



## HIGH-CONFLICT PARENTING DISPUTES

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## Parental Alienation or High-Conflict? Different approaches required

- ❑ Parental alienation - clear, defining characteristics
- ❑ CAFCASS definition: **“a psychological disturbance in which children are obsessed with deprecations and criticism of a parent – denigration that is unjustified or exaggerated”.**
- ❑ Child lacks ambivalence, idealising the aligned parent and denigrating the targeted parent
- ❑ Child adopts adult language and emphasising their “independent thoughts”
- ❑ Weak, frivolous and absurd rationalisations for the deprecation – don’t appear genuine
- ❑ Child rejects all the positive memories of targeted parent to focus on negative memories
- ❑ Child creates false autobiographical memories/borrowed scenarios (F never loved me)
- ❑ Child’s adamant rejection of targeted parent
- ❑ Absence of guilt over cruelty to targeted parent
- ❑ Spread of animosity to the extended family of the targeted parent

## Parental alienation by aligned parent

### ALIGNED PARENT

- ❑ Parent who launches a campaign of denigration and rejection against targeted parent
- ❑ Leads the child to believe the targeted parent is dangerous or unsafe
- ❑ Is overly insistent on the Guardian of the child hearing the views of the child

Peter Jackson LJ in *Re S (Cult: Parental alienation)* 2020 when he referred to the need for a process of alienation being found to exist.

### PATHS TO RESOLUTION

- ❑ General therapy for the child can make it worse
- ❑ Refer the parents to therapy
- ❑ Assessments – can assist: cognitive assessments, psychological profiles and historical parenting style
- ❑ Does not necessarily require change of residence

## HIGH-CONFLICT

- ❑ Prolonged acrimony
- ❑ Abandonment, anger, fear,
- ❑ Forcing the child to be the messenger of communication
- ❑ Making derogatory and blaming statements about the other parent
- ❑ indirect behaviours to thwart the relationship between parent and child
- ❑ intrusive behaviours – frequent phone calls
- ❑ Refusing to give emotional permission
- ❑ Informing the child of the reasons for the breakdown in adult relationship
- ❑ Parent not seeing their behaviours as being part of the problem
- ❑ Hyper vigilance, domestic violence, narcissistic personality
- ❑ P Deliberately instils barriers (complaints against third parties) drive narrative



# The Role and Limitations of ADR

## MEDIATION



## MEDIATION

- ❑ **Litigation** is unpredictable, time-consuming and costly
- ❑ **LIMITATIONS of mediation:** often not possible to engage HC in mediation what can be agreed
- ❑ Vulnerable clients
- ❑ Safeguarding concerns
- ❑ **ROLE/USING EFFECTIVELY:**
- ❑ Invaluable when waiting for the court process to start, find experts
- ❑ Confidential process, parties can leave at any time, not binding until signed, more flexible outcomes, less harmful to the long-term relationship between the parties
- ❑ Valuable where need for parties work together in future
- ❑ Various models: plenary sessions, shuttle mediation with private caucus sessions, hybrid mediation with lawyers (good with NPD/high-conflict/vulnerable clients)
- ❑ Key for success: trusting environment parties being heard, but confident enough to shift their position and view their dispute from a different perspective
- ❑ Mediator gently challenge, **reality check**, timing is key – may need days to decide/shift
- ❑ Parties who decide the outcome, the mediator does not make decisions, only *facilitates the decision*
- ❑ If parties who reach the decision, they are more likely to buy into and implement it

# ARBITRATION

- ❑ Different to mediation: involves handing over a dispute to a third party for a binding decision

## **LIMITATIONS:**

- ❑ CAN BE DIFFICULT TO AGREE TO ARBITRATION IN HIGH-CONFLICT
- ❑ SUITABLE IF SAFEGUARDING CONCERNS
- ❑ Once parties in dispute want victory rather than compromise – Not intuitive to sit down with enemy, want to be vindicated
- ❑ Convinced theirs is the only objective truth and that once get to court the judge will see that
- ❑ Cognitive dissonance when they only listen to points which further their own case
- ❑ Lawyer whips up client to believe once get to court other side emasculated
- ❑ Parties get attached to the dispute

## **ROLE:**

- ❑ Increasing judicial pressure to consider ADR
- ❑ Court process 40 weeks for private family law case
- ❑ Can arbitrate on DISCRETE issues (chosen by the parties)

