

# **High Conflict Parenting Disputes: Strategies on Reducing Parental Conflict in Order to Facilitate Effective Co-Parenting**

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## A (Children : Parental alienation) [2019] EWFC B56

- Decision of HHJ Wildblood QC in an exceptional case of parental alienation. In explaining his reasons for publishing the anonymised Judgment, the Judge stated:

***“...this is such an exceptional case that I think it is in the public interest for the wider community to see an example of how badly wrong things can go and how complex cases are where one parent (here the mother) alienates children from the other parent.”***

- Father had applied for contact in 2011. There were 36 hearings, extensive professional input and public law proceedings, all in the hope that it would lead to successfully re-establishing contact between the father and his children (ages and sexes withheld).

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- Despite 8 years of litigation, extensive professional input, and the professionals recommending contact, in the end, the father left the proceedings with no contact with his children.
- A trial transfer of residence for the children to live with the father had failed badly. The children ran away, contact broke down completely and it became clear that it would never work for the children to live with their father because they had been so alienated.
- Judge identified ten factors which contributed significantly to the difficulties.

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- i) Failure to identify, at an early stage, the alienation of the children from their father by the mother. By the time that it was identified, damage done.
- ii) Significant delay within the proceedings.
- iii) Case had been adjourned repeatedly in the earlier stages for further reviews . There were eight orders for review hearings in the first two years. The CAP (22nd April 2014), paragraph 15.3 now states: *‘... cases should not be adjourned for a review (or reviews) of contact...unless such a hearing is necessary and for a clear purpose that is consistent with the timetable for the child and in the child's best interests.’* This is an example of just how necessary the changes made were.
- iv) At no point prior to HHJ’s involvement in 2017 was there a full hearing on evidence. There were underlying and important allegations of fact that needed to be resolved so that future decisions could be based upon that judgment.

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- v) The use of indirect contact where there is parental alienation has obvious limitations. Letters/cards/presents were being sent into a home environment where the father had been 'demonised'. Regrettable that there was not more perseverance in earlier proceedings to resolve obstructions to contact.
- vi) The proceedings had involved a vast number of professional (10 if not more). Family members (especially children) are embarrassed about speaking of personal issues with strangers, develop litigation fatigue and learn to resent the intrusions into their lives by a succession of professional people. As the children have done, people reach a stage where they say: 'no more.'
- vii) The absence, at times, of collaborative working by professionals. A particular example of that occurred when an attempt was made to move the children to the father's care.

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viii) Early intervention is essential. It took years (probably five) to identify the extent of the mother's emotional and psychological issues. By that stage it was too late for any effective psychotherapeutic other intervention.

ix) The wishes and feelings of children living in an alienating environment have to be approached with considerable care and professionalism. To respond simply on the basis of what children say in this type of situation would be manifestly superficial and naive. The lack of an effective intervention in turn has led to the children's expressed wishes being reinforced in their minds. It has also resulted in the mother being able to say 'we should listen to the children', rather than addressing the underlying difficulties.

x) It was unfortunate that the joinder of the children was so delayed. Any attempt to conduct these proceedings without the joinder of the children would have been even more complex and unsatisfactory.

## A (Children : Parental alienation) [2019] EWFC B56

- The following paragraph from the judgment bears repeating in full:

***“It is beyond doubt that, in the long-term, what has occurred within this family will cause these children significant and long-term emotional harm... I am afraid that the cause of that harm lies squarely with this mother; whatever may be her difficulties, she is an adult and a parent with parental responsibility for her children. That parental responsibility, which she shares with the father, requires her to act in the best interests of her children. It also required her to promote the relationship between these children and their father. She has failed to do so. She had adult choices to make; the choices that she made were bad ones and deeply harmful to the children.”***

## Q (A Child) [2015] EWCA Civ 991

- Long-running contact dispute involving Q, a 7-year old boy. Court had made findings that Q had been influenced by M's hostility to F.
- The Guardian's position was that the idea of contact emotionally traumatised Q, and a final hearing was needed as soon as possible. Therapy would assist with contact, but the centre identified had determined that they could not assist while proceedings were ongoing.
- HHJ Brasse (who had been very largely continuously involved) departed from the previous strategy of seeking to order contact. Instead, he made a specific issue order requiring the child to attend therapy. The father appealed.



# Q (A Child) [2015] EWCA Civ 991

- Munby P gave the unanimous decision of the Court, upholding HHJ Brasse's judgment.
- The President reviewed his decision in ***Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521** on the obligations of the court to attempt to promote contact (para. 47):

*“Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.”*

- The President concluded that HHJ Brasse's decision was probably the only path that would increase the prospect of contact in the future. Ordering contact had not worked in the past. Without some change there was no reason to believe it would in the future. Far from abdicating his responsibility to promote contact, the judge was engaging non-court methods to facilitate future contact.

## **S (Transfer of Residence) (2011) 1 FLR 1789**

- S, aged 12, had been the subject of court proceedings almost continuously since 1999. In January 2010 HHJ Bellamy (sitting as a deputy High Court Judge) transferred the residence of S to the father.
- In March 2010, tipstaff ordered to implement the transfer of residence. This was appealed by S (by this time represented by a solicitor and guardian ad litem).
- The Court of Appeal allowed the appeal, and substituted an order that S be made the subject of a 4 week ICO, move to foster care, and contact with the father to be established with the aim of transferring residence within the 4 weeks.

