FAMILIES NEED FATHERS®

because both parents matter

Enforcement, Parental Alienation and Intractable Disputes

Prepared in collaboration with Families Need Fathers and FNF Both Parents Matter Cymru

by Michael Robinson of The Custody Minefield

BOTH PARENTS MATTER CYMRU

The Custody Minefield

Executive Summary

The impact of contact breakdown has become clearer over recent years through research on behalf of academia, Government and leading children's charities.

Children who are unable to have a relationship with both parents have an increased likelihood of experiencing mental health problems, developmental problems and poorer social outcomes in later life.

The breakdown of a relationship with a parent who does not pose a risk to the child therefore places a child at risk of significant harm. The impact of unreasonable breaches of Child Arrangement Orders compromises the welfare of the child.

The charity works with thousands of parents each year, and non-compliance with a Child Arrangements Order is a common problem. This includes (but is not limited to):

- The costs, both financially and mentally, of returning a case to court;
- Cases taking too long to be resolved, and a lack of continuity in proceedings;
- A lack of effective deterrents for parents who unreasonably breach orders, and a remaining perception in high conflict cases that orders will not be enforced;
- Mixed experiences of judicial responses to repeated intentional breaches of orders, with best practice not being consistently applied in all cases.

Cases involving elements of parental alienation:

Cases involving parental alienation represent a large proportion of the cases reported to us. Effective case management is crucial to the outcome of these cases. Too often the absence of clear case management, such as lack of judicial continuity, failure to monitor the implementation of therapy or failure to restart contact swiftly can result in negative outcomes.

If attempts to restore child arrangements are not supported by the resident parent, strategies implemented to support or reinstate contact are likely to fail. It is crucial that the alienating parent's behaviour is addressed as part of the judicial approach.

We believe that the lack of a formal process for addressing alienation cases can produce very uncertain, and sometimes negative, outcomes. The lack of awareness amongst professionals involved in family proceedings of the dynamics of alienation cases has a negative consequence for children and families.

Summary of Proposals:

We have detailed proposals to assist in conflict resolution in both enforcement and alienation cases. These include:

- There being a new practice direction specific to cases involving parental alienation to set out a strategy for case management which draws together best practice which exists in the upper courts.
- That the existing process for the enforcement of Child Arrangements Orders be developed to include the best practice strategies which have arisen in common law.
- Updating the wording of warning notices to include outcomes developed in common law.
- Producing guidance as to how cooperative parental responsibility should apply in practice.
- The cost of application for enforcement being borne by the respondent when the grounds for breach are found to be unreasonable, or where there was an absence of significant harm and the respondent failed to seek consent for variation, or failing this, the further order of the court via an application for variation.
- That costs related to investigation of allegations be borne by the accuser where allegations are found to be false.

Contents

Acknowledgments

Our sincere thanks go to the Families Need Fathers members and officers who were involved in discussions on this project and to John Baker for organising the meeting with the President of the Family Court.

Families Need Fathers is a registered UK charity which provides information and support to parents of either sex, grandparents and wider family members following divorce and separation. FNF works to ensure that children are able to maintain a meaningful relationship with both parents and their wider family. We do this through the provision of information and support to families, whilst also working with the government, judiciary and legal professionals to raise awareness of the issues faced by separating families.

FNF Both Parents Matter Cymru is a children's rights charity working to support parents and grandparents with child contact problems to stay positively engaged in the lives of the children they care about. The charity also seeks to promote the positive involvement of men as fathers and father figures. FNF-BPM run Law Works Legal Advice clinics in Wales.

The Custody Minefield provides information and guides to litigants-in-person, charities, McKenzie Friends and others involved in private family law.

1. Introduction

In October 2014 Sir James Munby, President of the Family Court, invited Families Need Fathers to put forward proposals for continued improvement in the area of contact enforcement. We welcomed this invitation, and view this as an opportunity to work with the family court to secure consistently better outcomes for children.

Our members have raised a wide number of issues in relation to enforcement and court proceedings. We aim to not only provide feedback to the President, but make proposals for process improvements with the intention to:

- Reduce the need for enforcement proceedings and litigation;
- Improve outcomes.

In this document we reference case law and current guidance. The purpose is to assist those outside the senior judiciary who read this document and are unaware of existing guidance in statute, practice direction and common law and those whose experience of the court is largely historic. We also seek to bring together best practice we have observed and seen to be effective.

The President is an advocate of process development, having issued practice guidance and practice directions to improve consistency, case management and outcomes. Examples being in the areas of gatekeeping and case allocation;[i] domestic violence;[ii] and the appointment of experts[iii].

Guidance in relation to the conduct of enforcement proceedings already exists within Practice Direction 12B (at part 21) [see Appendix A]. One particularly helpful aspect of that guidance was introducing a timescale for the listing of first enforcement hearings (20 days from application).[iv]

Statute for family law changed in 2014 via the introduction of the Children and Families Act 2014 which saw amendment to the Children Act 1989. Unusually, this statute came into force rapidly, with Members of Parliament still considering amendments in February 2014, the new Act gaining royal assent in March 2014 and coming into force on 22nd April 2014. We understand that this placed exceptional pressure on the Family Court in respect of drawing up formal processes in relation to case management under the Act.

Any process benefits from review and adjustment, and we are grateful for the opportunity to give feedback on the application of existing process and make suggestions for improvement. Within this, we have given consideration to practicality, resources, the powers of the court, cost (for the court and parties), powers of the President, the over-riding objective of child focused conflict resolution and the avoidance of litigation.

We recognise and are grateful to Sir James Munby's for his having been a leading advocate for improvements in enforcement and welcomed his appointment as President. Eleven years ago Sir James publicly condemned failings in the system:

> *"Too often at present, once things start going wrong, it takes too long – too often far too long – to get in front of a judge who is in a position to take potentially decisive action. Judicial case management where the case is allocated to a single judge affords real opportunities to combat this problem, particularly if the*

parties are able to communicate with the judge, and the judge with the parties, by fax or e-mail. Other things being equal, swift, efficient, enforcement of existing court orders is surely called for at the first sign of trouble. A flabby judicial response sends a very damaging message to the defaulting parent, who is encouraged to believe that court orders can be ignored with impunity, and potentially also to the child."[v]

Sir James' public comments helped prompt statutory reform via the introduction of the Children and Adoption Act 2006 which saw wider contact activity and enforcement measures embodied in the Children Act 1989. In April 2014, those were extended to all child arrangements and now encompass orders for shared living arrangements.

