



PUMP COURT  
CHAMBERS

**PARENTAL ALIENATION UPDATE**

J. Andrew Grime



# BC/PC Parenting in a Pandemic

- Guidance:-
- Coronavirus Crisis: Guidance on Compliance with Family Court Child Arrangement Orders, dated 24 March 2020:
- *<https://www.judiciary.uk/announcements/coronavirus-crisis-guidance-on-compliance-with-family-court-child-arrangement-orders/>*
- Guidance updated on 31<sup>st</sup> March 2020:
- *<https://www.judiciary.uk/wp-content/uploads/2020/03/Coronavirus-public-guidance-updated-31-March.pdf>*

- In summary, the general advice provides:
- Parental Responsibility for a child who is subject to CAO rests with the child's parents and not with the court;
- Parents must abide by the 'Rules on Staying at Home and Away from Others' issued by HM Government on 23 March 2020
- Government Guidance issued alongside the Stay At Home Rules provides an exception 'Where parents do not live in the same household, children under 18 can be moved between their parents' homes.' This does not mean that the MUST be moved. Ultimately this a decision for the parents to agree after a sensible assessment of the individual circumstances has been undertaken;
- Parents should communicate and act reasonably in making decisions about contact arrangements;
- If contact arrangements are varied temporarily, the courts will expect alternative arrangements to be made to establish and maintain regular contact between the child and the other parent eg. Face-Time, WhatsApp, Skype, Zoom or if not possible by telephone.
- *"The key message should be that, where Coronavirus restrictions cause the letter of a court order to be varied, the spirit of the order should nevertheless be delivered by making safe alternative arrangements for the child".*

- Other useful advice can be found at the CAFCASS website dealing with Co-parenting and child arrangements in a global pandemic
- <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/covid-19-guidance-for-children-and-families/>

# Duties & Responsibilities of parents

- Section 3(1) Children Act 1989 “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’ (emphasis added)
- In Re H-B(Contact) [2015] EWCA Civ 389 we see a passionate request from the Court of Appeal as to the responsibilities placed upon separated.
- Black LJ stated at para [62] that parents in the instant case would do well to read the postscript by McFarlane LJ in Re W (Direct Contact) [2012] EWCA Civ 999, [2013] 1 FLR 494 as to the duties and responsibilities of parenthood parents and the need to make child arrangements work for their children.

# Parents duties and responsibilities

- *62. These parents would do well to read the postscript added by McFarlane LJ to his judgment in Re W (Direct Contact) (supra), talking about the duties and responsibilities of parenthood in this situation, as would all other parents attempting to sort out arrangements for their child in the aftermath of their own separation. The fact that the courts cannot solve the problems presented by a case such as this one does not mean that they are insoluble. The solution so often lies in the hands of the parents. In this particular case, whatever the rights and wrongs in the past, the parent who is likely now to be able to influence things for the better is the mother. The girls have a close relationship with her and, if she changes her tune, there is a very good chance that they will listen. She owes it to them to try. She also owes it to herself to try because if she does not help the girls to gain a more accurate picture of their father and to make contact with him and his family again, it may have consequences for their relationship with her sooner or later.*

# Parents duties and responsibilities

- Munby P at para [71], approved the words of MacFarlane LJ in Re W [2012] (supra) in that:
- *"where two parents share parental responsibility, it will be the duty of one parent to ensure that the rights of the other parent are respected, and vice versa, for the benefit of the child."*
- *He returned to the point (para 74):*
- *"along with the rights, powers and authority of a parent, come duties and responsibilities which must be discharged in a manner which respects similarly-held rights, powers, duties and responsibilities of the other parent".*
- However, PR is much more than a legal principle. It is a fundamental reflection on the realities of the human condition, the very essence of the relationship as between a parent and their child. Duties are owed by parents not just to the court but, even more importantly, duties owed by each parent to their child.

