



JUDICIAL
COLLEGE

Family Court Bench Book

.....

January 2018

CONTENTS

FOREWORD	6
INTRODUCTION	7
ACKNOWLEDGMENTS	8
SECTION 1 – THE FAMILY COURT	9
The family justice system.....	9
Jurisdiction.....	10
Constitution of the court (relating to magistrates)	12
SECTION 2 – GENERAL PRINCIPLES IN FAMILY CASES	14
Human Rights Act 1998.....	14
Diversity and fair treatment.....	15
Family Procedure Rules and Practice Directions.....	21
General principles in specific jurisdictions	23
SECTION 3 – ALLOCATION OF PROCEEDINGS	27
Oversight of allocation	27
Urgent applications and applications in existing or concluded proceedings	27
Public law – cases involving a local authority	27
Private law – children.....	28
Domestic abuse	28
Adoption	28
SECTION 4 – STARTING PROCEEDINGS	29
Applications	29
The response (private law cases only)	29
Hearings without notice	30
The first hearing.....	30
Interim hearings	31
SECTION 5 – PUBLIC LAW CASE MANAGEMENT PROCEDURE	33
Introduction	33
Public Law Outline 2014	34
Active case management	35
Timetables	37
The three court case management stages	38
Costs	44
SECTION 6 – PUBLIC LAW ORDERS	45
Introduction.....	45
Care plans	45
Types of child protection orders.....	46
Child assessment order	46
Emergency protection order	47
Recovery order	52
Police protection	53

Care and supervision proceedings	54
Education supervision order	64
Secure accommodation order.....	65
SECTION 7 – PUBLIC LAW – A STRUCTURED APPROACH	67
The threshold criteria	67
Considerations at final hearing	68
Before and during the hearing	69
SECTION 8 – PRIVATE LAW CASE MANAGEMENT PROCEDURE	76
Introduction.....	76
Key provisions of the Child Arrangements Programme 2014	76
The first hearing dispute resolution appointment (FHDRA)	78
Other considerations at the first hearing	79
Welfare reports (s.7 Children Act 1989).....	80
The dispute resolution appointment (DRA).....	81
The final hearing	81
Costs	81
SECTION 9 – CHILDREN ACT PRIVATE LAW ORDERS.....	82
Introduction.....	82
Section 8 orders and special guardianship orders	82
Risk assessments.....	82
The section 37 investigation and report.....	83
Parental responsibility order	84
Child arrangements order	86
Prohibited steps order.....	93
Specific issue order	95
Special guardianship order	96
Family assistance order.....	99
Declaration of parentage	101
SECTION 10 – PRIVATE LAW – A STRUCTURED APPROACH	102
Child Arrangements Programme: Flowchart.....	102
Prior to the hearing	104
At the hearing	104
SECTION 11 – FAMILY LAW ACT – DOMESTIC VIOLENCE ORDERS	112
Jurisdiction.....	112
Non-molestation order	112
Occupation order	114
Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs)	116
SECTION 12 – FAMILY LAW ACT – ENFORCEMENT POWERS	118
Power of arrest	118
Proving the breach.....	119
Enforcement powers open to the court	120
Breach of a Domestic Violence Protection Order	121

SECTION 13 – WELFARE CHECKLISTS	122
Introduction	122
Welfare checklist – Children Act 1989	122
Welfare checklist – Adoption and Children Act 2002	123
SECTION 14 – REASONS CHECKLISTS	124
Introduction	124
Emergency protection orders	125
Interim care/supervision orders	127
Care/supervision orders – final orders	129
Family assistance orders	131
Child arrangements orders	132
Enforcement orders	133
Breach of enforcement orders	136
Financial compensation orders	137
Prohibited steps/specific issue orders	138
Parental responsibility orders	139
Secure accommodation orders	140
Special guardianship orders	142
Placement orders	143
Adoption orders	145
Occupation orders and non-molestation orders	147
SECTION 15 – ADOPTION	149
Adoption proceedings	149
Adoption and placement	150
Placement orders	151
Conditions for making a placement order	152
Reports	152
Contact whilst subject to a placement order	152
Adoption	153
Conditions for making an adoption order	154
Reports	155
Leave to oppose an application	155
Consent	156
Dispensing with consent	157
Final hearings	157
SECTION 16 – THE USE OF EXPERT WITNESSES	158
Introduction	158
Locating and selecting the appropriate expertise	161
Medical expert witnesses	163
Psychiatrists	164
Psychologists	168
Other disciplines	171
Social work	172
Request for leave for experts	176

SECTION 17 – GLOSSARY OF TERMS AND INDEX OF CHILDREN ACT SECTIONS..... 178

 Glossary of terms..... 178

 Index of Children Act sections 194

SECTION 18 – HUMAN RIGHTS – A STRUCTURED APPROACH..... 195

APPENDIX A – PRACTICE DIRECTION 12J – CHILD ARRANGEMENTS AND CONTACT ORDERS: DOMESTIC ABUSE AND HARM 199

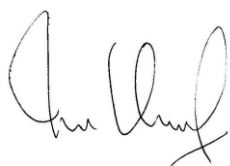
FOREWORD

This edition of the Bench Book has been produced to support the continuing cultural changes to the family justice system generated by the latest phase of the Family Justice Review. You remain key to ensuring that the Family Court operates smoothly and I sincerely hope that you will be able to make the most of your experience and training.

This bench book follows the same framework as its predecessor but incorporates changes up to January 2018. Thanks go to those who have produced it for providing a reference work suitable for use in the retiring room, at training events and also for private study. To supplement the Bench Book, you also have the benefit of the *Family Court Reference Cards* which set out guides to the most common applications.

Prior to the introduction of the Family Court, I visited every care centre. I was immensely impressed at how enthusiastically and with such determination and commitment everybody in the family justice system – local authorities, Cafcass/CAFCASS Cymru, court staff, judges (in whom, of course, I include you), justices' clerks/heads of legal operations and legal advisers, and the legal professions – has embraced the process of reform.

I know that you frequently put aside your personal commitments in order to fulfil your duty to ensure a child's safety. You decide difficult and sensitive cases affecting the future lives of all members of the families who come before you. I would like to pay personal tribute to your hard work and dedication and your invaluable contribution to the administration of family justice.



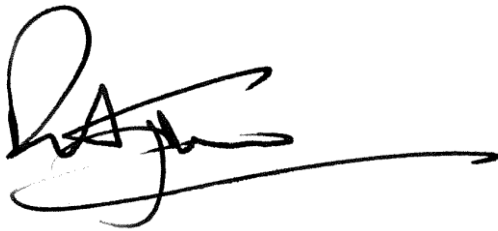
Sir James Munby
President of the Family Division
January 2018

INTRODUCTION

This is the fourth edition of the Bench Book. It continues to be used not only as a reference source on the bench and in the retiring room, but also as an invaluable tool for training. This edition brings it up-to-date as the law stands at January 2018.

The Family Court Bench Book will continue to be supplemented by the Family Court Reference Cards, which have been well-received as a ready source of information in court.

The Bench Book retains a glossary to help with unfamiliar terms. Finally, it is set out in the order in which cases present themselves to the court. The emphasis on effective case management during proceedings will be apparent and the final stage will be the use of the reasons at the end of each hearing.



His Honour Judge Robert Jordan
Magisterial Family Subcommittee, January 2018

ACKNOWLEDGMENTS

This, the fourth edition of the bench book, replaces but draws on the structure of the previous versions. Thanks therefore go to all the contributors to this and previous editions.

There have been many far-reaching changes to the family jurisdiction since April 2005 and the bench book has evolved in order to include these changes and update the original work.

SECTION 1 – THE FAMILY COURT

The family justice system

1. The Family Court was introduced by the Crime and Courts Act 2013¹ to ensure greater consistency and flexibility in the family justice system. The President of the Family Division leads the family judiciary and is supported in his leadership role by the Family Division Liaison Judges (FDLJs), who are High Court judges. They, in turn, are assisted by the Designated Family Judges (DFJs). DFJs are circuit judges who have a leadership role in their respective geographic areas to ensure that the Family Court works effectively, with their remit extending to magistrates and legal advisers. The expectation is that the DFJ will work closely with the Family Panel Chairman and the local family HMCTS legal lead. The justices' clerk/head of legal operations (HoLO) retains management responsibilities for the legal team.
2. A justice of the peace, if authorised to sit in family proceedings, will be a judge of the Family Court. There are four tiers of judiciary in the Family Court – magistrates, the district bench (district judges and district judges (magistrates' court)), the circuit bench and the High Court bench.
3. The functions of the Family Court or of a judge of the Family Court may be carried out by the justices' clerk/HoLO or their delegate. The functions that may be delegated are set out in legislation. These functions include advising magistrates on law, practice and procedure. It is clear that when carrying out these functions, the justices' clerk/HoLO or delegate has judicial independence. These functions must be carried out in accordance with the Bangalore Principles of Judicial Conduct (judicial independence, impartiality, integrity, propriety, ensuring fair treatment and competence and diligence).
4. There are rules that set out how family business should be distributed amongst the levels of judge. The process of cases being moved to the most appropriate level of judge is known as allocation. The President of the Family Division has

¹ Section 31A Matrimonial and Family Proceedings Act 1984 (as amended by the Crime and Courts Act 2013)

issued guidance on allocation of cases which assists with decision-making on allocation. The allocation decision must take into account:

- a. The need to make the most effective and efficient use of the local judicial resource and the resource of the High Court bench that is appropriate, given the nature and type of application;
- b. The need to avoid delay;
- c. The need for judicial continuity;
- d. The location of the parties or of any child relevant to the proceedings; and
- e. Complexity.

In practice, initial allocation will be dealt with by members of a gatekeeping team, made up of district judges and legal advisers. However, a judge of the Family Court may decide that the case should be heard by a different level of judge. (See Section 3 – Allocation of Proceedings)

Jurisdiction

5. The Children Act 1989 provides the basis for most applications in the Family Court. At its heart is the paramountcy principle which states that the child's welfare must be the court's paramount consideration when it is deciding any issue relating to a child's upbringing or property. For example, the Child Arrangements Programme in private law declares – "Children and young people should be at the centre of all decision-making. This accords with the Family Justice Young People's Board Charter"².
6. Magistrates also have powers to deal with maintenance between spouses and to make protective orders (to protect 'associated persons' and regulate the occupation of the family home). There are rules/orders and statutes, which govern the law and procedures in the Family Court. The main statutes that may need to be considered are:
 - a. Domestic Proceedings and Magistrates' Courts Act 1978

² https://www.cafcass.gov.uk/media/179714/fjypb_national_charter_1013.pdf

- b. Children Act 1989
- c. Family Law Act 1996
- d. Adoption and Children Act 2002

Public law and private law

7. Public and private law:

- a. *Public law cases* (e.g. care/supervision order applications) are those brought by the state, usually in the form of a Local Authority. They involve state intervention in family life which is necessary to protect the welfare of the child who is the subject of the proceedings.
- b. *Private law cases* (e.g. applications for child arrangements orders which will set out who the child is to spend time with and/or where they will live) are those brought by private individual family members. The applicant is unable to resolve their family problem concerning the child and so asks the court for an adjudication.

8. Other work dealt with includes:

- a. **Applications by spouses for financial provision for themselves.**
- b. **Non-molestation orders** to prevent domestic abuse.
- c. **Occupation orders** to keep a spouse out of the family home and involving, where appropriate, the use of powers of arrest.
- d. **Declaration of parentage**, allowing a court on application to make a declaration that a named person is the parent of another named person.
- e. **Adoption**, i.e. orders giving parental rights and duties in respect of a child to adoptive parents.
- f. **Enforcement** concerning, for example:
 - i. 1989 Act cases;

- ii. orders for financial provision for spouses. Also included under this heading is the enforcement of maintenance orders from abroad, and vice versa (known as 'reciprocal enforcement'). Maintenance for children has for the most part been dealt with by the Child Support Agency (CSA). The CSA has been gradually replaced by the Child Maintenance Service (CMS) which can charge when parents use its services. This regime has been designed to encourage parents to reach maintenance agreements between themselves.
 - iii. Child arrangements orders – enforcement may be by making an enforcement order, an order for financial provision or committal to custody.
- g. **Variation and enforcement of 'old' maintenance cases.**

Constitution of the court (relating to magistrates)

9. The Family Court must be made up of two or three magistrates from the family panel and, if practicable, include a man and a woman.

Family panel

10. Family panels are made up of magistrates authorised, or directly appointed, to hear family cases on the basis of their aptitude and personal suitability. In addition to their duties in the Family Court, members of the panel may serve in the magistrates' court, although requests can be made to sit exclusively in family work.

In order to apply for authorisation to become a family magistrate, the magistrate must have:

- observed at least two family courts, and
- demonstrated three criteria i.e. that they understand the different approach of the Family Court from the criminal court, that they have the commitment to sittings/meetings/training, and they have the ability to put the child's welfare first.

Panel Chairmen and Court Chairmen

11. The panel appoints its own chairman and can elect a deputy chairman. These roles carry significant leadership responsibility.
12. To preside in a family court, a family panel member must have attended the approved training course. It is not necessary to be an adult court chairman but the majority of family court chairmen also chair adult courts.

SECTION 2 – GENERAL PRINCIPLES IN FAMILY CASES

Human Rights Act 1998

1. The main rights guaranteed by the European Convention on Human Rights that are likely to be raised in family courts are enshrined in the following Articles.
2. **Article 6** (right to a fair trial). Article 6 also deals with the determination of civil rights and obligations. It sets out the entitlement of each individual to a fair hearing within a reasonable time by an independent and impartial tribunal established by law. Article 6 will be relevant in family proceedings when dealing with applications made without notice to other parties, questions concerning the disclosure of information, applications for leave to apply and the consideration of whether to proceed in the absence of one or more of the parties.

However, in children's or domestic abuse cases, where the risks are sufficiently grave and urgent, it may be entirely appropriate for the court to make orders without notice, but they should always be made for the shortest time possible. Provision should always be made for the application to be considered on notice within a short time.

3. **Article 8** (the right to respect for private and family life). Any interference with family life must be in accordance with the law, pursue a legitimate aim and be necessary and proportionate. Most applications involving children engage Article 8. Such a decision must be justified in terms of child protection and shown to be necessary and proportionate.
4. **Article 5 (1)** deals with the right to liberty and security. Such rights are engaged when the court has to deal with a secure accommodation order or committal for breach of an order, e.g. an occupation order. Both types of order are recognised as legitimate in appropriate circumstances.

Diversity and fair treatment

5. When taking the Judicial Oath, the newly appointed justice swears to ‘do right to all manner of people after the laws and usages of this realm, without fear, favour, affection or ill-will’. With this in mind, magistrates sitting in the Family Court will be aware of diversity and fair treatment issues and how they may affect the judicial process.
6. The *Equal Treatment Bench Book* is a vital resource to assist magistrates to understand and deal with these issues.
7. In particular, a magistrate specialising in family work needs to be able to demonstrate:
 - a. an understanding of their own personal values and assumptions about the family, such as what it means to be a father or mother, how fathers and mothers should behave or what constitutes family life, and
 - b. an ability to set aside those that are not relevant to the judicial process, so that they can recognise and respect the diversity of those entering the court (all manner of people) and treat them fairly (without fear, favour, affection or ill-will).
8. Magistrates in family cases must respect the diversity of lifestyles that exist in modern society and that no single family model is considered the ‘norm’.
9. Magistrates need to recognise that:
 - a. all families are unique with shared tendencies and idiosyncrasies
 - b. the family is the cornerstone of most communities and a key source of personal identity
 - c. differences in outlook amongst all families will exist in a diverse society
 - d. no major religion condones abuse – abuse is nearly always a combination of parenting failures

- e. if families suffer as a result of racism, it can add to the problems they encounter as a family
 - f. if someone has suffered racism at school, or from the police or social services, or at work, then what happens in the courtroom will probably be viewed with mistrust
 - g. same-sex couples can, as a matter of law, constitute an enduring family relationship
 - h. objective mainstream research shows that children brought up by lesbian or gay parents thrive as well as those brought up by heterosexual parents
 - i. families that do not conform to the traditional model are an increasingly common social reality.
10. Magistrates should also be able to demonstrate an ability to:
- a. identify the questions they need to ask and the steps they need to take in order to make decisions in the child's best interests, within a structured framework – this may include considering the needs of children (and their parents) who have specific physical/mental disabilities
 - b. identify disadvantaged and vulnerable people involved in, or directly affected by, the court process and take steps to address this disadvantage and minimise its effect
 - c. identify any other factors which will enable the court to demonstrate fairness such as:
 - i. whether or not any parties to the proceedings have a physical, learning or mental disability
 - ii. the religious beliefs of parties to the proceedings and what oaths or other provisions might be relevant
 - iii. any language considerations
 - iv. whether or not any parties suffer from poverty or social exclusion

- v. whether any parties are from a minority group including Roma, travellers, asylum seekers or refugees
 - vi. whether or not any women or girls in the proceedings are suffering from stereotyping of their roles or behaviour, for example, regarding child care, housework or paid work
 - vii. whether or not sexual orientation is a relevant feature of the case
 - viii. whether there are any other factors indicating that a party or witness is vulnerable.
- d. recognise and challenge any discriminatory remarks and unfair assumptions.
11. Magistrates will want to ensure that they are effectively communicating with everyone involved in the proceedings. Equally, they need to be confident that all parties to the proceedings accurately understand the material before them, the meaning of questions asked and answers given. This is particularly the case when there are litigants in person involved.
12. Ensuring fairness and equality of opportunity may mean providing special or different treatment.