Guidance within case law in recent years has the potential to improve case management but is not common knowledge. Sir James's guidance in **Re L-W (Children) [2010] EWCA Civ 1253** called for judicial continuity, improved judicial case management (including effective timetabling), there being a judicially set strategy for the case and consistency in judicial approach. Lord Justice McFarlane cites this guidance in **A (A Child) [2013] EWCA Civ 1104** and expands upon it:

If, as part of that strategy, the court makes an express order requiring the parent with care to comply with contact arrangements, and that order is breached then, as part of a consistent strategy, the judge must, in the absence of good reason for any failure, support the order that he or she has made by considering enforcement, either under the enforcement provisions in CA 1989, ss 11J-11N or by contempt proceedings. To do otherwise would be to abandon the strategy for the case with the risk that a situation similar to that which has occurred in the present case may develop; to do otherwise is also inconsistent with the rule of law.

Our objectives concerning enforcement echo those articulated by Sir James in public judgment:[vi]

a. *Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.*

b. *Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child´s welfare.*

c. *There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. 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. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.*

d. *The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.*

e. *The key question, which requires ´stricter scrutiny´, is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.*

f. *All that said, at the end of the day the welfare of the child is paramount; the child´s interest must have precedence over any other consideration.*

In relation to the lower courts not following existing guidance, we appreciate that the President's chief means of discovery is via hearing appeal. Many parents cannot afford appeal, are discouraged from applying, and often unaware that judgments and case management decisions are made which conflict with existing guidance, family procedure rules and practice directions. Without this technical knowledge, they cannot articulate an effective argument in support of an appeal.

2. Why Enforcement Matters

The child welfare impact of contact breakdown has become better understood in recent years as a result of the publishing of research studies and findings from the academic world, Government and leading children's charities. To briefly summarise those findings:

- Children are 40% more likely to experience depression, the less they see their fathers;[vii]
- Children are less likely to experience teenage pregnancy, delinquency and bullying when relationships with both parents are safeguarded;[viii]
- Children fair better developmentally when both parents are involved in schooling.[ix] This is measurable, with shared parenting arrangements resulting in the child securing a higher IQ.[x] An increase in maternal involvement is not a protective factor in a compensatory sense.[xi]

In short, contact breakdown subjects a child to harm. Such harm can meet the threshold of significant harm, but too often children are not protected.

The impact on children of contact breakdown is well researched. There is a high risk of significant harm. Adult lives are significantly harmed when parents and grandparents are prevented from having a relationship with their child. Being stopped from seeing your child or grandchild causes trauma, distress, depression and at times suicide.

We welcome the senior judiciary having accepted that parental alienation results in significant harm to children,[xii] but this and unreasonable contact denial should be considered a form of domestic violence against both child and adult, and we believe it high time it was recognised as such and treated with such gravity.

3. Members' Experience – Common Problems

We felt it useful to highlight concerns and experiences raised by members in relation to enforcement. Many of these issues have been recognised by the upper court in judgment (which we reference further on as we set out our proposals) and some also apply to other types of family law proceedings:

a. Warning Notices not applied to final orders;
b. A lack of '*effective*' deterrent in respect of breach of order and a remaining perception that orders will not be enforced;
c. Too many enforcement proceedings being treated as a fresh application for a new child arrangements order (by the respondent) despite final orders being recent. In some areas, we are told this is higher than 90% (in our Manchester region). According to research 59% of enforcement applications are made within 12 months of final order;[xiii]
d. Matters addressed in earlier proceedings being re-litigated where fact has already been found;
e. A lack of consistency in relation to decisions from the court;
f. Costs of reasonable enforcement being borne by the applicant who may not have the financial means to pursue enforcement;
g. Failures by Gatekeepers to adhere to Gatekeeping and Allocation Guidance: Complex cases fall before lay judiciary who lack the training and knowledge to secure a successful outcome. Applications for material variations of orders are passed to magistrates who change arrangements without the case history being examined and where a circuit judge has previously transferred residence due to non-compliance. Examples outside enforcement include cases involving leave to remove being allocated to magistrates. Case numbers can be supplied in support of examples given;
h. In respect of point (g) above, the hearing of enforcement proceedings by a judge junior to one who made the final order happens despite rule 17(5) of The Family Court (Composition and Distribution of Business) Rules 2014 – court rules are not being followed;
i. Too many intractable contact disputes being heard by magistrates, whose knowledge of strategies and experience to resolve such disputes is absent. Such decisions on gatekeeping seem in contrast to the clear guidance of the President handed down in April 2014.
j. A lack of judicial continuity despite guidance in this regard;
k. Cases taking too long to conclude;
l. Inadequate time being afforded to the first enforcement hearing which causes delay;
m. Contact not being reinstated immediately at the first enforcement hearing while matters are considered (if necessary supervised contact which may form part of the evidence gathering process);
n. Reference not being made to the full history of proceedings when the court considers deviation from existing orders;
o. Judicial reliance on 'expressed' as opposed to 'ascertainable' wishes and feelings. Wishes and feelings of the children being taken at face value;

p. Contact centres being used where no welfare risks exist (in response to the intransigence of the resident parent). At its extreme, we are aware of contact remaining in a centre for three years despite no welfare risk.
q. There being little to no disincentive in making false or unfounded allegations;
r. Insufficient time being afforded to first enforcement hearings resulting in unnecessary delay;
s. Where allegations are raised by the respondent in enforcement proceedings, an early welfare determination not being made which causes matters to drift and results in long delays to the resumption of contact;
t. Similarly, an early finding of fact not being ordered where fresh allegations are of a sufficiently serious nature to warrant the court's considering deviating from existing final orders;
u. Similarly, evidence not being called at an early stage. We are aware of cases where, despite proceedings being ongoing for a year, the parents had not yet been invited to submit written evidence;
v. Failure to order the early disclosure of police and social services reports at first enforcement hearings where these have a bearing on the case;
w. No effective strategy proposed to address intractable contact disputes and parental alienation during proceedings. Inappropriate strategies proposed to our members include indirect contact and leaving the decision as to when contact will resume subject to children's wishes (while under the influence of an unsupportive or alienating parent);
x. The court failing to address an unreasonable and intractable position by the resident parent. Causes range from a parent failing to exercise parental control (the argument "I can't make Johnny go to contact if he doesn't wish to"), parental separation anxiety, to simply refusing to comply with the court order (entitlement and hostility). It is worth noting that were a parent to utter such a position in respect of children not going to school, they court would not be tolerant;
y. A failure to see through strategies during proceedings, monitor them, and address non-compliance without months elapsing at each stage;
z. The court placing the burden on the applicant parent to recommend and pursue punishment of the parent in breach (a public example being in the Minnock case). It is the court's authority and court's order which is being flouted. Leaving such decisions to a parent complicates cases whereby the child is told such things as Daddy wants Mummy sent to jail which may result in harm to the child and their relationships;
aa. The court leaving it to the child as to whether contact will happen and when. In the words of Lord Justice Thorpe "in reality, it burdens them with a responsibility that they should not be asked to bear…"[xiv]. Such a strategy is unlikely to work when a child is subject to the care of a parent who is unsupportive of contact.
bb. Proposals for Skype contact for very young children. Again, where parents are unsupportive of contact, the child is often deliberately distracted and the experience is tortuous. Skype is no alternative to direct contact and should not be viewed as such.[xv]