# Parents duties and responsibilities

- Munby P at para [73] further identified another aspect of PR identified by MacFarlane LJ in Re W (supra):
- *"it is the parents, rather than the court or more generally the State, who are the primary decision makers and actors for determining and delivering the upbringing that the welfare of their child requires ... the courts are entitled to look to each parent to use their best endeavours to deliver what their child needs, hard or burdensome or downright tough though that may be. The statute places the primary responsibility for delivering a good outcome for a child upon each of his or her parents, rather than upon the courts or some other agency." [See paragraphs 74-76]*
- In relation to contact:
- *"77 Where there are significant difficulties in the way of establishing safe and beneficial contact, the parents share the primary responsibility of addressing those difficulties so that, in time, and maybe with outside help, the child can benefit from being in a full relationship with each parent ... the only interests that either parent should have ... in mind [are] those of each of their two children."*



# Parents duties and responsibilities

- *[78] Parents, both those who have primary care and those who seek to spend time with their child, have a responsibility to do their best to meet their child's needs in relation to the provision of contact, just as they do in every other regard. It is not, at face value, acceptable for a parent to shirk that responsibility and simply to say 'no' to strategies designed to improve the situation in this regard."*
- Munby P emphasised that it is not acceptable for a parent to shirk their responsibility by sheltering behind an assertion that the child will not do, or even that the child as adamantly opposed to doing, something and that this applied whatever the age of the child [Re H-B (Contact)[2015](supra) at para 74-75].

# Parents duties and responsibilities

- *‘75. As McFarlane LJ observed (para 75), the responsibility of being a parent can be tough, it may be 'a very big ask'. But that is what parenting is all about. There are many things which they ought to do that children may not want to do or even refuse to do: going to the dentist, going to visit some 'boring' elderly relative, going to school, doing homework or sitting an examination, the list is endless. The parent's job, exercising all their parental skills, techniques and stratagems – which may include use of both the carrot and the stick and, in the case of the older child, reason and argument –, is to get the child to do what it does not want to do. That the child's refusal cannot as such be a justification for parental failure is clear: after all, children whose education or health is prejudiced by parental shortcomings may be taken away from their parents and put into public care.’*
- Whilst the Court recognised that the parenting a headstrong teenager can be far from easy, this did not absolve a parent from exercising their parental responsibility [See para 76].

# Duties & responsibilities of the court

- *Re M (Children)(Ultra-Orthodox Judaism: Transgender Parent)[2017]*
- The case concerned an appeal by the father from a decision of Peter Jackson J (as he then was) where at first instance he had declined to order direct contact between the father, who had left the Charedi community to live as a transgender person, and the five children, because of the likelihood of the mother and children being marginalised or excluded from the community. Indirect contact was ordered four times per year and a FAO made to enable a Cafcass to work with the family to explain the situation to the children.
- The Court of Appeal, allowed the appeal and remitted the case to Hayden J for determination. In doing so, the Court set out two principles it considered central to the issues in hand:
- The function of a Family Judge in such a case is to act as the ‘judicial reasonable parent’ at paragraph 60:

# Duties & responsibilities of the court

- *“[60] the judge in a case like this is to act as the "judicial reasonable parent," judging the child's welfare by the standards of reasonable men and women today, 2017, having regard to the ever changing nature of our world including, crucially for present purposes, changes in social attitudes, and always remembering that the reasonable man or woman is receptive to change, broadminded, tolerant, easy-going and slow to condemn. We live, or strive to live, in a tolerant society. We live in a democratic society subject to the rule of law. We live in a society whose law requires people to be treated equally and their human rights are respected. We live in a plural society, in which the family takes many forms, some of which would have been thought inconceivable well within living memory.”*
- Secondly, judges have a positive duty to attempt to promote contact in cases of alienation which requires it to grapple with all the available alternatives before abandoning all hope of achieving contact (see also *Re C (Direct Contact: Suspension)*[2011] 2 FLR 912). Munby P set out in clear terms how a court is expected to deal with such a problem and the responsibility that falls upon it:-

