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## Have We Created a Monster? Intractable Contact Disputes and Parental Alienation in Context

Briony Palmer, barrister of 3 Dr Johnson's Buildings, considers intractable contact disputes where the underlying dynamics are not obvious.



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The introduction of the Child Arrangements Programme in 2014 brought much needed structure to the determination of private law disputes. But the current system remains flawed. Nowhere is this more painfully advertised than in the arena of 'intractable' contact disputes – where no contact is taking place as a result of resistance, with a lack of objective justification, on the part of the child or the resident parent. These are amongst the most bitter and emotionally draining hearings that courts, lawyers and litigants ever have to face. For the non-resident parent, the stakes can be as high as in any public law case – nothing short of the complete severance of their relationship with their child. Yet these cases are not given the priority afforded to public law matters and are particularly susceptible to the delay, inequality of resources and lack of accessible and impartial advice associated with the private law system at its worst.

Intractable contact disputes are nearly always attributed at some point, explicitly or implicitly, to the child having been 'alienated' from the non-resident parent. Alienation is a powerful concept. It tends to dominate cases where it has been raised and assume a definition for lay parties synonymous with 'poisoning' by the resident parent. An article from *The Guardian* dated 14.07.16 entitled '[Programme aims to help people affected by parental alienation](#)' defines it as 'a phenomenon where one parent poisons their child against the other parent'. It was this year the subject of [debate in Parliament](#) and described as 'the deliberate manipulation of a child by one parent against the other parent'.

Identifying alienation as emotional 'poisoning' is understandable but does not do justice to the reality of the psychological processes at work in these disputes. This article will argue that those of us who deal with intractable contact disputes on a day to day basis need to find a way of better understanding these cases without having to resort to an exclusive focus on alienation in this caricatured form. To do otherwise carries as much risk as failing to identify it at all, not least as it causes the parties' positions to polarise and thus to create the very monster we are trying to avoid.

'Parental alienation' as a distinct phenomenon has relatively recently been acknowledged as mainstream in the senior courts (as opposed to 'implacable hostility', which has been in use since *Re B* [1984] FLR 648). Recognition owes much to a judgment of HHJ Bellamy sitting as a High Court Judge in [Re S \[2011\]](#) 1 FLR 1789. Paragraph 43 reads as follows:

"[43] In his first report Dr [Kirk] Weir gave this description of the concept of alienation:

"There are children who show an extraordinary degree of animosity towards a parent with whom they once had a loving relationship. Most of these children will show some or all of [a cluster of psychological responses]. Within an individual child (and between children in the same family) the presence of the features can vary rapidly over time and place, but in their full manifestation are so surprising and unique as to be unforgettable. The proposed term "Alienation" applies only to the cluster of psychological responses in the child with no need to presume a deliberate campaign of denigration by one parent. There is now research data supporting a multifactorial aetiology for "Alienation" following parental separation, involving contributions from both parents and vulnerabilities within the child."

Early intervention is universally accepted as crucial in cases where alienation is thought to be present in order to prevent entrenchment of the parties' and, most importantly, the child's, positions. Equally, the assistance of an expert skilled in working with alienated children has been deemed 'essential' for a proper exploration of the family dynamics (*Re S* [2011] at paragraph 59). That expert, whether individual clinician or multi-disciplinary team, is generally called upon to explore the wider context of the child's expressed wishes and feelings and the extent to which they are 'genuinely' held. They will be asked to advise upon ways forward – in particular, whether and how it would be possible to restore the relationship between the child and their non-resident parent with the least possible emotional harm to the child.

The need for intervention is usually obvious at an early stage when 'alienating behaviours' are clearly present (e.g. the resident parent actively undermines the other with derogatory remarks to the child and easily debunked lies to the child and professionals). But most cases do not fall into this category, and herein lies the problem – the landscape of many disputes later identified as 'intractable' looks very different when the family initially comes before the court. The majority of resident parents, even in cases which become intractable, probably do not come to court having implacably set their face against the child having a relationship with the other parent, just as it would probably be inaccurate to characterise the majority of non-resident parents as 'unimpeachable'. It is rare that either side comes to court in this kind of dispute with spotlessly clean hands – one is reminded of the remarks of Lady Hale in a very different context in [B \(A Child\) \[2013\] UKSC 33](#) at 143: We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children...