cc. The lower court failing to make reference to s.1(3)(g) CA 1989 and a lack of awareness of what their powers are and effective strategies used by the upper courts;

dd. A lack of understanding of the serious developmental/emotional/psychological harm to children caused by non-compliance and/or where the child has been suborned into the intractable parent's position (resulting in alienation);

ee. Unreasonable contact denial not being viewed as a form of domestic violence and treated with similar gravity;

ff. A lack of ability and knowledge among litigants-in-person to argue their case;

gg. The court not taking a sufficiently inquisitorial approach;

hh. A lack of understanding among legal advisers concerning what matters a litigant can seek advice upon, when and to whom they may talk. Members have been told they may not seek lay advice without the court's consent.

A further key problem is the lower court not being aware of guidance from senior courts given in judgment, or at times being unaware of the President's own issued guidance and practice directions.

From Section 4.2 of this document, we make proposals in relation to enforcement of child arrangements orders. In Section 4.1, we look specifically at parental alienation which may be a factor in such cases.

4.1 Parental Alienation

Key Issues

4.1.1 **Issue:** Parental alienation can be a factor in cases where contact breaks down. We are in complete agreement with Mrs Justice Parker who succinctly expressed her views on this matter:[xvi]

- *I regard parental manipulation of children, of which I distressingly see an enormous amount, as exceptionally harmful.* [Emphasis added]
- *Children who are suborned into flouting court orders are given extremely damaging messages about the extent to which authority can be disregarded and given the impression that compliance with adult expectations is optional.*
- *Parents who obstruct a relationship with the other parent are inflicting untold damage on their children and it is, in our view, about time that professionals truly understood this.*

We believe that the absence of clear case management process hampers successful outcomes, and makes outcomes a lottery dependent on the choice of judge and their level of experience.

It remains our view that intractable contact cases and those involving alienation should be heard by judiciary senior to magistrates and this is increasingly not happening.

The case **H-B [2015] EWCA Civ 389** highlights how case management failures contribute to poor outcomes. The judgment highlights a lack of judicial continuity, failure to monitor the implementation of therapy, failure to re-start contact quickly (so positions did not become entrenched), failure to address the issue of the non-resident parent's unwillingness to exercise parental control and her ongoing alienation during therapy. Classic examples of why these cases drift unresolved.

4.1.2 **Inappropriate Strategies:**

We are concerned that in too many contested proceedings, the court puts in place unrealistic strategies which fail to address the alienating parent's behaviour and therefore leave to the child subject to harm. Examples of ineffective strategies being:

a. indirect contact only;
b. contact being suspended "while things settle";
c. it being left to the children to decide when contact should resume (while subject to the care and control of an alienating parent.

While we accept that conflict resolution is preferable to punishment, too often attempts to resolve broken contact are not supported by the resident parent, and as a result fail irrespective of strategies involving supported and/or supervised contact and therapeutic interventions. Problems are not resolved when the court imposes strategies focused on the re-establishment of contact, but fails to address the alienating parent's behaviour.

Underlying Issues

4.1.3 **Decisions on Punitive Measures:** Where the court is to consider punitive measures, it is essential that these are not left to the non-resident parent to apply for. Placing decisions on imprisonment or community service on applicant's shoulders risks entrenching the position of an alienated child. It is essential that the court takes responsibility for decisions on punishment, and does not seek to lay this burden on the parent. The decision in the Minnock case that it was for the father to decide whether to pursue the mother's committal appalled us.

If there is some fine point of law which requires a party to apply for committal or community service in respect of the party in breach, frankly, the point of law goes counter to the best interests of the child and fails the paramountcy principle. It is the court's order, and decisions on enforcement and seemingly sentencing should not be handed off to the litigant. In such circumstances, the court loses authority and great risk is placed on the parent/child relationship.

4.1.4 **Lack of Awareness of Common Law Guidance and an Absence of Process:** There remains a false belief among many in the public that the court does not recognise parental alienation nor its serious implications for child welfare. However, it is apparent and our members' experience that such it is not routinely treated with sufficient seriousness, and we particularly share Parker J's view that it is high time matters related to alienation and the serious harm posed to children were understood by professionals involved in family proceedings.

We acknowledge and respect the best practice that exists, but believe a lack of formal process leads to uncertain and at times very poor results.

It concerns us that there is a lack of formal process to assist the lower courts in the management of these cases and an absence of an approved list of experts or therapists who can assist in such situations. Such matters require urgent remedy.

4.1.4 **Children Left Subject to Abuse:** We believe it high time alienation, unreasonable contact denial and the cognitive manipulation of children were treated as child abuse and domestic violence. Many of our members' and their children's lives have been blighted by the court's failure to address such issues, and also the courts' taking the child's wishes and feelings at face value with insufficient welfare analysis.

Where one parent is seeking to alienate the child or has done so successfully, in the words of Lord Justice Ryder, it is untenable for the court to leave the child in the care of the abuser where that abuse continues:

> *"21. I ask the question rhetorically: given the court´s findings, how could the judge leave the child with the mother? No level of sufficient support and necessary protection was described by anyone. To leave the child without protection would have been unconscionable. One has*

only to consider physical abuse to a child that gives rise to a similar index of harm to understand that such a position was untenable. The submission made on behalf of the mother that her care of the child had in all (other) respects been good or even better than good simply misses the point. More than that level of care was needed to protect this child from her own mother."[lxvii]

4.1.5 **Wishes and Feelings:** Confusion exists in some lower courts and among some social work professionals as to the difference between a child's *expressed* as opposed to *ascertainable* wishes and feelings. In essence, there exists a barrier to a just and child welfare focused outcome where the court takes wishes and feelings at face value, with inadequate analysis. Ascertainable needs definition.

4.1.6 **Teens:** Part of growing up involves teens and parents *'falling out'*, and particularly when puberty starts. This happens in every intact family. The difference for separated families is that when the resident parent is not supportive of contact such situations often end in all contact being stopped and positions becoming entrenched.

Sadly, the older the child, it appears the more the court is willing to take their wishes and feelings at face value in absence of their long-term welfare needs and consideration of hormonal factors. There is insufficient analysis as to whether wishes and feelings are rational and proportionate, which goes counter to a child's long-term best interests.

