





# Parental Alienation and Non-Compliance

Ed Elliot, Garden Court Chambers (Chair)  
Jennifer Grehan, Garden Court Chambers  
Stephen Lue, Garden Court Chambers  
Rachel Schon, Garden Court Chambers



GARDEN COURT CHAMBERS



19<sup>th</sup> September 2024

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# Parental Alienation and Non-Compliance

Jennifer Grehan, Garden Court Chambers

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# Alienating behaviours / Parental alienation definition

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- Cafcass definition:  
*There is no single definition of ‘alienating behaviours’. We use the term to describe behaviours where one parent or carer expresses an ongoing pattern of negative attitudes and communication about the other parent or carer that have the potential or intention to undermine or even destroy the child’s relationship with their other parent or carer. These behaviours can result from a parent’s feelings of unresolved anger and a desire, conscious or not, to punish the other parent or carer. Alienating behaviours range in intensity and their impact on children.*
- The first step in assessing the reasons for the child’s resistance or rejection of a parent is to consider whether domestic abuse or other forms of harmful parenting are factors.
- The Domestic Abuse Practice Guidance in the CIAF includes the following advice:  
***“Ensure you have clearly distinguished between harmful conflict, domestic abuse and bond breaking or alienating behaviours which lead to resistance to contact.”***



# The Cafcass 'Behaviours checklist'

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- The child's opinion of a parent is **unjustifiably** one sided, all good or all bad; idealises one parent and devalues the other
- Trivial, false, weak and/or irrational reasons to justify dislike or hatred
- Allegations of harm are made against the rejected parent which, following investigation are either unsubstantiated or found not to have occurred.
- Reactions and perceptions are unjustified or disproportionate to parent's behaviours. This is often based around a single incident or alleged incident.
- Revises history to eliminate or diminish the positive memories of the previously beneficial experiences with the rejected parent. May report events that they could not possibly remember.
- Extends dislike / hatred to extended family of rejected parent
- Where otherwise compliant children appear to defy the resident parent's verbal and observed attempts to encourage contact
- No guilt, or ambivalence regarding their attitudes towards the rejected parent



# Behaviours demonstrated *by* parent alienating

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- Actively denigrating/exaggerating flaws
- Abdicates their PR in respect of encouraging a relationship
- Uses phrases like “will not force/drag” – negatively loaded
- Instructs a child what to say
- Relocating without agreement
- Refusing to hear positive comments of other parent
- Expresses no concern that the child is missing out on a previously positive relationship
- Portraying other parent as dangerous when not justified
- Gifts/cards from other parent not handed to child
- Not correcting child's defiant behaviour toward other parent
- Making child aware of their own distress/fragility
- Insisting on being present during contact which has been assessed as safe
- Making unfounded complaints against professionals who encourage relationship

***In Re S (Parental Alienation: Cult)*<sup>1</sup>, Jackson LJ reminded us that that “the manipulation of the child need not be malicious or even deliberate, it is the process that matters not the motive”.**



In *Re E (A child)*, Hedley J gave guidance as to appropriate case management in intractable contact disputes:

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"[11] ... it is extremely important, both for courts and advisers, to try to spot at an early stage those cases which have the hallmarks of difficulty, let alone intractability about them ... **it is extremely important that the parties at a relatively early stage have an opportunity to give evidence not against each other, as happens in fact-finding hearings, but in respect of the interests of the child** which are all too easily lost in the maelstrom of allegations that all too often surround fact-finding hearings'.

'[12] ... **judicial continuity** is of particular importance in difficult and intractable contact cases'

'[14] If a case is to be transferred to the High Court it seems to me that it is desirable that the judge so considering the matter consults with the Family Division Liaison Judge... and that the matter should be transferred not absolutely but for directions with a view to a High Court judge considering whether the matter should remain in the High Court. That has the advantage, which I readily understand and accept, **of a new mind being applied to the case without necessarily divesting the judge who has had continual oversight of the case from continuing in it with the benefit of such directions or observations as a High Court judge may in the circumstances be able to offer**.'