Vulnerable persons involved in proceedings

13. The court and all parties must identify at the earliest possible stage in proceedings whether a party or witness is a vulnerable person. The factors the court is required to take into account when assessing vulnerability are:
- a. the impact of any actual or perceived intimidation of the party or witness
 - b. whether they suffer from mental disorder or have a significant impairment of intelligence or social functioning, have a physical disability or suffer from a physical disorder or are undergoing medical treatment
 - c. the nature and extent of any information before the court

- d. the issues arising in the proceedings including concerns about abuse – this includes domestic, sexual, physical and emotional abuse, racial and/or cultural abuse or discrimination, forced marriage or so called ‘honour based’ violence, female genital or other physical mutilation, abuse or discrimination based on gender or sexual orientation and human trafficking
 - e. whether a matter is in dispute
 - f. the age, maturity and understanding of the party or witness
 - g. their social and cultural background and ethnic origins
 - h. their domestic circumstances and religious beliefs
 - i. any questions which the court is putting to a witness on behalf of a party
 - j. any characteristic of the party or witness relevant to the participation directions.
14. The court must consider
- a. whether a party’s vulnerability is likely to reduce their ability to participate in proceedings
- and**
- b. whether a party or witness’s vulnerability is likely to diminish the quality of their evidence.
15. When deciding on vulnerability, the court is expected to seek the help of the parties and should consider the ability of the party or witness to
- a. understand the proceedings and their role in them when in court
 - b. put their views to the court
 - c. instruct their representative/s before, during and after the hearing; and
 - d. attend the hearing without significant distress.

16. If a party or witness is deemed to be vulnerable, the court must consider whether it is necessary to make 'participation directions'.
17. When deciding whether to make participation directions, the court must have particular regard to the factors set out at 13 above and also:
 - a. whether any measure is available to the court; and
 - b. the costs of any available measure.
18. 'Participation directions' can:
 - a. prevent a party or witness from seeing another party or witness
 - b. allow a party or witness to participate/give evidence by live link
 - c. provide for use of a device to help communication
 - d. provide for the assistance of an intermediary
 - e. deal with the structure and timing of the hearing, the formality of language to be used in court and whether the parties should attend court via different entrances and use different waiting areas.
19. If necessary, the court may consider sitting at another location, for example if live link facilities are only available at certain court buildings.
20. There are further requirements in respect of protected parties, that is, those who lack capacity to conduct proceedings, and children. Magistrates should always consult the legal adviser in those situations.
21. If the court decides that a vulnerable party or witness should give evidence there must be a 'ground rules hearing'³ in advance of the hearing where evidence is to be heard. The 'ground rules' hearing is to sort out how the vulnerable person will give their best evidence at the full hearing.

³ Equal Treatment Bench Book, Chapter 2 (Children, young people and vulnerable adults).

Litigants in Person/McKenzie Friends.

22. In the light of the growth of litigants in person in all levels of family court, guidance has been issued – *Practice Guidance: McKenzie Friends (Civil and Family Courts)* (July 2010). The Guidance provides a reminder that the attendance of a McKenzie Friend will often be of advantage to the court in ensuring the litigant in person receives a fair hearing. The Guidance states that a party who is not legally represented has the right to have reasonable assistance from a lay person, that there is a strong presumption in favour of permitting such help unless the court thinks that fairness and the interests of justice do not require it. A McKenzie Friend may:

- a. provide moral support for the litigant
- b. take notes
- c. help with case papers
- d. quietly give advice on:
 - points of law or procedure
 - issues the litigant wishes to raise in court
 - questions the litigant wishes to ask witnesses.

A McKenzie Friend may not:

- a. act on behalf of a litigant in person
- b. address the court/examine witnesses
- c. act as an agent in or out of court e.g. by signing papers.

If the McKenzie Friend wishes to have a right of audience/conduct the litigation then they must make an application in the particular case to the court. The Guidance suggests that a court should be slow to grant such an application, but may do so where there is good reason.

Transparency/Openness in Family Courts.

23. Accredited media representatives are allowed into family courts and to report on all proceedings, except adoption, placement and parental order proceedings and judicially assisted conciliation, but they are restricted on what they can report. In limited circumstances, which include the interests of the child concerned, media representatives may be excluded from the proceedings. The privacy of the children and families involved in family court cases is also preserved by rules relating to the confidentiality of all documents within a family case.
24. The rules allow parties to family proceedings, where necessary, to communicate information by confidential discussions with any person in order to seek advice and support. Information can also be disclosed in order to engage in mediation, to make complaints and for the purpose of approved research projects. There is a continuing debate on the extent of transparency in the Family Court, balancing privacy for families against the need for greater public understanding and confidence in the court system. In the Family Court, High Court and circuit judges must allow certain judgments to be published with the appropriate anonymisation.

Family Procedure Rules and Practice Directions

25. The Family Procedure Rules 2010⁴ bring together a number of different sets of rules that had previously set out the procedure for the High Court, the county court and the magistrates' court. The result is a comprehensive set of rules that cover the Family Court. The Rules are supported by Practice Directions which give additional guidance.
26. Overriding objective. The rules have the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved. The court must give effect to the overriding objective when it applies the rules.
27. Dealing with a case justly includes, so far as is practicable:
 - a. ensuring that it is dealt with expeditiously and fairly

⁴ http://www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu

- b. dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues
 - c. ensuring that the parties are on an equal footing
 - d. saving expense, and
 - e. allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
28. The parties must help the court to further the overriding objective, which it will do by actively managing cases.
29. Active case management includes:
- a. setting timetables or otherwise controlling the progress of the case
 - b. identifying at an early stage –
 - i. the issues, and
 - ii. who should be a party to the proceedings
 - c. deciding promptly –
 - i. which issues need full investigation and hearing and which do not, and
 - ii. the procedure to be followed in the case
 - d. deciding the order in which issues are to be resolved
 - e. controlling the use of expert evidence
 - f. encouraging the parties to use a non-court dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure
 - g. helping the parties to settle the whole or part of the case
 - h. encouraging the parties to co-operate with each other in the conduct of proceedings

- i. considering whether the likely benefits of taking a particular step justify the cost of taking it
 - j. dealing with as many aspects of the case as it can on the same occasion
 - k. dealing with the case without the parties needing to attend at court
 - l. making use of technology, and
 - m. giving directions to ensure that the case proceeds quickly and efficiently.
30. The powers of a single justice have been extended, in that any function under the Rules or Practice Directions can be performed by a single justice, except for those functions that are specifically excluded. The Justices' Clerks and Assistants Rules 2014 delegate certain functions of the Family Court, or of a judge of the Family Court, to justices' clerks and authorised legal advisers.

General principles in specific jurisdictions

Proceedings under the Children Act 1989

The welfare of the child (Paramountcy Principle)

31. When a court makes a decision about a child's upbringing or property, the child's welfare must be the court's paramount consideration.

No delay

32. In cases concerning a child's upbringing, the court must also have regard to the general principle that any delay in reaching a decision is likely to prejudice the welfare of the child.

Welfare checklist

33. When deciding what is best for the child in:
- a. a contested application concerning child arrangements, specific issue or prohibited steps (that is a s.8 Children Act 1989 application); or
 - b. an application to make, vary or discharge a special guardianship order or a care or supervision order

the court must have regard to the 'welfare checklist'. Where a court is deciding contested applications set out at a. above, or deciding on parental responsibility, if a parent can be involved in a child's life without putting the child at risk of suffering harm, then the court is to presume, unless the contrary is shown, that involvement of that parent in the child's life will further the child's welfare.

34. The checklist, which is not exhaustive, includes the following:
- a. the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding)
 - b. the child's physical, emotional and educational needs
 - c. the likely effect on the child of any change in circumstances
 - d. the child's age, sex, background and any characteristics that the court considers relevant
 - e. any harm the child has suffered, or is at risk of suffering
 - f. how capable each of the child's parents (or other relevant person) is of meeting the child's needs
 - g. the range of powers available to the court under the 1989 Act in the proceedings in question.
35. The welfare principle and welfare checklist do not, however, apply in certain cases e.g. secure accommodation applications (see checklists in *Section 14 – Reasons and welfare checklists*).

No order principle

36. A court should not make an order unless it considers that doing so would be better for the child than making no order at all.

Limiting litigation

37. The court can limit future applications by stipulating that the applicant must obtain the leave of the court before re-applying. This power should be used

sparingly but it may be appropriate where applications are being made too frequently and they are shown to be damaging to the child(ren) concerned. This order has no name but is made under s.91(14) Children Act 1989.

Parental responsibility

38. Parental responsibility is defined as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property'.

Proceedings under the Adoption and Children Act 2002

39. In coming to a decision relating to the adoption of a child, the paramount consideration of the court must be the child's welfare throughout their life. Whenever a court is considering under the Adoption and Children Act 2002 whether to make an adoption order, whether to dispense with parental consent in relation to placement and adoption orders or the granting of leave to oppose the making of an adoption order, the court must have regard to the 'welfare checklist' under this Act. (This is similar, but **not** identical to the checklist under the Children Act 1989.)
40. The general principle that any delay in the decision-making process is likely to prejudice the child's welfare also applies.
41. The welfare checklist, which includes the following, is not exhaustive:
- a. the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding)
 - b. the child's particular needs
 - c. the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person
 - d. the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant
 - e. any harm which the child has suffered or is at risk of suffering

- f. the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or adoption agency considers the relationship to be relevant, including:
 - i. the likelihood of any relationship continuing and the value to the child of its doing so
 - ii. the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs
 - iii. the wishes and feelings of any of the child's relatives, or of any such person, regarding the child
42. The court must also, when coming to a decision relating to the adoption of a child, consider the whole range of powers available to it and must not make any order unless it considers that making the order would be better for the child than not doing so.
43. Note that in Wales, when a child is being placed for adoption, an adoption agency (such as a local authority) must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

Other proceedings within the jurisdiction of the Family Court

44. The principles to be applied in other types of case, which tend to be less frequently encountered, are set out in the relevant sections.

SECTION 3 – ALLOCATION OF PROCEEDINGS

Oversight of allocation

1. There will be gatekeeping teams deciding on which level of judge should hear a case in (a) private law and (b) public law, although they may include the same personnel. The DFJ will lead the teams, with membership including the justices' clerk, district judges and legal advisers. The legal framework for allocation, setting out what the gatekeepers must consider, is included in the Family Court Guide⁵.
2. In public law, allocation decisions will be monitored by the DFJ with a consultation group to make sure that decisions are consistent and making the best use of resources.

Urgent applications and applications in existing or concluded proceedings

3. Generally, urgent applications are allocated to the first available judge. Applications in existing proceedings go to the level of judge dealing with those proceedings and, similarly, applications connected with concluded proceedings are allocated to the level of judge who last dealt with those proceedings.

Public law – cases involving a local authority

4. When a public law case is received, it is issued and allocated to the appropriate level of judge by a gate-keeping team made up of a legal adviser and a district judge. The expectation is that magistrates will not usually deal with cases estimated to last longer than three days. Other factors that would suggest that the case is not suitable for magistrates are allegations or risk of **serious** abuse, **serious** domestic abuse, significant disputed psychiatric or medical issues, a child giving evidence, capacity issues, a real possibility of conflict of expert witnesses or difficulty in resolving conflict in the evidence of witnesses and international proceedings.

⁵ <http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/fjc/guidance/familycourtguide>

Private law – children

5. Private law proceedings for orders under the Children Act 1989 may be allocated to any level of judiciary. Applications will be allocated by a legal adviser and/or district judge. Jurisdiction is not limited to the area in which the applicant, respondent or child resides although such factors may be relevant when considering whether to allocate to another location within the area or to transfer from one DFJ area to another. The applicant can, in theory, apply to any court. The starting point for allocation is that the gatekeepers will allocate all relevant private law cases to magistrates, unless they are of a type set out in the Schedule to the President's Guidance. The Schedule refers to allegations of **significant** abuse, **significant** factual matters in issue, capacity, a real possibility of joining a child as a party, disclosure, immigration issues, leave to remove from the jurisdiction, enforcement of orders made by judges other than magistrates, and cases where there is a real possibility of public law orders which on the public law guidance would be dealt with by other levels of judge. Again, the starting point is that magistrates will not deal with a case likely to last more than three days.
6. In private law proceedings, if the court orders a local authority to consider whether public law proceedings are necessary, a 'section 37 investigation' is ordered. If the local authority concludes they are necessary, proceedings should be started in the court that ordered the investigation.

Domestic abuse

7. Applications for non-molestation orders and occupation orders under Part IV Family Law Act 1996 can be allocated to any level of judge and the decision should be based on the general criteria for allocation set out in Section 1 above.

Adoption

8. Applications for adoptions should be started at the level of judge dealing with, or who dealt with proceedings relating to the same child, or if there were none, to magistrates. However, if the local authority is a party or the application is for an overseas or Convention adoption, the application should go to district judge level.

SECTION 4 – STARTING PROCEEDINGS

Applications

1. Almost all applications must be in writing on a prescribed application form. The form must identify who else is involved in the case, who needs to be a party to the proceedings and who needs notice that the case is going on.
2. The applicant must prepare the papers and bring or send them to the court. A court hearing must then be fixed, giving enough time to get copies of the paperwork to everyone who needs to know about the case. Case management starts the moment that the application arrives at the court office, and in each public law case up to two legal advisers will be nominated to be case managers.
3. In public law cases, the applicant (or their solicitor) is responsible for notifying everyone of the application and the hearing.
4. In private law cases, the court will serve the respondent with the relevant paperwork.
5. Once the matter is before the court, it will, of its own motion, often be able to make orders to protect the child and/or the parties. The legal adviser's advice should be sought.

The response (private law cases only)

6. Where there is an application for a child arrangements, special guardianship, specific issue or prohibited steps order, all respondents must prepare a response to the application. Copies must be sent to the court and to all involved in the case. However, it should be noted that statements or documents relied on must be authorised by the FPR, the Practice Directions or directed by the court.
7. In maintenance cases, both applicant and respondent must submit financial details in writing.

Hearings without notice

8. A hearing without notice, which used to be referred to as an ex parte hearing, is where the court hears only one side of the case when the other parties involved have not had notice of the hearing. In some emergency cases it is possible for courts to hear applications relating to prohibited steps or specific issues, or to make an emergency protection order without the usual notice being given. Such applications are most often made at the start of a case. These orders may be made by the court or, if a court is not sitting, by a single magistrate. Because of the implications of the Human Rights Act 1998, hearings without notice occur only in exceptional cases and, if an order is made, it should be for the shortest period possible. With the exception of an emergency protection order, the order will invariably be followed by a hearing on notice to reconsider the application.

The first hearing

9. In both public and private law cases, the first hearing may take place before a fully constituted court or, where only case management issues are to be decided, before a single magistrate or a legal adviser. It may be possible for the court to deal with the case at the first hearing. If this is not possible, a number of important questions must be decided. The first hearing can set the course of the case. The court's role as case manager starts here. Interim orders, until the matter can be finally resolved, may also have to be considered here. Such orders may have to be made at any stage throughout the proceedings. Refer to *Section 5 – Public law case management procedure*, for a more detailed account of what happens at such hearings.

Interim hearings

Public law cases

10. In public law proceedings, it may be necessary to make interim care orders to safeguard the child or preserve the status quo while reports are being obtained, assessments made or statements of evidence prepared. The court will specify how long any interim care order will last. It may last until disposal of the case. Nonetheless, their use should be monitored carefully to ensure that the case does not drift unacceptably. When an interim care order is made, the court can also make:
 - a. Directions about the medical, psychiatric or other assessment of the child that can include directing the placement of the child and parent(s) in a specialised unit so that the parenting abilities of the mother and/or father can be assessed in a supervised setting.
 - b. An exclusion requirement for a person to leave or not enter a house in which the child lives, or not to enter a defined area in which the house is situated. The person who is to care for the child in the house must consent to the requirement being made.

Private law cases

11. In any private law proceedings where a court has power to make a child arrangements, specific issue or prohibited steps order, it may do so at any time during the course of the proceedings even though it is not in a position to dispose finally of those proceedings. Also, the court may make orders to protect the children and parties from domestic abuse. The order is usually made 'until the conclusion of the proceedings' and, although not strictly an interim order, it has the characteristics of such an order. It may sometimes be in the best interests of the child for a temporary child arrangements order to be made pending the conclusion of the proceedings e.g. to settle where the child should live while a Cafcass/CAFCASS Cymru report is being prepared, or to test contact arrangements.

12. Where a child arrangements order is made, the court **must** also order parental responsibility (PR) if the child will be living with their father as part of the order and he does not already have PR. If as part of the order, the child is to spend time with the father rather than live with him, the court **must** consider the grant of PR.
13. Where a child arrangements order sets out that a child will live with someone other than a parent or guardian, that person will have PR for as long as that part of the order is in force.
14. Where the child arrangements order provides that a non-parent is to have contact with a child, the court **may** consider PR for them as long as the order is in force.

Stay of proceedings or decision

15. Magistrates may stay proceedings or a decision given. A stay brings proceedings to a stop (other than steps allowed by the rules or the terms of the stay). Once a stay is lifted, proceedings can be continued. It is likely that such applications will be made most often in the Family Court at magistrates' level when a decision has been made and there is an indication that an appeal is to be lodged against the decision.

Fees

16. For both private and public law applications, the applicant has to pay a fee in order to commence family proceedings. Private applicants who receive certain social security benefits or who are on a low income do not have to pay. There is a system of part remission of fees if an individual has a low disposable monthly income. Local authorities who start public law proceedings have to pay fees. For care/supervision order applications, there is a system of incremental fees.

