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Parental Alienation

MARTHA HOLMES

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MARTHA HOLMES |MHOLMES@1KBW.CO.UK

What is it?

Parental alienation refers to the psychological manipulation of a child showing unwarranted fear, hostility or disrespect towards a parent and/or other family members.

Parental alienation lacks a single definition and the concept of parental alienation syndrome (first put forward in the 1980s) has been subject to debate. As a psychological phenomenon, there is reference to conscious and unconscious alienation, with suggestions that at the extreme end, the alienating parent may be suffering from a personality disorder requiring therapeutic treatment.

Looking at the case law, it seems that there have been two approaches to parental alienation cases: either try and force contact by punishing the alienating parent and persisting with court orders, or try and use a therapeutic approach to address the alienation of the children and the behaviour of the parents.

Re E (A Child) [2011] EHSC 3521

Hedley J

At the final hearing, the child was 8 ½ years old and had not seen the father for 3 ½ years. The father's application for contact had been issued in October 2006; the child began resisting contact in January 2008. The first fact-finding hearing was heard on 24th April 2009, a second fact-finding hearing listed for 12th August 2010 was actually used as an interim contact hearing and an order for contact was made but it didn't take place. The matter was transferred to the High Court on 15th November 2010 to enforce/define contact. Two reports by a child and adolescent psychiatrist concluded there was no objectively comprehensible reason for the child's resistance to contact.

The Judge decided to order a professional assessment of direct contact to put together a plan of work to restart contact, with the Guardian remaining involved to retain oversight. Indirect contact ordered in the interim.

Hedley J felt there were three options in the case, which could have more general application:

(1) Abandon the quest for contact

(2) Persist in the quest for contact by enlisting further but specialised professional help

(3) Simply make a contact order and leave it to the parents to handle the consequences of it and enforce the order to secure compliance from both parents. '*That is, of course, the usual approach in these cases and has much to commend it, because it puts the responsibility of contact where it belongs, namely, on the parents.*' [43]

It has been stressed in the case law that option 1 in this list must be the last resort. A classic distillation of this can be found expressed by Ward LJ (as he then was) in *M (Children) (Contact: Long term best interests)* [2005] EWCA Civ 1090:

'Where is in this case the court has the picture that a parent is seeking without good reason to eliminate the other parent from the child, or children's lives, the court should to stand by and take no positive action. Justice to the children and the deprived parent in this case the mother, require the court to leave no stone unturned that might resolve the situation to prevent long term harm to the children.'

In this talk, I will focus on option 3 and the implications for that approach.

Taking a hard line: enforcing a contact order

Re L-W Children [2010] EWCA Civ 1253

Munby LJ (leading judgment)
Sedley LJ
Jacob LJ

The father appealed committal and compensation orders made by HHJ Caddick. M, who was 10 by the time of the hearing, lived with the father and refused to have contact with his mother. The Judge, who had had conduct of the case throughout and described it as 'an intractable contact dispute, with an element of parental alienation and persistent failure to comply.' In 2009 the Judge made orders for contact stating that the "father shall allow the mother to have contact with M" with the additional words "and make him available accordingly." Contact did not take place. There followed repeated applications for enforcement by the mother, together with applications for compensation for petrol costs.

The father appealed five orders, which had culminated on 24th June 2010 with a committal order sentencing the father to 28 days imprisonment, suspended for 12 months on condition that he obeyed previous contact orders.

Appeal allowed; breaches had not been established save on three occasions as the Judge had overstated what it was that the relevant orders required the father to do or had wrongly rejected impossibility of performance as being a defence.

This is a very useful example of a case where the court had decided to 'act tough' and enforce contact orders in circumstances where the judge clearly felt that the child was being influenced by a hostile parent and tried to take steps to force contact to take place.

