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Park Lane Plowden Family Team Under 10's Newsletter

For the spring edition of our Family Team Under 10's Newsletter, as no fault divorce enters the headlines, Giorgia Sessi has prepared a piece discussing the changes surrounding No Fault Divorce, Simon Wilkinson studies two recent judgments which highlight the impact of social media within Court of Protection proceedings. Iain Hutchinson has commented upon fair hearings within care proceedings and Emily Chipchase, features with a piece of the 'lives with' order within private law.

Giorgia Sessi (2017)

A change to the Law: No fault Divorce

Introduction

Section 1(2) of the *Matrimonial Causes Act 1973 (MCA 1973)* outlines five grounds for divorce: two are based on a substantial period of separation, and the other three require one spouse to make allegations about the conduct of the other. This 'blame placing' element is at odds with the wider family justice system, which is focused on resolving issues in a non-confrontational way

The government has now responded to widespread calls by legal professionals and the wider public to amend the legal requirements for divorce, removing the fault element.

Owens v Owens

The recent case of *Owens v Owens [2018] UKSC 41* was one of the driving factors behind the current reform proposals.

Mrs Owens issued a divorce petition in February 2015 pursuant to s.1(2)(b) of the *MCA 1973,* alleging that the marriage had broken down irretrievably and that Mr Owens had behaved in such a

way that she could not reasonably be expected to live with him. Mr Owens defended the suit. At first instance, Mrs Owens was directed to expand her allegations and as a result, she gave 27 individual examples of Mr Owens' behaviour. The judge found that these examples were flimsy and exaggerated and that the test under *s.1(2)(b)* was not met. Mrs Owens appealed against this decision to the Court of Appeal, but her appeal was dismissed *([2017] EWCA Civ 182).* She then appealed to the Supreme Court.

In July 2018, the Supreme Court unanimously dismissed Mrs Owens' appeal on the basis that the judge at first instance had applied the test under *s.1(2)(b)* correctly. The majority however invited Parliament to consider replacing a law which, in the circumstances, denied Mrs Owens a divorce.

The 'No Fault Divorce' Bill

In July 2018, Baroness Butler-Sloss introduced a Lords Private Member's Bill, which would require the Lord Chancellor to review the law relating to divorce and judicial separation and to the dissolution of civil partnerships and the separation of civil partners. The review would include consideration of whether the law ought to be changed so that irretrievable breakdown of a marriage or civil partnership is evidenced solely by a system of application and notification.

Government Consultation

Between September and December 2018, the Ministry of Justice held a consultation aimed at obtaining views on the reform of the legal requirements of divorce.

The government proposed to remove both the ability to allege fault and the ability to defend a divorce, replacing them with a new process of a giving notice of irretrievable breakdown of the marriage or civil partnership.

The basis for the reform is that the current law requiring one party to make allegations about conduct serves no public interest. It exacerbates conflict at a time when temperatures are, by definition, already high and undermines the constructive approach that practitioners take to help families resolve their disputes.

The consultation also looked at the implications of the current law on children, who are often unnecessarily exposed to damaging impact of parental conflict during the divorce process.

Next steps

The consultation closed on 10 December 2018. Many legal professionals are of the view that the current law is out of date and bodies such as the Law Society and Resolution wholeheartedly supported the proposed reform.

On 8 February 2019, the Justice Secretary David Gauke committed the government to reforming divorce law through legislation in the next Parliamentary session, which starts in May. Mr Gauke told The Times that the more than 600 responses to the consultation 'were overwhelmingly in support, which is why I remain as convinced as I have been for the need to reform this particular area'.

The full response to the government's consultation is due to be published on 8 March 2019.

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Simon Wilkinson (2010)

Capacity and social media usage in the Court of Protection

Two recent interlinked judgments have recently been handed down by Cobb J clarifying issues relating to issues relating to capacity and the use of social media:

Re A (Capacity Social Media and Internet Use - best interest) [2019] EWCOP 2; and
Re B (Capacity - Social Media - Care and Contact) [2019] EWCOP 3.

The background

Re A

The separate applications concerned two young adults with learning disabilities. A was 21 years old with an impairment in adaptive social functioning and executive functioning. He needed support to manage his personal and domestic care needs. He lived in independent supported living and receivers personal social care support from Dimensions (a national organisation) and had very low level literacy - struggling with even 3 or 4 letter words. Concerns about A's social media use had been apparent since 2016 when it became clear that he had shared intimate images and videos with unknown males via Facebook. It also became clear that A's use of the internet (without the ability to read warning notices on websites) had led to him accessing extreme pornographic websites.

