Reluctance, resistance, and refusal – lets lose the pseudo-science.

Taking a constructive and collaborative approach to problem solving in an area which is complex is always a challenge. The polarising debates surrounding this complex area are particularly difficult to navigate because they have become unnecessarily confused by the application of pseudoscience. The result has been divergent practice and conflicting approaches where there is a real need for firm and fair guidance, consistently applied to draw attention back to the important issue here which is the safety and wellbeing of the children involved in these complex cases.

This is an area where there is more heat than light. That hobbles our progress in finding solutions. However, there is some light, and it is critical that we get some clear facts established so that we don't lose sight of the real issues.

The facts are these:

- **So-called 'parental alienation'(PA) has no legal or scientific basis.**
- **It is not a syndrome capable of 'being diagnosed.'**
- **It is not recognised as a disorder or condition in either of the major international indices, DSM-V or ICD-11.**
- **As a concept it has been denounced by the European Parliament and strongly criticised by GREVIO (the body responsible for monitoring the implementation of the Istanbul Convention) and the Domestic Abuse Commissioner (DAC) for England and Wales.**
- **The UN Special Rapporteur on Violence against Women and Girls (VAWG) has recommended that the concept be banned in the family courts.**

Considering this huge body of persuasive and expert evidence and opinion we must reconsider the term itself, its use and the damage that causes.

A literature review reveals that there has been a sharp rise in allegations of so-called parental alienation over the last seven years and my experience supports this. Analysis reveals a high level of domestic abuse in cases in which parental alienation is raised (Barnett 2020a; Barnett 2020b).
The suggestion is that allegations five times more likely to be made against parents who had alleged domestic abuse.

There is now a strong body of evidence that allegations of so-called parental alienation are made in response to allegations of domestic abuse arguably to negate or deflect from them.

It is terribly distressing when a child displays resistance or reluctance to seeing a parent. Within an adversarial system which centres around ascribing fault it is of little surprise that a distressed parent will seek to find a place for blame where a child doesn't want to see them.

However, the current path, with its focus on looking to parental alienation to ascribe blame is probably one of the biggest deviations from safe justice I have seen within my 30 years of practice. It seems to me that in a quest to find blame and ascribe fault we have been in danger

of adopting a discredited pseudo-science and building a toolkit around it to find solutions which fit a narrative in a desperate quest to preserve contact at all costs. We have minimised the impact of domestic on children and failed to properly understand why a child might be resistant. We have used the wrong people at the wrong time to determine 'facts' with disastrous consequence.

We have strayed from evidence-based research in making welfare decisions and the harm to those children impacted is now starting to become apparent as they fight through the most difficult ages in their lives to get back to where they feel safe. Many are now trying to represent themselves in their teens after years of trauma. Just last week I had two more children placing themselves at huge risk in desperation. Running away, sleeping rough, self-harming and attempted suicide are all too common.

These sad outcomes offend all our principles. We are failing to hear children and placing them at risk. We need to take a step back and unpick our practices to see how we got here and what now needs to change. With the wrong focus, resources are being spent in the wrong places. They could be redirected to better improve outcomes for families.

The entire mechanics of the system conspire to minimise and hide domestic abuse.

I believe this lies at the heart of so many cases of so-called parental alienation.

These are the cases where domestic abuse **does** exist and has impacted a child causing them to resist seeing a parent consequently, but that abuse is ignored / unidentified or minimised when the Childs reluctance is considered. As a result it is not considered as a reason for justified refusal and attention turns to the parent who has been the victim of that abuse to hold them responsible for the resistance of their child.

There is a gulf between findings of fact for domestic abuse and actual abuse and it is within this gulf that many cases of child reluctance sit. No findings, under our binary system means no abuse. No abuse appears to leave everyone searching for reasons for a Childs resistance. And winding up turning to'alienation'. BUT there are so many reasons why DA may not be found but may nevertheless have impacted a child. I want to explore some of them.

So, how are we missing Domestic Abuse?
The first is a lack of understanding of domestic abuse and particularly controlling or coercive behaviour (CCB). The landmark cases of H-N and others highlighted the importance of identifying CCB in cases concerning children and seeing the whole family context through this lens. CCB is the most dangerous and insidious form of abuse. It is also the hardest to evidence. The problem is exacerbated by the funding regimes.

A survivor of CCB may have insufficient time or validation to explore or reveal abuse within our legal system because of the speed they are rushed through it. Our fee structure undermines the care and time needed to help victims feel supported and validated. Private lawyers' fees are expensive and are time based, legal aid is based on low rates and fixed fees so victims are always rushed.

Many clients fail to recognise CCB for what it is or understand the impact it has had on them until they access the help support and validation to do so. This may take years. We know how easily controlling behaviour becomes normalised.

As a result, many survivors lack the opportunity to unpick the abuse they have suffered with the help of a trained lawyer who can advise on legal options and consequences. Just because they haven't disclosed doesn't mean the abuse hasn't happened and impacted any children.

Non-disclosure at an early stage leads to a minimisation throughout proceedings. Disclosure later in proceedings is met with accusations of fabrication because abuse wasn't mentioned before OR such allegations are minimised as 'historic abuse'.

This unrecognised abuse nevertheless impacts children and their attitudes towards an abusive parent. They may therefore show resistance without abuse even being raised …. although it may well exist.

Where disclosures are made

CCB is hard to evidence, its insidious and the lack of corroborative evidence makes fact finding an uphill struggle, not least because we do not have a trauma informed process.

Disclosure of CCB, and indeed other abuse, is often seen as insufficiently grave to justify a fact-finding hearing given limited court resource. Moreover, where contact is not opposed by the victim, but child resistance grows later on, the impact of unrecognised abuse is rarely factored in.

Where fact finding hearings (FFH) take place

Facts are regularly not found because we don't have a level playing field. We lack trauma informed process and still limit cases to a few incidents. If not proven, our binary system treats the case as if no abuse has occurred and other explanations are sought for a Child's resistance**.** Yet there may have been abuse.

There are an increasing number of victims electing not to want a FFH because they feel the court process is not geared to sufficiently support achieving best evidence or uncovering abuse. They fear a so-called parental alienation backlash with potentially dire consequence.

Others are told contact will happen anyway because of the pro contact culture so they don't put themselves through the additional trauma.

Many of these cases get reframed as 'high conflict cases'.

In short, the system's minimisation of abuse is masking real abuse and leading those trying to find answers towards dangerous and polarising litigation. If we were properly understanding abuse, in all its forms and if we recognised the impact of that abuse on children, this complex landscape would be much clearer and supportive frameworks could replace pseudoscience.

Without that better understanding the absence of the protective cloak of findings of DA which 'sufficiently justify' reluctance are denied to many. These parents remain terrified that they will be judged as responsible for any reluctance on the part of their children, often with horrific consequence. This undermines the voice of the child and can lead to agreements for unsafe contact

Where a child is resistant it is natural to want to ‘find’ a reason. My fear is that we are ignoring children and undermining potential reasons which denies us the opportunity to find a fix.

When reasons aren’t clear we were, all too quickly engaging in the worrying practice of appointing self-claimed experts to identify why a child might be resistant. I won’t recount the harm and trauma suffered as a consequence of so-called experts inappropriately appointed to determine ‘fact’. Thanks to the FJC guidance and the case of Re C we now have very clear guidance that fact finding is a judicial function.

We must not trespass on this judicial function

The distraction of a pseudo-science is polarising and hobbles efforts to properly understand child resistance. This in turn undermines remedies to facilitate safe arrangements between children and their parents.