

A new way of dealing with intractable contact cases in England

Family Justice Evening Seminar
House of Commons

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Agenda:

What to do with hostile parents

- Old ways didn't work
- New(er) ways
- Where do we go now?
- Is mediation the best way forward?

NB: I have assumed for this talk that the hostile parent is the mother



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The old ways didn't work

- Mothers can be very convincing in oral evidence
- Too difficult to intervene, 'will unsettle child'
- Too many judges were prepared to 'let sleeping dogs lie'
- Bias in favour of mothers, 'the natural carers'
- Court believed mothers always acted in child's best interests – sadly, not so
- Contact orders not complied with – no sanction



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The new(er) ways

- All residence and contact applications go straight to Conciliation Appointments – a judge tries to get parties to agree, with help of Cafcass officer
- Cafcass talks to children 9+ re ‘wishes and feelings’, but Cafcass under-resourced for preparing full reports
- If progress made (c50% of cases), CA can be adjourned
- If not, directions given for trial
- CAs take less time than trials, so appointments can be arranged more quickly



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Enforcement

- Difficult
- Some judges less 'proactive' – too little, too late
- Too much compromise on contact arrangements favours unreasonable parent
- PIPs – Parenting Information Programmes



What can judges do?

- Fine
- Suspended committal order (i.e. threat of prison)
- Ordering psychiatric report
- Electronic tagging of mother
- Committal order (i.e. prison)
- Shared residence order
- Change residence



Are current remedies effective?

Fine	Can mother pay? Takes money out of household
Suspended committal order	Threat of prison enables mother to play the martyr, distressing the child
Ordering psychiatric report	Informs Court (is mother mad or malicious?) Can be effective, but treatment too slow
Electronic tagging	Very effective in preventing abduction
Committal order	Step of last resort Enables mother to play the martyr Distress to child
Shared residence order	Chance to impose equal parenting time Conveys message that both parents matter
Change residence	The ultimate sanction Works well in highly conflicted cases



Electronic tagging of mother

- *Re A (Family Proceedings: Electronic tagging)*
[2009] EWHC 710
- Mother had twice abducted child, now returned & living with father
- Mother sought contact, which child also wanted
- Father feared further removal
- Court ruled, & parents agreed, that mother should be subject to curfew, supported by electronic tagging



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Shared residence

- *Re A (Joint Residence)* [2008] 2FLR 1593
- SRO now more common:
 - provides legal underpinning for actual shared parenting;
 - emphasises that parents equally important even if time with child unequal; or
 - redresses effect of over-controlling parent
- Not just where parents live close together or get on well



Shared residence - 2

- *Re K (Shared Residence Order) [2008] 2FLR 380*
- Mother appealed an SRO
- CofA: 'But his [F's] relative blindness to M's achievements is ... far too light a counterweight to the considerations which militate in favour of placing on the child a stamp that he has two parents of equal importance ..., notwithstanding that the division of time between the two households will remain slightly unequal.'



Delay

- *CP v AR* [2009] EWCA Civ 358
- Child 8, litigation 6 years
- Parents implacably hostile to each other
- Child very damaged; case had gone on too long
- Because of delay and damage, Guardian saw only solution as child to live with paternal grandparents
- CofA: Such a placement would not remove child from conflict. Remedy: therapy for the parents. If unsuccessful, child to be fostered.



No remedy for delay

- Strive to avoid delay by getting parents to agree to mediation
- Most mothers don't start by being implacable
- If the parents don't agree to mediate, one or both face more draconian outcomes
- 'Early Intervention' but is it soon enough?



‘Finding of fact’ hearings

- Domestic violence allegations used to necessitate ‘finding of fact’ hearings before contact can start, hence delay
- Incentive to make exaggerated or false allegations
- New Practice Direction (2010): not all domestic violence allegations require fact-finding before contact



The way forward?

- If contact breaks down, the case should come back to Court very quickly
- Listing doesn't permit this now
- Establish pool of mediators who can deal with such cases quickly, and re-establish contact
- Prevent child getting caught up in litigation



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Thank you!

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