SECTION 5 – PUBLIC LAW CASE MANAGEMENT PROCEDURE

Introduction

1. In any case concerning a child's upbringing, the court must have regard to the general principle that any delay in reaching a decision is likely to prejudice the welfare of the child. Decisions of the European Court of Human Rights emphasise the need under Article 6 of the European Convention for 'exceptional diligence' in this context. Practice Direction 12A, known as the Public Law Outline (PLO) 2014⁶, requires procedural fairness by the local authority i.e. early preparation and disclosure, which would include a letter before proceedings informing parents of the local authority's plan and what parents can do to avoid proceedings (save in emergency cases), an individual Timetable for the Child and identification of key issues for resolution by the court. The court is expected to facilitate the most effective means of ensuring that a case is fully prepared and dealt with at the earliest opportunity. Therefore, magistrates must adopt a proactive approach to the issues in the case.
2. Strong and effective case management is required throughout the proceedings in order to ensure that prompt and appropriate responses are given to any developments in the case. The legal adviser may conduct the early case management hearings and each court file must have a note of the name of the legal adviser(s) who is the case manager. The expectation of judicial continuity extends to the case manager.
3. The Issues Resolution Hearing should be the last case management hearing in the proceedings. The *President's Guidance on Continuity and Deployment* states that magistrates assisted by the legal adviser case manager should hear Issues Resolution Hearings and the Final Hearing which may follow on.
4. Where possible, magistrates and their case manager should conduct any contested hearing in all proceedings allocated to them.

⁶ Practice Direction 12A – Care, Supervision and Other Part 4 Proceedings: Guide to Case Management

Public Law Outline 2014

5. This general emphasis, on proper preparation by the local authority pre-proceedings and effective case management by the court once proceedings are issued, has been substantially reinforced in public law proceedings by the PLO 2014. **Each magistrate will have their own copy of the complete Practice Direction⁷.**
6. The PLO 2014 contains an outline of the order of the different stages of a case, what should be considered at the main case management hearings and the latest timescales for the main stages to take place in order to resolve proceedings within 26 weeks.
7. The Practice Direction further recognises that the key principles identified as underlying judicial case management and assisting the court to further the overriding objective are:
 - a. Timetable for Proceedings – each case will have a timetable for the proceedings set by the court in order to complete the case without delay and within 26 weeks. This timetable must take into account the welfare of the child and will take into account the ‘Timetable for the Child’ (see below) for this purpose.
 - b. judicial continuity – each case will be allocated to a case management judge or case manager (i.e. a nominated legal adviser).
 - c. active case management – each care case must be actively case managed with a view to furthering the overriding objective using appropriate case management tools, such as using the paperwork, which has been streamlined so that only relevant material is considered, hearings and Advocates’ Meetings to focus on what the proceedings are intended to achieve.
 - d. consistency of case management – each care case is to be managed in a consistent way in accordance with standardised steps, procedures and case management tools, including standard forms where appropriate, known as case management documentation.

⁷ <http://www.judiciary.gov.uk/wp-content/uploads/2013/02/PD12APLO-2014.pdf>

Active case management

8. The court must further the overriding objective by actively managing cases.
9. Active case management includes:
 - a. identifying the Timetable for the Child and the timetable for proceedings
 - b. identifying the appropriate level of judge to conduct the proceedings and allocating the proceedings as early as possible to that court
 - c. encouraging the parties to co-operate with each other in the conduct of the proceedings
 - d. identifying all facts and matters that are in issue at the earliest stage in the proceedings and at each hearing
 - e. deciding promptly which issues need full investigation and hearing and which do not and whether a fact finding hearing is required
 - f. deciding the order in which issues are to be resolved
 - g. identifying at an early stage who should be a party to the proceedings
 - h. considering whether the likely benefits of taking a particular step justify any delay which will result and the cost of taking it
 - i. directing discussion between advocates and litigants in person before the Case Management Hearing and Issues Resolution Hearing
 - j. requiring the use of a Case Management Order and directing advocates and litigants in person to prepare or adjust the draft of this order where appropriate
 - k. standardising, simplifying and regulating:
 - i. the use of Case Management Documentation and forms
 - ii. the court's orders and directions

- I. controlling:
 - i. the use and costs of experts
 - ii. the nature and extent of the documents which are to be disclosed to the parties and presented to the court in the form of bundles
 - m. whether and, if so, in what manner the documents disclosed are to be presented to the court
 - n. the progress of the case
 - o. where it is demonstrated to be in the interests of the child, encouraging the parties to use an alternative dispute resolution procedure if the court considers such a procedure to be appropriate and facilitating the use of such procedure
 - p. helping the parties to reach agreement in relation to the whole or part of the case
 - q. fixing the dates for all appointments and hearings
 - r. dealing with as many aspects of the case as it can on the same occasion
 - s. where possible, dealing with additional issues which may arise from time to time in the case without requiring the parties to attend at court
 - t. making use of technology, and
 - u. giving directions to ensure that the case proceeds quickly and efficiently.
10. Cases should be closely monitored to ensure that directions have been complied with. Prompt action should be taken whenever a time limit for compliance with a direction has not been met. The FPR also require the parties or their legal representatives to help the court to further the overriding objective. The expectation is that this will include monitoring directions and informing the court about any failure to comply/any other delay in the proceedings.

11. Experts (see *Section 16 – The use of expert witnesses*)

In all family proceedings relating to children, it is for the court to give permission for the instruction of experts. Guidance on the appointment and use of experts is set out in Practice Directions 25A, B, C and E and Part 25 of the FPR.

Timetables

12. The Children Act 1989 imposes a duty on all courts dealing with applications for care and supervision orders to draw up a timetable for the proceedings with a view to disposing of the application without delay and in any event within 26 weeks beginning with the date of issue of the application.
13. The Public Law Outline requires an individual timetable for each child, taking account of important events in the child's life, such as reviews by the local authority, educational changes, health care assessments, changes to the child's placement, significant changes in the child's social or family circumstances, and also sets out timescales within which the main stages of the process must take place.
14. The Public Law Outline sets out the four stages of a case (which includes pre-proceedings), the timescales within which they should be completed and the purpose of the main case management hearings together with the considerations for each stage. In addition, the emphasis on pre-proceedings preparation means that the local authority will start a case, other than in an emergency, having completed and gathered together the documents set out in the pre-proceedings checklist. These include:
- a. the documents specified in the annex to the application form:
 - i. social work chronology
 - ii. social work statement⁸ and genogram
 - iii. the relevant current assessments relating to the child and/or the family and friends of the child

⁸ The expectation is that social workers use the Social Work Evidence Template (SWET) with the aim of providing clear and analytical material to the courts – latest version June 2016.

- iv. care plan
- v. index of checklist documents (checklist documents are made up of evidential documents such as at b, c, d below and decision-making records as at e, f, g, h)
- b. previous court orders and judgments/reasons
- c. any relevant assessment materials
- d. interagency materials (e.g. health/education/immigration)
- e. pre-existing care plans (child in need plan, looked after child plan and child protection plan)
- f. key local authority minutes and records for the child
- g. records of key discussions with the family
- h. letters before proceedings.

The three court case management stages

15. The three stages in court are as follows:

a. Stage 1 – Issue and Allocation

On day 1, the court officer issues the application.

By day 2, the court must consider initial allocation and give initial case management directions so that the Case Management Hearing is effective.

b. Stage 2 – Case Management Hearing (CMH)

Not before day 12 and no later than day 18, the court should be holding the CMH, in order to identify issues and give full case management directions. At least two business days before the CMH, an Advocates' Meeting should be held to prepare a draft Case Management Order and identify any experts/draft questions for them.

There may be a Further Case Management Hearing (FCMH) but only if necessary and to be held as soon as possible and no later than day 25.

c. Stage 3 – Issues Resolution Hearing (IRH)

The IRH should be held in order to resolve and narrow issues and identify any remaining key issues. The timing of the IRH will vary, but must fit in with the Final Hearing being listed without delay and within 26 weeks of issue. No later than seven business days before the IRH, an Advocates' Meeting should be held in order to prepare/update the draft Case Management Order.

d. The Final Hearing

The date will be fixed in accordance with the Timetable for the Proceedings, having considered the Timetable for the Child. The issues should have been resolved or narrowed, as far as possible and any remaining issues will be determined at the Final Hearing, resulting in a final decision with reasons.

16. At Issue and Allocation – the court will take steps to ensure all the information needed for an effective CMH is available by checking what has been lodged/giving directions. The gatekeepers will allocate the case to the appropriate level of judge. A children's guardian will be appointed and a request made for the officer to prepare a case analysis for the CMH– this is a report prepared at the different stages of the proceedings to provide an evidence-based analysis of the issues that need to be resolved in the case including:

- a. threshold analysis – whether the case meets the 'significant harm' threshold
 - the risk analysis will cover the specific risks to the child
 - strengths in the family will be noted, including who the child can go to for security, growth and resilience
- b. case management advice

- any gaps in the evidence and additional assessments that are required should be highlighted, with comment on timetabling issues
- c. analysis of parenting capability to meet the child's needs
 - any gap in parenting capability should be defined, with reasons and whether it can be bridged in the child's timescale
- d. child impact analysis
 - this will cover behavioural, emotional and physical impact, the child's wishes and feelings, interim contact needs and the impact of the proceedings, including the impact of any potential delay
- e. early permanence analysis
 - this will include an analysis of the care plan (the proposed placement and contact framework)
- f. communication with the child by the court during proceedings, and
- g. recommendations for outcomes, in order to safeguard and promote the best interests of the child in the proceedings.

In drawing up the analysis, the guardian will consider the welfare checklist and apply an analysis of the checklist to the facts.

The Children's Guardian's Case Analysis and Recommendation will usually be in writing, but will be oral if there is insufficient time and should be completed in time for the Advocates' Meeting. The guardian or the court will also appoint a solicitor for the child, so that the child should have both legal and social work representation by the CMH.

Where a solicitor for the child has been appointed and a children's guardian has been appointed but not yet allocated by Cafcass/CAFCASS Cymru, the solicitor should play a leading role in case management issues to enable the smooth running of the proceedings and should also advise the court on whether

the local authority and the other parties have made out their cases on the evidence.

The gatekeepers will also:

- h. make arrangements for any urgent contested hearing
- i. give directions in relation to international/disclosure issues
- j. set the date for the next hearing (the CMH) and fix a date for an Advocates' Meeting prior to the CMH.

17. Advocates' Meeting prior to CMH – The advocates, including any litigants in person will consider the local authority documents and the Case Analysis and prepare a draft Case Management Order for the court, setting out the parties' positions and any disclosure or contested interim hearings that are necessary. The draft order must identify the Timetable for the Child, any delay in the proceedings and the reason for such delay and the key issues in the proceedings, together with the procedural directions which may be required to monitor compliance with directions/the timetable and to focus on what the proceedings are intended to achieve. It is also important that interim orders, findings made by the court or agreed by the parties and any undertakings are recorded. It also provides an opportunity to try to agree any questions to be put to any proposed expert. The local authority should take the lead in preparing and adjusting the draft order following the discussions.

18. The CMH – is the main hearing at which the court manages the case, identifies the key issues and gives full case management directions. The steps to be taken at this stage by the court will include:

- a. drawing up each child's timetable and the Timetable for Proceedings
- b. confirming allocation of the case
- c. identifying key issues and remaining case management issues and resolving those where possible
- d. identifying the evidence necessary to determine the key issues

- e. giving directions e.g. joinder of another person as a party/capacity issues/identification of family and friends as proposed carers and any overseas/immigration/jurisdiction/paternity/disclosure issues
 - f. deciding if there is a real issue about threshold to be resolved
 - g. identifying special measures
 - h. granting leave/giving directions for expert evidence if Practice Directions on experts and FPR have been complied with
 - i. checking directions to date have been complied with
 - j. directing filing of any threshold agreement, final evidence and care plan, responses to these and a Case Analysis ready for the IRH
 - k. setting a date for the IRH, an Advocates' Meeting, and if appropriate, a Final Hearing.
19. Advocates' Meeting/Discussion prior to IRH – This will be used to review the evidence and positions of the parties. It will identify the key issues, further evidence required, evidence that is relevant and witnesses needed at the final hearing and the extent of any contested hearing. Again, the local authority has responsibility for updating the draft of the Case Management Order and filing the updated version prior to the IRH.
20. The IRH – at this stage the court will:
- a. identify key remaining issues requiring resolution
 - b. consider whether the IRH can be used as the final hearing
 - c. scrutinise compliance with existing directions
 - d. make further directions, including for filing of final documentation and bundles
 - e. scrutinise the care plan

- f. review and confirm the child's timetable
 - g. resolve and narrow remaining issues
 - h. if any key issues remain outstanding, fix a Final Hearing where the relevant oral evidence can be heard and challenged.
21. The Final Hearing – will finalise the case, give reasons for any decision and make orders as appropriate. The court should also give directions regarding disclosure e.g. of papers to an adoption panel, of medical evidence to child's GP, of the court's written reasons to any expert.
22. The court is expected to adopt a proactive approach throughout the hearing. Time-wasting practices are to be prevented. Any statements filed should stand as evidence-in-chief, i.e. without the witness having to repeat the contents of the statement. Therefore, examination-in-chief should be confined to clarifying the statement or bringing it up to date.
23. The Practice Direction on bundles sets out what documentary information must be included at each hearing and how it should be presented. This has narrowed down what the court must consider to what is relevant to its decision. At the beginning of the bundle there should be:
- a. an up to date case summary of the relevant background to the hearing;
 - b. a statement of the issue or issues to be determined;
 - c. a position statement by each party;
 - d. an up to date chronology;
 - e. skeleton arguments, if appropriate;
 - f. a list of essential reading for that hearing; and
 - g. the time estimate.

24. Magistrates must read the documents set out in the essential reading list before the hearing starts. Once filed, a document may only be amended with the leave of the court.
25. The court can decide the order of the speeches etc. Generally, evidence will be given in the following order – the applicant will begin, followed by those with parental responsibility, anyone else who is a respondent, the children’s guardian and finally (if appropriate and very rarely) the child – these cases are likely to be dealt with by a different level of judge.
26. The legal adviser must note the substance of any oral evidence. Generally, all matters raised in oral evidence must have been disclosed in written statements and sent to everyone before the hearing.
27. The legal adviser, in consultation with the magistrates, must make notes of the reasons for the court’s decision and any relevant findings of fact. This document must be prepared before the decision is announced. The court, usually the chairman, must read out the findings of fact and reasons or a short explanation of the decision when giving the court’s decision.

Costs

28. The court has power after hearing representations to make orders for costs as it thinks just against any party or their legal representative. However, costs orders in family proceedings are extremely unusual.

SECTION 6 – PUBLIC LAW ORDERS

Introduction

1. In any family proceedings, the court has wide powers to make whatever order it regards as appropriate. For example, if in an application for an interim care order the court considers that a mother needs to be protected from domestic violence, it may grant a non-molestation order. The parties must always be given notice of the type of order that the court is considering and a bench should always take advice from its legal adviser before adopting such a course.

Care plans

2. These documents, in many ways lying at the heart of public law proceedings, are prepared by local authorities following government guidance.
3. *The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review* March 2010 (as updated) describes how local authorities should carry out their responsibilities. The care plan should set out:
 - a. the information about the long-term plan for the child, including timescales
 - b. the arrangements to meet the child's needs
 - c. details of the placement plan and why the placement was chosen
 - d. the name of the child's independent reviewing officer
 - e. details of the health plan and personal education plan
 - f. the wishes and feelings of relevant people (e.g. parents) about the arrangements for the child and any proposed changes to the care plan.
4. The care plan does not form part of any order to be made by the court, but before the court makes a care order it must consider the part of the care plan that relates to the long-term plan for the child's upbringing and arrangements for contact. The court is powerless to order a change in the care plan but, in the spirit of working together, a local authority should be prepared to modify a care plan, if the court expresses serious reservations about it.

Types of child protection orders

5. There are three types of order that can be considered by the court in cases where a child needs urgent protection:
 - a. a child assessment order
 - b. an emergency protection order
 - c. a recovery order.

Child assessment order

6. A child assessment order authorises a medical, psychiatric or other assessment of a child. It requires any person able to do so, to produce the child to a person named in the order, and to comply with any directions in the order relating to the arrangements for the assessment.
7. Only a local authority, the NSPCC or other 'authorised person' can apply.
8. The applicant has to do what is reasonably practicable to ensure that notice of the application is given to the child, their parents, carers and anyone with parental responsibility, or a contact order.
9. A children's guardian should be appointed, unless it is not necessary to do so to safeguard the interests of the child.
10. The child's welfare is the court's paramount consideration but the court does not have to apply the welfare checklist.
11. The court should not make an order unless to do so would be better for the child.
12. The court can make a child assessment order if it is satisfied that:
 - a. the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm, and
 - b. an assessment is required to enable the applicant to determine this question, and

- c. it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order.
13. If the court is satisfied that there are grounds for an emergency protection order and decides that it ought to make such an order, it must not make a child assessment order and may make an emergency protection order instead.
 14. If necessary, the order can include a direction that the child lives away from home for a specified period while undergoing the assessment and contact may also be regulated during this time.
 15. Although the order authorises any person carrying out the assessment to do so in accordance with the terms of the order, if the child is of sufficient understanding to make an informed decision, they can refuse to submit to the assessment.
 16. The order lasts for a maximum of seven days from a date specified in the order, and there can be no further application for a child assessment order within six months without the leave of the court.
 17. Persons specified in the Rules, and anyone entitled to notice, can apply for variation or discharge of the order.

Emergency protection order

18. Where it appears that a child is at risk of harm, an application may be made for an emergency protection order, in order to ensure the child's short-term safety. The serious nature of this order must be emphasised. If immediate separation of parent and child is contemplated to secure the child's safety, imminent danger must be established.
19. While the Rules provide for one day's notice of the application, it may be made with less notice, although such applications will need to be carefully scrutinised. An application for an emergency protection order will be allocated to the first available judge of the Family Court. An application without notice may be considered by a single justice, who may grant or refuse the application. Either

a court or single justice hearing an application without notice may direct that it will be heard on notice.

