

## **Father Spared Threat of Jail after Son Refused to see Mother**

In a recent Court of Appeal case a father, represented by Rebecca Scammell of this firm, was spared the threat of jail after a family judge conceded that his “intelligent” 10 year old son was acting on his own wishes when he refused to see his mother.

The appeal arose from long running Court proceedings and at some point in those proceedings an order was made for the child to have visiting contact. The contact did not often take place. The mother, or another trusted individual, would turn up to collect the child, the father would open the door to them and call the child, who would then say he didn’t want to go. The father would neither encourage or hinder the contact taking place and argued that there was nothing he could do about the child’s refusal short of physically making him, which he believed would cause the child significant emotional harm.

The father was ordered to do unpaid work and pay compensation to the mother. When that didn’t work he was, in June 2010, given a suspended 28 day committal to prison after the judge concluded that “it was from [him] that the boy had picked up not only his view of his mother but the vocabulary in which he was expressing it”. Father appealed this decision.

The Court of Appeal quashed the suspended committal order and accepted that the child had formed his own opinions independently and learned to describe them in a sophisticated language.

The Court of Appeal concluded with the benefit of hindsight that the threat of imprisonment was “counter productive” and unlikely to encourage the boy to have contact with his mother.

Further, that the threat of his father being imprisoned had the effect of “placing an intelligent 10 year old in the position in which he can either keep his father out of prison, by grudgingly going to see his mother, or acquire a burden of guilt by persisting in his refusal and letting his father go to jail”.

The Court of Appeal states that nothing in the judgement should be seen as a reason not to use enforcement proceedings, including, where appropriate, by means of committal. However, anyone trying to persuade a court to use committal as an enforcement tool in hostile cases involving children who express firm views that they do not want to have contact will now face an uphill struggle.

If you would like further information about this case or children contact matters in general then please do not hesitate to contact us on 01285 653 261, or visit our website, [www.alisonfielden.co.uk](http://www.alisonfielden.co.uk) for further information.