a finding of parental alienation was not sought "because father does not believe [the] children are in fact reluctant, resistant or refusing to engage in [a] relationship [with him]." It was therefore impermissible for the Judge nevertheless to proceed to make a finding of parental alienation without any such allegation being pursued by any party (the guardian did not seek such a finding).

29. The appellant mother's case is that having decided to consider making a finding of parental alienation and having considered the three stage approach in the FJC Guidance, the Judge then made fundamental errors in applying that approach. He accepted that there was insufficient current evidence about P's "actual views of her father" [para. 102 of the judgment]. Hence stage one of the three stage approach was not met in her case. There was no analysis of the second stage in relation to Q, for example there was no consideration of AAA. The third stage was not reasoned and, in any event, should not have been reached in relation to either child.

30. In support of the second ground of appeal, Mr Eaton submits that there was no ground rules hearing and that the Judge did not properly take into account the mother's ADHD when assessing her evidence, given over two days. The Judge's conclusion in his judgment was that, "[the mother] made up an allegation of sexual abuse by P against her father in order to prevent contact, and encouraged Q to make a detailed disclosure about deep sleeps which did not happen." In the recital (v) to the order of 31 July 2025 the

Judge recorded that having dismissed the mother's allegations, "the Court found that the mother had fabricated the allegations to frustrate the father's contact with the children." That recording does not tally with the findings made. Mr Eaton submitted that the Judge failed to give himself the *Lucas* direction and failed to consider if it had been proved to the requisite standard that the mother had fabricated her allegations.

31. The third ground of appeal is confined to the finding of parental alienation which, it is contended, was not supported with adequate reasoning.
32. For the father, it was submitted to this court that the Judge had signposted that he was going to consider both the issue of how the mother's allegations had come to be made and how that might feed in to the issue of parental alienation. The latter issue was on the agenda for the hearing. Although his reasoning was concise, it is clear that the Judge was satisfied of all three stages of the approach set out by the FJC. The Judge expressly referred to the mother's neurodivergence and what steps he had taken to accommodate that during the hearing. The appeal court should look at all the judgment – the Judge's assessment of the mother's credibility is unimpeachable and led to his findings that she had fabricated allegations against the father in order to stop contact between him and the children.
33. Ms Bartholomew for the Guardian supported the mother's appeal under the first ground. In *Re K and G (Care Proceedings: Fact-Finding)* [2025] EWCA Civ 910 Baker LJ set out principles to be applied at a fact finding hearing. He cited his own judgment in *Re EY (Fact-Finding Hearing)* [2023] EWCA 1241 in which he had held that:

"... a party against whom findings might be made is entitled to a fair hearing, including sufficient notice of the findings which may be made and the evidence relied upon in support. The practice of a local authority filing a threshold document setting out the findings it seeks and identifying the evidence relied on in support addresses that requirement of fairness, and a judge is only entitled to make findings that go beyond those sought in the document if they are within the "known parameters" of the case: *Re W (A Child)* [2016] EWCA Civ 1140; [2017] 1WLR 2415, *Re L (Fact-finding Hearing: Fairness)* [2022] EWCA Civ 169."
34. The Judge did not adopt a fair procedure. The mother could not have anticipated that the Judge would make findings of parental alienation. The Judge made a preliminary determination that he was not going to hear the father's allegations. The Judge did not address the three stages of the FJC's Guidance in relation to P and did not adequately consider stage two in relation to Q. There was no analysis of how manipulation caused each child's refusal, reluctance or resistance to engage in a relationship with the father.
35. The Guardian did not support the appeal under the second ground. Firstly, the Judge was alive to and took into account the mother's ADHD. She was represented throughout and no representations were made that she required any further measures. The mother has not shown that any further measures would have affected her evidence or the outcome. Secondly, the Judge carefully analysed the wealth of evidence including within the

bundle of documents and made findings on credibility on the basis of all the evidence, looking in particular at inconsistencies. Thirdly, the findings of fabrication were within the “known parameters” of the case. The Judge was entitled to find not only that the mother’s allegations were not proved but that she had fabricated them. The Guardian submitted that the mother was on notice of the case that she had fabricated the allegations and there was no unfairness to her in the Judge making those findings.

36. The Guardian submitted that the Judge failed to give adequate reasons for the finding of parental alienation and so supported the mother’s appeal on the third ground.

