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When is 'the end of the road' reached? Observing the presumption of parental involvement through systems theory

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ABSTRACT

In 2014 the Children Act 1989 was amended to include a presuption that involvement of a parent in a child's life will further the child's welfare unless there is evidence of the risk of harm. Kaganas published two seminal articles which concluded that the government's ideological rationale for introducting the presumption of parental involvement not only failed to materialise but had some unintended, possibly detrimental, consequences for mothers. This article examines the operation and effects of the presumption of parental involvement in recent years based on an analysis of private law family court judgments between July 2020 and December 2023. Drawing on Luhmann's theory of autopoietic social systems, it examines the possibilities for and limitations on using law to drive social change beyond the operations of the legal system itself. It concludes that the statutory presumption has failed to serve its stated purpose and has even had the unintended consequence of generating legal communications about the risks of parental involvement. From a feminist perspective, it concludes that positive changes observed in the family court response to domestic and child abuse are an achievement, in light of the limits on steering society, at least until something changes in the unknowable future.

KEYWORDS

Presumption of parental involvement; domestic abuse; autopoietic systems theory; parental alienation; family court

Introduction

Changes in family forms, functioning and breakdown from the early 1970s led to private law family court proceedings becoming the site for resolving the role of the father in the post-separation family, with the 'welfare of the child' as the focal point. In this arena, fathers' rights groups have demanded equal parenting presumptions, feminist scholars and the Violence Against Women sector have campaigned for protection from domestic abuse for women and children, and government has attempted to promote post-separation co-parenting and placate the demands of opposing campaigners.

What these developments reveal is a belief by policy makers, judges, professionals and campaigners that law can achieve social change, that is, it can 'steer' society by changing people's attitudes and behaviour in particular directions. It is this belief that led the UK

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government, in 2014, to introduce a statutory 'presumption of parental involvement' in the Children Act 1989 ('CA 1989'). Kaganas (2013, 2018) published two seminal articles which concluded that the government's ideological rationale for introducing the presumption of parental involvement not only failed to materialise but had some unintended, possibly detrimental, consequences for mothers.

This article examines the operation of the presumption of parental involvement since July 2020, after the UK government published its plan to implement the recommendations of a major report into risks of harm and family court proceedings ('the Harm Panel report') (Hunter *et al*. 2020). It considers what, if any, purpose the presumption is serving and whether 'progress' is being made in improving protection for mothers and children in family court proceedings. Drawing on Luhmann's theory of autopoietic social systems, it examines the possibilities for and limitations on attempting to steer what most people think of as society. Based on a doctrinal analysis of all published private law family court cases that referred to the statutory presumption between July 2020 and December 2023, it considers the utility of using law to drive social change beyond the internal operations of the legal system itself.

'Arguing against virtue': the 'de facto' and statutory presumptions

A perceived crisis for the role of the father in the family in the 1970s and an increasing fear of autonomous motherhood led to fathers being regarded as increasingly central to children in emotional and psychological terms (Smart 1991, Collier 1995). However, it was the introduction of, and reforms to, child support legislation in the US in the 1980s and the UK in 1991 that galvanised fathers' rights groups to demand equal shared parenting (Doughty and Drew 2022).

Case law since the 1970s demonstrated an increasing reliance on, and endorsement of, the child's 'need' for contact with non-resident fathers.[1] The CA 1989 introduced the gender-neutral concept of 'parental responsibility' (PR), with its emphasis on 'parenthood is for life' (Roche 1991). Thereafter, the case law aligned the welfare principle almost solely with the importance for children of post-separation contact with non-resident parents. Attempts by mothers to restrict or oppose contact were akin to 'arguing against virtue' (Smart and Neale 1997, p. 332). Judges emphasised that 'cogent' or 'compelling' reasons are required to refuse contact, that courts should not 'give up' on the pursuit of contact, and that contact should be terminated only as a last resort in exceptional circumstances and where there is no alternative.[2] Domestic abuse was seen as entirely separate from children's welfare after parental separation.

A pioneering study by Hester and Radford (1996) revealed that the perceived importance for children of maintaining contact with non-resident fathers led courts and professionals to minimise domestic abuse, resulting in unsafe contact arrangements. This led to attempts by policymakers and the Court of Appeal to change the way judges and professionals respond to domestic abuse in child contact cases. The seminal Court of Appeal judgment in *Re L, V, M, H (Contact: Domestic Violence)* [2000] 4 All ER 609 sent a clear message to the lower courts that domestic abuse is a 'significant failure in parenting' and laid down guidelines for courts and professionals in contact cases where allegations of domestic abuse are made.

Since *Re L*, we have seen what Hunter *et al.* (2021) observed as a 'cycle of failure'. When it became apparent that the *Re L* guidelines were not being followed (Craig 2007), a Practice Direction was issued by the President of the Family Division in 2008 which was subsequently incorporated into the Family Procedure Rules 2010 as Practice Direction 12J ('PD12J'). PD12J provides the framework to be followed by courts and professionals in child arrangements cases where allegations of domestic abuse are raised. PD12J was amended in 2014 and 2017, after research showed that it was not being implemented as intended and contact was continuing to be prioritised over safety (Hunter and Barnett 2013, Women's Aid 2016). Most recently, the Harm Panel report identified continued harmful practices and significant underlying problems in the family court response to domestic abuse (Hunter *et al.* 2020). Despite the sweeping changes contained in the government's plan for implementing the report's recommendations, two years later a report by Women's Aid (2022) revealed that little had changed.

In recent years, a significant barrier to improving family court responses to domestic abuse has been the deployment of accusations of so-called parental alienation ('PA'). The available evidence suggests that claims of PA have become prolific in family court proceedings and research strongly indicates that they are most frequently used by perpetrators to undermine, discredit or detract attention from allegations and even findings of domestic abuse and child abuse (Hunter *et al.* 2020, Birchall and Choudhry 2021, Women's Aid 2022, Domestic Abuse Commissioner 2023, Barnett 2024).

In March 2010, the UK government appointed a board to carry out a review of the family justice system (Family Justice Review Panel 2011). Under pressure from fathers' rights groups for a default position of 50/50 shared care, the Panel considered whether the CA 1989 should be amended to include a statutory presumption of shared parenting (Kaganas 2013, 2018). The final report of the Family Justice Review recommended against a statutory presumption (Family Justice Review Panel 2011, p. 141). Nevertheless, the government, concerned about rising court costs and a perception that courts were biased against fathers (mainly held by fathers' rights groups) (Kaganas 2013), decided that legislation should endorse 'the importance of children having an ongoing relationship with both their parents after family separation, where that is safe, and in the child's best interests' (Ministry of Justice, Department for Education 2012, p. 18).