# Where to start

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- Timetabling – weeks not months
- Judicial continuity - “proper judicial control and judicial case management requires what Wall J referred to in *Re M* at para [115] as “consistency of judicial approach” within the context of a judicially set “strategy for the case”. This must form what he described at para [118] as “part of a wider plan for [the] children, which... needs to be thought through” - Munby J in *Re D (intractable contact dispute: publicity)* [2004] EWHC 727 (Fam) at [49].
- Value of an early fact finding (*Re S (Parental Alienation: Cult)*, Jackson LJ ) – not necessarily against the other parent but the interests of the child
- If there will need to be a fact- finding on abusive relationship, then organise required disclosure early
- Think about experts - STL will address in detail later
- It is NEVER too late to say ‘alienation’ during proceedings
- It can sometimes only become apparent after a S7 report is filed





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- R 16.4 guardians

*FPR 2010, PD 16A, 7.2...*

(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;*

(d) *where the views and wishes of the child cannot be adequately met by a report to the court;*

(e) *where an older child is opposing a proposed course of action;*

- Section 37 reports – (SW must be experienced in alienation! (*Re H*, Mr Justice Baker)

- Mrs Justice Baker in *Re S* points out the difficulties for LA's grappling with complex private proceedings which they see as a dispute between parents.

- Any order must be clear and carefully worded that the parent is responsible to handover – not a decision for the children (*Re S (Contact: Intractable Dispute)* [2010] EWCA Civ 447)

- Where not appropriate to force contact ask for direction of therapy for child (*Re Q (A Child)*)



# Resolution

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In *Re H-B (Children) (Contact: Prohibition on Further Applications)* [2015] EWCA Civ 389, it was held that all parents must take full responsibility for ensuring that their children, regardless of their age, have a positive relationship with the other parent:

"But what one can reasonably demand – not merely as a matter of law but also and much more fundamentally as a matter of natural parental obligation – is that the parent, by argument, persuasion, cajolment, blandishments, inducements, sanctions (for example, “grounding” or the confiscation of mobile phones, computers or other electronic equipment) or threats falling short of brute force, or by a combination of them, does their level best to ensure compliance. **That is what one would expect of a parent whose rebellious teenage child is foolishly refusing to do GCSEs or A-Levels or “dropping out” into a life of drug-fuelled crime. Why should we expect any less of a parent whose rebellious teenage child is refusing to see her father?**

- **Child turning 16? Exceptional Circumstances S 9 (6) of the Children Act 1989**



## Article 8 rights – positive obligations

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***Pisica v Moldova (Application No 23641/17)*** 29 October 2019

Finding a breach of Article 8, the ECtHR stated:

*“63. The Court reiterates that although the primary object of Article 8 is to protect the individual against arbitrary action by public authorities, there are, in addition, **positive obligations inherent in effective 'respect' for family life**... In cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a de facto determination of the matter”*

***Re A (a child) (intractable contact proceedings: human rights violations)***, it was held that the family justice system, as a whole, had failed to meet its duty to meet the 12-year-old subject child's welfare.

The court acted on a teenager's wish for court proceedings to end by refusing the unimpeachable father direct contact and refusing him liberty to apply. It resulted in a breach of the ECHR, Art 8 rights of the father and the child. It was held that the courts should have taken a much tougher line earlier on.



# Remind the court it is about the child not your client...

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- Long term issues associated with rejection of an attachment figure include:
  - low self-esteem, lack of trust in the self and others, and social isolation\*
  - depression, drug and alcohol problems\*
  - divorce and loss of own children through divorce\*
  - shame, excessive guilt, unrelenting worry, and suicidal feelings\*
  - adult dissociation,\* high levels of identity diffusion,\* Unstable Personality Disorder\*\*

\* Baker, A.J.L. (2005). The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study. *The American Journal of Family Therapy*, \*\*  
Kramer, U., de Roten, Y., Perry, J. & Despland, J. (2013). Beyond splitting: Observer-rated defense mechanisms in borderline personality disorder. *Psychoanalytic Psychology*, 30:1, pp. 3-15.





# PARENTAL ALIENATION

## IMPORTANT CASES AND WAR STORIES

Stephen Lue, Garden Court Chambers

19<sup>th</sup> September 2024



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# Leading authorities on parental alienation

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- *Re C (Parental Alienation: Instruction of Expert)* [2023] EWHC 345 (Fam)

## Key principles

- Para 103 *“the decision about whether or not a parent has alienated a child is a question of fact for the court to resolve and not a diagnosis that can or should be offered by a psychologist”.*
- *‘parental alienation’ is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, ‘alienating behaviours’. It is, fundamentally, a question of fact.”*



## *Re C (Parental Alienation: Instruction of Expert) [2023] EWHC 345 (Fam)*

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- *What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents*
- *the identification of “alienating behaviour” should be the court's focus, rather than any quest to determine whether the label “parental alienation” can be applied.”*



# *Re C (Parental Alienation: Instruction of Expert) [2023] EWHC 345 (Fam)*

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## EXPERT?