# **S (Transfer of Residence) (2011) 1 FLR 1789**

- Following the move to foster care, the LA and guardian facilitated five sessions of contact. S would sit with his head in his lap and fingers in his ears. The guardian became very concerned as to S's mental state.
- One expert recommended intensive therapy with S and the family. Progress made with therapy was “tiny”. Clear intensive regime of further therapy would not have been in the best interests of S's welfare.
- Another expert disagreed stating that therapy and 'stepping stone' approaches are of little use and may make matters worse in cases of alienation.
- In July 2010, the father abandoned his attempts to enforce the residence order. Court made a residence order to the mother, a supervision order to the LA, and indirect contact via school reports and photographs only with a s91(14) order preventing further applications without leave until S reached 16.

# **S (Transfer of Residence) (2011) 1 FLR 1789**

Reflecting on the case, HHJ Bellamy noted that:

- (1) The concept of alienation as a feature of some high conflict parental disputes may today be regarded as mainstream.
- (2) There is no professional or expert consensus as to the approach the court should take with an alienated child. The solutions tried in this case had failed. The case demonstrated that there could be no 'one-size-fits-all' solution.
- (3) Alienation will only be a feature in a small number of cases and may be outside the experience of the care professionals. In cases involving an alienated child it is "essential that the court has the benefit of professional evidence from an expert who has personal experience of working with alienated children. "

# **S (Transfer of Residence) (2011) 1 FLR 1789**

## **Postscript to judgment**

“61. The final order was made on 21 July. S was informed later that evening. At my request, the guardian sent me an e-mail on 22 July to let me know how this meeting had gone. I set it out in full:

*'Dear Judge*

*To inform you that myself and Mrs K met S last night and we had a meeting with father and [his wife]. The father read out his letter to S and we asked S to listen which he did. It was an extremely difficult meeting for father but he managed to read the letter and S did allow his father to touch him on his arm. S did not look at his father and had his head down for the whole time.*

*I spoke to S after his father had left and he was feeling numb but "good". He said to say thank you and said that this was not the end and he would think about seeing his father after his GCSE's.*

*I am sure he listened to his father and it was S who volunteered that this was not the end and he would see his father on his terms when he was ready.*

*Overall S managed the situation very well, but sadly we could hear his father sobbing as he left.*

*Regards..."*

# Useful Cases/ Guiding Principles

## Re P (Contact: Supervision) [1996] 2 FLR 314 at 328

- It is almost always in the interests of a child whose parents are separated that he or she should have contact with the parent with whom the child is not living
- The court has power to enforce orders for contact, which it should not hesitate to exercise where it judges that it will overall promote the welfare of the child to do so.
- In cases which, for whatever reason, direct contact cannot for the time being be ordered, it is ordinarily highly desirable that there should be indirect contact.
- Judges should be very reluctant to allow the implacable hostility of one parent to deter them from making a contact order where they believe the child's welfare requires it.

# Useful Cases/ Guiding Principles

## Re C (A Child) (Suspension of Contact) [2011] EWCA Civ 521

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

# Useful Cases/ Guiding Principles

## Re C (A Child) (Suspension of Contact) [2011] EWCA Civ 521 (cont.)

- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- All that said, at the end of the day the welfare of the child is paramount; 'the child's interest must have precedence over any other consideration.

See also **Q v Q [2015] EWCA Civ 991**, in which the President draws together the relevant principles, and **S (Parental Alienation: Cult) [2020] EWCA Civ 568**, a decision of Peter Jackson LJ which comprehensively sets out the law and learning on parental alienation.



# Possible Tracks to Resolution

## Improving Child and Family Arrangements (ICFA)

- Service designed and funded by Cafcass in private law cases to help families agree safe, beneficial, and sustainable spending time with arrangements when they are finding it difficult to do so on their own. Focuses on reducing barriers and resistance to agreeing arrangements and promoting positive communication.
- Work tailored to meet the needs and outcomes of each individual family. Takes a few weeks and may include, but is not limited to:
  - Meeting the parents together and/or individually
  - Direct work with the children to prepare them for spending time with the adult
  - Observation of the adult spending time with the children in a contact centre, the home, the community, or any other suitable settings.
- Referral by Cafcass and ordered by Court. Report prepared to summarise progress and feed back to Court.



# PUMP COURT

## CHAMBERS



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*"Her attention to detail is second to none. In a particularly complex case, she was able to grasp both the key details and the minutiae with ease and her intricate knowledge of the matter really impressed the client."*

**-Chambers & Partners 2020**

Jennifer Lee is a specialist family law practitioner at Pump Court Chambers, London. She is regularly instructed in high-value, complex financial remedy cases concerning family businesses, inherited wealth, significant pensions, nuptial agreements, and trusts. Many of her cases involve foreign assets and cross-jurisdictional issues.

Jennifer is also regularly instructed to undertake complex children law matters, particularly in relation to high-conflict disputes, and relocation cases. She has experience of representing parties in proceedings involving serious domestic abuse and parental alienation. Over the years, Jennifer has also developed a niche practice in domestic/international surrogacy and modern families, having acted in HFEA cases and advising on legal issues surrounding LGBT families.

Jennifer continues to be ranked as a "Leading Junior (Tier 1) – Family and Children Law" in The Legal 500, and is recognised as a specialist in family/matrimonial law in Chambers & Partners (UK Bar). She was nominated as "Junior Barrister of the Year" for the Jordans' Family Law Awards 2016. She has appeared in a number of high-profile reported cases, most notably in *Veluppillai v Veluppillai & Ors* [2015] EWHC 3095 (Fam) (High Court), *LFL v LSL* (McKenzie Friends & Breach of Court Orders) [2017] EWFC B62, and more recently, in *N v N* (Afghanistan: Validity of an overseas marriage: Procedure)[2020] EWFC B55.

She is an associate member of the Chartered Institute of Arbitrators (ACI Arb), the Family Law Bar Association (FLBA), Resolution and LAWASIA. She serves on Resolution's ED&I Committee, and regularly contributes to seminars and articles on family law.