The Children and Families Act 2014 amended the CA 1989 to include a presumption in Section 1(2A) that 'involvement of [a] parent in the life of the child concerned will further the child's welfare' unless the contrary is shown. Under Section 1(6) a parent falls within the ambit of Section 1(2A) if they 'can be involved in the child's life in a way that does not put the child at risk of suffering harm' and the parent will be treated as not putting the child at risk of harm unless there is evidence to the contrary 'whatever the form of the involvement'.

Kaganas (2013) observed that the government was well aware that the presumption was not necessary since the courts and professionals already operated on the basis of a de facto presumption of contact. Nor did the government believe that the presumption would lead to making fathers take responsibility for their children and to mothers accepting fathers' involvement in their children's lives. Kaganas concluded that the government had an ideological rationale – to symbolically restore the status of fathers and of the family justice system and uphold a particular post-separation family form that is believed to be good for children.

In her second article, an empirical study of reported judgments, most of Kaganas' predictions were borne out (Kaganas 2018). She concluded that the presumption has probably had little impact on the way courts decide cases, the aim of placating fathers' rights groups had not been achieved, parents had not been deterred from taking their cases to court, and the symbolic affirmation of the importance of fathers may have led to mothers being compelled to agree to harmful arrangements for their children. Some of the judgments did not even mention the presumption, and where they did, this was more by way of paying lip service to it, while none of the outcomes turned on its application. Courts predominantly relied on the strong presumption derived from the case law.

This review of the trajectory of attempts to achieve social change through law calls into question whether such efforts can actually succeed. It is suggested that what is required is not better or more legal reform but an understanding of the possibilities for, and limitations on, achieving change beyond the internal operations of the legal system itself. This requires an understanding of what society is and how it functions for which Niklas Luhmann's theory of autopoietic social systems has powerful explanatory potential.

Autopoetic systems theory

The theory of autopoietic social systems was developed by the German sociologist, Niklas Luhmann, who was interested in 'how social order was possible if the contrary, chaos, was so much more plausible' (Ziegert 2005, p. 51). According to Luhmann (2013), what defines and structures social systems are their communications – everything that can be communicated and understood as having meaning. Rather than consisting of people (biological and conscious systems), society is the totality of all meaningful communications.

Since the political and industrial revolutions of the 16th to 18th centuries, western societies have evolved from stratified and hierarchical differentiation, to functionally differentiated subsystems such as law, politics, economics and science, with no ultimate hierarchical authority (King 1997). None of society's sub-systems can replace the knowledge-creating and interpretive functions of other systems or is able to offer an exclusively 'correct' view of society: only law may decide what is lawful, politics what is national policy, science what is scientifically true or false. Law's function in modern society is to maintain normative expectations in the face of disappointment (Luhmann 2004). Unlike cognitive expectations, which enable us to learn from experience and disappointment, normative expectations are sustained 'in the face of communications that report on contrary facts' (Nobles and Schiff 2013, p. 136).

The unity of the system is established through its autopoiesis, that is, it 'produces and reproduces its own elements by the interaction of its elements' (Luhmann 1989, p. 136). The basic distinction for systems theory is between system and environment, a difference that is produced by the recursive, autopoietic operations of the system itself (Luhmann 2013). The environment evoked by each system is not the 'real world' out there but its own selective internal version of the environment generated by its internal processes and only making sense within the system (Luhmann 2004). While society forms part of the environment of people (conscious systems), the environment for social systems consists of nature, conscious systems and all forms of communication, including other social systems. Social systems 'make sense' of their environments through the concept of re-

entry, that is, the distinction between system and environment is reproduced by the system in its communications as a 'system-generated environment . . . in a form that has meaning for that system' (King 2009, p. 79).

Each functional system distinguishes itself from its environment through its unique binary codes, which structure its communications and produce the boundaries of the system (Luhmann 2004). Without such operational closure, the system would have no way of distinguishing its own operations from those of its environment. Once law has selected a conflict applying its legal/non-legal code, it then applies its legal/illegal coding to that conflict and produces communications (decisions) based on this distinction (Luhmann 2004). The process of coding alone cannot determine how the code values (legal or illegal) are to be assigned, that is, it is an opposition with no content or a distinction with no meaning in itself (Luhmann 2004, p. 192, Nobles and Schiff 2004, p. 45). It is through the system's programmes (legislation, case law, rules of procedure and evidence) that the positive or negative code values are assigned to facts in the system's self-constructed environment (Luhmann 2004).

Because social systems are operationally and normatively closed to the external world, they cannot communicate directly with each other in the same way that people cannot communicate directly with a social system. However, society's subsystems are cognitively open, that is, they are dependent on other social systems producing authoritative communications on which they can rely and therefore can remain responsive to the external world (Paterson and Teubner 2005). A communicative event from one system or from a source external to social systems may constitute an 'irritation' or a 'perturbation' for another system.

Systems theory is, above all, based on the notion of observation and in particular, the partiality of observation (Luhmann 2013). Observation means the drawing of distinctions which indicate one side and not the other. By introducing the observer (one to whom we attribute a statement), Luhmann escapes the subject/object distinction and relativises ontology.

> [O]ntology is no longer the assumption of a reality that is shared, and of which it can be assumed that everyone sees the same facts . . . Instead, ontology becomes itself a schema of observation . . . on the basis of difference. . . . One always faces the question of who says a particular thing, and who does something, and from which system perspective the world is seen in a particular way (and no other). (Luhmann 2013, p. 99)

This does not mean that the world 'out there' does not exist and is simply an invention of social or psychic systems; rather, that the meanings by which we understand the world are structured through social and psychic systems' selectively reduced constructs of the external world (Paterson and Teubner 2005, Luhmann 2013).

The concept of structural coupling explains how communications produced by different systems can achieve a level of stability. Structural coupling describes communications that form stable patterns 'if a system presupposes certain features of its environment on an ongoing basis and relies on them structurally' (Luhmann 2004, p. 82). For example, political and legal communications are structurally coupled in the form of legislation. This should not be mistaken as direct communication between systems. Science cannot decide what is lawful or unlawful just as law cannot decide what is national policy. For people to participate in society, they need to operate socially, that

is, communicate, which occurs when consciousness is structurally coupled with communications through the mechanism of language (Luhmann 2013).