## Duties & responsibilities of the court

- *'[64] Where an intransigent parent is fostering in their child a damaging view of the other parent, and thereby alienating the child from the other parent and denying contact between them, the court does not hesitate to invoke robust methods where that is required in the child's interests. Thus, the court may make an order transferring the living arrangements (residence) from one parent to the other, either to take immediate effect or (see *Re D (Children)* [2009] EWCA Civ 1551 and [\*Re D \(Children\)\* \[2010\] EWCA Civ 496](#)) suspended so long as the defaulting parent complies with the court's order for contact. The court can make the child a ward of court. The court can make an order under section 37 of the Children Act 1989 for a report from the local authority with a view to the commencement of proceedings for taking the child into public care.'*
- In conclusion, the Court of Appeal commented at paragraph 138
- *"In our judgment, the best interests of these children seen in the medium to longer term is in more contact with their father if that can be achieved. So strong are the interests of the children in the eyes of the law that the courts must, with respect to the learned judge, persevere. As the law says in other contexts, "never say never". To repeat, the doors should not be closed at this early stage in their lives."*

# Duties & responsibilities of the court

- *Re D (A Child): Parental Alienation*[2018];
  - *Re D (A Child: Parental Alienation)*[2018] EWFC 864
  - This case is a clear example of the way in which there is a growing awareness of the idea of parental ‘alienation’ see paragraphs 165 and 166:
- *‘165. Most experienced Family Court judges would acknowledge that there is a category of private law Children Act disputes which present profoundly difficult challenges to the court and which frequently cause judges near despair as they endeavour to achieve a positive and enduring outcome for the child. Descriptive language is used to highlight the complexity of these cases – for example, implacable hostility, intractable dispute, high conflict dispute. In some of these cases the judge’s sense of despair at having failed to achieve a positive outcome for the child is palpable. In *Re D (Intractable Contact Dispute: Publicity)* [\[2004\] EWHC 727 \(Fam\)](#) Munby J memorably began his judgment by saying: ‘On 11 November 2003 a wholly deserving father left my court in tears having been driven to abandon his battle for contact with his seven year old daughter D.’*

# Duties & responsibilities of the court

- . [166] *It is acknowledged that in these difficult and challenging cases it is often appropriate to make the child a party to the proceedings and to appoint a children's guardian for her under rule 16.4 of the Family Procedure Rules 2010. Practice Direction 16A sets out guidance on circumstances which may justify making the child a party. Included in that list is §7.2(c):*
- *'where there is an intractable dispute over residence or contact, including where all contact has ceased, or where there is irrational or implacable hostility to contact or where the child may be suffering harm associated with the contact dispute'.*
- *It is within this category of case that reference is sometimes made to 'alienation', parental alienation' and 'parental alienation syndrome'. Use of such expressions frequently gives rise to criticism, profound scepticism and doubt.*
- *167. Parental alienation syndrome is a theory first propounded by American child psychiatrist Richard Gardner in 1985. For the mother, Mr Hadden MBE has produced an article published by Carol S Bruch in 2001, Parental alienation syndrome and parental alienation: getting it wrong in child custody cases , in which the author systematically demolishes Gardner's approach, which she refers to as 'junk science'. For my part I have no difficulty in accepting Bruch's criticisms of Gardner's work in that area. That does not, though, diminish the very real concerns about the problem of alienation in general and parental alienation in particular.'*

# Duties & responsibilities of the court

CAFCASS Indicators of Alienating Behaviour which do not form part of the Child Impact Assessment Framework (CIAF). HHJ Bellamy referred to these 'typical behaviours' contained within the guidance at paragraph 170 of his judgment:-

- The child's opinion of a parent is unjustifiably one sided, all good or all bad, idealises one parent and devalues the other;
- Vilification of the rejected parent can amount to a campaign against them;
- Trivial, false, weak and/or irrational reasons to justify dislike or hatred;
- Reactions and perceptions are unjustified or disproportionate to parent's behaviours;
- Talks openly and without prompting about the rejected parent's perceived shortcomings;
- 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 or rejected parent (rejection by association);
- No guilt or ambivalence regarding their attitudes towards the rejected parent.
- Speech about rejected parent appears scripted, it has an artificial quality, no conviction, uses adult language, has a rehearsed quality.
- Claims to be fearful but is aggressive, confrontational, even belligerent.