- *The court should work with the current, potentially confusing, scheme with its eyes open to the need for clarity over the expertise of those who presented as a psychologist, but who were neither registered nor chartered.*
- *HCPC registration, or chartered status in the British Psychological Society, provided a reliable, one-stop method of authentication.*
- *The generic label "psychologist" was not protected and could be used by any individual, whether registered or not. A report by an unregistered person calling themselves a psychologist could be called a "psychological report".*
- *In every case the court should identify whether an expert was HCPC-registered. A sensible practice where the expert was unregistered was for the court to indicate in a short judgment why it was nevertheless appropriate to instruct them, Kennedy considered.*





## *Re S (Parental Alienation: Cult) [2020] EWCA Civ 568*

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- Parental Alienation is not always at play e.g. *“it is not uncommon for there to be difficulties in a parent-child relationship that cannot fairly be laid at the door of the other parent”*.
- *“Situations of this kind, where the concerned parent is being no more than properly supportive, must obviously be distinguished from those where an emotionally abusive process is taking place”*.
- *Need for an early FFH “the value of early fact-finding has repeatedly been emphasised”*.
- *“where behaviour is abusive, protective action must be considered whether or not the behaviour arises from a syndrome or diagnosed condition”*. Sir Andrew McFarlane(see[2018] Fam Law 988)



## *Re S (Parental Alienation: Cult) [2020] EWCA Civ 568*

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- *CAFCASS definition of alienation: see Jennifer Grehan's slides on this topic*



## *Re S (Parental Alienation: Cult) [2020] EWCA Civ 568*

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- *Where a process of alienation is found to exist, there is a spectrum of severity and the remedy will depend upon an assessment of all aspects of the child's welfare, and not merely those that concern the relationship that may be under threat.*
- *the court's powers include those provided by sections 11A to 11O of the Children Act 1989, and extend to consideration of a more fundamental revision of the arrangements for the child.*
- *Change of where the child lives? whilst a change in the child's main home is a highly significant alteration in that child's circumstances, such a change is not regarded as "a last resort": Re L (A Child) [2019] EWHC 867 (Fam) at [53] to [59] per Sir Andrew McFarlane P. The judge must consider all the circumstances and choose the best welfare solution.*



## Breaches of Art 8 rights of the parent and child

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- *In cases concerning a person's relationship with his or her child, there is a duty to exercise exceptional diligence, in view of the risk that the passage of time may result in a de facto determination of the matter (see, for example, Ignaccolo-Zenide)*
- *In summary, in a situation of parental alienation the obligation on the court is to respond with exceptional diligence and take whatever effective measures are available. The situation calls for judicial resolve because the line of least resistance is likely to be less stressful for the child and for the court in the short term*
- *But it does not represent a solution to the problem. Inaction will probably reinforce the position of the stronger party at the expense of the weaker party and the bar will be raised for the next attempt at intervention*



## *Re S (Parental Alienation: Cult) [2020] EWCA Civ 568*

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- *In making its overall welfare decision the court must therefore be alert to early signs of alienation. What will amount to effective action will be a matter of judgement, but it is emphatically not necessary to wait for serious, worse still irreparable, harm to be done before appropriate action is taken.*
- *M was entitled to her belief in a cult in a democratic society, but the child's welfare is still paramount.*
- *The court had to keep the child's medium to long-term welfare at the forefront of its mind and wherever possible uphold the child's and the parent's right to respect for family life before it was breached*



# Strategies

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- Checklist of what steps can be taken at an early stage?
  - a) FFH to identify patterns of alienation.
  - b) Ordering an ISW to undertake direct work with the parents and child including facilitating contact? And report back to the court.
  - c) Making the LA undertake a s.37 investigation?
  - d) Contact at school?
  - e) Appointment of a Guardian?
  - f) Psychological reports of the parents? or a global family psychological assessment?
  - g) Ensure Judicial continuity early on in proceedings.
  - h) The strategy for a case might properly involve the use of imprisonment for the purposes of deterrence or coercion
  - i) Timetabling cases in weeks rather than in months. (D (A Child) (Intractable Contact Dispute: Publicity), Re, 2004 WL 960914 (2004)
  - j) Intensive Family Therapy for the parents and child/children?- as per the Re S cult case.
  - k) Family Separation Clinic (Expert Assessment - <https://www.familyseparationclinic.com/>)



## *Re GB (Part 25 Application: Parental Alienation) [2023]*

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Recent Case:- On appeal it was re-iterated that experts are not able to identify parental alienation. It is a matter for the courts.