Purpose-specific programmes like the CA 1989 create problems for law's function of generating normative expectations as they expose its decisions to the risk of being assessed on its future consequences and 'branded as the causal factor [of harm]' (Luhmann 2004, p. 155). Law typically manages this risk by the form of conditional programmes – 'if X occurs then Y is legal', which prevents 'any future facts, not accounted for at the time of the decision, from being relevant to a decision concerning legal and illegal' (Luhmann 2004, p. 198). This immunises law's decisions against an invisible future. However, the welfare principle means that an assessment must be made through legal procedures of what is likely to benefit the child in the future, but it provides no conditions for determining how the selection between legal and illegal is to be made (Nobles and Schiff 2013).

Law has resolved this problem by selectively constructing child welfare science, which modern society has vested with sole authority to determine children's best interests, as providing a consensus within the scientific literature that continued contact between children and their biological parents after parental separation is 'good' for children's emotional, psychological and developmental health (King 1997, Barnett 2014). This selective construction has enabled law to observe itself as capable of advancing children's welfare by applying these scientific 'truths', despite the contingent, complex, ambiguous and contradictory body of clinical and social science research and literature that reveals no firm conclusions on how children's welfare on parental separation can best be served (Barnett 2014, Newnham 2015). It has enabled law to introduce a conditional programme that attributes a positive value to the contact side of the distinction, 'contact/no contact'.

The presumption of parental involvement is an example of power being second-coded through law through the structural coupling of law and politics in the form of legislation (Newnham 2015). This article will now examine how law has been communicating about the presumption of parental involvement since the Harm Panel report was published in June 2020, which had recommended that the statutory presumption should be reviewed to determine whether it should be revised or repealed.

The published judgments - methodology

A search was undertaken of the British and Irish Legal Information Institute (Bailii) database for all judgments published from 1 July 2020 to 31 December 2023 using the search terms 'child arrangements order', 'Section 1(2A) Children Act 1989', 'presumption of parental involvement', 'S 1(2A) Children Act' and 'Section 1(2A)' (with duplicates across search terms removed).[3] Cases which would not be expected to refer to the presumption, *and* did not refer to it, were removed from the initial sample of 381 cases, such as those to which other statutory schemes applied, proceedings relating only to costs, stand-alone fact-finding hearings, and committals for breaches of orders. The resulting sample of 52 judgments comprised five for July to December 2020, 11 for 2021, nine for 2022 and 27 for 2023.[4] The higher number of judgments published in 2023 reflects more judgments being published by the lower levels of the Family Court (District Judges, Deputy District Judges, Circuit Judges, Recorders), responding to encouragement

to increase publication (Transparency Implementation Group Anonymisation and Publication Subgroup 2023).

In order to examine whether judgments that referred to the statutory presumption differed from those that did not, all judgements published in 2023 dealing with child arrangements orders, relocation and non-Hague Convention return applications that did not mention the presumption were identified, producing a sample of 18 judgements.

The total sample of 70 judgments was analysed using a combination of qualitative content analysis and critical discourse analysis, which were considered the methods most appropriate to the application of systems theory. Together they provide a systematic method for observing, describing, interpreting and deconstructing the characteristics, patterns, forms of communications and system-specific constructions (White and Marsh 2006, Bryman and Bell 2011, Paterson 2017). Some pre-formulated codes were applied while others emerged from the review of the judgments.

The limitations of this methodology are that the judgments analysed cannot claim to be representative of all cases. They comprise a small fraction of the 45,257 private law children cases disposed of in 2023 alone (Ministry of Justice 2024). There is no way of knowing why the particular judgments in the sample were chosen for publication although judges should 'self-select cases that provide an accurate reflection of the work that they undertake' (Transparency Implementation Group Anonymisation and Publication Subgroup 2023, p. 6).

The inordinate length of the cases, the fact that most private law family cases are concluded without a contested hearing,[5] and other characteristics of the cases suggest that the sample of judgments reflects some of the most difficult, complex and intractable disputes dealt with by the family courts. However, the notable consistency of the structure and content of the judgements suggests that they are strongly indicative of how the statutory and de facto presumptions are, or are not, being applied. Additionally, the judgements covered a wide range of courts geographically, particularly since 2022. All nine of the 2022 cases and 20 of the 2023 cases were conducted in different courts across the country.

The published judgments – findings

The paradox of the undecidable decision

A problem for law is its self-description as a decision-maker which means that, for law, decision-making is compulsory 'even when there are no (good) reasons for deciding them: the prohibition of the denial of justice' (Nobles and Schiff 2013, p. 31). Decisions have a temporal dimension. Decisions are not decisions until interpreted as decisions. judgments provide a structure for unfolding 'the paradox of the undecidable decision' through the temporal dimension by way of further distinctions (Luhmann 2004, p. 289). The judgments analysed in this article communicated a series of distinctions which recursively distinguished law from its environment ('the facts' of the case), thereby progressively reducing the complexity of the environment. For example, summaries of and quotations from written statements and other documents and oral testimony can be observed as re-entry of the environment under the semantic, 'evidence'. Law then attributes its own operations as decisions which determine the presence of facts

(Luhmann 2004). Once findings are made, any facts or claims on the other side of the distinction, 'proved/not proved', are invisible to law, and any party to the proceedings who disputes the findings is observed as 'in denial'.

Characteristics of the cases

There was no discernable difference between the characteristics of the cases in which the statutory presumption was referred to (the 'presumption cases') and those in which it was not (the 'non-presumption cases'), other than two aspects of the case samples discussed below. Unlike Kaganas' (Kaganas 2018) earlier sample, the majority of the 70 judgments were delivered by judges sitting in the lower courts. Fifteen cases were heard in the Family Division of the High Court and 55 in the Family Court, which enabled most of the judgments to be reviewed without the additional filter of an appellate court's interpretation of the underlying decision. The types of cases focussed on by this study were applications for child arrangements orders which comprised the majority of cases in the two samples (55 cases, 19 for lives with orders, 36 for contact orders).[6] Eight cases dealt with international relocation and two were applications for the return of children from abroad under the inherent jurisdiction. Twenty-four cases also involved applications for Section 91(14) orders.

The main parties to 63 of the private law cases were the children's mother and father. The remainder involved a former female partner, the father and two family friends (the mother having passed away), and the mothers and a known sperm donor (two unrelated cases but with the same donor in each case).