Additionally, A had confided to a support worker that he had been raped twice by an identified male adult. During the course of the subsequent investigation it became apparent that (i) he had been accessing extreme (and sometimes illegal) sexual content online; (ii) he had made contact with a large number of men - some of whom were known to be sexual predators and sex offenders; and (iii) the investigating officer was concerned that if A's behaviour continued he would become not just the victim but possibly the perpetrator of offences concerning internet imagery because of "his lack of understanding around the subject".

Despite professionals attempting to restrict A's internet access, he found ways around this. It was the view of the clinical psychologist, the community nurse and the independently instructed consultant psychiatrist that A did not understand the risks and benefits which contact with others presents to him and that his ability to weigh up the pros and cons of posting explicit images of himself on social media an accessing illegal material was severely undermined as a result of his learning disability.

Re B

Miss B was a young lady in her mid-30s. She struggled to manage her personal care and lived with her parents and a sibling. She had considerable social care needs, and although living with her family (with occasional respite care) was somewhat socially isolated. She was described by Cobb J as being 'wedded' to her mobile phone which she used to communicate via social media (Facebook, WhatsApp and Snapchat). Her internet use gave cause for a number concerns to adult social workers: she was know to send intimate photographs of herself and to communicate her address and other personal information to unknown males. She was keen to be in a relationship with a male and made active efforts to approach online unknown males in order to ask hem to be her boyfriend. She routinely 'sex chats' with males.

A number of safeguarding referrals were made to social services and a number of capacity assessments were undertaken - the outcome of these assessments was variable, for no clear reason. Concerns centred around issues such as Miss B sending explicit sexual messages and intimate photographs to unknown males including in 2018 a man in his seventies who was a conceited sex offender, categorised as 'medium / high risk' and subject to a Sexual Harm Prevention Order. Despite being advised of the risks, Miss B met him on several occasions and stayed overnight with him. He has described her in messages as his 'mistress' or his 'slave'. There were also concerns relating to Miss B being exploited financially via online communications. That gentleman (described in the judgment as Mr C) was made the subject of an injunction by Cobb J and there are ongoing contempt proceedings in respect of that.

The legal framework

Cobb J commences his judgment in *Re A* with an introductory section in which he refers to the rise in the development of the internet and social media and how these technological developments pervade every element of almost all of our lives. He notes that the internet and social media are particularly important for people who have disabilities and/or social communication problems as they 'enable ready access to information and recreation, and create communities for those who are otherwise restricted in leaving their homes' offering enhanced autonomy, providing a means to express social identity and enable the learning of new skills.

Reference is made to the identified rights as set out in the *United Nations Convention on the Rights of Persons with Disability* ("the convention"). This legislation is not enshrined within the laws of the United Kingdom, however it sets out (articles 9, 21 and 22) that states ought to take appropriate measured to enable those with disabilities to live independently and participate fully in all aspects of life, including access on an equal basis to the information and communication technologies. The Convention also enshrines a right for persons with disability to be able to exercise the right to a freedom of expression and opinion and for the right to privacy for the disabled. Cobb J determined that he should 'interpret and apply the domestic mental capacity legislation in a way which is consistent with the obligations undertaken by the UK [which has been ratified the Convention] under the [Convention]' (para 3).

Having set out the above Cobb J identified that the internet can be a dangerous place - with internet abuse (particular via social media and dating 'apps') being common-place. Those who are young,

learning disabled, needy and incautious are particularly at risk. In considering risk three discrete areas were identified:

1. Content risk;
2. Conduct risk; and
3. Contact risk.

In turning directly to the issue of capacity to use the internet and social media (pursuant to sections 1-3, Mental Capacity Act 2005), Cobb J considered whether internet and social media use should for a sub-set of a person's ability to make decisions about either contact or care. Cobb J found that it was, noting:

I have reached the clear view that the issue of whether someone has capacity to engage in social media for the purposes of online 'contact' is distinct (and should be treated as such) from general consideration of other forms of direct or indirect contact. I am satisfied that wider internet use is different from general issues surrounding care. (Para 25).

It was noted that to do otherwise could lead to issues of personal autonomy in those wider areas being reduced and that the issue of social media and the internet brought with them distinct characteristics which justified them being so classified.

