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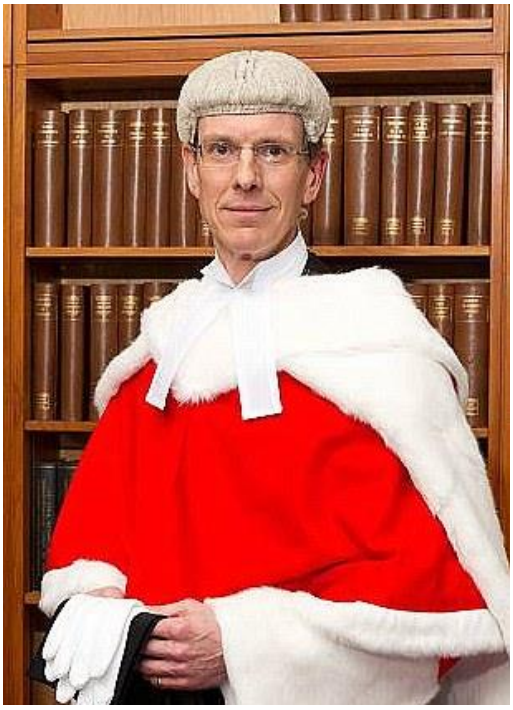
SENIOR JUDGE IS AT IT AGAIN..



Which part of 'Go away' do parents not understand?!

Mr Justice Stephen Cobb is a remarkable man. He has been charged with the design of much of the administration of Family justice in recent years. He has just completed a review of Private Law for the President of the Family Division. He's also sitting on an MoJ panel looking at 'safeguarding'. He is the brains behind the Child Arrangement Programme – the administrative system to improve Private law procedures after the 2014 Children & Families Act as well as Practice Direction 12J – dealing with caes in which domestic abuse is alleged. We think he doesn't like men – or specifically fathers. That may seem a pretty shocking accusation – but, as his colleagues in other fields of law might say – 'he has previous'.

In 2014 he managed to defeat the will of Parliament in the Children & Families Act. Our elected representatives sought to remove the damaging higher status granted to a controlling parent with a 'Residence Order' and the inferior status placed on a parent with a 'Contact Order' by introducing a single Child Arrangements Order. Mr Justice Cobb clearly didnt like that idea so he brought in to the administration of the Family Court the concept of 'the parent with whom the child lives' and 'the parent with whom the child spends time'. Many legal commentators have said how little the 'presumption of involvement' of both parents in a child's life has changed things since 2014. They're right – and much of that is thanks to Stephen Cobb. Some may regard that as an extra-ordinary abuse of power by a Judge.

In 2017 he again sought to overturn the will of Parliament through Practice Direction 12J. This is the 'guidance' or clearly 'Direction' given to Courts when dealing with domestic abuse allegations. In Mr Justice Cobb's first draft he proposed that

'Where the involvement of a parent in a child's life would put the child or other parent at risk of suffering harm arising from domestic violence or abuse, the presumption in section 1(2A) of the Children Act 1989 shall not apply '

In this way the force of statute law is overturned in a Practice Direction. Except, luckily we wrote to the President of the Family Division Sir James Munby and pointed out that he didn't actually have the power to set aside the law in this way. That clause was later removed. I do urge people to read the jaw-droppingly one sided note that Mr Justice Cobb issued when trying to sneak this through. It mentions Women's Aid more than 15 times https://www.judiciary.uk/wp-content/uploads/2017/01/PD12J-child-arrangement-domestic-violence-and-harm-report-and-revision.pdf

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In 2019 Mr Justice Cobb sits like a colossus astride Private Law. No sooner than he finishes chairing a review of his own troubled 'Child Arrangement Programme' for the President than he skips off across town to sit on the MoJ review of safeguarding – in which he joins his 'friends', feminist academics Liz Trinder and Rosemary Hunter along with the CEO of Women's Aid.

The review for the President proposes a number of interesting solutions. Enforcement has been a spectacular failure and an obvious target for criticism of a justice system proven incapable of enforcing its own Orders. The statistics are shocking. In 2011 there were nearly 2000 applications for enforcement. Just over 2% ended in an Order for enforcement. By 2016 applications had trebled to 6000 but the success rate had fallen to 1%! So, what cunning plan has Cobb J brought forward. Easy – abolish enforcement! In his proposals he says

> 'We recommend that the C79 is taken out of circulation, and that all applications which would otherwise have been made on a C79 (applications for 'enforcement') are made on a C100'

The cleverness of this proposal is that when an Order is flouted you effectively have to make a new application from the start. Of course he can defend against that charge – by claiming that the new application will go back before the same judge / magistrates etc. BUT the really clever part is that without the C79 it will be impossible to collect statistics about the spectacular failure to Courts to enforce orders because you won't know whether the C100 was issued for enforcement or just a new application.

Another excellent idea is to create a 'Supporting Separating Families Alliance' (SSFA) 'to provide integrated support for all families experiencing separation.' Cobb J goes on to suggest that 'The local SSFA alliances will be managed by a co-ordinating committee which could or should be chaired by the chair of the Local Family Justice Board or a nominated representative. Additionally, in due course, thought may be given to appointing a single operational co-ordinator of each SSFA.' All good stuff and perhaps a helpful way of trying to bring together support services. EXCEPT – right at the end he goes and spoils it with Appendix 6 by saying 'The agencies / partners identified in Annex 6 should be involved or represented in the alliance(s)'. Now some of you may be thinking that with his excellent relations with Women's Aid and Rights of Women he's going to simply create a framework in which he gives them even more power. Of course – you're right AND he even throws in to the mix a place for Gingerbread – the organisation that supports 'single parents' to pursue 'deadbeat dads' to pay up for their children. Did we mention that Companies House records that Cobb J was a Trustee of Gingerbread? Well yes he was – in 2010/11.

The next area he gives the Cobb treatment to is the MIAM. That's Mediation Information and Assessment Meeting to you. This is a process that the applicant (overwhelmingly fathers) have to go through. It typically involves them paying £100 or more to a mediator to be told how excellent mediation is, while sat there alone because the other side who has the child, and is preventing contact, has said that they aren't interested in mediation at all. So, will Cobb J require the Respondent to attend mediation? No. Instead he says

'The 'invitation' / direction to applicants to attend a MIAM should contain a more encouraging, positive and child-focused message underlining the benefits of NCDR to parents and their children;'

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And then goes on to say

'Judges and court staff should be more prepared to enforce the MIAM requirement'

Just to reinforce the point about the person who is seeking re-dress from the Courts really taking the point that 'he' shouldn't bother wasting his £215 Court fee Cobb J continues with

'The formal statement of expectation that Respondents would attend a MIAM (unless an exemption applies) should be reinforced to judges and professionals, underlining the benefits of this activity, whilst confirming that MIAMs can be attended separately and may not be appropriate where domestic abuse is a factor. Courts should automatically order MIAM attendance before the first hearing where this has not happened and no valid exemption has been claimed, and there is no safeguarding issue.'

So it seems that the way to make mediation work is to make it even harder for the party who has been prevented from seeing the child to seek redress through the Courts.

In summary, the various measures seem designed to ensure that those who are being prevented from a relationship with their children finally get the message that the Family Court would simply like you to go away and stop bothering them with your problems. The only real new initiative is the 'Supporting Separating Families Alliance' which will give Women's Aid a quasi-official role in 'resolving' family disputes.

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