Better equipped?

Joanna Abrahams sets out Cafcass's plans to address obstructive parents, and questions whether more needs to be done

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In 2017 it felt like the impetus behind campaigns to have Parliament recognise the issue of parental alienation was gaining momentum, and that the law might soon address the reality faced by many separated parents. It was therefore disappointing to end that year without clarification by Parliament of its stance on the issue. However, there is light at the end of the tunnel. In November 2017 Cafcass took a definitive step in the right direction, proposing a strategy to tackle damaging behaviour that parents are exhibiting in a growing number of its 125,000 cases every year, with the launch of its high conflict practice pathway (HCPP).

What is parental alienation?

Parental alienation can be summarised as the 'poisoning' of a child's attitude to one parent by the other: mental manipulation of a child to make them fear, disrespect or even hate the (usually) non-resident parent. It can be deliberate or subconscious. This often results in the child having little or no contact with the non-resident parent, and often the wider non-resident family too. Speaking to *The Telegraph* (12 February 2017), the chief executive of Cafcass, Anthony Douglas, said that cases of parental alienation could be compared to child abuse or neglect, saying 'I think the way you treat your children after a relationship has broken up is just as powerful a public health issue as smoking or drinking'. In *H (Children)* [2014] the Court of Appeal quoted the comments of Parker J at first instance that she regarded:

> ... parental manipulation of children, of which I distressingly see an enormous amount, as exceptionally harmful.

The drive to support families suffering this syndrome had seemingly stalled, despite a surge in public interest in the issue following widespread media coverage. However, while the phenomena is still not yet recognised in legislation, and its frequency has not been recorded, as Sarah Parsons, assistant director of Cafcass, told *The Guardian* (17 November 2017):

> We are increasingly recognising that parental alienation is a feature in many of our cases and have realised that it's absolutely vital that we take the initiative.

Cafcass

Cafcass's HCPP (see: www.legalease.co.uk/hcpp) is a framework designed to tackle cases of extreme and antagonistic behaviours by and between parents. In a groundbreaking first, parental alienation has claimed the spotlight as the key behaviour driving these cases. Having recognised the urgent need to act on the phenomena, these proposals aim to equip Cafcass officers with skills and tools to identify, and act, in cases of parental alienation to ensure continuing contact in the child's best interests. It is expected to be rolled out in spring 2018, following a pilot which began in late 2017.

The HCPP is designed to provide guidance, research and tools to practitioners so they 'can approach high-conflict cases consistently with an effective, evidence-based approach'. As it applies to parental alienation, it 'aims to empower officers to identify and work with parents to amend their behaviour'.

The first issue for Cafcass officers is how they will acquire the skills to identify the phenomena in practice. Specifically, what tools and guidance will be provided to officers making assessments? Encouragingly Cafcass now has an extensive library on parental alienation, and my experience working with its officers is also encouraging. Not only are they aware of the issue, but they are keen to engage and remedy. However, the challenge has always been the distillation of expertise in this area into clear guidance that can distinguish the concerned parent from the controlling. It has not yet been made clear how the rollout of training will be managed, nor the breadth of experts involved. However, in conversation with Anthony Douglas, chief executive of Cafcass, I've been encouraged by his dedication to bringing the best to the table.

Cafcass's impact of parental conflict tool provides a good base from which officers can assess a child's response to contact with the other parent, and signals the need to look for clues of undue influence of the parent on the child's wishes, ie is the child acting as a mouthpiece for that parent rather than expressing their own wishes? Are their wishes ascertainable or are they a parrot of the parent? As a side note, Dr Kang Lee's work into adult ability to judge whether a child is lying is a fascinating insight into the challenges faced by parents and professionals alike when it comes to getting to a child's 'truth'. His TED talk 'Can you really tell if a kid is lying?' (see: www.legalease.co.uk/kang-lee) provides much food for thought on how officers can be trained in these nuances, and fully investigate the issues given the limited time their resources allow to interview children and prepare reports.

Working with professionals such as psychologists trained in this area would inevitably help, and this is indeed part of Cafcass's proposal. During the HCPP pilot, which began in November 2017, 50 of its most difficult cases will undergo a three-month trial programme called 'Positive Parenting' whereby the abusive parent will work with Cafcass to understand the effect of their behaviour and its impact on the children. If that does not work, psychologists will be invited to intervene with more intensive therapy.

This parenting programme has the right ethos at its heart, and Cafcass should be applauded for its efforts to move the issue forward in the face of stalled political impetus. However, there are important questions to be asked in relation to the practicality of its implementation:

- First, how will more intensive therapy work without a court order? If the parent is not receptive to the initial programme, what will compel them to continue?

- Second, are there the requisite psychologists available to deliver this therapy, and importantly – who is to pay for it?

Will the Cafcass initiatives work?

I fear Cafcass officers' efforts may be thwarted by a judicial system that does not allow for the new programme to have teeth, and may not have the wider support and funding available to ensure its success. First is the issue of the weight given to the child's wishes. In relation to the HCPP, Cafcass has restated its focus to keep the child's needs, wishes and feelings central to recommendations made to the court as to who the child should live with or spend time with. I would not seek to question Cafcass's dedication to providing the right outcome in the best interests of the child. However, in determining that, they must be given the flexibility to question the child's reported wishes and have that assessment reflected by the court.