There were proportionately more cases in which both parents were legally represented in the non-presumption cases than in the presumption cases, but more cases in which only the mother was represented in the presumption cases than in the non-presumption cases (see Table 1). Another difference between the two case samples was the high number of cases in the presumption sample in which the children were separately represented by a Guardian ad Litem (usually appointed from Cafcass but occasionally from NYAS), compared to the less than five percent of all private law children cases in which a Guardian is appointed (Hargreaves *et al.* 2022). Conversely, in none of the non-presumption cases was a Guardian appointed.

A striking feature of both samples of cases is the length of the proceedings compared to the average duration of 46 weeks for all private law cases (Ministry of Justice 2024). Of the 41 presumption cases in which the start date or year of the proceedings was identified, 56% ($n = 23$) had lasted three years or more, with two cases lasting seven years and two cases finishing after eight years. Only two cases finished in less than a year and five cases had not yet finished. Two thirds of the non-presumption cases lasted three years or more

Table 1. Legal representation of parents.

	Presumption cases	Non-presumption cases
Both parents legallyrepresented	19	11
Only mother represented	21	2
Only father/other parent represented	4	3
Neither parent represented	8	2

($n = 11$) and one case lasted the full nine years of the child's life. Three of the cases were still ongoing, and only one case finished in less than a year.

The statutory presumption of parental involvement

In the section of the judgments headed 'The Law', all the 52 presumption cases summarised or set out in full the statutory presumption of parental involvement, although in many cases this was in the briefest of terms, for example: 'I have well in mind the statutory presumption of parental involvement'.[7] In the section of the judgments setting out the reasons for the decision, the vast majority of judgments applied each item in the welfare checklist to 'the facts'. Some judgments also applied programmes such as Articles 6 and 8 of the European Convention on Human Rights ('ECHR') or Section 91A of the CA 1989 (if a Section 91(14) order had been sought). Notably absent from the majority of the judgments was any application of the statutory presumption of parental involvement to 'the facts'. The presumption could not be observed to have had any impact on the decisions of the courts.

In 11 of the judgments, the judges *did* base the reasons for their decisions on the statutory presumption, but in nine of the 11 cases the final orders were for no contact or indirect contact only to the eight fathers and one mother. In these cases, the presumption was referred to in order to explain why it was being disapplied. For example, in *Ms X v Mr Y* [2023] EWHC 3170 (Fam) Mrs Justice Lieven said:

> I have closely in mind the welfare checklist in the Children Act 1989 and the principle in s.1 (2A) of that Act that it is generally in a child's interests for both parents to be involved in their lives. . . . However, the evidence in this case is overwhelming that for the children to have contact with the F would cause them significant emotional harm. [48–49]

There were no cases in this sample in which the statutory presumption could be observed to assist a non-resident parent to gain or retain any 'involvement' with their child.

In *K v F* [2023] EWHC 680 (Fam) [37], Mr Justice Cobb said that the trial judge 'could perhaps usefully have further referenced the statutory presumption of parental involvement in a child's life: section 1(2A) CA 1989'. However, the appeal against an order for no contact with one child and indirect contact only with the other child was dismissed because Cobb J did 'not find that her failure to do so incurably undermines the decision' [37]. Here Cobb J was telling judges how to immunise their decisions from being observed as illegal.[8]

The 'de facto' presumption of contact

Only 12 of the 52 'presumption cases' made reference to, or quoted from, the case law that has given rise to the 'de facto' presumption of contact. The highest proportion of cases communicating the de facto presumption were in 2020/2021 (6 out of 16 cases = 37%). Only one case in 2022 cited the case law, and only five cases in the 2023 presumption sample did so (18% of 27 cases). Of these 12 cases, eight ended in orders for no contact or no direct contact between the fathers and children. All eight of these cases involved very serious findings of domestic abuse. Additionally, in *Z (A Child: Order for not contact: No. 2: Welfare Decision)* [2023] EWFC 61 the father was found to have

sexually abused the child, and in *Re MLD (Summary Dismissal of Child Arrangements Application)* [2023] EWFC 129 the father was serving a life sentence for murder. None of the 19 non-presumption judgments referred to any 'pro-contact' case law and four of the cases cited no law at all.[9] Yet the orders made did not materially differ from the orders made in cases which cited the statutory or case law presumptions, or both.

In a few cases, primarily those in which no contact was ordered, judges expressed sentiments about the importance of post-separation contact for the child. For example, in *P (a child: dismissal of application – abusive application)* [2023] EWFC 86 the judge, in ordering no contact and a Section 91(14) order said:

> I must factor into my decision-making that P ideally should know and spend time with his father. It is important for P in the future for his sense of identity and sense of self-worth that he knows who his father is and that he knows that his father cares about him. However, at this time, I cannot see any way that contact can take place in a safe way. [40][10]

Domestic abuse and child abuse

The most common form of harm that was alleged and/or found in both samples of cases was domestic abuse (52 cases). Nearly 80% of the 52 cases involved allegations of domestic abuse against fathers ($n = 41$ comprising 32 presumption cases and nine non-presumption cases), including cases in which cross-allegations of domestic abuse were made. Cross-allegations of domestic abuse were made in nine presumption cases and three non-presumption cases. There were no cases in either sample in which only the mother was accused of domestic abuse. Other forms of harm were child physical abuse (alleged against the father in four cases, against the mother in two cases and against the mother's female partner in one case), and child sexual abuse (alleged against the father in five cases).

PD12J was referred to in 26 of the 41 presumption judgments and in only one of the 12 non-presumption judgments. Nevertheless, fact-finding hearings (either separately or as part of the final hearing) were held in 30 of the presumption cases and nine of the non-presumption cases. The majority of fact-finding hearings in which the father was the alleged perpetrator of domestic abuse, including the cross-allegations cases, resulted in findings against the father (32 cases). Findings of domestic abuse against only the mother were made in one case (a cross-allegations case).[11] Findings against both parents were made in two cases. In two cases findings of child physical abuse were made against the father, and in three cases the father was found to have committed child sexual abuse (either because he was convicted in criminal proceedings or because findings were made in the family court proceedings).