4.1.7 **A Lack of Contact Centre Venues and Lack of Adequately Trained Staff:** We acknowledge that the use of supported contact can be helpful in re-establishing contact between parents and children. Further, that supervised contact can be a helpful investigatory tool to assess the nature of the relationship between a parent and child and help the court reach an informed decision in relation to allegations, wishes and feeling and risk, and whether these are genuine, exaggerated or entirely false.

Finding contact centres where contact may be supervised by an adequately qualified individual is problematic. We note the quality and experience of contact centre staff has a significant impact on the reintroduction of contact. Too often it is left to a litigant-in-person to propose and find a centre.

4.1.8 **Common-Law Guidance:** We are concerned that guidance from the upper court is not being followed. Such guidance is extremely helpful and a brief summary includes:

a. The court's duty in respect of contact: Munby LJ in **C (A Child) (Suspension of Contact) [2011] EWCA Civ 521**;
b. The need for judicial continuity, effective timetabling and effective strategies: Munby LJ in **L-W (Children) [2010] EWCA Civ 1253**;
c. The need for the judge to see through their strategies, and where necessary to use enforcement measures: McFarlane LJ in **A (A Child) [2013] EWCA Civ 1104**
d. The need for detailed investigation at an early stage: Holman J in **T (Children) [2014] EWHC 2164 (Fam)**;

e. Hearing evidence on welfare matters at an early stage: Hedley J in **E (A Child) [2011] EWHC 3521 (Fam)**;
f. The need for involvement of an expert with experience in working with alienated children: Bellamy J in **S (A Child (2010) - Transfer of Residence)**;
g. That the court must consider the child's ascertainable as opposed to expressed wishes and feelings: Parker J in **H (Children) [2014] EWCA Civ 733**. Hedley J in **TE v SH and S [2010] EWHC 192**.

4.1.9 **Proposal:** We believe that a Practice Direction is required to set out a strategy for case management in alienation cases (whether present in proceedings where orders are considered in relation to residence and contact or following final order in enforcement proceedings).

We believe it would be helpful to involve the likes of Professor Mark Berelowitz, Dr Kirk Weir and Dr Sue Whitcombe in formulating strategies for the court (the latter having addressed the British Psychological Society on the issue of parental alienation at their 2014 annual conference). Alienation and intractable contact dispute cases are acknowledged as being complex, but no formal process appears to exist. Further, that the assistance of the British Psychological Society be sought to provide a list of suitably capable and qualified professionals to assist in these cases. This list to be published online.

CAFCASS should ensure that where alienation is a factor, they allocate officers who are sufficiently trained and experienced in these cases and conversant with this new Practice Direction. Where an independent social worker or one working for a local authority is involved, they too should be sufficiently trained and be intimate with the Practice Direction.

Below we suggest matters for inclusion within that Practice Direction from a case management perspective:

a. The common-law guidance from judgments set out in 4.1.8 above;
b. That Gatekeeping and Case Allocation guidance makes plain that cases involving alienation and indeed all intractable cases (including those where intractable positions exist in enforcement proceedings) should be heard by at least District Judge level (not lay judiciary or legal advisers);
c. A reminder that s.1(3) CA 1989 requires the court to consider a child's ascertainable as opposed to expressed wishes and feelings. The court to consider within the balancing exercise whether the child's wishes and feelings are rational and proportionate;[xviii]
d. That where a relationship has broken down, family therapy be considered to resolve conflict between the child and parent;
e. That where an expert is to be appointed, either to express opinion or for the purposes of therapeutic assistance, this expert must come from an approved register. In relation to counselling services, given the potential for psychological harm to the parties involved, we believe therapists used by the court should be HCPC registered. Currently there is no requirement that counsellors are members of any governing body or indeed, qualified;

f. That in cases where alienation is suspected to be a factor and where the resident parent's opposition to contact is unreasonable and intractable, any CAFCASS or Social Services investigation should include consideration of a transfer of residence and the non-resident parent's ability to meet the child's care needs. Both parents' willingness and ability to promote their child's relationships should be a routine consideration within the balancing exercise;[xix]

g. Where the child is so alienated that they will not see a parent, that the court consider interim foster care and investigations be carried out under s.37 CA 1989;

h. That the guidance makes reference to the following:

   i. The appointment of a Guardian-ad-Litem;

   ii. The use of supervised contact as an investigatory tool and to continue contact in the interim where investigation of allegations is required;

   iii. The use of supported contact and family therapy to aid in the re-establishment of contact, and consideration given as to whether this is viable while the child remains under the care of the alienating parent;

   iv. The need for effective monitoring of strategies for the re-introduction of contact, including review hearings and abridged hearings where strategies set out by the court are met with non-compliance;

   v. Where the resident parent wilfully obstructs the court's strategies, the court to order unpaid work, suspended residence orders and/or suspended committal orders and/or fines;

   vi. Where the court has made use of suspended orders as a warning to a parent who obstructs the courts strategy, the court must see through the consequences.[xx] Such consequences to include transfer of residence where practical, unpaid working, and committal where the alienating parent's position remains intractable);

i. That the court be reminded of their powers under section 1(3)(g) CA 1989, as described in s.11 CA 1989,

j. That the court must make reference to this Practice Direction in judgment.

4.1.10 Benefit:

- Ensuring what is acknowledged as a complex problem has a defined case management process supported by expert input from both senior judiciary and experts.
- That both the lower courts and litigants can be pointed to a single document which includes strategies developed by experts in this area.
- Protecting child welfare.
- Upholding Article 6 and 8 rights.

4.2 Draft Court Orders, Versions and Attachment of Warning Notices

4.2.1 **Issue:** Various versions of CAP02 and CAP04 appear to be being circulated. Some include while others omit warning notices and/or penal notices [see Appendix B].

The President issued a revised and 'lite' version of CAP02 which is dated 23rd May 2014. This does include both penal and warning notices. This form has no version number.

A further fuller version of CAP02 appears created on 27th May 2014 which is currently available online from Jordans Publishing and excludes both penal notice and warning notices. It may be in instances the court is adding a warning notice to this. This form has a version number, Version 1.1.

CAP04 omits a warning/penal notice within the body of the order. We understand that the President of the Family Court has provided guidance that CAP02L may be used as a general template, to which the language of CAP01-CAP04 can be applied.