## **TIPS ON HOW TO ARBITRATE EFFECTIVELY?**

- ❑ Tailor the process, evidence OR written submissions, CONTROL THE TIMING
- ❑ Maintain momentum, build on agreements/common ground
- ❑ Strategic value in offering ADR



## Appeal from arbitral awards

- ❑ From 6 April 2020 the scope of the Children Arbitration Scheme was expanded to include relocation – temporary and permanent – to certain foreign jurisdictions
- ❑ The President of the Family Division **The Family Court and Covid-19: The Road Ahead” 9 June 2020 emphasised the need has never been greater to have regard to alternative means of dispute resolution, including arbitration (para 37)**
- ❑ An ARBITRAL award is not necessarily final ***Haley v Haley* [2020] EWCA 1369**
- ❑ Attraction pre-Haley certain binding decision
- ❑ Off-set certainty of safeguard of an appeal
- ❑ Test – award is just wrong “welfare” children
- ❑ Court retains a supervisory jurisdiction and in exceptional circumstances can refuse to convert the arbitral award into a final and binding court order and to exercise its discretion anew.

## Role of independent experts

### Overcoming the impasse

- ❑ Narrow areas of conflict, experts, parenting co-ordinators, contact supervisors, parenting classes
- ❑ Relationship problems not legal problems - limitations of the court
- ❑ Social workers and family support workers – multidisciplinary assistance to the family LA
- ❑ Role of experts is to integrate new habits – can they change? OFW tone meter

### Role of independent experts – what assessing, remit of the instruction, LOI

- ❑ Mediators, arbitrators, coaches, child inclusive mediation, family therapy, psychotherapy
- ❑ Assessments – timing can wait 6-9 months (private) NHS ADHD 2 years
- ❑ Therapy can be critical in developing insight into own behaviours, build empathy and offer support, become more child focussed
- ❑ Align therapeutic input alongside legal process to maintain momentum and support change
- ❑ Witness training – has limitations, often brought in week before

## Narcissistic Personality Disorders/Substance Abuse

- ❑ When the prospect of resolution is remote: the prevalence of narcissistic traits and/or personality disorders/substance abuse in disputes of this nature
- ❑ Accept limitations – radical change unlikely – work with the dynamics in best manner possible
- ❑ Narcissism linked with high-conflict/antagonistic parenting style/resistant to advice/desire to see other parent punished (imprisonment/humiliated by the Judge)
- ❑ Keep the focus on child – therapy for the parent(s)
- ❑ Other Mental illness/long-term addiction
- ❑ SIGNPOST for diagnosis, treatment, therapy, LA/NSPCC programmes children of addicts
- ❑ Need for defined order, accept remote prospect for change in short, or medium term or at all
- ❑ Make it clear, court has limited powers, desire to punish (prison/public humiliation), seek high praise from the Judge/ get an apology,
- ❑ Judge will take care to leave space for ongoing parenting, praise both

## The Family Solutions Group report November 2020

- ❑ The Family Solutions Group set up by Mr Justice Cobb multidisciplinary sub-group of the Private Law Working Group, with a remit to consider the needs of separating families BEFORE they turn to court. Essential reading
- ❑ Argues that family law issues, particularly those involving children must be approached differently from other legal disputes:
- ❑ Legal response to parental disagreements over children is inappropriate for many and harmful for some,
- ❑ Disputes flow from unresolved emotions from relationship breakdown – these are relationship issues not legal matters.
- ❑ Research shows parental conflict harms children affecting their long term health and future life prospects
- ❑ Report calls for early triaging with parents to assess needs and direct them to a “safety pathway” for vulnerable families who need access to the court and promote a long-term parenting relationship
- ❑ Further recommendation for a holistic range of support

# When ADR exhausted and heading for court ...

- **Manage expectations of Court process** - litigants often very dissatisfied after litigation
- Expectation of winning not matched with reality - Rare for one party totally satisfied
- Litigation Judge imposes a solution. – and often carefully crafted to promote contact
- Some best solutions not offered in the court –an apology
- Care where binary decision required LTR
- Requesting Judge reserve the matter
- **IMPORTANCE OF DRAFTING: RECITALS/AGREEMENTS WITHIN BODY OF ORDER**
- **TIGHTLY DEFINED ORDER:** handovers, rolling orders, summer holiday weeks 1,3,5,
- default agreements, mechanics of default, OFW - template
- Define exercise of PR: communication
- Handovers: Neutral exchange locations - Agreed contact centres, Parenting Co-ordinators
- Guidelines for phone calls – often intrusive - Use and abuse of technology

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