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I refer to the experiences of Canadian counterparts dealing with the issue in that jurisdiction. For example, the Court of Appeal for Ontario in the matter of *Decaen v Decaen* [2013] stated that one needs to take into account the influence of the parent on the child's expressed wish, and that wishes were not necessarily unbiased or informed if influenced. In that case, the trial judge was found to be correct in discounting the weight of the testimony of the child via their lawyer.

Another common scenario encountered in our courts is where the resident parent explains the no-contact situation by way of the child themselves steadfastly refusing to attend, regardless of parental influence. They may claim to have done all they can to encourage contact, but still the child refuses. The parent refuses to enable contact, and claims they cannot force it in the face of a recalcitrant child.

In UK courts there is little that's done to counter this claim, or remedy its effect of continuing non-contact. The court may just ask the parent to 'encourage' contact without defining what constitutes encouragement, or what level of effort is deemed appropriate. Cafcass

officers may have an increasingly difficult assessment to make in these cases. I would reiterate my point that the time they are allowed to determine cases may not provide for thorough consideration of these nuances. Time and resource will always impact the ability for an officer to uncover the full 'truth' of a matter. Official guidance for judges, or legislation on the matter, would guide officers and courts alike in their recommendations, setting stakes in the ground to assist with the navigation of this complicated issue.

In Canada however, the court goes further. The resident parent will need to show exactly what they have done to encourage contact, similarly to the approach adopted to a child refusing to attend school. Ultimately, the query being whether the resident parent is able to adequately exercise parental authority, in the best interests of the child.

Furthermore, the Canadian court will use sanctions to intervene where it appears the parent is not actively encouraging contact. It will ask the parent to take on board the recommendations of a parenting assessor (in Canada this is likely to be a social worker, playing a similar role to that of Cafcass) relating to how the parent can, and should, exercise parental authority. For example, if the child refuses contact the parent should start by using basic incentives or sanctions, eg no TV, no access to the internet etc, if the child repeatedly refuses to attend contact. If a parent cannot get a child to attend contact the court will enforce the order, including the use of the police with powers of entry. They are also more robust in fining the resident parent for missed contact – up to £500 for each missed 'visit'.

If the child's reported refusal continues the court will assess if the parent is indeed being truthful about the reason for non-contact and, if so, consider whether the parent can adequately demonstrate parental authority. If not, do they need time out from parenting and a change in residence?

In extreme cases Canadian courts have made a resident parent's access to their children contingent on their engagement with therapy – where it is apparent that the true issue is one of parental alienation tactics. However there are legitimate questions over the true effectiveness of 'ordered' therapy if a parent is steadfastly refusing to engage in behaviour change. Our courts cannot legally compel somebody to receive treatment. In Canada they circumvent this issue by referring to such as 'educational intervention'. It may be that Cafcass's positive parenting course could be considered similarly. But still, whether or not a parent appears to engage, the issue remains – is contact happening? If not, why not? And what will the court do to remedy the situation?

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Evidence shows that the Canadian court turns far more often to a change of residence to deal with these cases and as a result, they face far less intractable contact disputes. The net effect is that when a Canadian court orders contact, it tends to happen.

Conclusion

So I return to the issue of the court having adequate power to enact the professional recommendations of Cafcass. Where contact is ordered there may be a hesitance to enforce, and this is often due to the fear that by punishing the resident parent the child may be inadvertently negatively affected. Our court's approach is much 'softer' than that of the Canadian courts, and begs the question of whether the current system is working.

So what next for Cafcass's proposed framework, its development and rollout later this year and most importantly its effects on parents and resulting court orders? I think there is no doubt that a key issue is that Cafcass seems to be woefully under-resourced. It is relying on training 50 officers who it seems may (it is not clear) in time cascade their knowledge to the rest. However, court-ordered psychologists making similar assessments can take 10-20 hours in interviews and writing reports. They have specialist training which, with all the will in the world, they cannot fully impart to a Cafcass officer. One queries how many psychologists there are ratio-wise to each officer. Then, how much time each officer has for each case?

Further as the term 'parental alienation' is so controversial, there is no consensus on what it is. Hence there is no agreed checklist to work from. Interest groups (which Cafcass points out that it is not obliged to but will consult) may well have their input as to what should be there but the bigger question is – is parental alienation something that can be marked against a checklist, as by its nature it is so subtle?

I would welcome an agreed definition, if nothing else, and an amendment to the statutory checklist in s1(3), Children Act 1989 so that it is specifically considered (or discounted as may be the case) but I am realistic enough to realise that is some way down the line. Cafcass, in recognising that estrangement exists, whatever it is called (and let's not get bogged down on the moniker), and seeking to at least to try to address it, should only be praised. I await a clearer pathway after consultation as indeed do many of my clients, which will hopefully only go to assist the judiciary moving forward. ■

Decaen v Decaen
[2013] ONCA 218 (CanLII)
H (Children)
[2014] EWCA Civ 733