# Duties & responsibilities of the court

- *Re S (Parental Alienation: Cult)[2020]EWCA Civ 568*
- The Court of appeal confirmed that the Cafcass definition of parental alienation was sufficient for working purposes :’When a child’s resistance/hostility towards one parent is not justified and is the result of psychological manipulation by the other parent.”
- That manipulation need not be malicious or deliberate
- If orders are required, the court can consider a fundamental revision of the child arrangements, which is not to be a last resort
- A judge must consider all the circumstances and choose the right solutions, taking a medium to long term view and not according excessive weight to short term problems.
- Paragraph 13 of the judgment provides a useful summary of the obligations on the court when dealing with parental alienation.

# Duties & responsibilities of the court

- *Re A (Children: Parental Alienation)[2019] EWFC B56*
- This case provides a classic example of a case gone wrong and is a warning to all practitioners of the need to be alert to the issue of parental alienation and to identify it at the earliest possible opportunity.

- *Re H (Parental Alienation): PA v. TT and another [2019] EWHC 2723*
- This case is a classic example of the benefits of an impressive and insightful expert report. In an in-depth report Dr Braier, who had assessed the parents and the child at length, concluded that the entrenched opinions of the mother, who regarded herself as a victim and disavowed any responsibility for what had taken place, had transferred to her son over time, resulting in his independent rejection of contact. The child's presentation suggested alienation rather than estrangement whilst also he prioritised the needs of his mother over his own.
- Dr Braier concluded that any attempt at therapeutic intervention aimed at restoring the father/son relationship was not advisable whilst he remained in the care of his mother and that a child's alienation from one parent, as in the instant case, was associated with an increased risk of long-term poor mental health and relationship problems and that a transfer of residence was 'the only feasible route to re-unification'.

- Keehan J made a CAO that the boy live with his father and spend time with his mother after a three month transition period. He held that the only means by which the child could have a full relationship with his father was by an order that he live with his father. Such an order was in his best interests and nothing else would do. He found that the mother had alienated the father and did not support him in playing a role in the boy's life. As a result, the boy was suffering emotional and social harm with consequences continuing throughout his life if the situation were allowed to continue. Whilst the court accepted that there was a small risk that the child would not settle in the care of his father, on balance a transfer of residence was required. He accepted the expert evidence that any attempt to restore direct contact whilst the child lived with his mother was likely to fail, with the boy merely becoming more entrenched in his views.
- Keehan J highlights the principles applicable in private law proceedings where a transfer of care is being considered as set out by the President in Re L (A Child)[2019] EWHC 867 (Fam) at para 5.

# Remedies & Enforcement

## Re MFS (Appeal: transfer of Primary Care)[2019] EWHC 768 (Fam)

- Case concerned a child aged 8 years by the time of the appeal. Long history of litigation dating back to 2012. In March 2017 M suspended contact with F. M wrote to judge alleging that the child's school had raised concerns for the child's well-being and that F's new partner had abused the child. Further, M alleged that the partner's children were 'constantly kicking' the child between the legs. F issued applications for CAO in May 2017 for the child to live with him.
- At final hearing the judge made findings that the child did not have OCD or Tourette's, concluding that the problem was an emotional disorder of childhood which was situationally based.
- After changing solicitors, M sought to appeal out of time on grounds including:-
- Judge's reliance on flawed expert evidence, describing this as a 'procedural irregularity';
- The order providing for a change in the living arrangements for the child was disproportionate.