- An appeal was allowed against a district judge's order for an expert psychological assessment of the parents and child.
- *“The expert was being invited expressly to provide an opinion about parental alienation. In the judgement of this Court, that is outside the expert's remit. The decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. It is the Court's function to make factual determinations necessary to inform welfare decisions for the child, not to delegate that role to an expert. The identification of alienating behaviours should be the Court's focus, where it is necessary and demanded by the individual circumstances of the case for the Court to make such factual determinations leading to final welfare decisions for the child.”*



## Other Key Cases in Parental Alienation

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- *Re A (A Child) (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA Civ 1104
- *Re D (A Child) (Intractable Contact Dispute: Publicity)* [2004] EWHC 727 (Fam)
- *Re O (A Child) (Contact: Withdrawal of Application)* [2003] EWHC 3031 (Fam)
- *Re T (A Child) (Contact: Alienation: Permission to Appeal)* [2002] EWCA Civ 1736





## No Contact Order – when your applicant client is not at fault?

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- *Re A (A Child) (Intractable Contact Dispute: Human Rights Violations)* [2013] EWCA Civ 1104
- Facts: Where a mother had maintained a long-term unjustified and implacable hostility towards contact between an unimpeachable father and their daughter. More than a decade of uninterrupted litigation, it acted on the teenager's wish for the court proceedings to end by refusing the father contact and refusing him liberty to apply
- Father said on appeal: the judge should not have accepted D's assertions as being a true indication of her wishes, and that the court should not abdicate its responsibility to make orders that afforded paramount consideration to D's welfare when she would plainly benefit from paternal contact; (2) the family justice system had failed to meet its duty to afford paramount consideration to M's welfare for over a decade.



## *Re A (A Child) (Intractable Contact Dispute: Human Rights Violations) [2013] EWCA Civ 1104*

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### Father's Appeal allowed:

- The importance in welfare determinations of a child's wishes and feelings would increase proportionately with the child's age and level of understanding. In some cases, those views would be determinative (just not THIS case!)
- Human rights violations might also arise from a refusal of direct contact.
- When making care orders, a judge's duty was "more than to exercise a discretion"; that same level of duty applied to orders depriving a parent of contact.
- The court should have taken a much tougher line much earlier, by analysing the evidence for itself, reaching key conclusions, exercising forward-thinking, and ensuring that adverse consequences resulted from non-compliance. A wronged parent might be reluctant to push for enforcement proceedings, but such reluctance did not relieve the court of the responsibility for enforcing its own orders. It had extensive powers to do so and was expected to use them.

# Warwickshire CC v Mother, 2023 WL 02266452 (2023)

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- *(Z and X), aged 13 and 11, court asked to determine where they should live*
- *The parents had separated. At a fact-finding hearing a finding of parental alienation was made against the mother. By the time of the instant hearing X was living with the mother's new wife's parents (B), and refused to have contact with her father; Z was living with her mother and wanted more contact with X.*
- *Determination:- Children were autonomous and had their own feelings and perceptions, particularly as they became older and wished to assert their own personalities.*
- *As they became older and more weight was accorded to their wishes and feelings, careful consideration had to be given to the degree to which a significant interference with their ECHR art.8 rights, against their wishes, was justified and proportionate*



## Warwickshire CC v Mother, 2023 WL 02266452 (2023)

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- *The parental alienation label had been thoroughly unhelpful, by embedding conflict and a sense that one parent was right and justified while the other was wrong and had acted inappropriately. It was an example of how the adversarial process of litigation, particularly when combined with lengthy delays, had served to entrench positions and produce poor outcomes for children. The mother had allowed her anxieties and her issues with the father to influence the children. She had also been quick to abdicate responsibility, whether to them or to professionals, and she had not actively sought to persuade the children to have contact with the father*
- STL Commentary:- which is a nuanced window in comparison to other parental alienation cases). It is a swing back in favour of leaning on the W+F's, but caution should be utilized when those W+F's have clearly been influenced by the resident parent (consciously or unconsciously).