The President, sitting in the court of Appeal, explains that if a breach is to be established, it has to be demonstrated that (a) the defendant has not done what he was required to do and (b) that it was within the power of the defendant to do it. The facts of several occasions when contact did not take place in accordance with the order made it clear that that the father had done nothing to encourage or assist with contact. For example, on one occasion he opened the door and told the mother the child was not coming, the child was then brought to the door and refused to leave - the father said nothing. On another occasion, the child was simply sent to answer the door alone and then refused to leave. The father had made plain that his attitude was that M was an intelligent and articulate boy and it was his decision on each occasion and the father would not interfere with that. However, Munby LJ highlighted that the father had 'allowed' the mother to have contact and had 'made him available' for contact. He was not obliged under the wording of the order to persuade or encourage the child to have contact with his mother. In any event, if it were found that the father had not done what the order required him to do, the Judge had to ask the question as to whether it

was in his power to do it? Munby LJ felt that the Judge at first instance had conflated the two questions and that the question of breach could not be determined by reference to the question of reasonable excuse.

Nonetheless, the father was still in breach of the order on three occasions and so it fell to the Court of Appeal to determine whether the order for committal should stand in the circumstances.

Within his judgment, Munby LJ provides examples of two strands of case law suggesting on the one hand that committal orders are rarely, if ever in the interests of the children and on the other hand that committal orders must be used to ensure a respect for court orders and the administration of justice.

Churchard v Churchard [1984] FLR 635 at 638:

'To apply for a legalistic but futile remedy, because it is the only thing left to do, is, in my judgment, the last hope of the destitute. The court is only concerned with the welfare of the children and ought not to trouble itself too much about its own dignity. These cases are exceedingly intractable. They can only be dealt with by tact not force. Force is bound to fail.' (Omerod LJ)

A v N (Committal: Refusal of Contact) [1997] 1 FLR 533 at 541:

"*…it is perhaps appropriate that the message goes out loud and in clear terms that there does come a limit to the tolerance of the court to see its orders flouted by mothers even if they have the care for their young children. If she goes to prison it is her fault, not the fault of the judge who did no more than his duty to the child which is imposed upon him by Parliament.'*

In this case, Munby LJ was of the view that, by the time the first instance judge was contemplating committal as an appropriate remedy, it was too late as the child had become entrenched in his rejection of contact. As he suggests at [103], '*the boy now has a weapon no child should possess: by agreeing to see his mother he can save his father from gaol; by refusing he can have his father punished.*' He then goes on to observe at [106]:

'*Committal should not be used unless it is a proportionate response to the problem nor if some less drastic remedy would provide the adequate solution. But this does not mean that one has to wait unduly before having resort to committal, let alone waiting so long that the moment has passed and the situation has become irretrievable.*'

In cases where the breach is an active breach that directly strikes at the heart of what the court ordered, it may be appropriate to impose a custodial sentence *(Re X (A Child by His Litigation Friend)* [2011] 2 FLR 793, (where a mother repeatedly breached court orders to return a child from Nigeria in wardship proceedings and was sentenced to 8 months imprisonment) and an appellate court is unlikely to interfere unless the sentence passed is manifestly disproportionate or excessive (*Slade v Slade* [2010] 1 FLR 160). The length of the sentence should bear some reasonable relationship to the statutory maximum of 2 years (*Hale v Tanner* [2000] 2 FLR 879).

Other options for enforcement

S11 CA 1989

The court has specific powers to impose directions and conditions on Child Arrangement Orders (ss11A and 11B CA 1989). The court can impose:

- Contact activities (ss11D-G)
- Require CAFCASS to monitor compliance (s11G) for up to 12 months and provide a report (s11H)
- Curfews, tagging or unpaid work (ss11J-N)
- Financial compensation for losses sustained by failure, without reasonable excuse, to comply with an order (SS11O-P)

All Child Arrangements Orders made or varied after 8 December 2008 must have a warning notice on them setting out the consequences of not complying with the order.

In *Re L-W* (above) Munby LJ set out guidance that stresses that if an order is breached, the judge must, in the absence of good reasons, support the order by considering enforcement under ss1J-N.

Activity Directions

An activity direction allows the court to direct a party to undertake activities designed to help them understand the importance of complying with the order and making it work. The activities directed or imposed can relate to more than just promoting the contact provided for in the CAO and can be about helping to 'establish, maintain or improve the involvement' of a person in a child's life.

CAFCASS guidance in relation to this refers to three types of activity:

(1) Information meetings about mediation

(2) Separated Parents information programmes

(3) Domestic Violence Intervention Programmes

Before making an activity order or condition, the court must be satisfied that the activity is appropriate in the circumstances of the case, the provider is suitable and the activity is available in a place where it is reasonable to expect the person in question to travel. The court must also consider the likely *effect* of the activity on the person required to undertake it (e.g conflict with religious beliefs or with work schedules) and can ask the CAFCASS officer to provide further information.