# Remedies & Enforcement

Appeal refused by the High Court. The consequences of the late appeal had had a direct impact on the child's welfare, in that it was now effectively not possible to recreate the previous arrangements without causing further upset to the child.

- Where transfer of primary care was the outcome and an appeal was proposed, the ideal approach would be for applications for permission to appeal and a stay to be made prior to the implementation of the transfer; even where this would mean the making of an urgent application to the appeal court.
- *Re N (Children)[2019] EWCA Civ 903*
- The case concerned a litigation history between the father and the mother concerning their two children, dating back some 5 years. At a hearing listed as a directions hearing at which the father was not present, Hayden J proceeded to hear evidence from the mother and the Children's Guardian. He indicated that he was minded to make final orders including a Section 91(14) order applying to both parents for a period of two years. The order provided the father with liberty to apply to vary the S.91(14) direction within 4 weeks.

# Remedies & Enforcement

- The father appealed out of time. LJ's Jackson and Baker granted permission to appeal, allowed the appeal and remitted the matter for further hearing. The Court of Appeal held that such orders should be made sparingly and that none of the fundamental requirements identified in Re T (A Child)(Suspension of contact)[2015] EWCA Civ 719 had been satisfied, see para 20
- *[20] It has been well established for many years that an order under that section should be made sparingly, for the reasons identified by this court in Re P. The principles set out in that case are well known and need not be repeated. More pertinent, perhaps, for this appeal, are the observations of Tomlinson LJ in Re T (A Child) (Suspension of Contact) [\[2015\] EWCA Civ 719](#) [2016 ] 1 FLR 916. Having referred to the guidance in Re P, he observed:*
- *"50. ... Given the significant implications of this statutory intrusion into a party's ordinary ability to access justice, it is imperative that the court is satisfied that the parties affected:*
- *(1) Are fully aware that the court is seised of an application, and is considering making such an order.*
- *(2) Understand the meaning and effect of such an order.*
- *(3) Have full knowledge of the evidential basis on which such an order is sought.*
- *(4) Have a proper opportunity to make representations in relation to the making of such an order; this may of course mean adjourning the application for it to be made in writing and on notice.*
- *51. These fundamental requirements obtain whether the parties are legally represented or not. It is, we suggest, even more critical that these requirements are observed when the party affected is unrepresented."*



# Remedies & Enforcement

- *Re P & N (Section 91(14): Applications for permission to Apply: Appeal)[2019] EWFC 421 (Fam)*
- This was a case concerning an appeal within private law proceedings concerning two boys aged 8 and 6 years. There was litigation history dating back some 6 years during which time the father was made the subject of a S.91(14) order for a period of three years. It was noted that the father had acted “inappropriately throughout the court hearing to include using foul and extremely abusive language towards counsel for the mother and towards the judge”, that the father ignored warnings of the risk of contempt were he to continue using such language, and “that he had to be removed from the court by security staff.”. The District judge recorded at the time of making the S.91(14) order that ‘unless and until the father engages the services of a medical/therapeutic or child-care professional in dealing with the issues’ identified previously ‘then any application made by the father for leave to issue a child arrangements order [application] is likely to be unsuccessful’.

# Remedies & Enforcement

- The Circuit judge granted the father's application. On being notified of this decision the mother sought permission to appeal. Her single ground of appeal was that the judge was wrong to grant the father's application without hearing from her, or receiving her representations.
- In allowing the appeal and remitting the matter to Keehan J, Cobb J set out the relevant law, in particular:-
  - There is nothing in the Children Act 1989 or the Family Procedure Rules 2010 which specifically prescribes how a court should approach an application for permission to apply for a Children Act 1989 Order following the imposition of a S.91(14) Order;
  - When determining application under the Children Act 1989: Re B (Minors)(Contact)[1994] 2 FLR 1 at pg 6, Family Court judges enjoy a wide spectrum of procedures.
  - Sections 1(1) and s1(3) of the Children Act 1989 do NOT apply to applications for permission to apply for an order, albeit that the welfare of the child will be a relevant consideration. The Court should however, have some regard to the 'overriding objective' and the obligations under r.1, FPR 2010;