Compared to the narrow constructions of 'domestic abuse' identified by earlier research and the Harm Panel report, a considerably wider range of behaviours were attributed as coercively controlling abuse by these judgments. For example, in *Re A and B (No 3) (domestic abuse – no direct contact – s91(14))* [2023] EWFC 192, findings were made against the father of rape, physical abuse and post-separation abuse that included secret CCTV recordings in the mother's home, a hidden tracking device in her car, publishing her address on Facebook, sending her harassing text messages and making silent phone calls.[12] The availability for the first time of a statutory definition in the

Domestic Abuse Act 2021 has provided judges with a programme for attributing a much wider range of behaviours as domestic abuse. Many of the 2023 judgments specifically referred to the statutory definition of domestic abuse. For example, in *TF v DL (Post Separation Litigation Abuse)* [2022] EWFC 139 the District Judge found that the father had 'used the vilest abuse against DL and sought to undermine every aspect of her personality and parenting. This amounts to domestic abuse in accordance with Section 1 (3)(e) of the Domestic Abuse Act 2021 being "psychological, emotional or other abuse"'. [56][13] None of the non-presumption cases referred to the statutory definition of domestic abuse but findings of serious coercive and controlling abuse were made in some cases.[14]

Parental alienation

In light of concerns identified by research and anecdotal evidence about the widespread deployment of allegations of PA, it was surprising to find that PA was raised in a minority of the sample cases. Allegations of PA were made in 28% of the presumption cases (n = 17) and in only three of the non-presumption cases. The mother was the alleged alienator in 14 of the presumption cases, with the father being accused of alienation in two cases, and the mother's female partner accused of alienation in one case.

Campaigners trying to influence the family courts have been compelled to frame their competing claims in the communication system of science, as it is child welfare science that law attributes with authority on 'the truth' about children's welfare (King 1997, Barnett 2014). This has led to a dispute over whether PA is scientifically diagnosable or whether it is pseudoscience. The High Court put an end to this dispute *in law* (but not in communications external to law) by correctly observing that it is not one that law can resolve, as it is science, not law, that can determine if something is scientifically true or false or even if it is science. McFarlane P in *Re C ('Parental Alienation': Instruction of Expert)* [2023] EWHC 345 (Fam) said that judges 'have, for some time, regarded the label of "parental alienation", and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. . . . the identification of "alienating behaviour" should be the court's focus, rather than any quest to determine whether the label, "parental alienation" can be applied'. [103]

Thereafter, a somewhat sceptical approach was taken to the concept of PA and its deployment in family court cases.[15] In *K v Y* [2023] EWFC 262 the judge made no findings of PA against the mother's female partner and said:

> I have intentionally stayed away from the term 'parental alienation' in this part of my judgment. Alienation is not something that can be diagnosed and, as the case law sets out, it is the behaviour and actions of a parent that need to be considered in the context of a particular case, rather than simply focusing on a label. [103]

Findings of PA or of 'alienating behaviours' were made in very few cases. In two cases (one in 2020 and one in 2021) the court found that the mother had alienated the child from the father,[16] and in a third case (in 2023) it was found that she had engaged in 'alienating behaviours' but the child had not been alienated.[17] By the time of the final hearings the children in all three of these cases had been removed from their mothers to live with their fathers. In two cases the court made findings of alienation against the fathers but had also made findings of domestic abuse against them. A feminist observer

might conclude that the fathers' 'alienating behaviours' in these two cases could more aptly be observed as part and parcel of their tactics of domestic abuse (Monk and Bowen 2021, Domestic Abuse Commissioner 2023).

Relatively few 'alienation experts' were instructed. Only six of the 17 presumption cases involved the instruction of an expert who subscribed to the PA belief system, and in three of these cases the expert's evidence was rejected.[18] None of the non-presumption cases involved the instruction of an 'alienation expert'.

Orders made

The orders most relevant to the statutory presumption and to risks of harm are analysed in the discussion that follows, namely, child arrangements orders, relocation orders, orders for the return of children to England and Wales under the inherent jurisdiction and Section 91(14) orders.

Lives with orders

Table 2 sets out the final orders made for the children's living arrangements where these could be identified in the judgments. The orders designated in Table 2 as 'lives with' orders are those that confirmed, rather than changed, the living arrangements at the time of hearing. The most common orders in both samples of cases were 'lives with' orders in favour of the children's mothers, followed by shared 'lives with' orders. Transfers of care were ordered in only four presumption cases (two to the mother and two to the father) and in only one non-presumption case (to the mother). None of the shared lives with orders provided for equal parenting time but were made to 'send a message' about the importance of both parents in the child's life.[19]

Of the seven cases which ended with the child/children living with the father or second female partner, the mother was granted unsupervised contact in one case,[20] supervised contact in four cases,[21] and no contact in one case (the mother having made it clear that she would not take up supervised contact).[22] *S (Parental Alienation: Cult: Transfer of Primary Care)* [2020] EWHC 1940, in which the mother's contact was suspended rather than terminated, was the only judgment in this cohort to have used the statutory presumption in its reasons (to explain why the presumption was being disapplied). The case of *Father v Mother* [2022] EWFC 204 ended in 2022 with the child remaining with her father, with the expectation that she would spend holidays with her mother. When the case returned to court the following year, the judge found that the father was 'alienating' the child from her mother and ordered an immediate change of residence to the mother.[23]

Table 2. Orders for children's living arrangements.

	Presumption cases July 2020 – December 2023	Non-presumption cases January – December 2023
Lives with to mother	10	5
Lives with to father/2nd female partner	3	2
Shared lives with	5	2
Transfer of care to mother	2	1
Transfer of care to father	2	0
Foster care	0	1

Spending time with (contact) orders

Previous court file-based research indicated that over the 10 years prior to 2017, indirect contact and no contact orders were made in about 10% of cases involving allegations of domestic abuse (Harding and Newnham 2015, Cafcass and Women's Aid 2017). A different picture emerged from the sample of judgments reviewed. Thirty-four of the presumption cases and 10 of the non-presumption cases involved various types of contact orders to the fathers. The most common orders in the presumption cases were for indirect contact only (16 cases) followed by supervised contact (eight cases). Unsupervised contact was ordered in only four cases, and orders for no contact in six cases. This means that 65% of the presumption cases involved orders for indirect contact or no contact and only 12% concluded with orders for unsupervised contact.

The non-presumption cases presented rather differently. Surprisingly, the non-resident parents in these cases fared better than those in the presumption cases. Sixty percent of these cases (six cases) concluded with orders for unsupervised, overnight contact, including cases where findings of domestic abuse had been made. Supervised contact was ordered in only one case, only three cases ended with orders for no contact, and there were no orders for indirect contact only. As noted above, none of the non-presumption cases referred to any of the pro-contact case law and most of the judgments only referred to the welfare principle and applied the welfare checklist. It is possible that the mothers in some of these cases were 'persuaded' to agree to direct, unsupervised contact in rather inauspicious circumstances,[24] but no other reason could be observed for this finding.