Cobb J then goes on to consider what the 'relevant information' is for the purposes of assessing capacity pursuant to section 3(1)(a) of the MCA 2005. He sets out that the relevant information which P needs to be able to understand, retain, use and weigh is (para 28):

i. Information and images (including videos) which you share on the internet or through social media could be shared more widely, including with people you don't know, without you knowing or being able to stop it;

ii. It is possible to limit the sharing of personal information or images (and videos) by using 'privacy and location settings' on some internet and social media sites; [see paragraph below];

iii. If you place material or images (including videos) on social media sites which are rude or offensive, or share those images, other people might be upset or offended; [see paragraph below];

iv. Some people you meet or communicate with ('talk to') online, who you don't otherwise know, may not be who they say they are ('they may disguise, or lie about, themselves'); someone who calls themselves a 'friend' on social media may not be friendly;

v. Some people you meet or communicate with ('talk to') on the internet or through social media, who you don't otherwise know, may pose a risk to you; they may lie to you, or exploit or take advantage of you sexually, financially, emotionally and/or physically; they may want to cause you harm;

vi. If you look at or share extremely rude or offensive images, messages or videos online you may get into trouble with the police, because you may have committed a crime; [see paragraph below].

The judge then adds the following guidance to assist with the interpretation and application moving forward:

i. In relation to (ii) in [28] above, I do not envisage that the precise details or mechanisms of the privacy settings need to be understood but P should be capable of understanding that they exist, and be able to decide (with support) whether to apply them;

ii. In relation to (iii) and (vi) in [28] above, I use the term 'share' in this context as it is used in the 2018 Government Guidance: 'Indecent Images of Children: Guidance for Young people': that is to say, "sending on an email, offering on a file sharing platform, uploading to a site that other people have access to, and possessing with a view to distribute";

iii. In relation to (iii) and (vi) in [28] above, I have chosen the words 'rude or offensive' – as these words may be easily understood by those with learning disabilities as including not only the insulting and abusive, but also the sexually explicit, indecent or pornographic;

iv. In relation to (vi) in [28] above, this is not intended to represent a statement of the criminal law, but is designed to reflect the importance, which a capacitous person would understand, of not searching for such material, as it may have criminal content, and/or steering away from such material if accidentally encountered, rather than investigating further and/or disseminating such material. Counsel in this case cited from the Government Guidance on 'Indecent Images of Children' (see (ii) above). Whilst the Guidance does not refer to 'looking at' illegal images as such, a person should know that entering into this territory is extremely risky and may easily lead a person into a form of offending. This piece of information (in [28](vi)) is obviously more directly relevant to general internet use rather than communications by social media, but it is relevant to social media use as well.

He specifically excludes from the list of relevant information that internet use may have psychologically harmful impact upon the user, noting that 'many capacitors internet users do not specifically consider this risk, or if they do, they are indifferent to this risk' (para 30).

The above summary of the legal principles were repeated verbatim in the judgment in *Re B* (at paragraphs 36-37).

Decision

In *Re A* Cobb J concluded, after having considered that the evidence of the expert psychiatrist appropriately approached the issue of A's capacity in light of the above guidance, that A lacked the capacity to use the internet or social media. In determining the A's best interests regard and approval is given to the local authority's draft 'Internet access and safety plan' which set out that:

1. A should have access to one of the Dimension's owned iPads for a limited period each day;
2. There should be a degree of supervision;
3. A's phone contract should be financial capped;
4. His mobile device should not have the capacity to access the internet;
5. Staff should be allowed to check his mobile phone on a daily basis to assist in supporting him deal with unwanted messages.

In *Re B* the court was concerned with a number of capacity best interests' decisions regarding Miss B including: litigation, property and affairs, residence, care, contact and consent to sexual relations The court made a number of findings relating to these issues which fall outside the scope of this commentary.

Having considered the evidence in the case and applying the relevant statutory test - in light of the guidance repeated above - Cobb J found that Miss B did not 'currently' have the capacity to decide to use social media for the purposes of developing or maintaining connections with others. That said he found that 'attempts in the form of practicable help should be offered to enable her to acquire capacity' and determined to make interim declarations only pending those steps being taken.