Child Contact Intervention

Some CAFCASS areas have funding in place with a provider for up to 12 hours of work with a family; possibly to supervise contact sessions or meetings with the parents individually and the children to seek out ways to reintroduce contact. More information can be found on the CAFCASS website.

Monitoring

A court may ask CAFCASS to monitor compliance and report to the court on such matters for up to 12 months. This has major funding implications for CAFCASS. CAFCASS guidance suggests that this should be limited to cases where there is a strong sense of dissatisfaction with the outcome on the part of one or both parties. The consent of the parties is not required.

This could be either at the end of proceedings or with a review hearing in place after a period of monitoring. Chronic cases of non-compliance should not be allowed to drag on but should be brought back to court by CAFCASS for guidance.

Enforcement Orders

If the court is satisfied, beyond reasonable doubt a person has failed to comply with a CAO, it may make an enforcement order, imposing an unpaid work requirement.

- If the person has a reasonable excuse for breach, an order will not be made (on the balance of probabilities, burden lies with the person breaching the order)
- The court may not make an enforcement order unless the person concerned has received a warning notice or has been otherwise informed of its terms
- Can join the child or ask CAFCASS to consider and report to the court with his/her opinion
- Maximum number of hours required is 200, minimum is 40
- CAFCASS can be asked to monitor compliance
- When an enforcement order is made, a further warning must be attached setting out the consequences of breach (imposition of a further enforcement order enhancement of existing order, use of existing sanctions for contempt)

Family Assistance Orders

FAOs are governed by s16 of CA 1989, with guidance in Practice Direction 12M.

Where the court has the power to make any order in any family proceedings it can order CAFCASS or a Local Authority to make an officer available to advise, assist and befriend the people names in the order for up to 12 months. No order can be made unless an adult named in the order has consented, and if the Local Authority is required to undertake the work, they must also agree. The court must obtain the opinion of CAFCASS or the Local Authority about whether it would be in the best interests of the child for a Family Assistance Order to be made and, if so, for what period.

It may be useful to consider a FAO in circumstances where the court is seeking to bring proceedings to an end but the case is not ready to be signed off completely; perhaps because of a real risk of a hostile parent slipping back to a previous stance of preventing all contact.

In *Re L and M (Children: Private Law)* [2014] EWCH 939 a FAO was made to help the father write letters to the children to reintroduce indirect contact after a breakdown in contact in the context of Hague and later private law proceedings spanning over 6 years. It was determined that the children had suffered psychological harm and were consistently opposed to direct contact.

Taking a hard line: Transfer of residence

Re: M (Children) [2012] EWHC 1948 (Fam)

Peter Jackson J

Although the father had enjoyed good contact with his two sons after separation, there had been problems with restrictions to the contact by the mother and the father had made a referral to social services about the mother's new partner, prompting an application in 2010. Contact was stopped completely after the children alleged that the father had tried to drown one of the boys at an incident at a swimming pool later that year – after investigation this was found to be rough play only. There was clear evidence from interviews with the CAFCASS officer that the children were being coached and influenced by the mother. She renewed the children's passports, substituting her surname for the paternal surname and moved to live 300 miles away in Devon without notice to the children's schools, the father or the court. The mother then refused to engage in court proceedings until she faced committal. Further attempts at contact were unsuccessful, with, on one occasion, the children running off from a service station only to be found by a local farmer 50 minutes later.

The Judge did not accept that the mother wanted the children to have a relationship with the father or wider paternal family and that by refusing to go to contact the boys were doing what they knew their mother expected of them. The judge made a conditional residence order to the father, which would not come into effect if staying contact resumed over the summer holiday.

Peter Jackson J makes it plain that he is giving the mother a last opportunity to comply with contact or face the consequences. He clearly feels that this is a mother acting maliciously who has the power to influence and control her children's behaviour (aged 10 and 8).