In half of the presumption cases ($n = 17$) and all three of the non-presumption cases where no contact or indirect contact only was ordered, the fathers had not had any direct contact with the children by the date of the hearing for a long time, in some cases for many years. The judges in these cases were not, therefore, being asked to terminate a current relationship between the parent and child but, effectively, to confirm the status quo.[25]

Relocation and return orders

Five of the presumption cases and three of the non-presumption cases involved applications by a parent for permission to remove the children permanently to another jurisdiction ('relocation cases'). Section 1(2A) does not apply to applications for relocation, which are governed by Section 13 of the CA 1989. However, it was imported into the law on relocation by Ryder LJ in *Re F (Relocation)* [2012] EWCA Civ 1364 when he observed that he had 'no doubt that [the presumption] will in future heighten the court's scrutiny of the arrangements that are proposed by each parent'. [34] Although some of the judgments discussed below referred to Ryder LJ's judgment in *Re F*, in all but two cases the reasons for the decisions did not include the statutory presumption.

In three of the presumption cases the mothers applied for relocation orders, which were granted in each case.[26] There were two cases in which the presumption appeared to have contributed to the court's decision. In *WS v KL* [2020] EWHC 2548 (Fam) the father successfully appealed against an order granting the mother permission to relocate the children to Hong Kong.[27] In *Father v Mothers & Ors* [2022] EWFC 204 the father's application to relocate the children to a country in Africa was refused, the judge having concluded that if the relocation was permitted, all the children would become estranged from the mother. Two of the non-presumption applications were made by mothers and the court granted the permission sought.[28] In the third non-presumption case, the father

was refused permission to relocate because he was observed to have frustrated the mother's contact with the children, and a lives with order was made to the mother.[29]

Two of the presumption cases involved applications by fathers under the High Court's inherent jurisdiction for return of the children to non-Hague Convention countries. One application succeeded (on the basis that the mother would return with the children to Nigeria and they would live with her).[30] One was refused, primarily because of the strong opposition of the children (aged 13 and 15) to returning to Qatar.[31] In neither of these cases could the statutory presumption be observed to have contributed to the courts' decisions. The one non-presumption case involving a return application, *T (A Child: Application to Permanently Relocate)* [2023] EWHC 545 (Fam), was not decided any differently from the presumption cases in refusing the father's application for the return of a child from Estonia (an Estonian court having already refused a return order under the Hague Convention).

Section 91(14) orders

Courts can make orders under Section 91(14) of the CA 1989 to restrict the ability of parties to continue litigation by prohibiting applications being made without the permission of the court. Research indicated that Section 91(14) orders were rarely made because the case law stipulated that they should be the exception rather than the rule and weapons of last resort,[32] and perpetrators' use of proceedings as a tactic of abuse was not understood by courts and professionals.[33] Responding to the recommendations of the Harm Panel report to reverse the exceptionality requirement, Section 67 of the Domestic Abuse Act 2021 introduced Section 91A into the CA 1989 under which the only criterion for the making of Section 91(14) orders is whether any specified applications would put the child or another person at risk of harm. Courts can also make Section 91(14) orders even if no one has applied for them.

No Section 91(14) orders were made in the sample of cases reviewed prior to the coming into force of the Domestic Abuse Act 2021 in April 2021. Thereafter there was an increase in the making of such orders, particularly since Section 91A came into force on 19 May 2022. Fifteen Section 91(14) orders were made in the presumption sample of cases against fathers and one was made against a mother. There were only two refusals to grant the orders (both cases having been heard before Section 91A came into force). In the non-presumption sample, five Section 91(14) orders were made against fathers, one was made against a mother and there were no refusals to grant them.

The statutory presumption did not appear to impact on the judges' reasons for making Section 91(14) orders and there was no observable difference between the presumption and non-presumption judgments in the way in which Section 91(14) orders were made. The statutory presumption is not expressed to apply to Section 91(14) orders, but it does not (yet) appear to have crept into Section 91(14) through the case law.

The vast majority of the cases in which Section 91(14) orders were made had been running for years, involving numerous applications and serious findings of domestic abuse against the fathers, and the fathers had not seen the children for years. Earlier case law observed Section 91(14) orders to be applicable based on the length of the proceedings and frequency of unmeritorious applications. This approach can be seen in the judgment of District Judge Webb in *TF v DL (Post separation Litigation Abuse)* [2022] EWFC 139 who said that 'it is essential that patterns of repeated litigation activity are

identified and appropriately dealt with as an interim issue in order to avoid the experience that DL has gone through in this case'. [64]

In subsequent cases, behaviour observed as using court proceedings as a form of abuse has re-entered law's environment as 'litigation abuse' or 'lawfare' (a term derived from the judgment of King LJ in *Re A (A Child) (Supervised Contact)* [2022] 1 FLR 1019).[34] In *In the Matter of W* [2023] EWFC 228 (B) District Judge Moan said:

> The chronology of previous litigation is nothing short of eye-watering. Applications have been made in 2014, 2016, 2017, 2018, 2020 and this case started in 2021 despite a two-year barring order being made by Her Honour Judge Dowding in August 2017. . . . [The father] has used whatever platform he has had at his disposal (i.e. the Court proceedings, social services referrals) to continue his own agenda and in the process has consistently abused mother. [18]

Litigation abuse was addressed extensively by Mr Recorder Tyler KC in *Re H (A Minor) (Child Arrangements: Section 91(14) Order)* [2023] EWFC 89: 'It is not necessary that there have been "repeated and unreasonable" applications. In this case there has been only one application in this court, albeit that it has taken an inordinately long time to dispose of it'. [14] The father was found to have used court proceedings in the UAE dishonestly and 'in a punitive and coercive way' and continued to do so [114]. Additionally, denial of findings was observed as a form of litigation abuse: 'to deny the truth of one's wrongdoing and so to put one's victim through the ordeal of a fact-finding hearing is, in my estimation, to weaponise legal proceedings; and to continue wholly to deny the truth of findings of abuse is abusive in itself'. [114][35]

Discussion

Even before the statutory presumption of parental involvement was enacted, the legal 'truth' that children 'need' to maintain a relationship with both parents after parental separation had developed sufficient redundancy (meaning that stays the same) with repeat use to develop into a principle or 'presumption'. This means that there is no need for law to make further reference to external authorities, and it can simply reproduce its earlier communications, thereby illustrating the autopoietic nature of the legal system (Nobles and Schiff 2013, Newnham 2015). Since the late 1990s, domestic abuse has been attributed as a 'cogent reason' to deny or restrict contact, but the narrow range of behaviours attributed as providing 'cogent reasons' in law's self-constructed environment has, until recently, achieved a high level of redundancy.