Until contact has been tried and failed, the child separately represented, and Cafcass or the local authority unable to find an effective way forward, there is often very little to distinguish cases with the potential for intractability from those which have simply been beset by a very common catalogue of practical constraints (illness of child or resident parent, contact centre unavailability, mix-up about times or dates, weather or transport-related problems, delays in accessing or funding professional resources etc). It is at about this time that more specialist expert intervention usually starts being considered. But, by now, allegations and cross-allegations have probably been raised and repeated, almost always not of a 'safeguarding' nature but nevertheless extremely hurtful – of too much or too little communication, of breach of agreed arrangements for contact, of unreliability and lack of empathy with the child and the like. There may have been a fact finding hearing, but more likely there has not been, the court ultimately considering the allegations, even if true, irrelevant to contact and unable to engage in depth with what is always a bitter, confusing and complicated history with no clear fault on either side. The child's parents have, however, re-lived and re-imagined that history each time they have read each other's statements or come to court. They certainly do not themselves see it as irrelevant just because the court tells them it is so. They have spent more than they can afford on lawyers, court fees and transport, and used up all their leave from work. Indirect contact has been tried and failed, the resident parent accusing the other of lack of commitment by failing to send letters and cards regularly, and the non-resident parent complaining that there is no point – the child won't be allowed to see anything sent anyway. By this stage, one has more than likely been accused of 'poisoning' and 'manipulation', the other of 'lacking commitment' and failing to 'listen' to the child.

By now, it is going to be much more difficult to co-opt these parties into the joint endeavour of restoring the relationship between the child and his or her non-resident parent, principally because the benefit of the same no longer seems to justify the cost of getting there. There may never have been a strong commitment to promoting that relationship on the part of the resident parent in the first place, but at least they probably wanted to be seen to be doing the right and fair thing. But now the gloves are well and truly 'off' and the non-resident parent is no longer perceived by the other to be entitled to fair treatment in light of what has been said and done within the litigation. More importantly, the child appears to be suffering more from the various attempts to promote contact than he or she is from not having that contact.

Alienated children are at risk of significant long-term emotional harm. The words of Mrs Justice Parker in the first instance judgment in [Re H \[2014\] EWCA Civ 733](#) at 44 in this regard are unambiguous:

"I regard parental manipulation of children, of which I distressingly see an enormous amount, as exceptionally harmful. It distorts the relationship of the child not only with the parent but with the outside world. 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."

However, long term emotional harm is by its nature not immediately obvious, especially where a child appears otherwise well looked after and happy in the here and now. Children in these cases tend not to be beset by the disadvantage and behavioural problems which may set them apart from their peers in public law matters (['Intractable contact disputes - Lectures given to the JSB'](#) by Dr Kirk Weir 2010/11). Thus one of the hardest things to square can be the child's apparently 'normal' functioning in other areas of their life with the claim that he or she is suffering emotional harm from the dearth of a fundamental relationship. Instead, the harm looks rather to be flowing from disruptive attempts to restore that relationship. Hence the common complaint one hears from resident parents that the child is too often taken out of class to meet professionals, that the child is suffering nightmares and/or self-harming after a professional has visited to talk about the other parent, that the child just wants it all to be over so he or she can get back to normal life.

The above has been set out in some detail because, too often, the breakdown of a relationship between a child and their non-resident parent in circumstances where there is no apparent safeguarding reason is ascribed or ascribed exclusively to deliberate 'poisoning'. Of course there are resident parents who maliciously embark on a premeditated campaign of denigration and manipulation with the sole aim of poisoning a child against the other parent. But these are rare, even amongst intractable disputes where no contact is taking place at all. The concept of alienation is a useful tool, but if used indiscriminately and without knowledge of its potentially multi-faceted causation it can be dangerous. Simply ascribing a child's resistance to 'poisoning' can elevate the dispute to something it is not, or at least is not yet, over-simplify it and reeks of a wasted opportunity. In contact disputes, probably more than in any other kind of litigation, labels tend to become a self-fulfilling prophecy. As soon as a parent is diagnosed as 'alienating' and 'implacable', or indeed 'relentless' and 'failing to listen', their every action or inaction tends to be viewed wholly through that prism, and other explanations – anxiety, frustration, stress, the child's own ability to 'play off' their parents etc. – are not given the weight they need if the problem is to be effectively tackled. It is axiomatic that a parent who is wrongly told that they are deliberately poisoning their child when what they are actually doing is failing to properly address a complex response on the part of that child to the loss of the other parent will a) not understand what is expected of them, b) lose confidence in the court's ability to solve the dispute fairly, and c) abandon any attempt to self-reflect and to change.