Although the children are adamant that they do not want to see their father when they meet with the Guardian, the judge emphasises '*it is important to distinguish between real wishes and feelings on the one hand, and statements the children make, and think they mean, on the other*' [61]. He carefully balances up the factors for and against a change of residence and readily admits that '*leaving the children to grow up in relative isolation of their mother's home is the easier short-term solution, it does not provide the foundations they need for a healthy, rounded future.*' [72] He points out that it is '*bad for the children to be taught that the sort of manipulation they have been caught up in succeeds.*' [73]

The case contains a very helpful transcript of the order made.

Transfer of Residence with an ICO:

Re M (Intractable Contact Dispute: Interim Care Orders) [2003] EWHC 1024 (Fam)

Re S (Transfer of Residence) [2011] 1 FLR 1789

These cases provide two examples where the court took the ultimate step of transferring residence to the alienated parent, via the mechanism of an ICO and temporary placement in foster care as a stepping-stone to the other parent's home.

In *Re M*, the mother had fabricated allegations of sexual abuse by the father. After the fact-finding hearing, the mother refused to obey the order made for contact and then made a further allegation of sexual abuse which was again found to be untrue and it was determined that the mother had emotionally manipulated the child into making the allegation. The judge made an order for the mother's committal, which was delayed whilst the matter was transferred to the High Court.

Wall J (as he then was) rejected the idea of an immediate removal and felt that too much time had elapsed to push ahead with the committal; instead he ordered an investigation under s37 of the Children Act on the basis that he felt the children had been suffering significant harm in their mother's care and he sought the assistance of the Local Authority in formulating a plan for the. Consequently, the Local Authority instituted care proceedings and the children were placed in foster care. Although there were initial difficulties (the children absconded from the placement), contact with the father and paternal grandparents successfully recommenced and within three months both children were refusing to see their mother. After a further month of staying contact, both children expressed a wish to live with their father and a residence order to the father and 2-year supervision order to the Local Authority were made.

In contrast, in *Re S*, which was reported repeatedly in 2010, the child, aged 12, was made subject to a 4 week ICO, with a view to transferring residence to the father thereafter. Following the move to foster care, the local authority and guardian facilitated five sessions of contact to the father. At these sessions 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 and believed that he should not remain in foster care. The father consented to S returning home to the mother under an interim care order. Attempts to implement the residence order continued with S at home. He still refused to engage in contact. Intensive therapy was undertaken with S and the family. The therapist recommended further therapy and father abandon efforts to transfer residence. The other expert in the case, Dr Weir, disagreed, stating that therapy and 'stepping stone' approaches are of little use in cases of alienation, and may make matters worse. S was involved with CAHMS who considered him clinically depressed by the contact/ residence situation. In July 2010 the father abandoned his attempts to enforce the residence order. By consent, it was ordered that there should be a residence order to the mother, a supervision order

to the local authority, indirect contact by the provision of school reports and photographs, and a s91(14) Children Act 1989 order preventing further applications without leave of the court by either parent until S reached 16. Reflecting on the case HHJ Bellamy notes 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 out-with the experience of the care professionals. In cases involving an alienated child it is "essential that the court has be benefit of professional evidence from an expert who has personal experience of working with alienated children."*

Useful principles

Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124 at 128C to 130E

Summarised in *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 who, 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 case which, for whatever reason, direct contact cannot for the time being be ordered, it is ordinarily highly desirable that there should be indirect contact
- Citing Re J (A Minor) (Contact) [1994] 2 FCR 741 at p749A: 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.

Other cases:

- Orders terminating contact should only be made when there is no alternative *Re O (A Child) (Contact: Withdrawal of Application)* [2003] EWHC 3031 (Fam)
- There is a positive obligation on the state and therefore on the judge to take measures to maintain and to reconstitute the relationship between the parent and child, in short, to maintain and restore contact. The judge has a positive duty to attempt to promote contact *Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521
- *Re P (Children)* [2008] EWCA Civ 1431: "contact should not be stopped unless it is the last resort of the judge" [38] and until "the judge has grappled with all the alternatives that were open to him" [36]

In the recent case of *Q v Q* [2015] EWCA Civ 991, the President draws together the principles above in a helpful summary of the case law.

1KBW

MARTHA HOLMES

T 0207 936 1500 **E** mholmes@1kbw.co.uk
1 King's Bench Walk, London EC4Y 7DB