

## In Practice

### Chronically Litigated Contact Cases: How Many are there and What Works?

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In 2010 we were asked by the Children and Families Committee of the Family Justice Council to review the international research on chronically litigated cases, especially effective interventions. These cases exercise policy-makers and practitioners because although they are uncommon they consume a disproportionate amount of the court's time and resources often without a satisfactory conclusion. Furthermore, these very entrenched and bitterly fought cases can have a devastating impact on the children. A very robust body of research evidence has now established that, although conflict per se is not necessarily problematic for children, prolonged exposure to frequent, intense and poorly resolved conflict, as typified by chronic litigation, is associated with a range of psychological risks for children including anxiety and depression, aggression and hostility and low social competence. This is as a result of children directly witnessing and possibly being implicated in the parental conflict and also indirectly with conflict having a negative impact on parenting.

We found, however, that there is very little systematic research in this field although there are some pointers towards best practice. We summarise here what we found about the numbers and characteristics of chronic litigation and the most promising interventions. The full report is published as J Hunt and L Trinder, 'Chronic Litigation Cases: Characteristics, Numbers, Interventions' (Family Justice Council, 2011).

#### What is 'Chronic Litigation'?

There is no accepted definition of chronic litigation. We define chronic litigation as private law cases that return repeatedly to court over a long period, whether in the form of fresh applications or very protracted proceedings, and that are also characterised by very high and ongoing levels of parental conflict.

#### How Common is Chronic Litigation?

There is surprisingly little data internationally on the extent of court use to pursue child-related matters post-separation or divorce. However, the picture is reasonably consistent across jurisdictions. On the whole only a minority of parents litigate, a small proportion return to court once but very few return repeatedly to court. In England and Wales litigants with five or more applications probably represent about 0.1% of all separating or divorced families and 1% of those who use the courts.

## What Characterises Chronic Litigation Cases?

It probably comes as no surprise that long-running cases are characterised by multiple problems and high levels of conflict. Research on the related concepts of ‘entrenched’ and ‘complex’ cases has highlighted the importance of psychological factors – the nature of the separation, coping and communication styles, mental health issues. Some researchers have also emphasised that whilst in the majority of cases both parents are ‘entrenched’, in some only one parent is responsible for sustaining the conflict while one parent seeks to disengage. Systematic research is needed however to test the extent to which these factors are indeed associated with long-running cases.

## Is it Possible to Identify Chronic Cases Earlier?

A New Zealand study gives some pointers towards identifying ‘complex’ cases which often involve lengthy or repeat litigation. Drawing on the characteristics identified in the research and practice literature and their own interviews with practitioners, the researchers divide the factors into:

- (1) *Those available to the court at/around the time an application is filed:*
  - The parties having been involved in a complex case previously
  - Multiple parties
  - Cross-applications
  - Ex-parte applications
  - Involvement of children’s services
  - Legally aided parties
  - Self-represented litigants
- (2) *Those evident in the affidavits filed:*
  - Voluminous and poor quality affidavits
  - Mental health issues
  - Allegations, particularly contested and unproven allegations, of child sexual abuse or domestic violence
  - Disputes involving relocation or property
  - Substance abuse
- (3) *Those which can be identified through contact with the parties:*
  - Personality problems
  - Strong beliefs and inflexible views

- Distrust of the other parent
  - Unwillingness to let the relationship go
  - High levels of conflict and hostility where the parties cannot communicate except through a third party
  - New partners
  - Wealth
- (4) *Those which became apparent as the case progresses:*
- Change of legal representative
  - Multiple applications
  - Refusal to attend counselling
  - Litigious parties who want their day in court and are not motivated to settle

The researchers also highlight that the quality and approach of the legal representatives, the way the case is managed by the judge and judicial continuity can also lead to a case becoming complex.

## Interventions for Chronically Litigating Families

There are a number of approaches that are being developed internationally, although as yet few have been rigorously evaluated. The three main approaches are:

### Delegated Dispute Resolution: Parenting Co-ordination

Parenting co-ordination (or 'Special Masters') is probably the most innovative 'solution' to the problem of chronic litigation and the one viewed as most promising by overseas experts. It is an umbrella term for a role which has become increasingly widespread in the US, where it originated. The parenting co-ordinator (PC) is a neutral professional, appointed by the court essentially to ensure that a parenting plan (ie a court order) is implemented in cases where repeated relitigation has occurred previously. The parent co-ordinator's role is multi-faceted, including educator, case manager and conflict manager. Importantly too the role includes an element of delegated decision-making with the PC authorised by the court to arbitrate, though within the framework set out by the existing court order/parenting plan and typically within the Association of Family and Conciliation Court guidelines for parenting co-ordination. There is some evidence that PC results in a reduction of re-litigation amongst chronic and entrenched cases and parents and professionals are reported to be satisfied with PC.

Despite the limitations of the research base it is an avenue that may be well worth exploring, possibly within the framework of the Family Assistance Order. It would also require 'buy-in' from the judiciary in relation to the (limited) delegation of decision-making powers, although, strikingly, this has not been problematic in the US. It must be emphasised, moreover, that the role is highly skilled and challenging, demanding a mix of both legal, psychological and dispute resolution knowledge and skills.

### Therapeutic Approaches

There are a number of therapeutic programmes that have developed internationally, involving group or individual counselling. Of these only the Alameda 'impasse mediation' model has been evaluated using a comparison group. The model uses a combination of mediation techniques, group education and counselling to try to address the underlying problems producing the stalemate. There are individual and group versions of the model. Crucially, in both the children are involved in the programme in addition to their parents. The programme was associated with reduced re-litigation and better communication. It is not suitable, however, for cases where there are serious allegations of abuse of serious character pathology. As might be expected it is a resource intensive programme of 25–40 hours and requires highly trained and experienced professionals with dual divorce mediation and child and family therapy backgrounds.

### Education and Skills-based Approaches

There appears to be a general recognition that parent education classes are not sufficient for the most troubled families and could be counter-productive. This has led to the development of a few specialised classes for high conflict couples. As yet there is little robust evidence of their effectiveness.

### Conclusions

There is little information about chronic cases and what research is available has suggested is that there are no easy answers. Although the Parent Information Programme (PIP) has now been made available to litigating parents, it is very unlikely that this short programme will be suitable to address the very complex needs of parents involved in chronic litigation. Although the evidence-base is not extensive, we would recommend that a small but carefully devised pilot of Parent Co-ordination, drawing on the US experience, might be the most effective way forward.