That is a tragedy, because the opportunity to re-engage the 'labelled' parent in the process of reconstituting the relationship with the other parent has now been lost. This may be a regrettable but necessary side-effect where the resident parent is genuinely and irrevocably determined to excise the other from the child's life and a change of residence is really the only effective solution. In more ambiguous cases, it is an avoidable and highly damaging own goal. These are the cases which so often peter out, despite multiple hearings, with a no contact result. The sources of the child's resistance to a relationship with the other parent have not been correctly identified, with the result that that resistance grows more entrenched with each hearing. The resident parent has become disaffected from a court process wherein she/he has been unjustly accused of something quite monstrous whilst being allowed to continue to abdicate responsibility for actively tackling the real roots of that resistance. The non-resident parent's conviction that 'poisoning' is causing the child's

rejection has not been rigorously challenged and is simply further alienating the child, who protests quite genuinely to professionals that it is their own wish not to see him or her despite the resident parent telling them they should. There is in fact no hard evidence of active 'alienation' or 'poisoning' because it is simply not taking place. This means that the more hardline approaches of compulsory contact, committal or change of residence are very difficult to argue for, as the likely emotional harm which would flow from these significantly outweighs the likely harm which would flow from leaving the child where and as she is. The court at final hearing usually ends up having to decide between three bad alternatives: whether the matter should remain in proceedings for other measures to be tried with little prospect of success, whether to make some form of stepped final order which won't work because by now one side has no interest in making it work, or whether to accept defeat and end the process of attempting to reconstitute the relationship between the child and his or her non-resident parent.

All of the above suggests that we need to spend more time at an earlier stage thinking in depth about what is actually going on within the family, rather than saving that analysis for the final hearing. Whether this early consideration should be in the form of a fact-finding exercise is not always clear. Early fact-finding hearings in intractable cases have been strongly pressed (cf. *T (Children)* [2014] EWHC 2164 (Fam) per Holman J; [Sir James Munby - Families Need Fathers 2017 Annual Conference Speech](#)). The rationale for this where allegations are clearly delineated and self-evidently relevant to contact – such as in cases of alleged physical or sexual abuse – is unarguable. More problematic, however, is a situation where, as in the majority of the more 'ambiguous' cases, the allegations are of themselves nebulous, un-boundaried and not objectively significant enough to impact upon long-term decisions about contact.

For example, an eleven year old child is adamant despite multiple attempts that he will not participate in further contact, saying that on previous occasions when he went to his father's home he was obliged to spend unsupervised time with a new step-sibling who called him names. Father says that neither he nor any other adult heard this happen. A fact-finding exercise into whether and how often the child was called names, or who heard it, is likely to be disproportionate and inconclusive. The key issue isn't really the factual dispute at all, rather the proportionality of the child's response to the incident. Father asserts that the child has been 'wound up' and manipulated by mother because she can't stand the fact of the new family. The reporting professionals note that the child's anxiety and reactive behaviour to previous contact are disproportionate to the risk identified and that father had a good relationship with the child prior to the parents' separation (Cafcass Impact of Parental Conflict Tool). There are no 'safeguarding' concerns and this child's is not an objectively 'rational' reaction.

Manipulation may well be present here, but is it the whole story? It will be evident that this example is highly likely to carry roots and resonances far beyond its immediate facts. The causes of the child's extreme reaction may well be any number or combination of things. No longer perceiving himself to be the primary focus of his father's love and attention, for example, along with a compensatory search for validation from his mother, who is responsive to complaints which chime with her own anxieties. These are not 'rational' justifications for a child not to have contact but neither are they solely driven by manipulation or 'poisoning' by the resident parent. Yet without identifying them and taking them seriously, whilst at the same time addressing any conscious or unconscious encouragement by the resident parent, the relationship between the child and his non-resident father is going to be much more difficult to restore.

As this example demonstrates, the lack of 'rational', 'objective' reasons for a child's intractable opposition to contact does not always mean that that opposition must be rooted or rooted solely in 'poisoning' or manipulation by the resident parent. Parents, professionals and the court need to be alive to this. If a psychologist can be instructed at an early stage in order to tease out and address the causes of alienation before positions become entrenched, so much the better. But if the parties are unable to afford the costs of issuing a Part-25 compliant C2, of the expert then reporting, and of him or her also answering written questions and coming to court for cross examination, all is not necessarily lost. Much can be achieved, even without expert input, by a combination of perceptive representation, if the parties have lawyers, and a sensitive but persistent approach from the court and from professionals. It is suggested that the court should be cautious about arguments solely based on a binary choice between 'rational' reasons for rejecting contact and 'brainwashing'. This article also argues for a starting point of a more nuanced understanding of both the causes of alienation and of how it is maintained, with a willingness to challenge arguments which locate the cause of the problem solely in one parent.

Intractable contact disputes where the dynamics are ambiguous are much harder to resolve than those where what is going on is obvious. This is not to say that we should give up trying to restore the relationship between the child and their non-resident parent in these cases because it is too complex and too difficult. But it is to suggest that we need to look again at how we label and address intractability in certain families. It is not within the remit of this article to comment on the effectiveness of the various competing approaches to alienation – therapeutic intervention, contact backed by compulsion, transfer of residence, work done within or outside of proceedings etc. However, the precondition for any of these to work surely has to be a nuanced and accurate understanding of what is actually going on within the family.

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- Keywords:
- [children arrangements](#)
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