20. A children’s guardian should be appointed unless it is not necessary to do so, to safeguard the interests of the child.
21. A full note or recording of everything said at the hearing should be taken.
22. Anyone can apply for an order, including a local authority, an ‘authorised person’ such as the NSPCC or a police officer. However, the grounds for making the order differ according to the type of applicant:

Type of applicant	Grounds for making the order
Any person	There is reasonable cause to believe that the child is likely to suffer significant harm if they are not removed, or do not remain where they are.
A local authority	Enquiries are being made about the child and those enquiries are being frustrated by access being unreasonably refused, and access is required urgently.
An authorised person	The applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm and the applicant is making enquiries and those enquiries are being frustrated by access being unreasonably refused and access is required urgently.

23. The child’s welfare is the paramount consideration, but the welfare checklist does not have to be taken into account. However, consideration should always be given to the guidance issued in *X County Council v B* [2005] and *Re X* [2006] namely:
 - a. An emergency protection order, summarily removing a child from his parents, is a ‘draconian’ and ‘extremely harsh’ measure, requiring ‘exceptional justification’ and ‘extraordinarily compelling reasons’. Such an order should not be made unless the court is satisfied that it is both

necessary and proportionate and that no other less radical form of order will achieve the essential end of promoting the welfare of the child. Separation is only to be contemplated if immediate separation is essential to secure the child's safety: 'imminent danger' must be 'actually established'.

- b. Both the local authority which seeks and the court which makes an order assume a heavy burden of responsibility. It is important that both the local authority and the court approach every application with an anxious awareness of the extreme gravity of the relief being sought and a scrupulous regard for the European Convention rights of both the child and the parents.
- c. Any order must provide for the least interventionist solution, consistent with the preservation of the child's immediate safety.
- d. If the real purpose of the local authority's application is to enable it to have the child assessed, then consideration should be given to whether that objective cannot equally effectively, and more proportionately, be achieved by an application for, or by the making of, a child assessment order.
- e. No order should be made for any longer than is absolutely necessary to protect the child. Where the order is made on an application without notice, very careful consideration should be given to the need to ensure that the initial order is made for the shortest possible period, commensurate with the preservation of the child's immediate safety.
- f. The evidence in support of the application for an order must be full, detailed, precise and compelling. Unparticularised generalities will not suffice. The sources of hearsay evidence must be identified. Expressions of opinion must be supported by detailed evidence and properly articulated reasoning.
- g. Save in wholly exceptional cases, parents must be given adequate prior notice of the date, time and place of any application by a local authority. They must also be given proper notice of the evidence the local authority is relying upon.

- h. Where the application is made without notice, the local authority must make out a compelling case for applying without first giving the parents notice. An application without notice will normally be appropriate only if the case is genuinely one of emergency or other great urgency, and even then it should normally be possible to give some kind of albeit informal notice to the parents, or if there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on.
 - i. The evidential burden on the local authority is even heavier if the application is made without notice. Those who seek relief without notice are under a duty to make the fullest, most candid and frank disclosure of all the relevant circumstances known to them. This duty is not confined to the material facts; it extends to all relevant matters, whether of fact or law.
 - j. The court can hear oral evidence. But it is important that those who are not present should nonetheless be able to know what oral evidence and other materials have been put before the court. The court must 'keep a note of the substance of the oral evidence' and must also record in writing, not merely its reasons, but also any findings of fact.
 - k. The local authority, subject only to any direction given by the court, to allow a child who is subject to an order 'reasonable contact' with his parents. Arrangements for contact must be driven by the needs of the family, not stunted by lack of resources. The court needs to be aware of this when considering any directions in relation to contact.
24. The court should not make an order unless to do so would be better for the child.
25. The order lasts for a specified period not exceeding eight days, which can be extended once for up to seven days. In view of the serious nature of the order it should be made for the shortest period possible.
26. The order authorises the applicant to remove the child to, or to keep them in, a safe place.

27. The order gives the applicant limited parental responsibility in order to safeguard or promote the child's welfare.

Emergency protection order – exclusion requirement

28. An exclusion requirement can be included in the order where:
- a. there is reasonable cause to believe that if a particular person is excluded from the house where the child lives, the child will not be likely to suffer significant harm or the enquiries will cease to be frustrated, and
 - b. another person living in the house, whether a parent of the child or some other person, is able and willing to look after the child and consents to the making of the exclusion requirement.
29. An exclusion requirement is any one or more of the following:
- a. a provision requiring the relevant person to leave a house in which they are living with the child
 - b. a provision prohibiting the relevant person from entering a house in which the child lives, and
 - c. a provision excluding the relevant person from a defined area around the house in which the child lives.
30. The exclusion requirement may be for a shorter period than the other provisions of the order. The court may also attach a power of arrest to the exclusion requirement.
31. The court also has power to order a named person to disclose where the child is, or to allow the applicant to enter specified premises in order to search for the child. A warrant authorising the assistance of a police officer may be issued if entry is likely to be refused.
32. On making the order, the court can give directions concerning contact, the medical or psychiatric examination or other assessment of the child and whether a doctor, nurse or health visitor should accompany the applicant.

33. An application to discharge may be made to the court which made the order. Such an application is not permitted where the order has been extended or the applicant had notice of, and was present at the hearing when the original order was made.

Recovery order

34. A recovery order ensures that a child who is in care, under police protection or the subject of an emergency protection order and is missing is recovered.
35. A person with parental responsibility by virtue of an emergency protection order or a care order or, where the child is under police protection, a designated officer may apply for an order.
36. The child's welfare is the paramount consideration, but the welfare checklist does not have to be taken into account.
37. The court should not make an order unless to do so would be better for the child.
38. The court may make an order where it has reason to believe that the child:
- a. has been unlawfully taken, or kept away, from the responsible person who has care of the child by virtue of a care order, emergency protection order or police protection
 - b. has run away, or is staying away, from the responsible person, or
 - c. is missing.
39. A recovery order:
- a. operates as a direction to any person, who is in a position to do so, to produce the child on request to any authorised person
 - b. authorises the removal of the child by any authorised person

- c. requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a constable or an officer of the court
 - d. authorises a constable to enter any premises specified in the order and search for the child, using reasonable force if necessary .
40. A recovery order is open-ended. It remains in force until the child is recovered or the order is discharged.

Police protection

41. In addition to the powers of the court considered above, the police also have powers to take urgent steps to protect a child for up to 72 hours. As soon as practicable, after taking a child into police protection, the police officer concerned shall:
- a. inform the relevant local authority
 - b. inform the child, if they appear capable of understanding, of the action taken and what further action is intended
 - c. take such steps as are reasonably practicable to discover the wishes and feelings of the child
 - d. ensure that the case is enquired into by the 'designated officer'
 - e. secure the child's accommodation in either local authority accommodation or a refuge, if they are not already so accommodated. The local authority is under a duty to receive and provide accommodation for such children and 'certified' safe houses can now legally provide accommodation for children
 - f. inform the child's parents, anyone with parental responsibility for the child, and any other person with whom the child was living immediately before being taken into police protection, of the action taken and any further action planned.

Care and supervision proceedings

Interim Care Order

42. An interim care order enables the court to safeguard the welfare of a child until such time as the court is able to decide whether or not it is in the best interests of the child to make a care order. An interim care order establishes a holding position, after weighing all the relevant risks, pending the final hearing.
43. A local authority, the NSPCC or other 'authorised person' may apply.
44. A children's guardian should be appointed unless it is not necessary to do so, to safeguard the interests of the child. A solicitor must be appointed for the child.
45. The child's welfare is the court's paramount consideration and the court has to apply the welfare checklist.
46. The court should not make an order unless to do so would be better for the child.
47. The court can make an interim care order when:
 - a. adjourning an application for a care or supervision order
 - b. making a 'section 37' direction to investigate a child's circumstances.
48. The court may only make an interim order if it is satisfied that there are reasonable grounds for believing that:
 - a. the child concerned is suffering, or is likely to suffer, significant harm, and
 - b. the harm, or likelihood of harm, is attributable to:
 - i. the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them, or
 - ii. the child being beyond parental control.
49. Where the court is considering removal of a child from parental care under an interim care order, the case of *Re G (Interim Care Order)* [2011] 2 FLR 955,

should be referred to. The President summarised the authorities on removal as requiring the court to ask itself:

- a. whether the children's safety (using that term to include both psychological and physical elements) requires removal, and
- b. whether removal is proportionate in the light of the risks posed by leaving the children where they are.

The decision at the interim care order stage must be limited to issues that cannot await the final hearing.

50. The order places the child in the care of the local authority and gives the local authority parental responsibility for them. The authority must accommodate and maintain the child.
51. While the interim care order is in place, there is a presumption that the child will have reasonable contact with their parents, any guardian, including special guardian, anyone with parental responsibility or anyone who had a High Court order to care for the child or an order that the child was to live with them, immediately before the making of the care order. The court is under a duty to consider the arrangements for contact and to hear representations from the parties before making orders regulating or refusing contact.
52. An interim care order, if made when care or supervision proceedings are adjourned, can be made for any period that the court considers appropriate up to disposal of the application.
53. If an interim care order is made on the court giving a s.37 direction (asking a local authority to investigate a child's circumstances), the interim order can be made for any period up to:
 - a. If the local authority decides to start care or supervision proceedings, the date the application is dealt with.
 - b. If the local authority does not start proceedings, 8 weeks or the date that the local authority was to report its investigations to the court.

54. When determining the length of the order, the court must consider whether any party who was, or might have been, opposed to the making of the order has been able to argue their case fully.
55. When it makes an interim order, the court has the power to make directions concerning the medical or psychiatric examination or other assessment of the child. As part of an interim care order the court can order or prohibit any assessment of the child, alone or with others (s.38(6) Assessments). The House of Lords has held (2006) that in relation to residential assessments, the court was looking for information necessary to make a final decision regarding the child's future with the minimum of delay. The court will need to make findings in relation to the following before giving a direction under s.38(6) Children Act 1989:
- a. Is what is proposed truly an assessment and not treatment? There is no Article 8 right to be made a better parent at public expense.
 - b. Is the focus of the assessment on the child, and is the assessment contrary to the child's best interests, taking account of delay etc?
 - c. Is the assessment necessary to enable the court to discharge its functions and come to a decision?
 - d. Is it unreasonable for the local authority to fund such an assessment? (Where a party is publicly funded, the court cannot order them to contribute to the cost of the assessment.)

If the child is of sufficient understanding to make an informed decision they can refuse to submit to the examination or assessment.

Interim care order – exclusion requirement

56. Where the court makes an interim care order, the court may include an exclusion requirement in the order if:
- a. there is reasonable cause to believe that, if a particular person is excluded from a house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and

- b. another person living in the house, whether a parent of the child or some other person, is able and willing to look after the child, and consents to the making of the exclusion requirement.
57. An exclusion requirement is any one or more of the following:
- a. a provision requiring the relevant person to leave a house in which they are living with the child
 - b. a provision prohibiting the relevant person from entering a house in which the child lives
 - c. a provision excluding the relevant person from a defined area around the house in which the child lives.
58. The exclusion requirement may be for a shorter period than the other provisions of the order. The court may also attach a power of arrest to the exclusion requirement.

Care Order

59. A care order places a child in the care of the local authority and requires the authority to accommodate and maintain the child. It also gives the local authority parental responsibility for the child.
60. A local authority, the NSPCC or other 'authorised person' may apply.
61. The child's welfare is the court's paramount consideration and the court has to apply the welfare checklist.
62. The court should not make an order unless to do so would be better for the child.
63. A court may only make a care order if it is satisfied that:
- a. the child concerned is suffering, or is likely to suffer, significant harm, and
 - b. the harm, or likelihood of harm, is attributable to:

- i. the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them, or
 - ii. the child being beyond parental control.
- 64. Any local authority looking after a child is required to make arrangements for them to live with or near their family, unless it is not reasonably practicable and consistent with the welfare of the child.
- 65. The local authority acquires parental responsibility for the child which it shares with the parents. However, it can determine how a parent or guardian exercises parental responsibility in order to safeguard the child's welfare.
- 66. There are some statutory limitations on the local authority's powers e.g. it may not change a child's religious upbringing; it cannot give/withhold consent to adoption; it cannot appoint a guardian. It can only change a child's surname, or take the child out of the UK, with the court's permission or with the consent of all those with parental responsibility.
- 67. Before making a care order, the court must consider the arrangements that the local authority has made, or proposes to make, for contact with the child and invite the parties to the proceedings to comment on them.
- 68. While the care order exists there is a presumption that the child will have reasonable contact with their parents, any guardian or special guardian, anyone with parental responsibility and anyone who had a High Court order to care for the child or is named as having the child living with them as part of a child arrangements order immediately before the making of the care order. Decisions about contact, its frequency, duration and possible termination can only be made by the court.
- 69. A care order lasts until the child's 18th birthday unless it is brought to an end before that date.
- 70. A care order is discharged by the making of:

- a. special guardianship order
- b. an adoption order
- c. child arrangements order with respect to living arrangements
- d. a supervision order
- e. an application for the discharge of the order being granted.

On the making of a placement order a care order is suspended.

Contact with children in care

71. There is a presumption that a child in care will be allowed reasonable contact with those set out at para 68 above. As a matter of urgency, however, the local authority may withhold contact for a period of up to seven days, if it is satisfied that it is necessary to do so to safeguard or promote the child's welfare. Where there are disputes as to contact with children in care, an application must be made to the court.
72. A child is 'in care' if they have been placed in the care of the local authority by virtue of a care order, whether an interim or final order, made by a court.
73. The following have a right to apply for an order allowing contact:
 - a. the child or the local authority
 - b. the child's parent or guardian, including special guardian
 - c. any person with parental responsibility
 - d. the person in whose favour a child arrangements order relating to living arrangements existed immediately prior to the making of the care order
 - e. any person who immediately before the making of the care order, had care of the child by virtue of an order of the High Court under its inherent jurisdiction.
74. Anyone else can apply for contact with the leave of the court.

75. A children's guardian should be appointed unless it is not necessary to do so to safeguard the interests of the child.
76. The child's welfare is the court's paramount consideration and the court has to apply the welfare checklist.
77. The court should not make an order unless to do so would be better for the child.
78. Before making an interim or final care order, the court must consider the arrangements that the local authority has made, or proposes to make for contact with the child, and invite the parties to comment on them.
79. When making a care order or dealing with a case involving a child in care, the court can make an order concerning contact with a child in care even though no application for such an order has been made.
80. The court has a wide discretion as to whether or not it makes an order and, if so, on what terms.
81. The court can impose such conditions as it considers appropriate on the order.
82. The order lasts until the child reaches the age of 18, or the date specified in the order, unless it is discharged before that date.
83. The child, local authority or person named in the order may apply for variation or discharge.
84. The contact order ceases to have effect once the child is no longer in care and is therefore, discharged by the making of a child arrangements order with respect to living arrangements.
85. If an application for contact has been refused, the applicant cannot make a further application for six months unless the leave of the court is obtained.

Interim Supervision Order

86. An interim supervision order enables the court to safeguard the welfare of a child, until such time as the court is able to decide whether or not it is in the

best interests of the child to make a supervision order. An interim supervision order establishes a holding position, after weighing all the relevant risks, pending the final hearing.

87. A local authority, the NSPCC or other 'authorised person' may apply.
88. A children's guardian should be appointed unless it is not necessary to do so to safeguard the interests of the child.
89. The child's welfare is the court's paramount consideration and the court has to apply the welfare checklist.
90. The court should not make an order unless to do so would be better for the child.
91. The court can make an interim supervision order when:
 - a. adjourning an application for a care or supervision order
 - b. making a 'section 37' direction to investigate a child's circumstances.
92. The court must make an interim supervision order when it makes a child arrangements order with respect to living arrangements in care proceedings, unless the child's welfare will be sufficiently safeguarded without one.
93. The court may only make an interim supervision order if it is satisfied that there are reasonable grounds for believing that:
 - a. the child concerned is suffering, or is likely to suffer, significant harm, and
 - b. the harm, or likelihood of harm, is attributable to:
 - i. the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them, or
 - ii. the child being beyond parental control.
94. When it makes an interim supervision order, the court has the power to make directions concerning the medical or psychiatric examination, or other

assessment of the child. If the child is of sufficient understanding to make an informed decision, they can refuse to submit to the examination or assessment.

95. An interim supervision order, if made when care or supervision proceedings are adjourned, can be made for any period that the court decides appropriate up to disposal of the case.
96. If an interim supervision order is made on the court giving a s.37 direction (asking a local authority to investigate a child's circumstances), the interim order can be made for any period up to:
 - a. If the local authority decides to commence care or supervision proceedings, the disposal of the application.
 - b. If the local authority does not commence proceedings, 8 weeks or the date that the court directed the local authority to report the results of its investigation to the court.
97. When determining the length of the order, the court must consider whether any party who was, or might have been, opposed to the making of the order has been able to argue their case fully.

Supervision Order

98. A supervision order places the child under the supervision of a designated local authority, or officer such as a social worker or probation officer.
99. A local authority, the NSPCC or other 'authorised person' may apply.
100. A children's guardian should be appointed unless it is not necessary to do so to safeguard the interests of the child.
101. The child's welfare is the court's paramount consideration and the court has to apply the welfare checklist.
102. The court should not make an order unless to do so would be better for the child.
103. A court may only make a supervision order if it is satisfied that:

- a. the child concerned is suffering, or is likely to suffer, significant harm, and
- b. the harm, or likelihood of harm, is attributable to:
 - i. the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give them, or
 - ii. the child being beyond parental control.

104. The supervisor is under a duty:

- a. to advise, assist and befriend the supervised child
- b. to take such steps as are reasonably necessary to give effect to the order, and
- c. to consider whether or not to apply to the court for its variation or discharge, where:
 - i. the order is not wholly complied with, or
 - ii. the supervisor considers that the order may no longer be necessary.

105. The court can include directions in the supervision order requiring the child and 'the responsible person' to act in a particular way.

106. A court shall not include in the order, a requirement concerning the examination or treatment of a child unless it is satisfied that, where the child has sufficient understanding to make an informed decision:

- a. they consent to its inclusion, and
- b. satisfactory arrangements have been made for the examination or treatment.