Looking to the future in the event that Miss B remains unable to make decisions as to social media use, Cobb J notes that any subsequent best interests evaluation will need to carefully be balanced so as to ensure that her rights under the Convention and under the European Convention on Human Rights are maintained. In particular Cobb J stresses that (para 41):

> *…any interference with those rights (by way, for example, of supervision, filters, 'Parental Control Applications', and monitoring) will have to be justified and proportionate. Careful thought will also have to be given to the ways which can be devised which are effective in limiting or supervising her internet and social media use without being unduly "restrictive of [Miss B's] rights and freedoms of action" (section 1(6) MCA 2005).*

Comment

These two cases set out starkly the increasing pervasiveness of social media and internet usage in our lives. Such technological developments bring enormous benefits, however the risks of the darker side of online life are set out starkly by the court. Under treaties which have been ratified by the UK the state has obligations to ensure that those with disabilities are enable to participate fully in the benefits brought about by online and social media usage which are set out clearly in Re A. There is therefore a positive obligation when considering best interests to ensure that a persons' internet usage is not arbitrarily stopped.

Having said that the judgment notes that when the risks of the darker side of the internet become so great due to P being unable to properly make decisions for themselves and to appreciate those risks, then best interests decisions must and can be made for them with the Court of Protection.

When considering these issues it is important to consider the following:

1. Capacity - remains issue specific. Any assessment of capacity must address the points raised within this judgment and must set out clearly within them the relevant information identified by Cobb J and as mandated by section 1(3) MCA 2005.

2. Best interests - great care must be taken that any proposed restrictions are proportionate and necessary and not unduly restrictive. Key to this, it is submitted, must be P's age, circumstances and other factors set out in section 4 of the MCA 2005.

Lawyers ought to be especially careful of both of the above issues and how they impact upon all aspects of litigation. I would suggest the following practical starting points (not an exhaustive list)

should be given proper scrutiny by those representing all parties but in particular those representing P or the emanations of the state:

- Ensuring the capacity assessments are detailed and thorough;

- Linked with the above, ensuring that letters of instruction to experts and for section 49 reports make explicit reference to the test outlined within the judgment;

- Giving proper consideration to the risks - based upon the three areas of risk identified - and how great these are;

- Ensuring that a proper, reasoned and thought-through plan is in place. Given the positive commendation of the 'Internet Access and Safety Plan' in Re A I would suggest that such plans should be the norm in cases such as this - in much the same way as covert medication plans or restraint plans are commonplace - to supplement any other care plans which may be in place.

Iain Hutchinson (2013)

Case Comment: Re G (Children: Fair Hearing) [2019] EWCA Civ 126

It is often the inherent nature of an urgent application for an interim care order that there is pressure on all parties. The Court will commonly fit the hearing into an already busy list and look to the advocates to ensure that time is used efficiently so that the positions of the respondent parties are established, and the matter can be heard appropriately. Lay clients are understandably anxious, angry, upset, etc. Throughout the process the Court is right to utilise robust case management and the giving of preliminary indications to guide all involved. *Re G (Children: Fair Hearing)* brings to the forefront the balance that the Court must strike between robust management of the matter and putting undue pressure on the parties so as to impact on the respondent parent's right to a fair hearing, it also serves as a pertinent reminder of the difference between the threshold criteria under S31 and S38(2) CA 1989.

Re G concerned an urgent applicant for an ICO. The background to the matter itself does not highlight the case as out of the ordinary for such applications and is not the subject of this case comment. The Mother met her Counsel for the first time that day, (which in the author's view must be recognised as being the unfortunate reality of Interim hearings and the experience of most parents). The matter was listed not before 12:00pm and was heard at 2:00pm. Mother's Counsel

indicated that he was instructed to contest the LA's application, to which the Judge proceeded to make comments making it clear the Mother's prospects of success in contesting the hearing stating it is: *"very risky for her"; "a very very precarious position";* The Judge also indicated the impact of findings being made at an interim hearing: *"inevitably, I'm going to make findings… – that that is significant harm. I don't think there's any question about it."; "not… without some consequences."*

In an exchange between Counsel and the Judge, Counsel attempted to argue some aspects of Mother's case but was cut short, the judge said that *"If that is the preposterous proposition, you're putting to me, it'll fall on deaf ears".* She also stated that *"I shall probably send my findings, if I make any, to the police and require it goes to the CPS and see what happens".* After a short adjournment, Mother's counsel confirmed she would consent to the ICO. The Mother later appealed and was represented by alternate Counsel at the Court of Appeal. The Court of appealed focussed on 2 of the 11 grounds of appeal:

- The learned Judge had subjected the mother to extreme pressure amounting to duress and undue influence through her comments in court and impacted on the advice given to her. As a victim of duress she did not freely consent to the ICO. This resulted in serious procedural irregularity

- The learned Judge's comments gave a strong indication she had pre-judged the application and prejudiced a fair hearing, breaching the Mother's Article 6 and 8 rights.