*S and T (care proceedings following private law dispute) [2021] EWFC B54 (06 July 2021)*

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*In a judgment published on Bailii, HHJ Vincent in S and T (care proceedings following private law dispute) [2021] EWFC B54 (06 July 2021) goes on to comment at para [75]:*

*'75. Parental alienation is a loaded term which means different things to different people. It can describe a child who is estranged from a parent for justifiable reasons; if that parent presents as a risk to them. It can describe the motivation or actions of one parent deliberately acting to manipulate and control their child so as to reject the other parent. That process can also take place deliberately or inadvertently, a parent unconsciously transferring onto their child their fears about the other parent or fears of losing control. It can describe the behaviour of a child who appears to reject a parent completely with no rational basis'.*



# War Story: Iceland Case

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- Case concerned two young girls A and B. 3 and 5 years old.
- Parents had a short marriage and were in contentious financial proceedings.
- The CAO proceedings had resulted in findings of dishonesty. M was legally trained in Iceland (M was found to have made a false allegation of rape to the police against the Father, that was “designed to cause maximum collateral damage”).
- M had been found to have perpetrated domestic abuse, including physical, emotional and psychological abuse against the Father.
- M had fraudulently obtained the Father’s confidential therapy notes.
- The parents had been subject to a psychological assessment. The (registered and chartered) expert found that the Father was suffering PTSD.
- The M alleged that the F was engaging in parental alienation against her, and that she simply wanted to have a relationship with the children.
- The M wished the children to spend half their time in her care. At the time of the final hearing the M was seeing the children via a contact supervisor.
- The court made an order for no contact, with a prohibition on the M making further applications for 2 years for the M to engage with intensive therapy. Court found there was no parental alienation.



# Thank you

020 7993 7600

info@gclaw.co.uk

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# Parental Alienation – Remedies / Orders

Rachel Schon, Garden Court Chambers

19<sup>th</sup> September 2024



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# ICFA (Cafcass)

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- Improving Child and Family Arrangements (ICFA) is the name of the service designed by Cafcass to help families agree safe, beneficial and sustainable child arrangements when they are finding it difficult to do so on their own.'
- Needs to be ordered by the Court within proceedings following recommendation by Cafcass
- Parents need to be on board otherwise this won't work
- Service is free to parents

## **How does the ICFA service help families?**

ICFA supports families to make the most suitable arrangements for children by:

1. Reducing barriers and resistance to agreeing arrangements and managing any risks so that these are safe.
2. Promoting positive communication within families.
3. Ensuring children's wishes and feelings are heard and considered.
4. Helping families agree a Parenting Plan to avoid future issues arising.



# Transfer of Residence

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- No longer seen as a 'last resort'. The court's paramount consideration is the welfare of the child.
- Consider impact of separating siblings where relevant.
- The views of the child are no longer seen as determinative of the outcome, particularly in cases where the resident parent has influenced the child
- Short term trauma/harm can be outweighed by the long-term benefits of a relationship with both parents
- The court can choose to order transfer but suspend the order to facilitate compliance



## *Re L (A Child)* 2019 EWHC 967 (Fam)

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“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.... Use of phrases such as “last resort” or “draconian” cannot and should not indicate a different or enhanced welfare test. What is required is for the judge to consider all the circumstances in the case that are relevant to the issue of welfare, consider those elements in the s 1(3) welfare check list which apply on the facts of the case and then, taking all those matters into account, determine which of the various options best meets the child's welfare needs.”

Sir Andrew McFarlane, President of the Family Division



# Enforcement

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Paragraph 21.1 of the Child Arrangements Programme (FPR 2010, Practice Direction 12B) requires the court:

"On any application for enforcement of a child arrangements order to:

- consider whether the facts relevant to the alleged non-compliance are agreed, or whether it is necessary to conduct a hearing to establish the facts;
- consider the reason for any non-compliance;
- consider how the wishes and feelings of any child are to be ascertained
- consider whether advice is required from Cafcass/CAFCASS Cymru on the appropriate way forward;
- assess and manage any risks of making further or other child arrangements orders;
- consider whether a SPIP\* or referral for dispute resolution is appropriate;
- consider whether an enforcement order may be appropriate, and
- consider the welfare checklist."