4.2.2 **Proposal:**

a. All future versions of draft court orders to include a clear version number and date of publication within the 'footer' of the document.
b. Warning and penal notices to be embodied within the order (as per the President's version in CAP02 Lite).
c. HMCTS to take responsibility for publishing draft court orders on their web site and responsibility for ensuring versions are up-to-date.
d. We believe it would be helpful if the President's Guidance on the use of Prescribed Documents (Private Law) [April 2014] was reissued, including allowances granted for the use of CAP02L, and further making clear that CAP02, CAP03 and CAP04 orders must include the prescribed warning notice wording.

4.2.3 **Purpose:**

a. Removal of confusion as to which version of draft court orders are current.
b. Ensuring that warning/penal notices are attached to child arrangements orders.

4.3 Warning Notice Content

4.3.1 Issues:

a. Improving upon the warning notice through inclusion of potential outcomes derived from common law.
b. We do not believe there is sufficient understanding from litigants that, where the court has made an order, if variation is sought it should be made via consent or by further order following an application for variation. We think it wise to add 'written consent'.

4.3.2 Proposal: We propose an improvement to the warning notice by adding the following wording:

Warning: You must comply with this order. If you seek a change to the arrangements set out in this order, you may not do this without the written consent of the named parties (unless otherwise stated in this order) or failing this, your having made a fresh application to the court for variation and the court having given its consent. Otherwise, if you are in breach of the order, the court may:

a. make you pay for the cost of enforcement including the application fee and costs which resulted in relation to the breach; and
b. find you in contempt of court and you may be committed to prison or fined: and/or
c. make an order requiring you to undertake unpaid work ("an enforcement order") and/or an order that you pay financial compensation; and/or
d. the court may transfer residence to the other party if you fail to promote the child's relationships and welfare interests.

This warning notice to be:

a. attached to all child arrangements orders;
b. attached to the C7 form sent to the respondent (when an application for enforcement is made);
c. handed to the parents at the commencement of the first enforcement hearing and be discussed with the parties at the commencement of proceedings with the opportunity given to withdraw. The parties should be reminded that the court has already determined what is in the children's best interests, and variation to those arrangements may only be made by written consent or via application to the court.

We also feel it would be helpful if, at the final welfare hearing when a child arrangements order is made, the judge makes clear that if parties seek to vary arrangements set out in his/her/their order, this must be by written consent or via further application to the court.

4.3.3 Benefit:

a. Deterrent;
b. Reminding parties of the authority of the court;
c. Educational.

4.4 Costs of Enforcement

4.4.1 **Issue:** In section 4.3.2, we mentioned the costs of enforcement being borne by the respondent.

For some of our members whose finances are exhausted from primary litigation or for reasons due to other circumstances, the cost of application is prohibitive.

There is also the issue of justice. We feel the court should make clear that if a party seeks to vary an order, they should do this by agreement, via mediation or fresh application to the court. Under the current system, the injured party almost always bears the costs.

Similarly, in respect of strategies which require psychiatric assessment, supervised or supported contact, we believe that where allegations initially supporting these steps are found to be false or largely exaggerated, the court should award costs against the accuser in relation to investigatory costs.

Currently, there is little reason for a party not to break an order, and rarely negative consequence in relation to this or false allegations.

4.4.2 **Proposal:** That there be clear Practice Guidance in relation to costs in enforcement proceedings and in relation to costs incurred in respect of investigation of allegations. We accept this being discretionary to the point where, if the court finds such allegations had merit or there were serious welfare grounds which supported non-compliance, these may be taken as mitigating circumstances. Further, there should be the freedom for the judiciary to order that the cost in application be shared if the parties are collectively at fault.

As proposed in 4.3,2, we recommend including specific wording in relation to costs of enforcement within the Warning Notice attached to all CAP orders. This provides clarity for the litigant.

In our proposal at 4.5, we recommend a further notice be included within a document setting out the courts expectation in relation to the exercise of parental responsibility. This notice to remind parents of what they should do if they seek variation to an order. This notice on parental responsibility to be sent out with all CAP orders. The court may also wish to provide it to parents at the start of proceedings. It may be useful for this document to also be part of an information pack sent out by mediators.

If a party is on low income, this should not be a bar to costs being awarded for non-compliance or vexatious allegations. The court should use the option of staged payments.

4.4.3 **Exceptions:** Matters in relation to costs in enforcement should remain subject to judicial discretion where enforcement applications are found to be for frivolous or vexatious reasons. In such circumstances, it is right that the applicant should bear the cost. Further, that an exemption should exist if fact is found that the current arrangements subjected the children to significant harm and safeguarding required an immediate breach of order prior to an application to court for variation.

In all other circumstances we believe, at the very least, the cost of the application for enforcement should go against the respondent. If they wished variation and the applicant was unwilling, they should have sought variation.

4.4.4 Benefit:

a. **Deterrent:** This will present a practical deterrent in relation to breach of order and may help decrease non-compliance for frivolous reasons;
b. **Fairness:** Neither the applicant nor respondent will be penalised unless their applications are petty, frivolous or vexatious.
c. **Affordable Justice:** Those who refrain from applying for enforcement whose case has clear merit, but where their income cannot meet application costs, will not be dissuaded from application. We believe that this meets with the paramountcy principle.
d. **Authority:** It upholds the authority of the court and removes the perception that adherence to court orders is optional. It reminds parents that breach of order is a serious matter with consequences;
e. **Child Welfare:** It safeguards child welfare. Where an order has been made for contact or shared living arrangements, the court has determined such arrangements are in a child's best interests.

4.5 Education on the Exercise of Parental Responsibility

4.5.1 **Issue:** The court has at various times reminded parents of the expectation that they co-operate in respect of the children's upbringing. Many disputes arise due to parents' lack of understanding as to matters in which they may take individual decisions and ones where they should co-operate with the other parent.

4.5.2 **Proposal:** We believe an information sheet, attached to all child arrangements, parental responsibility orders and parenting plans would better inform parents.

Where individual proceedings result in restriction of certain rights or privileges held under parental responsibility, that sheet to be varied.

The sheet should also include that if the parents are in dispute, they must attend mediation prior to applications to the court.

The wording for such an information sheet is drawn from the past President's guidance in judgment (subject to additions made in blue) in A v A [2004] EWHC 142 (Fam) at paragraph 133. We believe it has sufficient clarity and wisdom to be shared with all separated parents.

The content of that sheet to be as follows:

Decisions related to parental responsibility for separated parents

The court expects parents to co-operate in respect of decisions about their children's lives. Similarly, the court expects parents not to involve the children in adult disputes, or talk negatively about the other parent or family members. To do otherwise subjects your children to harm.

Certain decisions may be taken individually, while some may be taken independent of the other holders of parental responsibility.