107. The order initially lasts for up to one year and it may be extended on more than one occasion. The maximum length of the order is three years.

108. The order cannot continue after the child's 18th birthday.

109. The order can be discharged by:

- a. a care order
- b. an application for discharge made by the child, any person with parental responsibility or the supervisor being granted.

Education supervision order

110. An education supervision order places a child under the supervision of a designated local education authority.

111. The local education authority must consult the appropriate local authority before making an application.

112. The child's welfare is the court's paramount consideration and the court has to apply the welfare checklist.

113. The court should not make an order unless it thinks that to do so would be better for the child.

114. The court must be satisfied that the child is of compulsory school age and is not being properly educated.

115. An education supervision order cannot be made in respect of a child in local authority care, although it can coexist with a supervision order.

116. The supervisor is under a duty to advise, assist and befriend, and to take such steps as are reasonably necessary to give effect to the order.

117. The child, and the parent(s), if asked, may be required to keep the supervisor informed of any change of address and to allow the supervisor to visit the child wherever they are living.

118. If directions are not complied with, the supervisor must consider what further steps to take in the exercise of the powers under the Act.

119. If the child persistently fails to comply with any direction given under the order, the local education authority must notify the local authority, who must investigate the circumstances of the child.
120. A parent who persistently fails to comply with a direction given under an education supervision order is guilty of an offence.
121. The order lasts for one year but it may be extended for up to three years and there can be more than one extension.
122. The order automatically ceases on the making of a care order, or when the child reaches 18 years of age.
123. The child, parent or the local education authority can apply for the order to be discharged.

Secure accommodation order

124. A secure accommodation order restricts the liberty of a child being looked after by a local authority, by placing or keeping the child in secure accommodation.
125. The local authority looking after the child or the health authority, National Health Service trust or local education authority providing the child with accommodation may apply for such an order.
126. The child, and all those with parental responsibility, should be notified of the application.
127. A children's guardian should be appointed unless it is not necessary to do so to safeguard the interests of the child.
128. The court may not make a secure accommodation order if the child is unrepresented, unless the child has been informed of their right to legal aid and has failed or refused to apply.
129. An order may be made where it appears that the child:

- a. has a history of absconding, and is likely to abscond from any other type of accommodation and, if they abscond, are likely to suffer significant harm, or
- b. is likely to injure themselves or others, if kept in any other type of accommodation.

130. Where the court finds the criteria satisfied it is required to make an order. The welfare principle and the welfare checklist do not apply.

131. The order should be for no longer than is necessary. The court must make findings of fact, and give reasons for the length of the order made.

132. A child may be kept in secure accommodation for a maximum of 72 hours without a court order, but if longer is required an application to the court must be made.

133. The court may make an order for up to three months on a first application and up to six months on any further application.

134. An order cannot be made unless the child is legally represented, or has been told about the right to apply for legal representation and has refused or failed to apply.

135. A child under 13 cannot be placed in secure accommodation without the approval of the Secretary of State.

SECTION 7 – PUBLIC LAW – A STRUCTURED APPROACH

The following points need to be taken into account at the hearing.

The threshold criteria

1. The applicant for a care or supervision order must establish, on a balance of probabilities, that the threshold criteria have been met. Without that, no care or supervision order can be made. The court will only be able to make a care or supervision order if it is satisfied that, at the time the local authority took action to protect the child (either by direct intervention or by making its application for the care order):
 - a. the child was suffering/likely to suffer significant harm, and
 - b. the harm/likely harm was attributable to:
 - i. either the care, or likely care if no order were made, not being what it would be reasonable to expect of a parent, or
 - ii. the child being beyond parental control.
2. These are known as the ‘threshold criteria’.
3. In some cases, the parents concede that the threshold criteria are satisfied on the basis of facts agreed by all parties and filed at, or before the hearing. Nevertheless, the court must satisfy itself that the evidence before it proves the facts that establish the threshold criteria, and state the findings in their reasons. Where concessions are made, they can be taken as having evidential value and a contested hearing will not be necessary.
4. Where concessions are made, they should be recorded in writing and kept on the court file. If made prior to the Final Hearing, they will be part of a Case Management Order.

Considerations at final hearing

5. The final hearing of an application must deal with the following (see the case of *Re W* [2013] EWCA Civ 1227):
 - a. What are the key issues that need to be determined for the final decision to be made?
 - b. Are there facts which if found, are sufficient to satisfy the threshold criteria? The court is concerned with making findings of fact and assessing whether the criteria are satisfied. The child's welfare is not the court's paramount consideration in deciding whether the threshold criteria are made out.
 - c. What are the findings of fact in respect of the key issues identified?
6. The court will then use its decision in relation to those points to answer the following three questions:
 - a. What is the harm and/or likelihood of harm
 - b. To what is the harm or likelihood of harm attributable
 - c. What will be the best for the child?
7. In relation to the question 'What will be the best for the child?', the local authority must produce the relevant evidence, setting out the services that are available for each placement option and each order being considered by the court.
8. Based on this information, the court will determine what is best for the child by considering:
 - a. What is the welfare analysis of each of the placement options that are available
 - b. What is the welfare evaluation, that is the best option among those available, and
 - c. What orders are proportionate and necessary, if any?

If the threshold criteria are satisfied, how should the case be disposed of? Should the court make a care order, some other order or no order? This involves the exercise of discretion – the child’s welfare is the court’s paramount consideration and the welfare checklist must be addressed in the analysis.

9. The expectation is that local authority witnesses, guardians and court-appointed experts will deal with the issues identified by the court, so that the court can conduct a complete analysis on the same occasion as making findings.
10. It should be noted that if the local authority is applying for the grant of a care order with a care plan of adoption, then that is an option of last resort to be made only in circumstances when, having considered all realistic options, nothing else will do.⁹

Before and during the hearing

Read the evidence prior to the hearing

11. Before the hearing, the magistrates will receive an indexed bundle of documents prepared by the local authority as set out below. The essential reading will be identified in one of the preliminary documents.
12. At the front of the bundle there will be what are known as the ‘preliminary documents’ –
 - a. an up to date case summary of the relevant background to the hearing
 - b. a statement of the issue or issues to be determined
 - c. a position statement by each party, including a summary of the order or directions sought by that party
 - d. an up to date chronology
 - e. skeleton arguments
 - f. a list of essential reading, and

⁹ [Re B \(Care Proceedings: Appeal\) \[2013\] 2 FLR 1075](#)

- g. the time estimate.
13. Copies of all authorities relied on must be contained in a separate agreed bundle.
 14. The documents in the bundle shall be arranged in chronological order in the following sections:
 - a. preliminary documents (see above) and any other case management documents
 - b. applications and orders
 - c. statements
 - d. care plans
 - e. experts' reports and other reports (including those of the children's guardian), and
 - f. other documents.

Establish the issues before the court

15. The court must establish what issues it is being asked to decide, and whether the threshold criteria are conceded. Is the court to undertake a 'split hearing'? (Split hearings can have serious disadvantages and the advice of the legal adviser should be sought.)

Hear the oral evidence

16. First, the applicant opens the case.
17. The parties give their evidence in the following order, unless the court directs otherwise:
 - a. the applicant (usually the local authority)
 - b. respondents with parental responsibility (usually the parents)

- c. other respondents (e.g. grandparents)
 - d. the children's guardian
 - e. the child, if appropriate (this is very rare).
18. The written statement of a witness forms the basis of their examination-in-chief, though supplemental questions may be asked by their advocate. The witness is cross-examined by the other parties and, if necessary, re-examined by their advocate.
19. The court can direct the order of closing speeches which are usually made in the following order:
- a. the respondents
 - b. the applicant
 - c. the children's guardian.
20. Not every witness who has made a written statement will give oral evidence, as their evidence may be unchallenged.
21. Evidence that has not been supplied in advance of the hearing, in the form of a written statement or document, may only be given with the leave of the court. Such leave will only be given if the evidence is relevant.
22. Hearsay evidence is admissible but, as it cannot be challenged by cross-examination, the court must consider carefully what weight to attach to it.

Make findings of fact

23. What findings need to be made?
- a. Findings need to be made that are relevant both to the threshold criteria and the final disposal of the case. Carefully read the findings of fact that need to be determined in respect of the key issues, and remember that the court may need to make orders under the Children Act 1989 (e.g. child

arrangements order) even if the threshold criteria are not met and it cannot make a care order or supervision order.

24. How should the findings be made? Evidence which has been read and heard must first be carefully weighed and evaluated.
 - a. Set out the relevant facts in chronological order, or under convenient headings.
 - b. It should be made clear what facts are not in dispute and what facts are disputed.
 - c. Findings on disputed issues should be made, and an explanation given as to why particular evidence has been accepted or rejected.

25. Which party must establish the threshold criteria?
 - a. The burden of proof rests with the local authority.

26. What is the standard of proof?
 - a. The standard of proof is the normal civil standard on the balance of probabilities, nothing more and nothing less. Neither the seriousness of the allegation(s), nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts.

27. What is significant harm?
 - a. The word 'significant' has its ordinary dictionary meaning. 'Harm' is very widely defined. It covers all forms of physical, sexual, emotional and other non-physical abuse, as well as impairment of health, or significant impairment of any aspect of child development. It can include impairment suffered from seeing or hearing the ill-treatment of another.

28. What is the likelihood of harm?
 - a. It is a real possibility of harm and must be based on actual facts rather than suspicions; although it is not necessary to prove actual harm has occurred.

Decide whether the threshold criteria are satisfied

29. On the basis of the facts found by the court, are the threshold criteria satisfied? Reasons must be given to support the decision. If the threshold criteria are not satisfied, the application for the care order will fail, but the court will consider other Children Act orders.

Decide what order, if any, to make

30. If the threshold criteria are satisfied, the court will consider the disposal of the case. The child's welfare must be the court's paramount consideration. It may make a care order or a supervision order, but must consider and record the range of powers available to the court and not just the orders that the local authority asks it to make. In its exercise of this discretion, the court must:
- a. remember that the child's welfare is its paramount consideration
 - b. have regard, in particular, to the welfare checklist
 - c. have regard to the general principle that delay is likely to prejudice the child's welfare
 - d. not make any order unless it is better for the child than making no order at all
 - e. consider the implications of the Human Rights Act 1998. (A local authority has a duty to support, and eventually to reunite a family, unless the risks are so high that the child's welfare requires alternative care.)
31. Before making a final decision on the care application, the court must:
- a. Have all the information it needs to make a final decision. In rare cases where it does not, it may have to adjourn the case and, if it does, it can make an interim order if appropriate. If the court considers that it is *necessary* to extend the proceedings beyond 26 weeks in order to resolve them justly, full reasons must be given in court and in writing in the Case Management Order.
 - b. Consider the permanence provisions of the local authority care plan.

32. In deciding how to dispose of the case finally, the court should adopt the following approach:
- a. Apply the findings of fact to every section of the welfare checklist. The list provides a very useful guide to the court in deciding what factors are relevant and what order, if any, will most promote the child's welfare. For example, what are the wishes of the child? What harm have they suffered or are likely to suffer? What are their needs and who might best meet them? In answering some of these questions, the court is looking to the future and must base its assessments as to the risk of future harm, etc. on actual facts rather than suspicions. Facts short of the occurrence of past harm can nevertheless, in an appropriate case, demonstrate that future harm is likely.
 - b. When considering the range of powers available to it, the court should consider the effect on the child of not just the care order, but the effect of making no order and all other available orders that might be relevant to the particular circumstances of the case.
 - c. Take into account any other factors identified by the court that it considers are relevant to the final disposal of the case.
 - d. Balance all the relevant factors such as, those which point towards or away from a particular disposal, apply the paramountcy test, i.e. what best promotes the child's welfare, and decide what order(s), if any, should be made. Reasons which justify the court's decision will have to be given.
 - e. Ensure that the court's decision is compatible with the Human Rights Act 1998. All Children Act orders, to differing degrees, engage Article 8 and the making of a care order is an obvious interference with the exercise of the rights of the parents (or other carers) and child to respect for their family life. The court's decision must therefore:
 - i. be in accordance with the law. Any Children Act order will meet this requirement

- ii. pursue a legitimate aim, i.e. it must be necessary. The respective rights of parents (or other carers) and the child must be balanced, and a care order may be necessary to protect a child's health and their right to a stable and secure future
- iii. be the minimum interference necessary to secure the legitimate aim and be proportionate and fair.

Finally

- 33. Consider the arrangements that the local authority has made, or proposes to make for affording the parents, and other specified persons, contact with the child and give the parties the opportunity to comment on those arrangements.
- 34. Arrange for the legal adviser, in consultation with the court, to make notes of the findings of fact and reasons. This must be done before the court makes or refuses to make an order.
- 35. In giving reasons for its decision, and any order made, the court must set out the factors which it took into account and how they were balanced.
- 36. If the court did not follow the recommendation of the children's guardian or other independent expert, it must explain why it did not follow their recommendation.
- 37. When making an order or refusing an application, the court or one of the justices must announce its decision and either its findings of fact and reasons or a short explanation of the decision. The legal adviser must make a written record of the court's decision. The order and written reasons must be handed out to the parties by close of business on the same day or, if that is not practicable and the proceedings are on notice, no later than 72 hours from when the court announced its decision.

Announce the decision in open court and read out the facts found and the reasons given for the decision.

SECTION 8 – PRIVATE LAW CASE MANAGEMENT PROCEDURE

Introduction

1. Practice Direction 12B, The Child Arrangements Programme (CAP 2014) is designed to provide a framework for a consistent approach to the resolution of the issues in private family law.
2. It is designed to help families to reach safe and child-focused agreements, where possible out of court. Where agreement cannot be reached, it encourages speedy resolution of the dispute through the court.

Key provisions of the Child Arrangements Programme 2014

3. **Signposting services, parenting plans and glossary** – CAP 2014 recommends advice and support services for parents and families who are dealing with disputes in relation to children. This includes reference to the usefulness of parenting plans. A glossary is provided to assist litigants in person.
4. **Child-centred approach** – The Practice Direction makes it clear that in making arrangements with respect to a child, the child's welfare must be the highest priority. Children should be involved in making the arrangements that affect them and should feel that their needs, wishes and feelings have been considered. Children's views can be put before the court through Cafcass/CAFCASS Cymru, by way of a letter to the judge or by the judge meeting the child (this must be in accordance with Family Justice Council guidance).
5. **Non-court resolution of disputes** – Except in limited circumstances, an applicant for a disputed private law order, including a child arrangements order, prohibited steps order, specific issue order, parental responsibility order and special guardianship order, must attend a Mediation Information and Assessment Meeting (MIAM) before making the application to court. The respondent should also attend if willing to do so. The MIAM requirement does not apply in certain circumstances including where there has been domestic

violence, where there are child protection concerns, in urgent or without notice cases, where there has been a recent MIAM, where a disability prevents attendance, where either party is in prison or on bail or outside England and Wales and where there is no local mediator. When the case reaches court, the judge must consider at every stage whether non-court dispute resolution is appropriate and make appropriate directions.

6. **Allocation** – In a similar way to public law proceedings, gatekeepers will allocate the case to the appropriate level of judge in the Family Court. Judicial continuity is important, particularly where there has been a fact-finding hearing, and applies to magistrates as well as other levels of judge.
7. **Welfare** – The key welfare principles apply to private law applications. The child's welfare is the court's paramount consideration, delay is likely to be prejudicial to the child and the 'no order' principle applies. The 'overriding objective' in the FPR also applies so the court will deal with a case justly, having regard to the welfare issues involved and specifically will:
 - a. ensure that the case is dealt with expeditiously and fairly
 - b. deal with the case in ways which are proportionate to the nature, importance and complexity of the issues
 - c. ensure that the parties are on an equal footing
 - d. save expense
 - e. allot to each case an appropriate share of the court's resources, while taking account of the need to allot resources to other cases.
8. **Safeguarding** – CAP 2014 acknowledges that court orders, even those made by consent, must be scrutinised to ensure they are safe and take account of any risk factors. It underlines that the court must take account of the duty on Cafcass/CAFCASS Cymru to make safeguarding enquiries and provide the court with a letter/report.

The first hearing dispute resolution appointment (FHDRA)

9. This should be listed within four weeks and no later than six weeks from the issue of the application. The court will need to know at the first hearing whether the parties have attempted mediation.
10. The court must inform the parties of the result of any safeguarding checks by Cafcass/CAFCASS Cymru unless that would create a risk of harm to a party or the child. It must also consider whether a risk assessment is required and whether a fact-finding hearing, in accordance with Practice Direction 12J: Residence and Contact Orders: Domestic Violence and Harm, is needed.
11. Dispute resolution will also form part of the hearing:
 - a. the court, working with the Cafcass/CAFCASS Cymru practitioner and with the assistance of any mediator present, will seek to assist the parties in conciliation and explore the resolution of issues between the parties, identifying any appropriate referrals for assistance
 - b. where the local scheme provides for it, the detailed content of the conciliation discussions may remain confidential
 - c. the court may adjourn a FHDRA for further at-court conciliation, a report upon the availability or success of any proposal or for the parties to attend at an activity or intervention.

Note: In cases where there are no safeguarding concerns, the court should encourage families to use mediation and parenting plans and should ensure that parenting plan materials have been made available to the parties prior to the hearing.

12. In all cases at the conclusion of the FHDRA, and generally at the end of any subsequent hearing that may be required, the court shall identify on the face of the order:
 - a. confirmation of allocation
 - b. the issues that are determined, agreed or in dispute

- c. steps to be taken to resolve the issues and interim arrangements until the application is resolved
- d. the timetable and the sequence of the steps that are required to lead to an early hearing, including the date of any hearing
- e. a statement of the facts relating to risk or safety and how they have been, or will be, addressed
- f. whether there is to be mediation or other parenting intervention, with details
- g. the filing and service of evidence limited to such of the issues as the court may identify
- h. whether a Cafcass/CAFCASS Cymru practitioner's or other expert report is necessary and, if so, the specific issues to which the report is to be directed

The court should also consider in respect of all orders, agreements and referrals, directions for:

- a. the facilitation of the same (in particular by a Cafcass/CAFCASS Cymru practitioner)
- b. the monitoring of the outcome, including by urgent reserved re-listing before the same court within ten working days of a request by Cafcass/CAFCASS Cymru
- c. enforcement.