# Enforcement

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Paragraph 21.6 of Practice Direction 12B lists the range of powers available to the court on an application for enforcement of a child arrangements order. The powers include (though are not limited to):

- (a) referral of the parents to Planning Together for Children (old SPIP) or mediation;
- (b) variation of the child arrangements order (which could include a more defined order and/or reconsidering the contact provision or the living arrangements of the child);
- (c) a contact enforcement order or suspended enforcement order made under section 11J Children Act 1989 (“Enforcement order” for unpaid work), (see paragraph 21.7);
- (d) an order for compensation for financial loss (under section 11O Children Act 1989);
- (e) committal to prison or
- (f) a fine.



# Enforcement

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- The court can make an enforcement order for unpaid work under Section 11J of the Children Act.
- The court will consider whether the person has a reasonable excuse for the failure to comply. If there is a reasonable excuse, no enforcement order can be made.
- Court must be satisfied beyond reasonable doubt that the person has failed to comply
- The court must be satisfied of two further matters before making an enforcement order, namely that:
  - "(a) making the enforcement order proposed is necessary to secure compliance with the child arrangements order or any child arrangements order that has effect in its place;
  - (b) the likely effect on the person of the enforcement order proposed to be made is proportionate to the seriousness of the breach'.' (Section 11L of the Children Act)



## Enforcement – Unpaid Work

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- Court must also be satisfied that unpaid work is available in the police area where the person resides – sometimes there is nothing available considering that the pool of work is also being chased by those in the criminal justice system
- Section 11J (9) allows the court to suspend an unpaid work order to facilitate compliance
- Cafcass are responsible for monitoring the enforcement order. Cafcass may request the appointed probation officer to report back to them to assist with their report.
- Minimum number of unpaid work hours is 40 and maximum is 200. This must be undertaken within 12 months.
- It is possible to apply for an enforcement order to be revoked in certain circumstances



# Committal

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- "The days are long gone when mothers can assume that their role as carers of children protects them from being sentenced to immediate terms of imprisonment for clear, repeated and deliberate breaches of contact orders." - Ward LJ, *Burgess v Stokes* [2009] EWCA Civ 548
- A willingness to impose short sentences (one, two or three days) may achieve the necessary deterrent effect without significantly impacting the ability to look after the children
- However, a party making an application for a committal order must ensure that all correct procedures have been complied with and that a penal notice was attached to the original CAO, see *CH v CT (Committal: Appeal)* [2018] EWHC 1310
- Can suspend an enforcement order, including committal, to achieve compliance





## Child refusing to cooperate?

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- In *Re L-W (children)* 2010 EWCA Civ 1253 the Court of Appeal considered a father's appeal against compensation and committal orders in circumstances where a child was refusing to attend contact with his mother.
- The relevant order provided that the father 'shall allow the mother to have contact with [the child] and make him available accordingly'



# Child refusing to cooperate?

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Lord Justice Munby (as he then was) derived five propositions from earlier authorities relating to committal applications:

1. (i) first, the judge hearing the application for committal for the alleged breach of a mandatory order should identify by reference to the express language of the order precisely what the order required the defendant to do. That is a question of law;
2. (ii) the judge's second task is to determine whether the defendant has done what he was required to do and, if he has not, whether it was within his power to do it. These are questions of fact;
3. (iii) third, the burden of proof remains throughout on the applicant: it is for the applicant to establish that it was within the power of the defendant to do what the order required, not for the defendant to establish that it was not within his power to do it;
4. (iv) fourth, the standard of proof is the criminal standard, so that before finding the defendant guilty of contempt the judge must be sure that the defendant has not done what he was required to do and that it was within the power of the defendant to do it;
5. (v) if the judge finds the defendant guilty, the judgment must set out plainly both the judge's finding of what it is that the defendant failed to do and the judge's finding that he had the ability to do it.

# Child refusing to cooperate?

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- The court considered what is meant by 'reasonable excuse'.
- Lord Justice Munby (as he then was) explained that a defendant is not in breach of a mandatory order, even if he has failed to do what the order required, if it was not within his power to do it (issues of force majeure go to questions of breach, and he gave the example of the grounding of airlines by volcanic ash).
- In contrast, reasonable excuse arises where, although it was within the defendant's power to comply, he has some good reason for not doing so (for example, the sudden illness of a child, resulting in the child's being taken to a doctor rather than for contact).



# Thank you

020 7993 7600

info@gclaw.co.uk

@gardencourtlaw



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