It is in this context that PA appeared to gain acceptance so quickly from approximately 2017, as it chimed with the presumption of contact. It was anticipated, therefore, that the judgments examined would demonstrate little change from Kaganas's (2018) review of the pre-2018 judgments, and if anything, they would reveal more strenuous enforcement of contact through the pro-contact case law and claims of PA. This was observed not to be the case. There has been a rapid surge in the variety and complexity of law and its environment recently, particularly in programmes that can have the effect of limiting, restricting or stopping parental involvement, most notably the Domestic Abuse Act 2021 but also the revised PD12J, Section 91A of the CA 1989 and new practice directions. We have also

seen the effect in law of challenges to the scientific status of PA and the credibility of PA 'experts'. On the face of it, the Domestic Abuse Act 2021 appears to have led to a sea change in communications about domestic abuse that have vastly expanded its scope and its 'relevance' to children, leading to a steep increase in orders for no direct contact.

To some extent, the judgments reviewed revealed little change from Kaganas's (2018) analysis of the presumption case law. The only purpose of the presumption appeared to be to enable law to immunise its decisions against the risk of being observed (by law) in the future as illegal rather than legal, by referring to (but not applying) it in the judgments. However, a shift could be detected in the few cases where the presumption was used to attribute reasons for the court's decision, in that it provided a basis for judges to articulate why they were *not* ordering contact or were reducing it. This resulted in further legal communications being generated confirming and extending the ambit of domestic abuse and its harm to children and resident parents, rather than expounding the benefits of contact and parental 'involvement'.

A very different picture was presented from the judgments reviewed by Kaganas (2018) with respect to the de facto presumption. Very few cases cited the pro-contact case law, particularly the most recent judgments in which only five out of 47 cases did so, and the cases that were cited were somewhat dated. In the non-presumption sample the pro-contact case law had disappeared completely. By failing to communicate the existing case law, and with no variety (new pro-contact case law), the high level of redundancy observed in the case law analysed by Kaganas (2018) appears to have almost dissipated, as far as the sample of judgments reviewed is concerned. The case-specific sentiments about the benefits of contact communicated by a few judges do not provide authoritative programmes that can be reproduced in further legal decisions. The most consistent programme applied in the vast majority of cases was the welfare checklist which gives rise to entirely fact-specific decisions and does not promulgate any redundancies for future cases.

As far as PA is concerned, the judgments analysed revealed a relatively low incidence of allegations of PA, rejection of the evidence of some PA 'experts', a sceptical approach to PA by some judges as well as the avoidance of using PA terminology. This suggests that feminist campaigners achieved some success in preventing law from attributing PA with the status of child welfare science.

A note of caution is required, however, from the perspective of a feminist observer, lest this analysis of the judgments appears over-optimistic. In a minority of cases domestic abuse was minimised and mothers were constructed as 'good mothers' for promoting contact, even in cases of proven domestic abuse. There *were* a few cases where children were removed from their mothers after findings of PA and in those cases the judges did not question its validity.

The most striking development concerns Section 91(14) orders, which can be observed as a legal programme for ousting law legally. The judgments reviewed revealed a big increase in the making of Section 91(14) orders, particularly since Section 91A of the CA 1989 came into effect. These orders respond to the construction of legal proceedings as encouraging conflict between parents which is seen as 'bad' for children (Kaganas 2011). They also respond to irritations from the economic system arising from cuts to legal aid causing a steep rise in litigants in person,

widespread court closures since 2010 and a significant shortage of judges, leading to immense pressure on the judiciary and huge delays in hearings (Fouzder 2022).

Most importantly, the enhanced understanding of litigation abuse and the increased number of cases in which Section 91(14) orders were made must be observed in the context of the length of these cases, many of which ran for years with numerous hearings. This suggests that the cases reviewed may, in fact, be at the point of the 'last resort' when there is 'no alternative' and that what has been observed is not the demise, but simply the final stage of the 'exhaust all avenues' approach.

This is a problem with time. 'For everything that happens, is happening now – and not in the past or in the future. Time horizons are empty horizons in relation to what is actually happening, and the only purpose they serve is to orient the present and move along with it' (Luhmann 2004, p. 131). Time is a dimension of meaning by the use of the distinctions, 'before/after' or 'past/future'. Just as law cannot see whether its decisions will be observed as legal or illegal in the future, it also cannot see whether its order will turn out to be final or temporary. Having selected the 'final' side of the distinction, 'interim/final', law is blind to the unmarked side in which lies the future containing the possibility of more applications and orders. Section 91(14) orders operate in the present to bind the future, they observe a future where more applications, more abusive litigation, will happen. The difficulty for judges is: at what point is there sufficient 'evidence' to predict more applications and abusive litigation?

Conclusion

The 'cycle of failure' discussed in this article, and the failure of the statutory presumption of parental involvement to serve its stated purpose 'are the product of [people's] unrealistic expectations of what is achievable, arising out of their insistence on a model of society and its operations which leads inevitably to disappointment' (King 1997, p. 18). If we recognise the impossibility of direct communications between social systems and of conscious systems communicating directly with society we can, according to King (1997), adjust our expectations to more modest levels by observing the operations of social systems and the environments they construct.

This analysis of the judgments has shown that the statutory presumption of parental involvement has had little, if any, benefit for parents seeking 'involvement' with their children and seems to have done nothing to restore the status of the family justice system or deter parents from litigating, goals it could not possibly achieve. Rather, what we have seen are the unintended consequences of attempting to steer society. The statutory presumption was observed to have been instrumental in restricting or terminating parental involvement by generating legal communications about domestic abuse and its risks for adult and child victims. This unintended consequence arises from the difference between the presumption's environment constructed by the political system, which is populated by sharing, caring dads, and its environment increasingly constructed by the legal system, populated by murderers, rapists, paedophiles and violent abusers.