Analysis and Conclusions

37. Alienating behaviours are a form of abuse. If it is alleged and the court considers that a fact-finding hearing is required then the allegation should be set out and the evidence in support identified. An inference cannot be drawn from a finding that allegations of abuse by parent 1 are not proved, or even that they have been fabricated by parent 2, that parent 2 is, without more, guilty of alienating behaviour. The burden of proof of an allegation of alienating behaviour lies with the person making the allegation and the court has to consider whether, on all the evidence, the allegation is proved.
38. The importance of a finding of alienating behaviour is demonstrated by this case. In a case management order after the finding had been made, the Judge made a “suspended residence order” in stark terms (see para. 19 above). That order is not separately under appeal and I make no finding as to whether it should ever have been made, but it shows the potentially draconian consequence of a finding of alienating behaviour.
39. The court should adopt the three stage enquiry set out in the FJC Guidance and by Sir Andrew McFarlane in *Re Y* (above). Whilst the judgment under consideration pre-dated *Re Y*, the Judge had the benefit of, and purported to adopt, the FJC Guidance.
40. The father’s allegations against the mother included an allegation of manipulation which followed some of the wording of the three stage test in the FJC Guidance. Although the term “alienating behaviour” was not used by the father, the allegation was, in effect, an allegation of alienating behaviour by the mother.
41. The Judge made a preliminary determination not to hear the father’s allegations. He thereby took the allegation of alienating behaviour off the agenda for the hearing. His observation that in determining the mother’s allegations he would deal with the general issue of why the allegations had come up “which might feed into parental alienation” was not a determination that he was going to decide whether the mother had been guilty of alienating behaviour at the hearing. Hence, the mother was not on notice that she faced a potential finding of alienating behaviour at the hearing. It breached her article 6 right to a fair hearing and natural justice to then make a finding against her of “parental alienation”. The finding of parental alienation was unjust for procedural irregularity and must be set aside.
42. Further or alternatively, the Judge made substantive errors when making his finding that

the mother had been guilty of parental alienation.

- 42.1. The Judge did not treat the issue which he termed ‘parental alienation’ as an allegation to be proved by the father.
 - 42.2. The Judge noted that the father did not contend that the children were reluctant, resistant or refusing to engage in a relationship with him but nevertheless proceeded as if such an allegation was being made.
 - 42.3. The Judge did not find that P was reluctant, resistant or refusing to engage in a relationship with the father. Indeed, he said that he would “need up to date information about her actual view of her father.” Hence, he could not find that stage one of the fact-finding process was satisfied in relation to P. That should have been that – no finding that the mother’s alienating behaviour had caused P to be reluctant, resistant or to refuse to engage in a relationship with her father should have been made.
 - 42.4. Although the reasoning is sparse, I am satisfied that the Judge found on the basis of evidence within the bundle of documents that the first element of the three stage process was met in respect of Q. However, the Judge did not adequately address the second stage. He found only that Q’s new found animosity towards his father was not attributable to his father’s behaviour. He did not address whether it might be due to other factors such as the child’s alignment, affinity or attachment (AAA). This was not an academic oversight: there was a real risk that AAA had caused P to become reluctant or resistant to seeing his father during the period when the mother had stopped contact. Indeed, later evidence, not before the Judge, raises that very question with some force. The Judge did not address that possibility at all in his judgment which was a fundamental error.
 - 42.5. The Judge only expressly considered the third stage in respect of Q. He found that the only person who had been able to influence Q was “the mother and those who she lets Q have contact with”. He found that the mother had “deliberately kept the children of school” (and had had no contact with the father). That still left others with whom he had had contact, including family friends, one of who had made serious allegations. The Judge did not articulate what behaviours the mother had engaged in to have an impact on Q (let alone on P) leading to reluctance, resistance or refusal to engage in a relationship with the father.
 - 42.6. The Judge’s conclusion on ‘parental alienation’ at para. 103 of his judgment that the mother “made up an allegation of sexual abuse by P against her father in order to prevent contact”, is not a finding of alienating behaviour affecting the children. A parent can fabricate an allegation in order to stop contact without leading the child to become reluctant, resistant or to refuse to engage in a relationship with their other parent. Furthermore, the Judge did not explain how the fabricated allegation had impacted P and Q beyond allowing the mother to stop contact.
43. The finding as recorded in the Judge’s order was of “parental alienation” and did not discriminate between the two children. The finding cannot stand, not just because of procedural unfairness but because the reasoning leading to the recorded finding was fundamentally flawed and inadequately reasoned.