Allowing the appeal, Lord Justice Peter Jackson found that the Judge's comments put undue pressure on the Mother and the conclusion Mother, and her Counsel could draw from the Court's comments were that the judge had made up her mind and was sure to make adverse findings that would be damaging to her in the long run. Jackson LJ made the following comments:

- *23) Judges can, and frequently do, indicate a provisional view to the parties. This is entirely proper and may lead to parties changing their positions. Provided they do so freely (even if reluctantly), there is nothing objectionable about this. However, judges must not place unreasonable pressure on a party to change position or appear to have prejudged the matter.*

- *25) This was an urgent application, which the judge rightly appreciated had to be decided that day. As she said, she had time available. It was a matter for her, given the practical constraints, as to whether to hear oral evidence: if she had been considering making a short-term holding order I would not have criticised her for not doing so, with any evidence needed to justify a longer-term order being taken on a later date.*

- *27) [the transcript of the case, including quotes noted above] amply substantiates the appellant's case that her consent or non-opposition to the interim care order was not freely given, but was secured by oppressive behaviour on the part of the judge in the form of inappropriate warnings and inducements. Regardless of the fact that the mother was legally represented, she did not get a fair hearing. There has been a serious procedural irregularity. This ground of appeal succeeds. It is unnecessary to go on to consider the other grounds.*

<u>Difference between S31 and S38 Children Act 1989</u>

In response to the Court of Appeal being informed that 'it was commonplace in certain courts to warn parents that, if the application for an interim care order was opposed, the court may have to

make findings as to facts in dispute' and that these findings would stand "to prevent the need to go over the same ground again" at final hearing. Moor J's obiter comments are a useful reminder to all advocates regularly engaged in urgent ICO hearings of the fundamental statutory differences between the Court finding that the interim threshold is crossed, compared to the threshold for a final order:

1. There is a fundamental difference between sections 31 and 38 of the Children Act 1989. Section 31 relates to a requirements for 'full' Care order and Section 38(2) relates to the interim threshold: "A court shall not make an interim care order or supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2) ".

2. Section 38(2) does not require the court to make findings of fact to the civil standard, nor to be satisfied that the main threshold document is proved. Instead, the section requires the court to be satisfied that " there are reasonable grounds " for believing that the threshold in section 31 is made out.

3. At an interim hearing, rarely, if ever, will findings of fact be made that will have the effect of establishing the threshold at a final hearing.

4. Courts should be very cautious before making reference to the significance of conclusions drawn at the interim stage as such comments may appear to the parents to be a form of pressure.

5. If the court is satisfied that there are "reasonable grounds" for believing the threshold is made out, it will say so, but, in doing so, the court is not making final findings pursuant to section 31 on matters that must be proved to the requisite standard in due course.

Emily Chipchase (2018)

Private Law Proceedings: The joint 'lives with' order

In recent years a shift in judicial approach has led to an increasing number of joint 'live with' orders in private law cases. Previously, shared residence orders (as they were called under the old statutory regime) were used sparingly, reserved only for cases with 'exceptional circumstances' *(Re H (A*

Minor) (Shared Residence) [1994] 1 FLR 717). Since the decision in *D v D (Shared Residence Order) [2001] 1 FLR 495* there is no longer a need for exceptionality.

Following this case, Lord Hoffman later observed in *Holmes-Moorhouse v London Borough of Richmond Upon Thames [2009] UKHL 7*, that "shared residence orders are not nowadays unusual" [7]. Mostyn J similarly commented in *Re AR (A Child: Relocation) [2010] EWHC 142 (Fam)* that such orders are "a rule rather than the exception" [52].

The equal status of parents was recognised by the departure from the terminology of 'residence' and 'contact' following the *Children and Families Act 2014*. Under the new legislative regime, shared care arrangements are expressed as a 'joint lives with order' rather than a 'shared residence order'. This change demonstrated the Court's growing emphasis upon the importance of the role that both parents have in a child's life.

'Lives with both parents' vs 'lives with one parent and spends time with the other'

Both 'types' of order regulate arrangements relating to when and with whom a child is to live, spend time, or otherwise have contact. A lives with order confers parental responsibility upon the person in favour of whom it is made. Where a lives with order is made in favour of a father who does not already have parental responsibility, or some other person (i.e. a second female parent (s4ZA) or a step-parent (s4A)), an order for acquisition of parental responsibility pursuant to *s4 Children Act 1989* will follow. Parental responsibility does not follow where an order that a child is to spend time with a parent is made.