1. Decisions that could be taken independently and without any consultation or notification to the other parent.

- How the children are to spend their time during contact
- Personal care for the children
- Activities undertaken which take part solely when the children are in your care
- Religious and spiritual pursuits
- Continuance of medicine treatment prescribed by GP

2. Decisions where one parent would always need to inform the other parent of the decision, but did not need to consult or take the other parent´s views into account.

- Medical Treatment in an emergency
- Booking holidays or to take the children abroad in contact time unless prohibited by the court.

Where a child arrangements order names you as the parent with whom the child lives, you may take the children abroad for up to one month without the other parent's consent where this does not interfere with the arrangements set out in a child arrangements order in respect of the child's time with the other parent.*

- Planned visits to the GP and the reasons for this

3. Decisions that you would need to both inform and consult the other parent prior to making the decision.

- Activities which impact upon the other parent and their time caring for the children.

- Schools the children are to attend, including admissions applications.

- Changing schools

- Relocation, where this will impact upon the children's time spent with the other parent

- Planned medical and dental treatment

- Stopping medication prescribed for the children

- Attendance at school functions so they can be planned to avoid meetings wherever possible

- Age that children should be able to watch videos. ie videos recommended for children over 12 and 18.

Where you and the other parent are in dispute over arrangements for the children you must attend mediation if you are unable to resolve matters yourself. This must take place prior to an application to the court for an order to resolve the issue.

Where the court has made an order in respect of child arrangements, unless specifically allowed within that order, you MAY NOT change these arrangements without:

- **the consent of the other holders of parental responsibility; and**
- **the consent of the parties named in the order.**

Otherwise you must apply to the court for a variation of order before changing arrangements. Where you seek to vary arrangements within 12 months of a final order being made, you should apply to the court using form C2. Otherwise, form C100 should be used.

4.5.3 Benefit:

a. Dispute resolution;
b. Avoidance of court proceedings for trivial matters;
c. Respect for family life under HRA Article 8;
d. Providing clarity for both parents and the lower courts.

4.6 Quality Control and Judicial Non-Compliance with Guidance

4.6.1 **Issue:** The lower court being unaware of existing guidance, and acting outside of that guidance. We doubt from our experience that case law and practice directions are clearly understood by lay judiciary and legal advisers and that the means of imparting information to the lower court is sufficient. It is also apparent to us that the President's judicial gatekeeping and case allocation guidance is not understood.

4.6.2 **Proposal:** There needs to be a more effective mechanism for ensuring the lower court's adherence to guidance. In respect of the matters raised by our members, we ask the President to share these issues with the lower courts via the Family Justice Councils [FJC]. Similarly, we believe case management failures found at appeal should act as a warning signal that there is a breakdown in process.

There should be a mechanism for ensuring failures found at appeal reach the President, to allow messages to be sent to FJCs who should then take responsibility for imparting such information and review future adherence in their regions.

We further believe it would be helpful if there was an annual review of existing guidance, referencing case law, whereby best practice guidance from the appellate court might be formally introduced into process. In this way, best practice will routinely be brought within formal process.

4.6.3 **Benefit:** Introducing a mechanism whereby best practice can be shared, and poor practice identified and addressed.

We acknowledge this is not a 'perfect' solution, in that matters will only reach appeal and be brought to the President's attention when a litigant is aware that decisions have been made which fail to comply with practice directions, family procedure rules or binding precedent. There also remains the issue of cost with appeal, whereby the need for transcripts of judgments in addition to the cost of lodging an appeal dissuades many. For many too, legal advice remains beyond their financial means. The limited resources available for pro-bono support are outstretched and charities have had funding significantly cut or completely withdrawn. The reality is that it is incumbent on the inexpert to identify failures in what is often complex process. To say such a situation is undesirable is an understatement.

4.7 Improving the Process for Enforcement

4.7.1 **Issue:** The issues related to contact enforcement are set out in section 3 in detail.

These can best be summarised as:

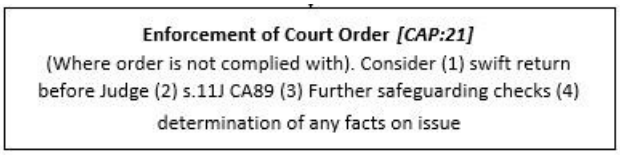
- The process for enforcement is insufficiently detailed;
- Existing guidance including gatekeeping guidance is not properly applied and there is a lack of judicial continuity;
- When matters return to court within a year of final order, too often matters become re-litigated when the court has already made a welfare determination as to arrangements which are in the children's best interests;
- There is insufficient deterrent in respect of non-compliance and the cost of enforcement is a bar to applications being made;
- The court too often fails to address non-compliance or suggests strategies which are plainly inappropriate (see Section 4.1.2)
- At times the court leaves responsibility to the litigant for suggesting enforcement measures rather than being pro-active in setting in place a strategy and also making warnings and carrying through consequences for non-compliance (see Section 4.1.3).
- Inadequate time is allocated to the first enforcement hearing.
- Safeguarding checks not being completed, and there is a failure to order disclosure of police and social services records (where relevant), CAFCASS reports from past proceedings, and orders/judgments from past proceedings at the first enforcement hearing when matters cannot be concluded at that hearing. This results in delay.

In 2015, the President gave excellent guidance to Local Authorities in relation to '*good enough parenting*' and Local Authorities not removing children from parents where the threshold of significant harm was not reached.[xxi] It is an anomaly that children are prevented from having contact with a parent in private law proceedings when that threshold has not been reached. At times contact is severed for trivial reasons.

In this section we look at process development for proceedings where child arrangements are not complied with but where children are not alienated in respect of seeing their parents (the issue relates solely to non-compliance and/or the making of fresh allegations).

We believe a separate process is required for these cases. While that process exists at part 21 of Practice Direction 12B (see Appendix A), we believe it needs to be more detailed and improved. Further, that it

would be helpful if the process were set out in a flowchart. Currently, within the CAP process flowchart, enforcement is limited to this.



We also believe that unreasonable contact denial should be acknowledged as a form of domestic violence and the impact of harm on the children recognised. We believe this will help send a clear message that the family court treats such matters with sufficient seriousness. Unreasonable contact denial harms children unnecessarily.

4.7.2 **Best Practice:** We acknowledge that when cases come before an experienced judge or magistrate who takes a robust and authoritative approach in dealing with non-compliance, enforcement cases have better outcomes.

Similarly, when the court takes an inquisitorial approach at the first enforcement hearing, adequate time is allocated to that first hearing, and oral evidence heard, matters can often be quickly resolved. It is the absence causes drawn out proceedings where positions entrench.

4.7.3 **Proposal:** We believe that where cases return to court within 12 months of a final order (which concluded arrangements which are in the children's best interests) matters should not be subject to re-litigation unless new and serious welfare risks are raised which meet the threshold of significant harm. We believe that non-compliance should not be tolerated for frivolous reasons.