44. I do not believe that the failure to conduct a ground rules hearing was material in this case. The mother was represented and the Judge was alive to and took account of the mother's vulnerability as he explained in his judgment.
45. The Judge's analysis of a great deal of evidence on the mother's allegations was efficient and clear. He had the benefit of seeing and hearing the parties give evidence. As a generality, I am satisfied that the Judge was entitled to find that the mother had fabricated one or more of the allegations she had made against the father. It was within the "known parameters" of the fact-finding exercise he had embarked upon to do so. Furthermore, where he found fabrication, he gave adequate reasons for doing so. I must read the judgment as a whole. The Judge made findings about the mother's credibility in relation to allegation 2(d) that had relevance to her credibility in relation to other allegations.
46. However, examination of the judgment shows that he did not in fact make findings of fabrication by the mother in relation to all of the allegations she had made against the father. In the order of 31 July 2025 the Judge recorded in the second sentence of recital (v), "In summary the court found that the mother had fabricated the allegations to frustrate the father's contact." In the judgment itself he clearly made those findings of fabrication in respect of allegations 2(a) to (d) and, I am prepared to accept, 2(e) and (f). He was entitled to find, as he did, that the mother's motivation was to stop the children's contact with the father. However, he found only that the mother had encouraged Q to make the allegation at 1(a) not that she had fabricated it. He made no findings that the mother had fabricated allegation 1 (intoxication) or allegation 3 (photographs). I am satisfied that the findings he made in the judgment about why the allegations against the father arose, including that they were intended to frustrate contact, were properly reached but they are not properly recorded in the order. He did not find that the mother had made up an account that the father had slept when caring for the children, indeed he found that to be true. He found that there was no evidence of intoxication but did not find that the mother had fabricated that allegation only that it was not proved. He did not find that the mother had implanted the idea of the specific incident of a deep sleep on 7 January 2024 in Q's mind, only that she had encouraged him to report it. He found that Q's account of the photographs was fantastical and not credible, not that he mother had created it for him.
47. I am conscious that the Judge properly made use of the hearing time after the Guardian's final analysis was not available and he hastily produced a written judgment to assist the parties. Concision is to be welcomed in a judgment. Nevertheless, for the reasons given I am satisfied that both grounds 1 and 3 of the grounds of appeal are made out and the appeal is allowed on those grounds. The finding of 'parental alienation' is set aside.
48. I am not satisfied that ground 2 is made out but the Judge wrongly recorded his findings of fabrication in the order of 31 July 2025. The second sentence of the recital schedule paragraph (v) should be set aside and the following substituted: "The court found that in order to frustrate the father's contact with the children, the mother had fabricated the allegations 2(a) to (f), and had encouraged Q to make the detailed allegation 1(a)."

Consequential Directions

49. Eight months have passed since the fact-finding judgment. Further evidence has been filed, including Cafcass reports, on the basis of a finding of ‘parental alienation’ and the other determinations. The children have spent time with the father and their responses to him have been of considerable interest. They have been observed to be at ease in his presence, enjoying time with him. But, when asked about their attitude to him, they revert to the negativity that concerned the Judge.

50. In my judgment it would be wrong for me to order a hearing of the father’s allegation of alienating behaviour. Circumstances have changed. The Judge purported to exclude the father’s allegations from determination, and the father may not now wish to pursue an allegation of alienating behaviour. The court might not think that a fact-finding hearing into alienating behaviour is required. Accordingly, I direct that the Family Court shall consider whether a fact-finding exercise in relation to the mother’s alleged alienating behaviour is required and, if so, whether it should be heard separately or as part of a final hearing. That will be matter for the Family Court taking into account the findings of fabrication that stand, which include fabrication of serious allegations of sexual abuse, and all the evidence now available including evidence obtained since July 2025 but bearing in mind that the evidence was given in the light of the finding of parental alienation which is now set aside. I remit the case to the Family Court accordingly but not to be heard by Recorded Brannon. I gave that direction at the hearing so that it could be communicated to the Family Court for its case management hearing listed on 23 March 2026.