

Foreword to the fourth edition

The majority of separating couples manage to resolve their differences without recourse to litigation. To a greater or lesser degree, separation or divorce is always painful, at least for one party. But even if the outcome is rarely as ‘amicable’ as often asserted, for many people it is ultimately at least tolerable. Most separating couples and their children work out a way of getting along. One judge, now retired, told with me with a smile that he always cooked Christmas lunch for both of his wives and all of his children. (He was, I stress, a divorcé, not a bigamist.) That degree of amicability is perhaps unattainable in most cases, but it is indicative of a *modus vivendi* to which many would aspire.

For others, however, this is not their experience. Many have to go through a process of dispute resolution before the issues about children and finances are sorted out. A smaller number have to go to court. A very small proportion find themselves stuck in proceedings seemingly indefinitely.

The court system in which these litigants pursue their cases has been hit by a series of crises over the last ten years which has left it ill-equipped to deal with the work expeditiously – the impact of LASPO, a shortage of judges, the crumbling court estate, reductions in court staff, restrictions in sitting days, inadequate IT and, most dramatically, the Covid-19 pandemic. All this has resulted in undue and unacceptable delays. In proceedings involving children, so-called public law cases (concerning issues of child protection between local authorities and families) understandably take priority alongside cases about urgent medical treatment and child abduction. This leaves cases involving disagreements between parents about child arrangements and the division of parenting time at the back of the queue. In an era of diminished resources, it is unsurprising that it is these cases which have experienced the greatest increase in delays. At the time of writing, the average time taken to resolve these cases is 44 weeks. Over 80,000 children in England and Wales are currently in private children’s proceedings.

Hitherto, these cases have gone largely unnoticed because proceedings have always taken place in private. Now, the implementation of the reforms instigated following the Transparency Review published by the President of the Family Division is beginning to shed greater light on what goes on. Following an initial pilot in Cardiff, Cumbria and Leeds, the reforms are being extended to 16 other courts. As I write these words on 28 January 2024, staff at the Central Family Court are preparing to implement the new scheme next week. By the time these words are published, it will have been in effect in London and a dozen or so other courts across the country for several weeks. It will be interesting to see what gets published. Judges cannot and should not have any say in how newspapers and bloggers report what goes on in court, provided the rules and restrictions on anonymity are obeyed. So far, the focus has been directed to the courts’ treatment of allegations of domestic abuse, which continues to be a matter of concern to many people. There are, however, many other issues which are also worthy of attention – not least the efforts to steer separating parents away from court and into alternative ways of settling their differences – and it is to be hoped that expanded reporting will increase public interest and debate.

One other development we are all keeping an eye on is the progress of the Pathfinder Project which is trialling a different way of dealing with private children’s applications. The approach is investigative, with a more intensive involvement for Cafcass at the outset, focusing on the key issues about the child’s welfare, enabling the court more easily to hear the voice of the child, and directing cases to out-of-court dispute resolution processes where appropriate whilst being alert to allegations of domestic abuse which need to be brought to the court’s attention. So far the project has been confined to two pilot courts in North Wales and Dorset where under the leadership of the Designated Family Judges, respectively HH Judge Gaynor Lloyd and HH Judge Chris Simmonds, it has been dramatically successful in bringing about earlier resolution in the vast majority of cases. This coming year, the pilot is being extended to a small number of additional courts. The commitment of greater resources to achieve a resolution with the aim of saving money down the line is always an attractive idea but budget holders are understandably keen to ensure that the new approach really does work before making that commitment.

Whether you are a litigant in person struggling with the law in a dispute about your children, or a lawyer wanting to have all the relevant law at your fingertips, or an appeal judge with long experience in the field but who needs to be reminded of the latest developments, this well-designed and judiciously-edited Dictionary is an invaluable resource. I dare say that journalists and bloggers thinking of reporting on cases on the family courts may also find it illuminating. The editorial team is to be congratulated on updating it so assiduously once again.

The Right Honourable Lord Justice Baker

January 2024

Introduction to the 2024 edition

The *Dictionary of Private Children Law* was launched in 2021 – as a work in its own right and as a sister publication to the *Dictionary of Financial Remedies*, also published by Class Legal, whose stable has since grown to include the *Dictionary of TLATA and Inheritance Act Claims* and as of this year the *Dictionary of Public Children Law*, which we would heartily recommend to all those involved in that field of children law too.

The book has a distinctive A–Z dictionary format, giving the reader a portable, potted summary of the most commonly confronted topics and issues in private children law, and providing ready access to the relevant case-law, statutory sources and points of practice. Our overarching aim was to create a quick, user-friendly reference guide, to be consulted as and when the need arises, whether at court or otherwise.

The generous feedback that we received on our first three editions would suggest that we succeeded in that objective and that, as we had hoped, the *Dictionary of Private Children Law* has already become an invaluable tool for judges and practitioners working in the field.

As such, we are very happy to produce this fourth edition. Readers will note a modest expansion and allied retitling of two of the entries, introduced in light of recent case-law. **Contact: General Principles** has become **Contact and Shared Care: General Principles**, whilst **Parental Alienation** has now been renamed **Parental Alienation and Alienating Behaviours**, a title we suspect that will need to be kept under continuing review. We have also retitled **Judges Meeting Children** as **Children Meeting Judges** to reflect the relevant guidance as well as the purpose of those meetings. As before, all the entries from the last edition have been reviewed and updated, with the law stated as at 1 January 2024.

A digital edition for use on all computers, including tablets and smartphones, is also available via the publisher’s website, www.classlegal.com, with our citation of cases within the text adapted to make them more digitally accessible.

Our thanks go as ever to the publishing and editorial team, to Lord Justice Baker for his most kind foreword and to HHJ Edward Hess, one of our original co-authors, who now serves as overseeing Dictionary Series Editor.

We commend this fourth edition to you all and will be pleased to receive any comments and feedback from any of our readers.

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