# Remedies & Enforcement

- Re S (Permission to Seek Relief)[2006] EWCA Civ 1190 is the most recent guidance from the Court of Appeal as to the appropriate procedure where at paragraphs 78-79 it is stated that the applicant has to demonstrate that there is a need for renewed judicial investigation on the basis that he has an arguable case. In the same judgement at paragraphs 91-95 the issue as to whether such hearings should be heard on notice or without notice was comprehensively re-considered. The Court of Appeal emphasised the importance on inter partes hearings, albeit allowing for an 'ex parte' review 'in the first instance'. It was further acknowledged that although the application for permission could be determined on the papers, if an applicant sought an oral hearing, they should be not be denied that opportunity.
- Recommended reading: paragraph 38-43 of the judgment where Cobb J sets out clear guidance as to the procedure to be adopted when considering such applications.

# Remedies & Enforcement

- *CH v. CT [2018] EWHC 1310 (Fam)*
- *Important decision concerning whether or not a suspended committal order should be set aside.*
- The Court considered r.37 FPR 2010, which governs applications and proceedings regarding contempt of court in family proceedings along with PD37A, FPR 2010.
- Baker J (as he then was) identified a number of errors of procedure in hearing before the Recorded, in particular:
  - The fact that a party had failed to comply with an order did not empower the court to make a committal order without complying with the procedural requirements;
  - There was no application to commit the mother and therefore she did not have proper notice of the committal application. The only application before the court was for an enforcement order and the judge erroneously thought that gave her the power to make a committal order;
  - Rule 37.10(3) was not satisfied. The mother had not received an application identifying separately and numerically each alleged act of contempt. Further, the paternal grandmother had not filed an Affidavit in support;

# Remedies & Enforcement

- An order could only be enforced by committal if endorsed with a penal notice that complied with r.39.9(1) FPR 2010 and paras 1.1 and 1.2 of PD37A Whilst the Recorder had drawn up an order in form N79 detailing the contempts she purported to have found proved, her judgment failed to deal with the breaches adequately, nor the reasons for the making of a committal order as opposed to an alternative means of enforcement. The judge had failed to give sufficient consideration to the making of an enforcement order as committal is a remedy of last resort in such sensitive cases and the Recorder failed to give sufficient consideration to the alternative orders available.
- Whilst a court could waive procedural defects to committal applications pursuant to para 13.2 PD37A, FPR 2010, it could only do so if satisfied that no injustice had been caused to the respondent.

# Cases falling short of alienation

- Re L (A child) [2019] EWHC 867 (Fam)
- Appeal from HHJ Tolson and heard by the President where at first instance the judge had ordered a change of residence for a child where the evidence pointed to emotional harm caused by the mother's undermining of his relationship with his father.
- President emphasised that orders for the transfer of residence should NOT be thought of as a 'last resort' in such circumstances.
- In this case, whilst no findings of parental alienation were made, the child was not permitted the emotional space with the mother to express positive feelings about the father, and he received emotional reward for expressing negative views. HHJ Tolson concluded, based on this that the level of emotional harm and the potential for future harm were such that, in the absence of any clear indicator of change, a transfer of residence was justified by the trial judge.

