

Implacable Hostility and Parental Alienation

‘The Hostile Parent’
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4PB FAMILY



At the point of instruction

- Scrutinise your case – is this implacable hostility?
- Assemble your team
- Set out your reasonable proposals
- Avoid protracted negotiation
- Consider external parenting resources
- Collate your evidence
- Local authority/police involvement?
- Formulate and communicate your plan for interim contact, especially if contact has stopped.

Re M (Children) [2017] EWCA Civ 2164

- Summary: there is a positive obligation on the court to encourage contact between a parent and child. Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child. Contact is to be terminated only in exceptional circumstances where there are cogent reasons for doing so and when there is no alternative. The judgment provides a helpful summary of existing principles derived from case law.
- 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.

*Re L-W (Enforcement and Committal: Contact);
CPL v CH-W and Others [2011] 1 FLR 1095, CA*

- Judicial continuity
- Judicial case management (including timetabling),
- A judicial strategy
- A consistency of judicial approach
- Be ready to consider enforcement

The voice of the child

- PD16A, 17.2:
- The decision to make the child a party will always be exclusively that of the court, made in the light of the facts and circumstances of the particular case. The following are offered, solely by way of guidance, as circumstances which may justify the making of such an order –
- (c) where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational but implacable hostility to contact or where the child may be suffering harm associated with the contact dispute;

Fact Finding

- In *Re J (Children) (Contact Orders: Procedure)* [2018] 2 FLR 998 the Court of Appeal repeated the (well-established) principle that fact-finding hearings are a fundamental element of the court's positive duty to strive to achieve contact between a parent and child, especially where there is a “polarised dispute” [para84] .
- “[40] Through a series of practice directions, the most recent of which is the version of the FPR 2010, PD 12J ('Child Arrangements and Contact Orders: Domestic Abuse and Harm') which was issued in October 2017, courts are required, at an early stage in proceedings, to identify whether there are issues of domestic abuse and, if so, apply the requirements of PD 12J to their management of the case.”

Necessity of Fact Finding

- In Re H-N & Others [2021] EWCA Civ 448 with the Court setting out the following approach:[37]
- *The court will carefully consider the totality of PD12J, but to summarise, the proper approach to deciding if a fact-finding hearing is necessary is, we suggest, as follows:*
- *i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD12J.5).*

PD12J

- Paragraph 5 – the court will consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms;
- The allegation must be relevant to child arrangements and potential risk to the child.
- See also paras 58 and 59 in *Re H-N & Others* [2021] EWCA Civ 448
- *only those allegations which are ‘necessary’ to support the above processes should be listed for determination;*

Parental Alienation

- The recent case of *Re S (Parental Alienation: Cult) [2020] EWCA Civ 568* outlines the potential signs of alienation:
- Portraying the other parent in an unduly negative light
- Suggesting that the other parent does not love the child providing unnecessary reassurances to the child about the time with the other parent
- Contacting the child excessively when with the other parent
- Making unfounded allegations
- It also sets out how to proceed in such cases: fact-finding and instruct experts who have experience with parental alienation. Consider medical records and school records, to see whether a parent has taken any unilateral decisions

Early intervention and speedy proceedings

- In *Re A (Children) (Parental Alienation) [2019] WLUK 445* the court commented on an exceptional case of parental alienation. Early intervention was essential to identify the problems within the family before the children's views became entrenched. The judgment sets out markers by which parental alienation can be identified and highlights the importance of dealing with parental alienation at an early stage.

Transfer of Residence

- *Re L (a Child) [2019] EWHC 867* reminds us that the decision to transfer residence is a balancing exercise and requires a holistic view as to the welfare checklist. This case confirms that transfer of residence is not an option of last resort, an important point not necessarily clear to date. Key Passages:
- *[59] Having considered the authorities to which I have referred, and others, there is, in my view, a danger in placing too much emphasis on the phrase "last resort" used by Thorpe LJ and Coleridge J in Re: A . It is well established that the court cannot put a gloss on to the paramountcy principle in CA 1989, s 1 . I do not read the judgments in Re: A as purporting to do that. The test is, and must always be, based on a comprehensive analysis of the child's welfare and a determination of where the welfare balance points in terms of outcome.*