Other considerations at the first hearing

13. When considering the listing of the case, the court must timetable it so that the dispute can be resolved as soon as is safe and possible in the interests of the child. The court must consider the impact that the court timetable will have on the welfare and development of the child. This consideration will take into account the child's age, birthday, start of nursery/school, school terms, proposed change of school and any significant change in the child's family or social circumstances.

14. Cases must not be adjourned for reviews or addendum reports unless necessary, consistent with the timetable for the child and in the child's best interests.
15. Notice – has everyone who should know about the case had notice? Should the court go ahead even if some people have not been served with notice or have not responded?
16. Parties – is there anyone else who ought to be involved in the proceedings? Is there anyone who wants to apply to be a party?
17. Statements – how soon can the parties disclose their case to each other in written statements?
18. Interim orders – are any interim orders necessary?

Welfare reports (s.7 Children Act 1989)

19. **Cafcass/CAFCASS Cymru:** Where conciliation or mediation is unsuccessful and an assisted settlement is not possible, the court may request the preparation of a welfare report. A request for a welfare report should only be made when absolutely necessary and the court should always consider whether the wishes and feelings of the child can be adequately presented to it without a report. If a report is necessary, the court should always consider the extent of any report which is required from Cafcass/CAFCASS Cymru, such as whether it needs a report dealing with the wishes and feelings of a child, a single issue or multiple issues – general reports should be avoided. Reports will usually only be ordered where there are issues over who the child should live and spend time with, or if there is an issue concerning the child's wishes, if there is an alleged risk to the child and if other information or advice is necessary before the court can make its decision.
20. **Local authorities:** Where a local authority has had an involvement with the child or family, they can be requested to prepare a report in place of Cafcass/CAFCASS Cymru. These are essentially the same 'section 7' type reports that Cafcass/CAFCASS Cymru prepare. Where, additionally, the court has concerns about issues of significant harm and whether considerations

should be given to the instigation of public law proceedings, the court may order the relevant local authority to investigate a child's circumstances. This would be a 'section 37 direction'. When such a direction is made, the court also has the power to make an interim care order and appoint a children's guardian. If the local authority does not institute public law proceedings, it must prepare a report within a period of eight weeks or such other time as the court directs. (See *Section 9 – Children Act Private Law Orders.*)

The dispute resolution appointment (DRA)

21. A DRA following the filing of the welfare report may be helpful in a private law case in the Family Court, particularly where the issues are complex and to avoid wasting court time where parties reach agreement or issues are narrowed.

The final hearing

22. Final hearings should be approached in the same way as public law hearings (See *Section 5 – Public Law Case Management Procedure.*)

Costs

23. Although the court may at any time make such order as to costs as it thinks just, costs orders are very rare in private law cases. The courts recognise that there is a very wide latitude necessary where families are subject to complex and difficult emotions. Adverse orders for costs can exacerbate an already tense situation. However, consideration should be given to costs orders where the conduct of a party has been tactical, wholly unreasonable or an abuse of process.

SECTION 9 – CHILDREN ACT PRIVATE LAW ORDERS

Introduction

1. In any family proceedings, the court has wide powers to make whatever order it regards as appropriate. For example, if in an application for contact with a child the court considers that a mother needs to be protected from domestic violence, it may grant a non-molestation order. The parties must always be given notice of the type of order that the court is considering and a bench should always take advice from its legal adviser before adopting such a course.

Section 8 orders and special guardianship orders

2. There are three main orders that are made in private law matters. Unavoidably they are known in the jargon as ‘section 8 orders’. They are for:
 - a. child arrangements, which settles where and with whom the child is to live and to have contact
 - b. specific issue
 - c. prohibited steps.

The court also has powers to make special guardianship orders, which provide legally secure placements for children who cannot live with their birth parents but for whom adoption is not appropriate.

3. In any family proceedings, the court can:
 - a. on application, make a section 8 order or a special guardianship order
 - b. grant leave to apply for such an order
 - c. make a section 8 order or a special guardianship order on its own motion.

Risk assessments

4. There is a duty on Cafcass/CAFCASS Cymru to carry out a risk assessment in relation to a child in certain circumstances, and to provide that assessment to

the court. A risk assessment should be carried out where the Cafcass/CAFCASS Cymru officer is involved in any function relating to any s.8/special guardianship/enforcement and facilitation of contact proceedings, and the officer is given cause to suspect that the child concerned is at risk of harm. A risk assessment may be provided at any point during proceedings and, even after a final order has been made, Cafcass/CAFCASS Cymru can apply to revive proceedings. Cafcass/CAFCASS Cymru also work to a Safeguarding Framework and the emphasis is on the need for Cafcass/CAFCASS Cymru and the courts to ensure that in considering and determining private law applications, the safety of children and vulnerable adults remains a strong focus. Practice Direction 12L – Children Act 1989: Risk Assessments under s.16A Children Act 1989 emphasises that the officer must provide the assessment to the court, even if they reach the conclusion that there is no risk of harm to the child. Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Violence and Harm is a further expression of the need to ensure child arrangements orders and other orders regulating where a child should live and who they should have contact with are only made if any contact ordered will not expose the child concerned and/or the other parent to the risk of harm from a parent who has perpetrated domestic abuse.

The section 37 investigation and report

5. The section 37 investigation provides the ‘cross-over’ or bridge between private and public law. If, within private law proceedings, the court becomes concerned about the welfare of any child, it can involve the ‘state’, in the form of the local authority, and set in train enquiries which have to be reported back to the court.
6. Where, in any family proceedings in which a question arises concerning the welfare of a child, it appears that it may be appropriate for a care or supervision order to be made the court may, of its own volition, direct a local authority to undertake an investigation into the child’s circumstances.

7. During the investigation, the local authority must consider whether it should apply for a care or supervision order, provide services or assistance for the child or their family, or take any other action concerning the child.
8. Where the local authority decides not to apply for a care or supervision order, it should inform the court of the reasons for its decision, any support it has provided for the child and their family and any other action to be taken concerning the child.
9. The information should be given to the court within eight weeks of the date of the direction unless the court states otherwise.
10. The authority named in the direction should be the authority in whose area the child lives or the authority where the circumstances causing concern arose.
11. Where the authority decides not to apply for a care or supervision order, it is required to consider whether it is appropriate to review the case at a later date and if it is appropriate, to set a date for it.

Parental responsibility order

12. The term 'parental responsibility' refers to all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and their property, or which a guardian of a child's estate has in relation to their property.
13. Married parents each have parental responsibility for their child. Where the parents are not married to each other at the time of the birth, only the child's mother has parental responsibility – the father will not have parental responsibility unless he acquires it in one of four ways specified in statute.
14. An unmarried father or second female parent can acquire parental responsibility by:
 - a. becoming registered as the child's parent
 - b. making a formal parental responsibility agreement with the mother

- c. obtaining a parental responsibility order
 - d. an order of the court when making a child arrangements order, where the parent is named as someone with whom the child is to live. Note that the court **must** make a parental responsibility order in these circumstances.
 - e. an order of the court when making a child arrangements order, where the parent is named as someone with whom the child should have contact. In these circumstances, the court must make a parental responsibility order if it is appropriate to do so.
15. A step-parent is an individual who is married to the parent of the child who is the subject of the application. For the purpose of this legislation, a step-parent may also be an individual who is in a relationship with someone of the same sex who is the parent of the child and is the civil partner of that person. A step-parent can acquire parental responsibility by:
- a. obtaining a parental responsibility order
 - b. making a formal parental responsibility agreement with any parent of the child who has parental responsibility for the child.
16. Anyone else can acquire parental responsibility by:
- a. being granted a child arrangements order where they are a named person with whom the child is to live (automatic) or to have contact (discretionary)
 - b. being made a guardian or a special guardian
 - c. having an emergency protection order in their favour (although this is limited to taking reasonable steps to safeguard and promote the child's welfare)
 - d. having a child 'placed' with them for adoption by order of the court or an adoption agency
 - e. having an adoption order made in their favour.

17. A local authority acquires parental responsibility on the making of a care order or a placement order.
18. When the court is dealing with an application for a parental responsibility order, the child's welfare is the court's paramount consideration.
19. The court should not make an order unless it thinks that to do so would be better for the child.
20. The court must take into account all the relevant circumstances, particularly the degree of commitment that the father has shown to the child, the degree of attachment between him and the child, and his reasons for applying for an order. Where the father has shown commitment and there is a degree of attachment between the father and the child and his reasons for applying for an order are not improper or wrong, it will generally be in the child's best interests that an order is made. Different considerations may apply in relation to step-parent applications. Consideration must be given to the effect the making of an order will have on the child's relationship with the other parent, if there is one, who is not married to the step-parent.
21. The father's parental responsibility will continue even if the child arrangements order is brought to an end.
22. If a natural father has acquired parental responsibility as the result of a formal agreement or court order, it can only be brought to an end by a successful application to the court by a person with parental responsibility or, with the leave of the court, on the application of the child.
23. Parental responsibility orders will generally continue until the child is 18.
24. See section in relation to Declaration of Parentage below.

Child arrangements order

25. A child arrangements order determines the person(s) with whom a child is to live, spend time or otherwise have contact. Where a child arrangements order, regulating living arrangements, is made in favour of two or more persons who do not live together, the order may specify the periods during which the child is

to live in the different households concerned. Contact is not restricted to direct, physical contact but can include indirect contact such as telephone calls or letters.

26. There are two categories of applicant – those who can apply as of right and those who require the leave of the court. Those who can apply as of right are:
- a. parent, guardian or special guardian
 - b. a party to a marriage or civil partnership, where the child is a child of the family
 - c. anyone with whom the child has lived for a period of at least three years
 - d. anyone who has the benefit of a child arrangements order regulating where the child is to live
 - e. a local authority foster parent with whom the child has lived for at least a year immediately preceding the application, where the child arrangements order applied for relates only to living arrangements
 - f. a relative of a child with whom the child has lived for at least a year immediately preceding the application.
 - g. any other person who:
 - i. has the consent of all those named in a child arrangements order as being those with whom the child should live
 - ii. has the consent of everyone with parental responsibility
 - iii. was granted parental responsibility for the child with a child arrangements order, or (where the child is in care) has the consent of the local authority.
27. No-one may apply for a child arrangements order with living provisions without the leave of the court, if the child is subject to a special guardianship order.
28. With the leave of the court anyone else, including the child, can apply.

29. The court is able to make a child arrangements order of its own volition in any family proceedings without an application being made, but the parties should always be given notice that the court is minded to do so. The legal adviser should always be asked to advise before such a step is taken.
30. The child's welfare is the court's paramount consideration and the court must take the welfare checklist into account if the application is opposed.
31. The court should not make an order unless to do so would be better for the child.
32. A child arrangements order can be applied for either separately or in any family proceedings.
33. The local authority cannot apply for a child arrangements order. An order can be made if the child is in local authority care but making a child arrangements order including living arrangements has the effect of discharging the care order.
34. If a child arrangements order with living arrangements is made in favour of an unmarried father, the court must also make a parental responsibility order.
35. A child arrangements order with living arrangements provisions automatically gives anyone in whose favour it is made (other than a parent) parental responsibility for the child.
36. When a child arrangements order with living arrangements is in force, no person may either change the child's surname or remove them from the United Kingdom without the written consent of every person who has parental responsibility for the child or the leave of the court. However, a person who has such an order can take the child out of the United Kingdom for up to one month without getting anyone's consent.
37. The order can contain conditions and directions as to how it is to be carried out and can be limited to a specified period.
38. A child arrangements order ceases to have effect:

- a. where it relates to living arrangements, if the parents, both having parental responsibility, live together for a continuous period exceeding six months
- b. in relation to contact arrangements, if the parents live together for a continuous period exceeding six months
- c. on the making of a placement order
- d. if an adoption order is made
- e. if the order is discharged.

The living arrangements provisions of a child arrangements order will last until the child is 18, unless the court directs that it should cease to have effect on an earlier date. Any other provisions will cease to have effect when the child is 16, unless the court is satisfied that the circumstances of the case are exceptional and makes the order beyond that date.

39. Any person entitled to apply for a child arrangements order can apply for its variation or discharge. Anyone else is entitled to do so if the order was made on their application. Leave is required to vary or discharge a child arrangements order, in respect of which a direction has been made on request of the applicant that the order is to last until the child's 18th birthday.
40. If there is an allegation, or otherwise reason to suppose that the child or a party has experienced domestic abuse, or there is a risk of such, then the court must refer to the guidelines in Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Violence and Harm (seek advice of a legal adviser) – see *Appendix A – Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Violence and Harm*. When a case is adjourned for a further hearing after a fact-finding hearing, the case remains part-heard and, as a minimum, the same chairperson should return to deal with the final hearing. In its reasons, the court must make clear how its findings on domestic abuse have influenced its decision on child arrangements. In particular, where the court has found domestic abuse proved but goes on to make an order which results in the child having contact with the perpetrator of the abuse, the court must always

explain in its reasons why it takes the view that the order which it has made will not expose the child to the risk of harm and is beneficial for the child.

Consent Orders: Child Arrangements

41. In all cases, it is for the court to decide if an order accords with the welfare of the child. Any proposed order, whether to be made by agreement or not, must be scrutinised by the court. The court must not make a consent order, or give permission for an application to be withdrawn, unless the parties are present in court, all initial safeguarding checks have been obtained by the court and an officer of Cafcass/CAFCASS Cymru has spoken to the parties separately, except where it is satisfied that there is no risk of harm to the child and/or the other parent in doing so. The court has to consider all the evidence and information available to help it decide if there is any risk of harm to the child.

Facilitation and Enforcement of Child Arrangements

42. The court has powers which it can use to support child arrangement orders and establish, maintain or improve the involvement of a person in the life of the child concerned. The main provisions are:

- a. Attachment of Warning Notices to Child Arrangement Orders – which warn of the consequences of failing to comply with the order, and which must be put into any child arrangements order.

The wording of the additional warning explains that where a child arrangements order is in force and a person does not comply with the order they may be committed to prison or fined, and/or the court may make an order requiring them to undertake unpaid work ('an enforcement order') and/or an order that they pay financial compensation.

- b. Activity Directions – can be imposed during disputed proceedings on an interim basis. These can also be imposed where the court is considering whether a person has failed to comply with a child arrangements order. The court directs parties in a dispute about child arrangements to attend approved activities, designed to promote contact.

- c. Activity Conditions – can be imposed when making or varying a child arrangements order. The condition has to specify both the activity and the person providing it.

Activities are not free, and as there is no national provider, the availability of activities will vary from area to area (check with a legal adviser).

- d. There are three main forms of activity:
 - i. information about mediation
 - ii. domestic violence perpetrator programmes
 - iii. parenting information programmes/classes.

The court has to satisfy itself that the proposed activity is appropriate, the provider is suitable, the place is geographically accessible, and it is suitable bearing in mind the person's work, education commitments and religion. Cafcass/CAFCASS Cymru is under a duty to investigate these issues for the court, if so requested. The welfare of the child must be taken into account at all times.

- e. Monitoring –
 - i. the court is allowed to request a Cafcass/CAFCASS Cymru officer to monitor compliance with an Activity Direction, or any Activity Condition. In the case of non-compliance, Cafcass/CAFCASS Cymru will provide the court with a report called an 'Activity Compliance Report'. A copy will also be sent to the parties and in the case of an Activity Condition may prompt a party to make a further application, e.g. for an Enforcement Order
 - ii. the court may also ask a Cafcass/CAFCASS Cymru officer to monitor whether an individual complies with a child arrangements order, and to report to the court on such matters relating to compliance as the court specifies in the request. The compliance is monitored for a specified period, not exceeding 12 months.

- f. Enforcement Orders –
- i. a person aggrieved by non-compliance can apply to the court to enforce the order. If the court is satisfied beyond reasonable doubt of non-compliance with a child arrangements order, it can make an enforcement order, unless the person in breach can show that they had a reasonable excuse for failing to comply with the contact order. The enforcement order imposes an unpaid work requirement of 40-200 hours to be completed in 12 months. The order can be of immediate effect or suspended for such period as the court thinks fit. The order is not to punish but to secure compliance with the original order and is likely to be imposed as a last resort. The order must be necessary and proportionate, the welfare of the child must be considered, and the court must obtain from Cafcass/CAFCASS Cymru information about the likely effect of any order and the availability of unpaid work locally. The court must attach a warning notice setting out the consequences of non-compliance
 - ii. an enforcement order can be made on the application of the person with whom the child lives/is to live or the person with whom contact with the child is provided for under the order. (The child can also apply but magistrates would not expect to be allocated such an application)
 - iii. the court must ask Cafcass/CAFCASS Cymru to monitor compliance. Probation will supervise, give warnings and report back to Cafcass/CAFCASS Cymru. After a second breach, without reasonable excuse, Cafcass/CAFCASS Cymru will notify the court and the other party. It is that party who will bring proceedings for breach
 - iv. where a court is satisfied beyond reasonable doubt that a person has failed to comply with unpaid work and no reasonable excuse is demonstrated, the court may:
 - increase the hours (subject to the 200 hour maximum)
 - extend the operational period of 12 months

- make a second enforcement order (either in addition to or in substitution for the first order if still in force)
- v. the court has the power to revoke or amend an order e.g. because a person has moved or is now complying with the contact order.
- g. Financial Compensation Order – on application by a relevant party, the court can require a person who has caused financial loss to that party through breaching a child arrangements order, to pay compensation up to the amount of the loss. The court must take into account the welfare of the child and the financial circumstances of the person in breach. The court cannot make an order where it is satisfied that the person had reasonable excuse for not complying.
- h. The powers of the court to deal with failure to comply with contact (or any other court order which does not relate to the payment of money) under the contempt of court provisions – by fine or imprisonment – are also available, and additional to the orders for unpaid work and financial compensation.