For feminist campaigners, the success in preventing PA from being observed, by law, as having scientific status had the unintended consequence of a new construct re-entering law's environment – 'alienating behaviours'. Scholars have observed that the

application of 'alienating behaviours' can result in every action or inaction of a parent being designated as alienating behaviours 'regardless of whether the child actually rejects the other parent' (Sheehy and Lapierre 2020, p. 1).

Observing family law through systems theory is not intended to portray a wholly pessimistic view. On the contrary, as King (1997, p. 207) concludes, 'as far as changing society is concerned', while 'the most that any system, whether conscious or social, can achieve' are irritants or perturbations, 'even this may be quite an achievement'. The implementation of the Domestic Abuse Act 2021, the much broader construction of domestic abuse and litigation abuse by the family courts, and the increase in 'no contact' and Section 91(14) orders are remarkable achievements, at least as far as the judgments reviewed are concerned and until something changes in the unknowable future.

Those on the periphery of the legal system (such as mediators and family lawyers) who seek to dissuade mothers from litigating in its centre need to bear in mind that, while communicating in the legal system carries risks (of not being believed or of having engaged in 'alienating behaviours'), failing to communicate is equally risky. And while relying on law to achieve social change 'remains a high risk strategy . . . it would be riskier still to abandon it to those who are unconcerned with, or opposed to, the goal of gender equality' (Munro 2007, p. 84).

Notes

1. See, e.g. *M v M* [1973] 2 All ER 81.
2. See, e.g. *Re S (Contact: Promoting Relationship with Absent Parent)* [2004] EWCA Civ 18; *Re M (Children)* [2009] EWCA Civ 1216; *Re J-M (A Child)* [2014] EWCA Civ 434.
3. From 1st January 2024 all published judgments appear in the National Archives: https://caselaw.nationalarchives.gov.uk/.
4. See Supplemental Material for a full list of the judgments reviewed.
5. Previous research has indicated that more than three-quarters of final orders in child arrangements cases are made 'by consent' (Barnett 2020).
6. 'Lives with' orders used to be called residence orders; 'spending time with' orders used to be called contact orders. The term 'contact orders' has been used in this article for ease of reference.
7. *LKM v NPM* [2023] EWFC 118 [10].
8. See also the judgment of Baker J in *DG v KB & Anor (Re EMP) (A Child) (Rev1)* [2023] EWFC 180 [272].
9. See, e.g. *O (Children) (Privilege Against Self-Incrimination)* [2023] EWFC 14; *PJ v HB* [2023] EWHC 3400 (Fam); *MA v TA* [2003] EWFC 271.
10. See also *Re T (Child: Application to Permanently Relocate)* [2023] EWHC 545 [39]; *EH v FT* [2023] EWFC 159 [57].
11. *Re V and W (Children: Findings of Fact)* [2023] EWFC 233.
12. See also *Father v Mother &* Ors [2022] EWFC 204.
13. See also *EH v FT* [2023] EWFC 159 (B); *P v M & Ors* [2023] EWFC 254; *Re V and W (Children: Finding of Fact)* [2023] EWFC 233 (in which findings were made against the mother); *Re Daniel (Contact, enforcement, s91(14) orders)* [2023] EWFC 20 (B); *A Mother v A Father* [2023] EWFC 54 (B); *K v F* [2023] EWHC 680 (Fam).
14. See, e.g. *F v M (Rev 1)* [2023] EWFC 5; *O (Children) (Privilege Against Self-Incrimination)* [2023] EWFC 14.
15. *DG v KB & Anor (Re EMP (A Child) (Rev1)* [2023] EWFC 180; K v Y [2023] EWFC 262.
16. *S (Parental alienation: cult: Transfer of Primary Care)* [2020] EWHC 1940; *H (A Child) (Private Law: Adverse Findings)* [2021] EWFC B9.

17. *Re J (A Minor)* [2023] EWFC 35.
18. *B v C (Private law – allegation of parental alienation)* [2021] EWFC B61; P v M & Ors [2023] EWFC 254.
19. See K v Y [2023] EWFC 262; A v B (Private law final hearing – application for non-molestation order) [2023] EWFC 74.
20. *Cumbria County Council v A Mother & Ors* [2021] EWFC 196.
21. *M and J (private law final hearing)* [2021] EWFC 822; *H (A Child) (Private Law: Adverse Finding)* [2021] EWFC 891; *Re J (A Minor)* [2023] EWFC 35; *Re M (A Child) (No 2)* [2024] EWFC 99 (B).
22. *B (a father) v M (a mother)* [2023] EWFC 281 (B).
23. *A Mother v A Father & Anor* [2023] EWFC 163 (B).
24. See, e.g. *AF (A Father) v AM (A Mother)* [2023] EWFC 153; *O (Children) (Privilege Against Self-Incrimination)* [2023] EWFC 14.
25. See *D v E (Termination of PR)* [2021] EWFC 37; *K v F* [2023] EWHC 680 (Fam); *Re H (A Minor) (Child Arrangements: Section 91(14) Order)* [2023] EWFC 89.
26. *Re A (A Child) (Relocation)* [2020] EWHC 2878; *RD v TK (Relocation – BIIA – Transitional Provisions)* [2021] EWHC 489; *Re VB & LB (Children)* [2022] EWFC 60; *Re C (Parental Alienation: Permanent Removal to Germany)* [2023] EWHC 1995 (Fam).
27. See Paragraph 48 of the judgment of Knowles J.
28. *Re Amelia (A Child: Relocation)* [2023] EWFC 242 (B); *Re Sophia (A Child) (International Relocation)* [2023] EWFC 237 (B).
29. *In the matter of T, H & E (Re Child Abduction and Custody Act 1985 – Children Act 1989)* [2023] EWFC 297 (B).
30. Re P (Inherent Jurisdiction Return: Return Order: Welfare Analysis) [2023] EWHC 225 (Fam).
31. *MB v KB & Ors* [2023] EWHC 3177 (Fam).
32. *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573.
33. See Barnett (2020) for a review of the literature.
34. For an example of a case that referred to 'lawfare' see *A Mother v A Father* [2023] EWFC 54.
35. For similar judgments that observed litigation abuse see *A Mother v A Father* [2023] EWFC 54; *F v M & Ors* [2022] EWFC 64; *Re Daniel (Contact, enforcement, s91(14) orders)* [2023] EWFC 20; *Re H (A Minor) (Child Arrangements: Section 91(14) Order)* [2023] EWFC 89; *F v M & Ors* [2023] EWFC 172.

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