Warning Notices: All child arrangements orders should have a more detailed warning notice as described in Section 4.3 making clear that compliance with court orders is not optional, and how arrangements may appropriately be varied (e.g. by written consent or via an application for further order). That warning notice to also include the potential consequences of transfer of residence and likelihood of costs being awarded for breach (in absence of significant risk) – see Section 4.4.

Education Regarding the Exercise of Parental Responsibility: We believe much conflict results from parents' not understanding or respecting the other parent's role in the child's life. Entitlement and possessiveness are common problems. A clear message explaining how the court expects parents to co-operate might reduce litigation and contact breakdown (see Section 4.5).

Gatekeeping and Allocation: Parts 21.2 and 21.3 of Practice Direction 12B need amendment, in that Rule 17 of The Family Court (Composition and Distribution of Business) Rules 2014 requires that enforcement proceedings are heard by the same level of judge or one more senior to the one who made the final order. This practice direction is insufficiently clear which may be a factor in gatekeeping breakdown.

Costs of Application: Awarding costs of application for enforcement should be as set out in Section 4.4. Where allegations of significant harm are raised, and the court makes an order for supervised contact in the interim while matters are investigated, there should be a clear warning to the parent making the allegations that the cost of this supervision will be awarded against them should allegations prove groundless or grossly exaggerated. The same should apply to any costs in relation to the appointment of experts or independent social workers.

We note that in reality, little exists as a deterrent in respect of false allegations or non-compliance. Further, that costs being shared or borne by the accused is unjust where allegations prove false. If parties are of limited means, the court should order staged payments. Similarly, if the court later finds allegations to be true, costs in relation to investigation should be borne by the accused.

Opportunities to Withdraw: We suggest that when the C7 Form is sent out in response to an application for enforcement, a copy of the standard Warning Notice be included. This reminds the parent in breach of the consequences of breach of order. Further, that the C7 presents an opportunity for parties in breach to give a written assurance within that form to reinstate arrangements immediately, at which point enforcement proceedings may be halted without the need for a hearing. This would save both the parties and the court significant costs.

Time Allocated to the First Enforcement Hearing: We have seen that where adequate time is listed for a first enforcement hearing, proceedings are more likely to be brought to an early close. We believe such scheduling may save the court money, and save the parties and their children from more lengthy litigation. To this end, we ask that enforcement hearings be listed for a minimum of one hour, and longer where the contents of the C79 and C7 forms indicate that the cases may contain particular complexity. The first hearing should be for a minimum of an hour, with the decision on additional time made by the Gatekeeper.

Reinstatement of Contact Once Enforcement Proceedings Commence: In absence of significant risk, we believe that the court must order the reinstatement of contact at the first enforcement hearing. Parental non-compliance for any other reason is not acceptable and it is worth remembering that the court has already decided which arrangements are in the child's best interests.

Where problems relate to the resident parent's intransigence, we believe that the court should immediately suspend the aspect of the existing child arrangements order which relates to residence, pending a welfare investigation which should consider whether a transfer of residence is viable. The court should also entertain the use of orders for community service, but where the court suspects continued non-compliance, the court might consider a suspended committal order as a final warning.

It should not be the case that an order to reinstate contact is impossible due to an absence of consent. The court has already determined that contact is in a child's best interests and there should be a clear

rebuttal presumption in this regard. Too often, the court accepts unreasonable parental opposition in the interim.

Where allegations represent serious risk to child welfare if true, and necessitate a cessation of contact in the interim while allegations are investigated, the court should give serious consideration to supervised contact to both enable the safe continuance of the parent child relationship, and as an investigatory tool to observe both parents' and the children's conduct and behaviour in relation to contact. The first enforcement hearing should have sufficient time allocated to hear oral evidence to support an order for supervised contact being made.[xxii] It should be incumbent on the party making the allegations to present evidence at the first enforcement hearing to provide sufficiently compelling evidence to support the need for contact to be supervised.[xxiii]

Preparation for the First Enforcement Hearing: We believe that a bundle should be prepared for the first enforcement hearing by the applicant, to include the full court bundle from proceedings where the order subject to enforcement was made. Added to that bundle should be a copy of the final order and transcript of judgment if available. Litigants should be told at final hearing to keep a copy of the bundle.

Directions at the First Enforcement Hearing: We are aware of proceedings where the court fails to make directions for evidence early in proceedings. In respect of enforcement proceedings, where matters cannot be concluded at the first enforcement hearing and where matters remain in dispute, we believe it essential that:

- Orders for the disclosure of police records and social work reports are made at the first enforcement hearing where these relate to matters at hand and are to be relied upon by either party; and
- The court directs parties to file statements which should include proposed arrangements for the care of the children if transfer of residence is a possibility.

Early Welfare Investigation and Fact Finding: Where serious allegations are raised sufficient to bring existing arrangements into question, the court should ensure there is an early welfare investigation and fact finding (reference guidance cited in Section 4.1.8).

Powers of the Court: While noting that Part 21.6 of Practice Direction 12B lists some of the powers of the court, we believe it would be helpful to include:

- Orders which suspend residence;
- Suspended committal orders;
- Transfer of residence.

In respect of Costs of Enforcement, we believe there should be a rebuttal presumption in this regard, as set out in Section 4.4.

The President's Guidance: We believe that the President's guidance as set out in Re C (A Child) (Suspension of Contact) [2011] EWCA Civ 521 (see our Introduction) should be embedded within Practice Direction 12B.

Judgments in Enforcement: We would ask that the President issues guidance stating that enforcement judgments must make reference to Practice Direction 12B Part 21 (or the new Practice Direction which replaces it including amendments). We believe it should also be a requirement that magistrates are personally conversant with PD12B and not reliant on legal advisers to impart information contained within it.

We hope that the expectation that the judiciary referring in judgment to practice directions related to enforcement will help existing and proposed process to become routine knowledge.

Practice Directions to be attached to C79 Applications: Following receipt of application, a copy of the practice direction relevant to proceedings should be sent to the applicant and respondent by the court administration department. Currently this would be PD12B, but in the event that further practice directions and flow charts are produced for contact enforcement and in respect of cases where alienation may be present, these should be posted to the parties.