# Cases falling short of alienation

- *A v. B and C (By her Children's Guardian)[2018]*
- Interesting case with echoes of *Re W (Direct Contact) [2012] EWCA Civ 999*.
- Case concerned a 16yr old girl whose mother had passed away in 2016. She lived with her mother for the first 15 years of her life, first in Nigeria and from 2012 in the United Kingdom. The child began to spend time with her father only following the mother and the child's move to the United Kingdom. On the mother's death the child moved to live with her aunt and the aunt's family. Her contact with her father continued for some months until it was stopped in November 2016. The aunt applied for a CAO and the local authority became involved in the case. In October 2017 HHJ Probyn made a shared care order in favour of both the aunt and the father.
- In March 2018, the father applied for the child to be made a ward of court as well as a CAO. He also aimed for the removal of parental responsibility order made in favour of the aunt. Despite the shared care order made in October 2017, the child had since early 2018 been living with her father, though she made her views abundantly clear during the proceedings (including by speaking to the court directly), that she wished to maintain her relationship and continue to spend time with her aunt.

# Cases falling short of alienation

- Keehan J was critical of the behaviour of both the father and the aunt. He made a CAO that the child live with her father to reflect the reality of the situation on the ground and that she spend time with the aunt on no less than three occasions each week. Further, as a consequence of his order, he granted parental responsibility to the Aunt. Keehan J declined to make a S.91(14) order which had been sought on behalf of the child, however, he reserved any future applications to himself, in order to act as a filter to any future “unmeritorious” applications.
- Re G (Children: Intractable Dispute) [2019] EWCA Civ 548
  - Lord Justice Peter Jackson helpfully summarises the ‘Governing Principles’:-
- *‘44. The governing principles in proceedings of this kind are, of course, the welfare principle, the ‘effect of delay’ presumption, the parental involvement presumption, the overriding objective, and the parties’ rights under ECHR Articles 6 and 8. In the present context, they have on many occasions been gathered together in authority of long standing, as for example by Black LJ in J-M (A child) [2014] EWCA Civ 434 at [25]:*

# Cases falling short of alienation

- *(1) The welfare of the child is paramount.*
- (2) 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 whom he or she is not living.*
- (3) There is a positive obligation on the State and therefore on the judge to take measures to promote contact, grappling with all available alternatives and taking all necessary steps that can reasonably be demanded, before abandoning hope of achieving contact.*
- (4) Excessive weight should not be accorded to short term problems and the court should take a medium and long term view.*
- (5) Contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare.*

# Cases falling short of alienation

- Peter Jackson LJ, in dismissing F's appeal concluded that, since 2015, the judge had *"diligently and sympathetically attempted to revive the father's relationship with his children but has been forestalled by the mother's earlier lack of support for contact and by the father's increasingly extreme attitude"* [See para 65].
  - In the same case, Peter Jackson LJ re-emphasised the judgment in Re A (Contact: Human Rights Violations) [2013] EWCA 1104
- *'Where delay has a direct and adverse impact on a party's position, a breach of the procedural aspects of Article 8 may be found. That is what happened in [Re A \(Contact: Human Rights Violations\) \[2013\] EWCA 1104](#), [2014] 1 FLR 1185, where McFarlane LJ said this at [53]:*
- *"The conduct of human relationships, particularly following the breakdown in the relationship between the parents of a child, are not readily conducive to organisation and dictat by court order; nor are they the responsibility of the courts or the judges. But, courts and judges do have a responsibility to utilise such substantive and procedural resources as are available to them to determine issues relating to children in a manner which affords paramount consideration to the welfare of those children and to do so in a manner, within the limits of the court's powers, which is likely to be effective as opposed to ineffective."*



# Cases falling short of alienation

- *50. In that case an "unimpeachable" and "irreproachable" father was not given "a timely and effective process in circumstances where there was no overt justification for refusing contact other than the intractable and unjustified hostility of the mother." The failure was of such a degree that it amounted to an unjustified violation of the Art. 8 rights of the father and child. [65]*

*51. The judgment in Re A contains important guidance at [60] about the need in a potentially intractable case for:-*

- *(i) judicial continuity;*
- *(ii) effective case management and timetabling;*
- *(iii) a judicially set strategy;*
- *(iv) consistency of approach;*
- *(v) a predetermined willingness to enforce orders.*