Prohibited steps order

43. A prohibited steps order restrains in some way the action of another person in relation to the child. However, the only steps that can be prohibited are those that could be taken by parents in meeting their parental responsibility, such as preventing a child being taken out of the country. Any person entitled to apply for a prohibited steps order can apply for its variation or discharge. Anyone else shall be entitled to do so if the order was made on their application or they are named in the contact order.
44. There are two categories of applicant – those who can apply as of right and those who require the leave of the court. Those who can apply as of right are:
- a. a parent, guardian or special guardian
 - b. any step-parent with parental responsibility
 - c. anyone who has a child arrangements order with living arrangements in relation to the child.

45. With the leave of the court anyone else, including the child, can apply for a prohibited steps order. In the case of local authority foster-parents, unless they are relatives of the child or the child has been living with them for one year preceding the application, they must have the consent of the local authority to apply for the court's leave.
46. The court is able to make a prohibited steps order of its own volition in any family proceedings without an application being made, but the parties should always be given notice that the court is minded to do so. The legal adviser should always be asked to advise before such a step is taken.
47. The child's welfare is the court's paramount consideration and the court must take the welfare checklist into account if the application is opposed.
48. The court should not make an order unless to do so would be better for the child.
49. A prohibited steps order can be applied for either separately or in any family proceedings.
50. A court cannot make an order that is to have effect beyond the child's 16th birthday unless it is satisfied that the circumstances of the case are exceptional.
51. A prohibited steps order cannot be made in relation to a child in local authority care or subject to a placement order.
52. The court cannot make a prohibited steps order with a view to obtaining a result that could be achieved by a child arrangements order, or in any way that is denied to the High Court.
53. The order can contain conditions and directions as to how it is to be carried out and can be limited to a specified period.
54. Any person entitled to apply for a prohibited steps order can apply for its variation or discharge. Anyone else shall be entitled to do so if the order was made on their application or they are named in the child arrangements order.
55. An order ceases to have effect:

- a. when the child reaches 16 (18 in exceptional circumstances)
- b. if a care order is made
- c. if a placement order is made
- d. if an adoption order is made
- e. if it is discharged.

Specific issue order

56. A specific issue order is an order of the court giving directions as to how a particular aspect of parental responsibility should be exercised, such as a question concerning a child's schooling.
57. There are two categories of applicant – those who can apply as of right and those who require the leave of the court. Those who can apply as of right are:
 - a. a parent, guardian or special guardian
 - b. any step-parent with parental responsibility
 - c. anyone who has a child arrangements order with living arrangements in relation to the child.
58. With the leave of the court anyone else, including the child, can apply for a specific issue order. In the case of local authority foster-parents, unless they are relatives of the child or the child has been living with them for one year preceding the application, they must have the consent of the local authority to apply for the court's leave.
59. The court is able to make a specific issue order of its own volition in any family proceedings without an application being made, but the parties should always be given notice that the court is minded to do so. The legal adviser should always be asked to advise before such a step is taken.
60. The child's welfare is the court's paramount consideration and the court must take the welfare checklist into account if the application is opposed.

61. The court should not make an order unless to do so would be better for the child.
62. A specific issue order can be applied for either separately or in any family proceedings.
63. A court cannot make an order that is to have effect beyond the child's 16th birthday unless it is satisfied that the circumstances of the case are exceptional.
64. A specific issue order cannot be made in relation to a child in local authority care.
65. The court cannot make a specific issue order with a view to obtaining a result that could be achieved by a child arrangements order, or in any way that is denied to the High Court.
66. The order can contain conditions and directions as to how it is to be carried out and can be limited to a specified period.
67. An order ceases to have effect when:
 - a. the child reaches 16 (18 in exceptional circumstances)
 - b. a care order is made
 - c. a placement order is made
 - d. an adoption order is made
 - e. it is discharged.
68. Any person entitled to apply for a specific issue order can apply for its variation or discharge. Anyone else shall be entitled to do so if the order was made on their application.

Special guardianship order

69. A special guardianship order is an order of the court appointing one or more individuals to act as the child's special guardian. A special guardian has parental responsibility for the child and (subject to any other order in force with

respect to the child) is entitled to exercise that parental responsibility to the exclusion of any other person with parental responsibility. The consent of a special guardian is required for the making of an adoption order.

70. The court may make a special guardianship order on the application of an individual or on the joint application of more than one person. There are two categories of applicant – those who can apply as of right or those who require the leave of the court. Those who can apply as of right are:
- a. any guardian of the child
 - b. any individual in whose favour a child arrangements order with living arrangements is in force with respect to the child
 - c. anyone with whom the child has lived for a period of three years
 - d. any other person who has the consent of everyone in whose favour a child arrangements order with living arrangements was in force or, where the child is in the care of the local authority, has the consent of that authority, or in any other case has the consent of all those who have parental responsibility for the child
 - e. a local authority foster-parent with whom the child has lived for a period of at least a year immediately preceding the application
 - f. a relative of a child with whom a child has lived for at least a year immediately preceding the application.
71. With the leave of the court, anyone else can apply for a special guardianship order provided that they are over 18 and that they are not the parent of the child. Local authority foster-parents, with whom the child has lived for less than a year, may not apply for leave unless they have the consent of the local authority or are relatives of the child.
72. Anyone wishing to apply for a special guardianship order must give three months' notice to the local authority in whose area they reside or if the child is being looked after, to the local authority that is looking after the child, of their intention to apply for an order.

73. The court may not make a special guardianship order unless it has received a report from the local authority dealing with a number of matters including the suitability of the applicant to be a special guardian.
74. On the making of a special guardianship order, the court must consider whether a child arrangements order containing contact provision should also be made and whether to vary or discharge any section 8 orders which are in force
75. The court may also make a special guardianship order of its own volition in any family proceedings without an application being made, but the parties should always be given notice that the court is minded to do so. The legal adviser should always be asked to advise before such a step is taken, as the court is still required to consider a report from the local authority (see paragraph 73 of this section).
76. The child's welfare is the court's paramount consideration and the court must take the welfare checklist into account if the order is opposed.
77. The court should not make an order unless to do so would be better for the child.
78. A special guardian may remove the child from the United Kingdom without a court order for a period up to three months. A special guardian can, with the written consent of every person who has parental responsibility for the child or the leave of the court, take the child out of the United Kingdom for a period of more than three months. A special guardian can also, with the consent of every person who has parental responsibility, change the surname of the child unless the child is subject to a placement order.
79. A special guardianship order will cease to have effect:
 - a. when the child reaches 18
 - b. if a care order is made
 - c. if an adoption order is made
 - d. if the order is discharged.

80. A special guardianship order can be varied or discharged on the application of:
- a. the special guardian
 - b. any parent or guardian of the child (with leave)
 - c. any individual who has or had parental responsibility for the child immediately before the making of the order (with leave)
 - d. the child (with leave)
 - e. the local authority designated in a care order with respect to the child.

Family assistance order

81. A family assistance order is addressed to a local authority or to Cafcass/CAFCASS Cymru and requires it to appoint a social worker or Cafcass/CAFCASS Cymru officer to advise, assist and befriend a person named in the order. The order provides help to a family in the aftermath of a family break-up where there are difficulties concerning the children.
82. Unless the child lives within their area, it is always necessary to have consent of a local authority before making such an order. Even where formal consent is not necessary, it is always sensible to enquire whether Cafcass/CAFCASS Cymru or the relevant local authority would support such an order being made and whether it would have the resources to implement it.
83. It is not possible to apply for a family assistance order. Only the court of its own volition can make the order.
84. The child's welfare is the court's paramount consideration but the welfare checklist does not apply.
85. Practice Direction 12M – Family Assistance Orders: Consultation states that an officer (of Cafcass/CAFCASS Cymru/the local authority) must provide the court with an opinion, orally or in writing, as to whether an order would be in the best interests of the child and, if so, how the order could operate and for what period. Any person in an order must be given the opportunity to comment.

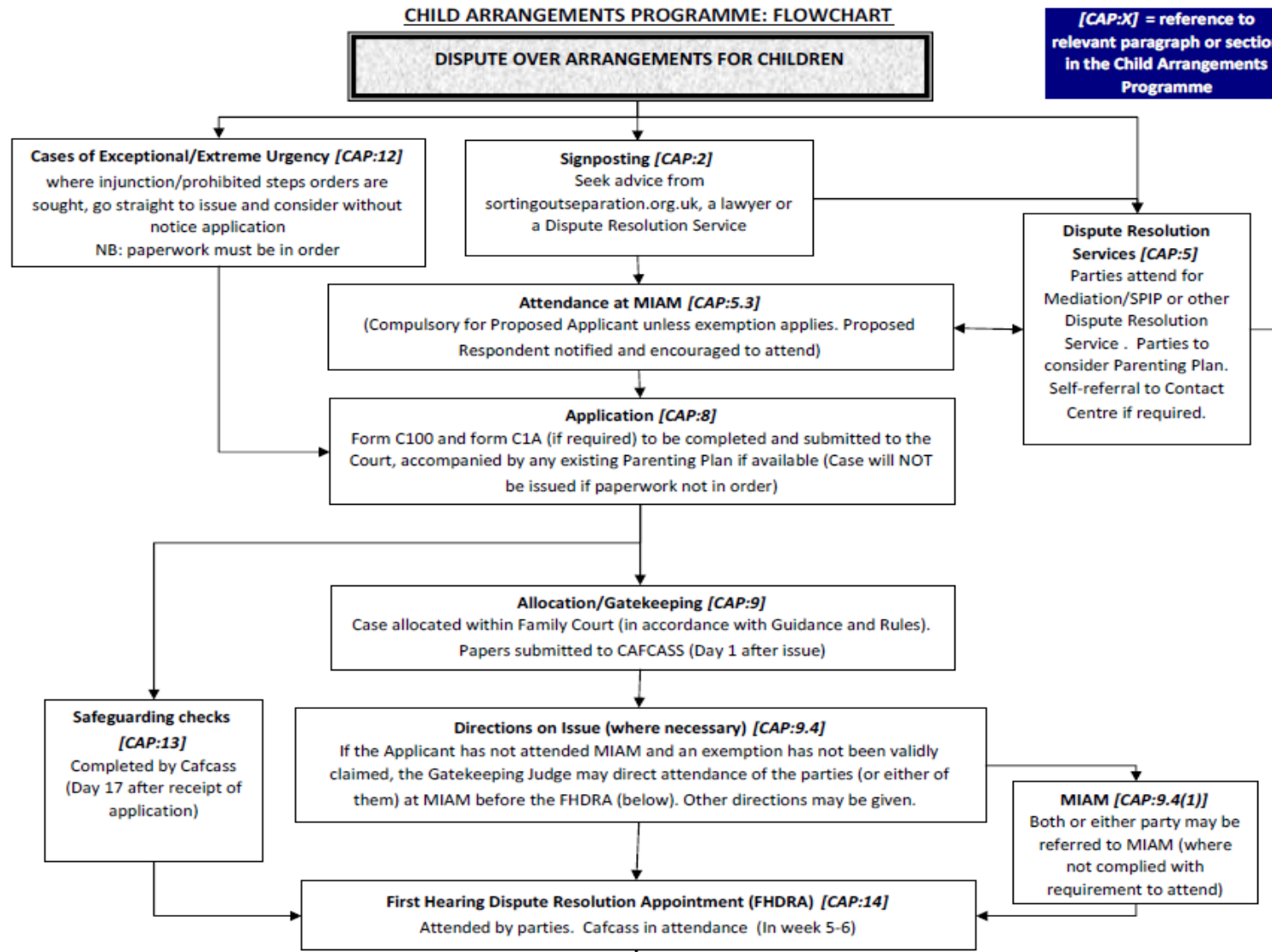
86. The court should not make an order unless it thinks that to do so would be better for the child.
87. The court may only make a family assistance order if:
 - a. it has the power to make a child arrangements, prohibited steps, special guardianship order or specific issue order (whether or not an order is actually to be made), and
 - b. it has obtained the consent of every person named in the order other than the child.
88. The persons who can be named in the order are:
 - a. any parent, guardian or special guardian of the child
 - b. any person with whom the child is living or in whose favour a child arrangements order with living arrangements is in force with respect to the child
 - c. the child.
89. Any person named in the order can be required to take such steps as may be specified to keep the officer informed of the address of any person named and to allow the officer to visit such person(s).
90. Unless a shorter period is specified, the order lasts a maximum of twelve months, although a new order can be made at the end of this period.
91. The officer can refer back to the court issues relating to the discharge or variation of child arrangements, prohibited steps and specific issue orders current during the period of a family assistance order.
92. If a family assistance order is made at the same time as a child arrangements order with contact provision, then the family assistance order may direct the officer concerned to give advice and assistance as regards establishing, improving and maintaining contact with named persons in the order.

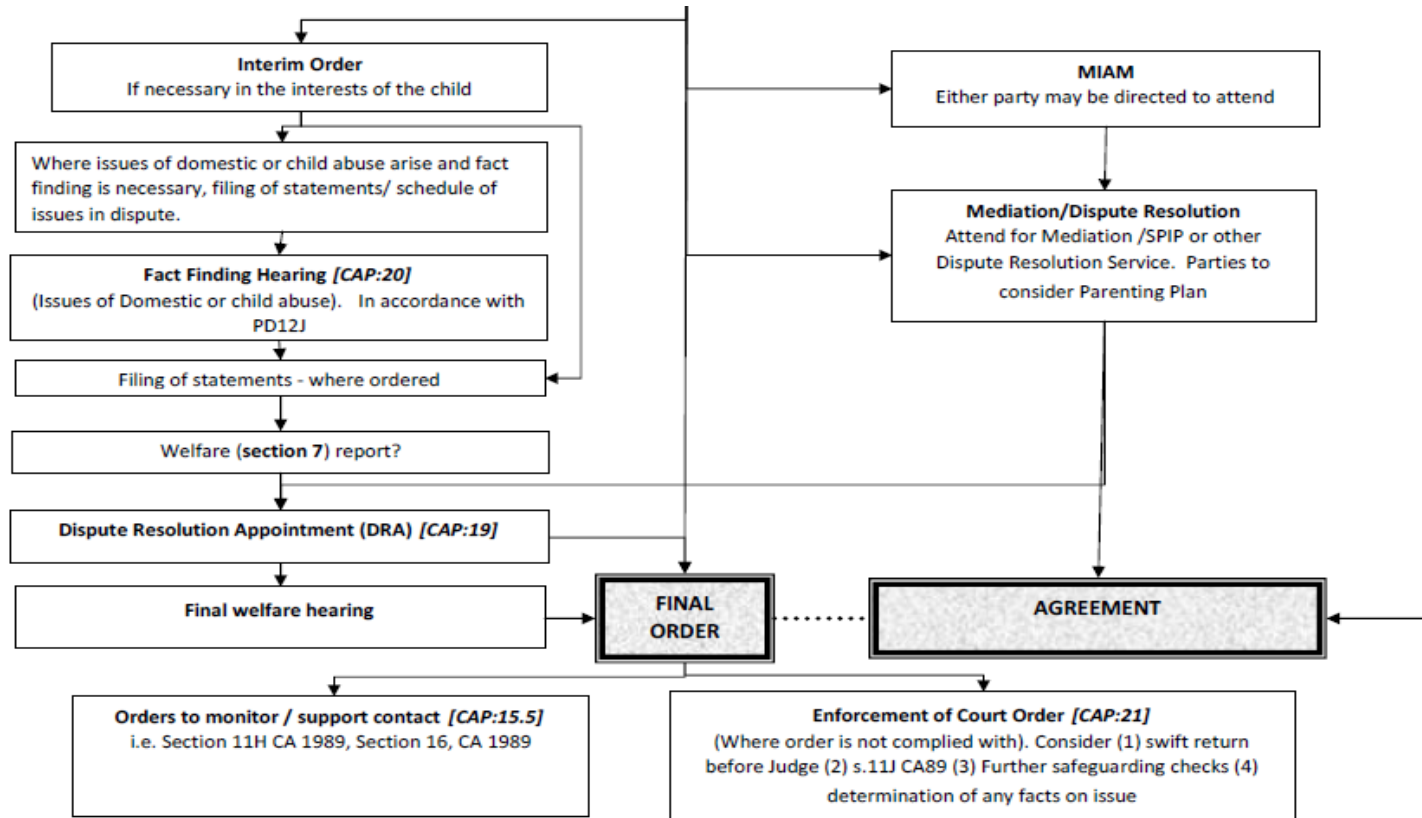
Declaration of parentage

93. A declaration of parentage is an order declaring that a named person is or is not the parent of another person. The application may be made to the High Court or the Family Court.
94. The following may apply for a declaration of parentage as of right:
 - a. a parent of a child named in the application
 - b. a child of a parent named in the application
 - c. the Secretary of State for Work and Pensions.
95. Anyone else with a sufficient personal interest in the determination of the application may apply for a declaration.
96. The court can direct, on application of one or both of the parties, that scientific tests to determine parentage be carried out by an accredited body. The court can order that a scientific sample be taken from a minor if the person who has care and control does not consent, where it is in the best interests of the minor to do so. Before making such a direction, the court needs to know how and by whom payment is to be made.
97. A children's guardian can be appointed at any stage in the proceedings if such an appointment is necessary to safeguard the interests of the child.
98. The court can:
 - a. make a declaration, or
 - b. refuse to hear the application if it is not in the child's best interests to do so or the applicant has insufficient personal interest in the application.
99. The unsuccessful party can be ordered to pay the successful party's costs, including the fee paid for any scientific tests undertaken in connection with the case.