In the majority of private law proceedings the parties involved both already have parental responsibility for the child. In such cases the making of any child arrangements order, be it a joint 'lives with' or a 'live with/spends time with' order does not alter the existing legal relationship between a parent and their child. A 'live with' parent and a 'spends time with' parent have equal parental responsibility and involvement. The distinction does not confer some greater legal status on the 'lives with' parent though it is often perceived to be that way by the parties involved.

The only exception is that pursuant to *s13(1) Children Act 1989*, a parent specified in a child arrangement order as a parent with whom a child lives, has an automatic right to remove a child from the jurisdiction for a period of up to a month without the need for written consent of all persons with parental responsibility. Where a joint 'lives with' order is made both parents will have this right. Where a 'lived with/spends time with' order is made, the parent who the child spends time with will have no such automatic right.

Whilst the two forms of order have little practical difference to parents who already have parental responsibility for their child, the terminology of the joint lives with order in and of itself carries considerable weight. An order that the child shall live with both parents sends a message that the parents are equal in the eyes of the law, having equal status, involvement and responsibility for the child. That is a message of note not only to parents but to schools, health professionals, etc.

When will the Court make a joint 'lives with' order?

When deciding an application for a child arrangements order, the Court's paramount consideration is the welfare of the child. Consideration must be given to the checklist factors at *s1(3)* and to the no

order principle pursuant to *s1(5) of the Children Act 1989.* The Court begins with the presumption at *s1(2A)* that, "unless the contrary is shown, involvement of that parent in the life of the child concerned will further the child's welfare."

When determining the appropriate level of involvement a parent is to have with a child, the division of time and the subsequent expression of that apportionment in an order are separate but nonetheless related matters. The pre-2014 case of *Re K (Shared Residence Order) [2008] 2 FLR 380* sets out that the court is "to rule first upon the optimum division of the child's time in his interests and then, in the light of that ruling, proceed to consider whether the favoured division should be expressed as terms of a shared residence order or of a contact order." [6] Whilst the current legal framework has moved away from the use of 'residence' and 'contact' orders it remains good law that the Court is to first determine the appropriate apportionment of time before considering what type of order best reflects that arrangement.

In the case of *Re M (Children) [2008] EWCA Civ 66* Thorpe LJ suggests that where there are no welfare concerns relating to the parent's ability to care "equality [of time] is, if not indicated, certainly a starting point in any consideration" [12]. Whilst orders for 50/50 shared care are increasing, it is certainly not a prerequisite of a joint 'lives with' order that a child spends an equal amount of time in each household. When making a determination as to the apportionment of time the Court will look to the quality of the relationship with the child rather than the quantity of time spent together.

Assessment of the appropriate form of order requires consideration of how the arrangement will work in practice. Factors such as geographical proximity of the two parental homes, financial means, ability to travel, and the relationship between the two parents must be considered in determining the appropriateness of the time spent with each parent. Even where parties have the best of intentions, an order which is unworkable is going to be detrimental to the child's welfare. *Re M (A Child) [2014] EWCA Civ 1755* is an example of a case where practical considerations made a joint 'lives with' order unachievable.

The Courts have offered conflicting opinions on the appropriateness of shared care arrangements where there is animosity between the parents. Whilst the opinions provided in cases prior to 2014 concern the merits of shared residence orders, the principles established are transferable to joint lives with orders. In *A v A (Shared Residence Order) [2001] 1 FCR 147* it was suggested that a shared residence order can promote cooperation whereas in *M (A Child) [2014] EWCA Civ 1755* it was suggested that this type of order is only appropriate where parents are on reasonable or good terms.

A joint 'lives with' order may be appropriate in either case. Where dealing with issues of high conflict between parents, a joint lives with order can be used to send the message that neither parent is in control, as was done in the case of *Re P (Shared Residence Order) [2005] EWCA Civ 1639.* The joint 'live with' order is a tool frequently adopted by the Courts in an effort to reduce conflict, sending a message of equality to parents and placing them on an equal footing for future contact arrangements. In cases where the parties have a good relationship, a joint 'lives with' order will most likely be an accurate portrayal of the child's arrangements.

That said in determining whether a joint 'lives with' order is appropriate in a particular case, the Court must exercise its discretion. Each application for a child arrangements order will be fact sensitive and proper consideration must be given to the particular circumstances of the parties. The appropriate division of time and the type of order made will ultimately be determined in accordance with the child's welfare needs.

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