4.7.4 Benefit:

- That enforcement proceedings can be avoided through improved education;
- That cost need not be a barrier to enforcement;
- That parents have a clear knowledge of what the court expects from them;
- That parents clearly understand the consequences of breach of order;
- That a real deterrent exists;
- That cases are heard by the right level of judge;
- That a clear process exists for the management of these cases;
- That parties are aware of how such cases should be managed to inform decisions on whether to appeal if appropriate. Better still failures might be identified and corrected during proceedings;
- That sufficient time is allocated to the first enforcement hearing;
- That the judge has sufficient information to make more likely a conclusion of proceedings at the first enforcement hearing;
- That where matters remain in dispute, evidence may be gathered without delay;
- That contact is only stopped in the interim where children are at risk of significant harm;
- Protecting child welfare.
- Upholding Article 6 and 8 rights.

Appendix A – Practice Direction 12B – Child Arrangements Programme

Enforcement of Child Arrangements

21.1 On any application for enforcement of a child arrangements order, the court shall –

- 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 reasons for any non-compliance;
- consider how the wishes and feelings of the 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 order;
- consider whether a SPIP or referral for dispute resolution is appropriate;
- consider whether an enforcement order may be appropriate, and
- consider the welfare checklist.

21.2 The Gatekeepers shall list any application for enforcement of a child arrangements order for hearing, before the previously allocated judge if possible, within 20 working days of issue. Enforcement cases should be concluded without delay.

21.3 An application made within existing proceedings in the family court shall be allocated to the level of judge in accordance with rule 17 of the Family Court (Composition and Distribution of Business) Rules 2014.

21.4 The Gatekeepers shall, if considered necessary, direct that further safeguarding checks are required from Cafcass/CAFCASS Cymru. On any application for enforcement issued more than three months after the order which is the subject of the enforcement, safeguarding checks shall be ordered.

21.5 The court has a wide range of powers in the event of a breach of a child arrangements order without reasonable excuse.

21.6 This range of powers includes (but is not limited to):

(a) referral of the parents to a SPIP, or in Wales a WT4C, 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 under section 11J Children Act 1989 ('Enforcement order' for unpaid work), (see paragraph 21.7 below);

(d) an order for compensation for financial loss (under section 11O Children Act 1989);

(e) committal to prison or

(f) a fine.

21.7 In the event that the court is considering an enforcement order for alleged non-compliance with a court order (under section 11J Children Act 1989) or considering a Compensation order in respect of financial loss (under section 11O Children Act 1989), the court shall (in the absence of agreement between the parties about the relevant facts) determine the facts in order to establish the cause of the alleged failure to comply.

21.8 Section 11L Children Act 1989 provides that if the court finds that a breach has occurred without reasonable excuse it may order the non-compliant party to undertake unpaid work if that is necessary to secure compliance, and if the effect on the non-compliant party is proportionate to the seriousness of the breach. The court must also consider whether unpaid work is available in the locality and the likely effect on the non-compliant party. It is good practice to ask CAFCASS/CAFCASS Cymru to report on the suitability of this order. Section 11L(7) also requires the court to take into account the welfare of the child who is the subject of the order for contact.

Appendix B – CAP 02 Varying Versions

CAP02 Lite Order at FHDRA / Directions Hearing 31

Source: 4 Paper Buildings, Family Law Hub Date Created: 23rd May 2014 No Version Number

Web Address: *www.4pb.com/media/PDFs/Court...**Orders**/CAP02_Lite_Final.doc*

Screen Shot:

Penal Notice and Warning Notice included.

12. CHILD ARRANGEMENTS

The following child arrangements order is made

(a)Until [ ] the children shall live with

(b) Until [ ] the children shall spend time or otherwise have contact with [ ] as follows:-

.

Warning notice

Where a child arrangements order is in force: if you do not comply with this contact order –

(a) you may be held in contempt of court and be committed to prison or fined: and/or

(b) the court may make an order requiring you to undertake unpaid work ("an enforcement order") and/or an order that you pay financial compensation

14. PENAL NOTICE

(a) To [ ]: You must obey the instructions contained in this order. If you do not, you will be guilty of contempt of court and you may be sent to prison, fined or your assets may be seized.

(b) This penal notice is attached to the following paragraphs of this order: paragraph

CAP02 at FHDRA / Directions Hearing

Source: Jordans Online Publishing Date Created: 27th May 2014 Version 1.1

Web Address: *www.jordanpublishing.co.uk/system/redactor_assets/.../299/**CAP02**.doc*

Warning notice and penal notice omitted.

12. FACT FINDING

Having considered the documents, received the representations of the parties, and the safeguarding report, a separate fact finding hearing is not necessary in this case because the nature of the allegations [and/or admissions] are such that the court does not require such a hearing in order to be able to decide whether to make the orders sought.

Or

Having considered the documents, received the representations of the parties, and the safeguarding report, a fact finding hearing is necessary in this case because.....

[delete/complete as appropriate]

End Notes

[i] President's Guidance on Allocation and Gatekeeping [April 2014]
[ii] Practice Direction 12J
[iii] Practice Direction 25A
[iv] Section 21.2 of Practice Direction 12B
[v] D [2004] EWHC 727 (Fam) at paragraph 54.
[vi] Re C (A Child) (Suspension of Contact) [2011] EWCA Civ 521
[vii] Searching for Values in a Competitive Age. The Children's Society [2010]
[viii] Child Adjustment in Joint-Custody versus Sole-Custody Arrangement: A Meta Analytic Review. Bauserman [2002]
[ix] The Impact of Paternal Involvement in Children's Education. DfES [2003] and The Impact of Parental Involvement in Children's Education. DFSC [2008]
[x] Published in the Journal of Evolution and HumanBehaviour [2008]. Professor Daniel Nettle of Newcastle University and the Institute of Neuroscience led a team which analysed data from the National Child Development Study which followed outcomes for 18,000 British children from birth to adulthood.
[xi] Early father's and mother's involvement and child's later educational outcomes. British Journal of Educational Psychology 2004; 74: 141-53.
[xii] H (Children) [2014] EWCA Civ 733, W (A Child) [2014] EWCA Civ 772.
[xiii] Enforcing Contact Orders: Problem Solving or Punishment. Trinder et al. Nuffield Foundation [2013]
[xiv] S (Children) [2010] EWCA Civ 447
[xv] R (A Child: Relocation) [2015] EWHC 456 (Fam)
[xvi] H (Children) [2014] EWCA Civ 733
[xvii] W (A Child) [2014] EWCA Civ 772
[xviii] Re K (Abduction: Case Management) [2011] 1 FLR 1268. Thorpe LJ sets out that the court must consider if wishes and feelings are rational
[xix] M v H [2008] EWHC 324 (Fam)
[xx] A (A Child) [2013] EWCA Civ 1104
[xxi] Re A (A Child) [2015] EWFC 11
[xxii] Re D (Contact: Interim Order) [1995] 1 FLR 495
[xxiii] Re M (Contact: Restrictive Order: Supervision) [1998] 1 FLR 721