

## FOURTEEN

*Very Young Children  
How far can you push the court over  
contact and staying arrangements  
for very young children, what will  
that contact look like and what will  
happen if a relocation is  
envisioned?*

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# 1. Introduction

- Focus on children less than 18 months old
- Focus on fathers and non-biological mothers seeking 'contact'
- Assumption that the biological mother is the one who is envisaging a relocation

## 2. The law



- Back to basics; section 1 of CA 1989:

*“(1) When a court determines any question with respect to the upbringing of a child... the child’s welfare shall be the court’s paramount consideration.”*

*“(3) (d) His age.....”*

- Presumption of a relationship contained in s1(2A) CA 1989

*“A court, in the circumstances mentioned in subsection (4)(a) or (7), is ...to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child’s welfare.”*

But

“(2B)... “involvement” means involvement of some kind, either direct or indirect, but not any particular division of a child’s time.

- No end of case law about contact between babies and parents who have been separated by care proceedings, but very little in the private law sphere

# 3. The system

- Required to mediate before issue (e.g. PD12C)
- Then need to issue (if problems not resolved)
- Currently, waiting lists of c26 weeks for a CAFCASS report
- Currently, final hearing (even assuming a CAFCASS officer is found or an ISW is funded) is still likely to be 12-18 months away

- The question in relation to arrangements for young babies is all-too-frequently “*how far can you push the Court at an interim hearing*”

## 4. Solutions

- Very few Judges nowadays hold the rigid perspective that babies must always and at all times be with their mothers
- However, arrangements concerning babies are still delicate and by far and away the most effective strategy is plan what to do before the parents have separated formally (if the luxury of doing so is available)

- With babies, some of the profound complications that arise with older children are entirely absent. Instead, there are different challenges to overcome
- Take a careful history
- Are the parties still living under the same roof?
- How experienced a carer is the other parent?
- Can the mother support the baby to transition?

- How much time has the baby spent away from the mother
- How much time has the baby spent with the father/ NBM
- Does the child go to nursery?
- Is the child breast-, bottle- or combination-fed? Is the child fully weaned? Is the mother who breastfeed willing to express milk?

- Does the child have a comfort toy/ blanket
- Generally speaking, a little and often contact is likely to be the best approach initially
- How flexible on timing can the client be? Generally speaking, the more flexible the greater progress will be made
- Is there an older sibling, how do those arrangements work?
- Is there a matriarch/patriarch who can support

- Putting a child-focused comprehensive plan before a Judge reaps rewards
- Often decisions are made under considerable judicial time pressure
- Simply asserting a one-size-fits all approach can have a notably adverse impact on the arguments
- In an ideal world, this does not HAVE to be adversarial

## 5. How far is too far?

*“Over the line?”*

*You... you... you're so far past  
the line that you can't even see the line!*

*The line is a dot to you”*

- Joey Tribbiani (Friends)

- The child's welfare is paramount
- Putting forward plans that lack child-focus can damage parental relationships
- For a young baby, feeling safe and secure is likely to be more important in the short term than having an extensive fully-developed relationship with both parents (unless he had that relationship already)
- Patience can reap dividends

# 6. Relocation

- To where?
- Domestic, Europe, Long-haul?
- Building up a relationship with an infant becomes ever-more difficult as distance increases
- Consider negotiating a deferred relocation

- Consider ways of bridging the gap between visits
  - Remote visual contact has limited functionality
  - Reading/ recording bedtime stories can have some benefit
  - A sensory toy that smells of home
  - Photos
  - All require co-operation to work at best
- Regular (little and often) visits if at all possible

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