SECTION 10 – PRIVATE LAW – A STRUCTURED APPROACH

Child Arrangements Programme: Flowchart





Prior to the hearing

Read the evidence prior to the hearing

1. Prior to the hearing, magistrates must read a bundle of documents containing copies of some or all of the following:
 - a. the application for the order
 - b. statements of the applicant and their witnesses
 - c. statements of the respondent(s) and their witnesses
 - d. orders made and directions given during the course of the proceedings
 - e. welfare report(s) prepared by Cafcass/CAFCASS Cymru or the local authority
 - f. medical and other reports from experts.

At the hearing

Establish the issues before the court

2. At the hearing, the court must first establish what issues it is being asked to decide. If issues are not clear from the paperwork supplied, e.g. in an application for a child arrangements order, it may be unclear whether the person with whom the child lives is opposing contact in principle or merely the type or frequency of contact, these need clarification.
3. In most cases, the court will be asked to adjudicate on the application and decide what order, if any, it should make.
4. In some cases however, the court may simply be invited to make certain findings of fact and then adjourn the case to a later date so that, for instance, a welfare report can be obtained from Cafcass/CAFCASS Cymru and further evidence filed by the parties. This is called a 'split hearing' and occurs in cases where an important factual issue has to be determined before the application can be finalised. For example, where an application for a child arrangements order is made by the father, the mother may allege domestic abuse on his part

and the court may be asked to make a finding in relation to it before the application is heard and determined. The court must consider the domestic abuse guidelines (seek the advice of the legal adviser and refer to the Practice Direction at Appendix A of this bench book). The same court shall, wherever possible, sit for both the fact-finding and final disposal. If that is not possible, continuity should be provided by at least one member of the original bench, preferably the chairman, and the legal adviser.

How to approach the hearing

5. At the final hearing of any application for an order in a private law case, the court must generally adopt the following approach:
 - a. determine the facts of the case. This involves making findings on outstanding, disputed, factual issues
 - b. decide what order, if any, to make. The child's welfare is the court's paramount consideration. The court must relate the facts found to the welfare checklist.

The court must maintain a flexible approach to hearings involving litigants in person and the issues raised at Section 2, paras 9-12 should be taken into account.

Hear the oral evidence

6. The applicant opens their case.
7. The parties give their evidence in the following order unless the court directs otherwise:
 - a. the Cafcass/CAFCASS Cymru officer (children and family court reporter) if present at the direction of the court – the children and family court reporter should be released once they have given evidence
 - b. the applicant
 - c. any respondent with parental responsibility for the child

- d. any other respondent
 - e. the child, if appropriate (this would be very rare).
8. The written statement of a witness forms the basis of their examination-in-chief, though supplemental questions may be asked by their advocate. The witness is cross-examined by the other parties and if necessary re-examined by their advocate, if they are represented.
9. Closing speeches are usually made in the following order unless the court directs otherwise:
- a. the respondent(s)
 - b. the applicant.
10. Not every witness who has made a written statement will give oral evidence, as their evidence may be unchallenged
11. Evidence, which has not been supplied in advance of the hearing in the form of a written statement or document, may only be given with the leave of the court, but if it is potentially relevant, leave is usually given. However, neither party should be 'ambushed' and if evidence is admitted late, the proceedings may need to be adjourned for a short period.
12. Hearsay evidence is admissible but, as it cannot be challenged by cross-examination, the court must carefully consider what weight to attach to it.

Make findings of fact

13. What findings need to be made?
- a. Any factual issue that is disputed and that is relevant to the determination of the application before the court must be the subject of a finding. The findings required may be few or many depending on the type of application before the court. In some cases the facts may be agreed. The court should not make more findings than are necessary to determine the issues before it.

14. How should the findings be made?
 - a. The following procedure should be adopted:
 - i. evidence which has been read and heard must first be carefully weighed and evaluated
 - ii. set out the relevant facts in chronological order or under convenient headings. There may be a local pro forma to be used to structure reasons but care should be taken not to recite standard wording.
 - iii. make it clear what facts are not in dispute and what are disputed
 - iv. make findings on disputed issues and say why particular evidence has been accepted or rejected.
15. On which party is the burden of proof?
 - a. The burden of proving a fact rests with the party who alleges it to be a fact.
16. What is the standard of proof?
 - a. The standard of proof is the normal civil standard on the balance of probability.

Decide whether a section 37 direction should be made

17. In rare cases the court, having read and heard the evidence, may have such concerns about a child's welfare that it believes that it may be appropriate for a care order or supervision order to be made. In such a case, it can adjourn the application and order the local authority to investigate the child's circumstances (a 'section 37 investigation'). If it makes such a direction, the court has the power to make an interim care order or an interim supervision order but should never do so without first discussing the matter fully with the legal adviser. The court should consider whether to appoint a children's guardian. See *Section 9 – Children Act private law orders*, for further information.

Decide what order if any to make

18. What powers are available?

a. The court must consider at this stage that the child's welfare is paramount. It must:

- i. remember that the child's welfare is its paramount consideration
- ii. have regard, in particular, to the welfare checklist
- iii. have regard to the general principle that delay is likely to prejudice the child's welfare
- iv. not make any order unless it is better for the child than making no order at all
- v. consider the implications of the Human Rights Act 1998
- vi. remember that no child arrangements order, save for one that relates solely to living arrangements, specific issue or prohibited steps order, other than for the variation or discharge of an existing order, can be made with respect to a child who has reached the age of 16 unless there are exceptional circumstances.

b. In deciding what order to make, if any, the court should apply the findings of fact to every section of the welfare checklist. The list provides a very useful guide to the court in deciding what factors are relevant and what order, if any, will most promote the child's welfare. For example, what are the wishes of the child, what harm have they suffered or are likely to suffer, what are their needs and who might best meet them? In answering some of these questions, the court is looking to the future and must base its assessments (e.g. risk of future harm) on actual facts rather than suspicions. However, reasonable inferences as to likelihood may be drawn from findings of fact actually made.

19. In relation to the last section of the welfare checklist, i.e. the range of powers available to the court:

a. first consider, in the light of the facts found, the likely effect on the child of 'no order' and decide whether it is better for them if the court makes some

- order. For example, 'no order' may lead to the continuation of muddled arrangements regarding contact, or the person with whom the child lives not having parental responsibility for them
- b. then consider, again in the light of the facts found, the effect on the child of not just the order sought but all other available orders that might be relevant to the particular circumstances of the case. For example, a family assistance order to provide short-term assistance to the child's family.
20. Take into account any other factors that have been identified by the court and that it considers are relevant to its decision.
 21. Balance all relevant factors, i.e. those that point towards or away from the order sought or other relevant orders, apply the paramountcy test, i.e. what best promotes the child's welfare, and decide what order or orders should be made if any. Reasons that justify the court's decision will have to be given.
 22. Ensure that its decision is compatible with the Human Rights Act 1998. All Children Act orders engage Article 8 and, to differing degrees, interfere with the exercise of the rights of parents (or other carers) and child to respect for their family life. The court's decision must thus:
 - a. be in accordance with law. Any Children Act order will meet this requirement
 - b. pursue a legitimate aim, i.e. it must be necessary. The respective rights of parents (or other carers) and the child must be balanced and an order may be necessary to protect the child's health and their right to a stable and secure future
 - c. apply the minimum interference necessary to secure the legitimate aim and thus be proportionate and fair.

Decide whether any direction, condition or limitation should be attached to the order

23. In an appropriate case, the court can:
- a. add to the order directions about how it is to be carried into effect
 - b. attach conditions which must be complied with by any person in whose favour the order is made, any parent, anyone who has parental responsibility but is not a parent and anyone with whom the child is living
 - c. make the order for a specified period only
 - d. prevent anyone (usually the applicant) from bringing any future applications of any specified kind in respect of the same child for a prescribed period, without the leave of the court. This power, which is intended to stop inappropriate applications being brought (e.g. repeat applications for contact to which a child is adamantly opposed), should be used sparingly and the legal adviser's advice sought.

At the conclusion of the hearing

Arrange for the legal adviser, in consultation with the court, to record the findings of fact and reasons. .

24. In giving reasons for its decision and any order made, the court must set out the factors which it took into account and how they are balanced.
25. If the court did not follow the recommendation of the Cafcass/CAFCASS Cymru officer or other independent expert, it must justify its decision in its reasons.
26. The court must announce its decision and either its findings of fact and reasons or a short explanation of the decision. The legal adviser must make a written record of the court's decision. The order and written reasons must be handed out to the parties by close of business on the same day or if that is not practicable and the proceedings are on notice, no later than 72 hours from when the court announced its decision.

Read out the facts found and the reasons given for the decision and announce the decision made.

Consider any application for costs

27. Although the court may at any time make such order as to costs as it thinks just, costs orders are rare. Consideration should also be given to costs orders if they are sought in circumstances where the conduct of a party has clearly been tactical, wholly unreasonable or an abuse of process.

SECTION 11 – FAMILY LAW ACT – DOMESTIC VIOLENCE ORDERS

Jurisdiction

1. The Family Court has the power to make two types of order: a non-molestation order and/or an occupation order. A non-molestation order can be made of the court's own motion in family proceedings where the respondent is a party, if the court considers such an order should be made for the benefit of any party to the proceedings or any relevant child, but the parties should always be given notice that the court is minded to do so. The legal adviser should always be asked to advise before such a step is taken. The court cannot attach a power of arrest to a non-molestation order although it may be attached to an occupation order. Persons who have breached a non-molestation order will be liable to arrest and charge. The case will be dealt with by an adult criminal court.
2. Where an emergency protection order has been made that includes an exclusion requirement, the court also has power to make a non-molestation order.
3. Magistrates can deal with these cases, subject to the principles in the schedule to the allocation guidance, except where they are made without notice, and
 - a. the applicant is aged under 18, or
 - b. where an application for an occupation order requires a decision in relation to property ownership.

Non-molestation order

4. A non-molestation order prohibits a person from molesting an associated person and/or a relevant child. 'Molestation' is not specifically defined but it has been held that the word implies some quite deliberate conduct aimed at a high degree of harassment of the other party so as to justify the intervention of the court.
5. A person who is 'associated' with the respondent can apply but the court can make an order of its own volition in any family proceedings if the court

considers that the order should be made for the benefit of any other person, or any relevant child.

6. A person is associated with another person if they:
 - a. are or have been married (or are civil partners)
 - b. live or have lived in the same household other than by reason of one of them being the other's employee, tenant, lodger or boarder
 - c. are relatives
 - d. have agreed to marry one another
 - e. are parents of, or have or have had parental responsibility for, the child
 - f. are parties to the same family proceedings
 - g. have or have had an intimate personal relationship which is or was of significant duration.
7. Associated persons are the parties to the proceedings and are generally entitled to notice of the proceedings but the court may, in any case where it considers that it is just and convenient to do so, make an order even though the respondent has not been given notice, i.e. a without notice order.
8. In deciding whether to make a without notice order, the court is required to have regard to all the circumstances including:
 - a. any risk of significant harm to the applicant or a child
 - b. whether the applicant is likely to be deterred or prevented from pursuing the application if the order is not made, and
 - c. whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service of the application.

9. In deciding whether to make an order and, if so, in what manner, the court is required to have regard to all the circumstances including the need to secure the health, safety and well-being of the applicant and any relevant child.
10. The order may be expressed so as to refer to molestation in general, to particular acts of molestation, or both.
11. In a case where the court has power to make an order, the court may accept an undertaking from any party to the proceedings. The court should not accept an undertaking where the respondent has used or threatened violence against the applicant or a relevant child, and it is necessary for their protection to make a non-molestation order, so that the breach may be punishable in the criminal courts. Where an undertaking is given to the court, it is enforceable as if it were an order of the court. Breach of an undertaking is not a criminal offence and must be dealt with by the Family Court or the High Court.
12. Although the order may be for a specified period or until further order, it has been held that orders should be for a specified period of time unless there are exceptional or unusual circumstances.
13. Either party to the proceedings may apply for variation or revocation.
14. In some circumstances the court may, of its own volition, vary or discharge the order.

Occupation order

15. An occupation order regulates the occupation of a dwelling-house and may extend to a defined area in which the dwelling-house is included.
16. There are various categories of occupation orders. The appropriate category in a particular case is determined by reference to whether either party is entitled to occupy the property. In practice, most applications are by an applicant who is entitled to occupy a home with the respondent who is an 'associated' person.
17. The parties to the proceedings are generally entitled to notice but the court may, in any case where it considers that it is just and convenient to do so, make an order even though the respondent has not been given notice. Where

either party is entitled to occupy the property, the applicant must serve a copy of the application and notice on the mortgagee or landlord.

18. In deciding whether to make an order without notice, the court is required to have regard to all the circumstances including any risk of significant harm to the applicant or a child, whether the applicant is likely to be deterred or prevented from pursuing the application if the order is not made and whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service of the application. In practice, the court should be slow to deprive a party of a roof over their head on a without-notice basis and should be satisfied that it is necessary in order to carry out its duty. The court should have in mind that it has only heard one side and should be on its guard against 'tactical' applications.
19. The category of occupation order determines the nature and extent of its scope. Where the court makes an order it may, depending on the relevant category:
 - a. enforce the applicant's entitlement to remain in occupation as against the other person
 - b. require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house
 - c. regulate the occupation of the dwelling-house by either or both parties
 - d. if the respondent is entitled to occupy the dwelling-house the order may prohibit, suspend or restrict the exercise of that right
 - e. if the respondent has matrimonial home rights in relation to the dwelling-house and the applicant is the other spouse, restrict or terminate those rights
 - f. require the respondent to leave the dwelling-house or part of the dwelling-house
 - g. exclude the respondent from a defined area in which the dwelling-house is included.

20. Additional provisions relating to the repair and maintenance of the dwelling-house or the payment of rent, mortgage or other outgoings can be included in the order. However, as a result of a gap in the legislative scheme, such orders cannot be effectively enforced and the financially vulnerable party would do better to seek other forms of financial relief, if available.
21. In a case where the court has power to make an order, the court may accept an undertaking from any party to the proceedings. However, a power of arrest cannot be attached to an undertaking and therefore the court should not accept an undertaking in cases where a power of arrest should be attached to the order. Where an undertaking is given to the court, it is enforceable as if it were an order of the court.
22. Where the court makes an order and it appears that the respondent has used or threatened violence against the applicant or a relevant child, the court is required to attach a power of arrest to the order unless it is satisfied in all the circumstances of the case that there will be adequate protection without such a power. Where the order is made without notice, the court may attach a power of arrest if the respondent has used or threatened violence and there is a risk of significant harm if a power of arrest is not attached.
23. An order may be made for a specified period, until the occurrence of a specified event or until further order.
24. Either party to the proceedings may apply for variation or revocation.

Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs)

25. The Family Court remedies set out here, sit alongside DVPNs and DVPOs which were rolled out by police area from March 2014.

What are they?

26. They are short-term protective measures designed to provide immediate safety to the victims of domestic violence. DVPNs are issued by the police, who then apply to the court for a DVPO. The application for a DVPO is a civil application made to the magistrates' court.

27. There may be a later application to the Family Court for a non-molestation order and family magistrates are likely to be assisted by seeing the record of any previous DVPO proceedings and any order made.

What are the considerations?

Domestic Violence Protection Notice

28. A DVPN may be issued to a person (P) aged 18 years or over if a superintendent or higher ranking police officer has reasonable grounds for believing that:
- a. P has been violent towards, or has threatened violence towards, an associated person (AP), and
 - b. the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.
29. A notice of court hearing will be served along with the DVPN. The court hearing must be within 48 hours of service. The hearing will be before the **magistrates' court** and not the Family Court, although the definition of 'associated person' is taken from the Family Law Act 1996.

Domestic Violence Protection Order

30. The court may make a DVPO, which will last 14 to 28 days, if:
- a. it is satisfied on the balance of probabilities that P has been violent towards, or has threatened violence towards, an associated person, and
 - b. making the DVPO is necessary to protect that person from violence or a threat of violence by P.
31. It must take into account the welfare of any relevant child, the views of the AP, and if an order is made relating to the premises, any other associated person living there.
32. The DVPO **must** contain a non-molestation provision. It may, where P and AP are living in the same premises, require P to leave the premises, and/or prohibit P from entering or coming within a certain distance of the premises.

SECTION 12 – FAMILY LAW ACT – ENFORCEMENT POWERS

(This section also applies to failure to comply with an exclusion requirement.)

Power of arrest

1. On the making of an occupation order, the court can attach a power of arrest in the circumstances outlined in *Section 11 – Family Law Act – Domestic Violence Orders*, paragraph 22. The court can attach a power of arrest to an exclusion requirement included in an emergency protection order or an interim care order. For details see *Section 6 – Public Law Orders*, paragraphs 28 to 30 and 56 to 58.
2. A power of arrest is a sanction designed to encourage compliance with an occupation order and protection for the applicant and/or any relevant child. It is a direction contained within one of those orders that enables constables to arrest, without warrant, a person whom they have reasonable cause for suspecting to be in breach of any provision of the order to which the power of arrest has been attached.
3. If the court has not attached a power of arrest to the order, the applicant can apply for the issue of a warrant for the arrest of the respondent. The applicant must give evidence on oath about the alleged breach of the order. A warrant can only be issued if the court has reasonable grounds for believing that the respondent has failed to comply with the order.
4. If the respondent is arrested, they must be brought before the relevant court within 24 hours. There are special provisions for Sundays and some Bank Holidays. Failure to produce the arrested person before a court within the time limits means that the court cannot deal with them on that arrest and they must be released. However, fresh process can be initiated and a warrant sought in respect of the same breach. (*Note: If the original order was made by a certain level of judge, an order for committal for breach of that order may only be made by that level of judge or above.*)

5. When a respondent is brought before the court following arrest under a power of arrest or a warrant of arrest, the court may either proceed to deal with the respondent immediately or, if appropriate, adjourn the proceedings and remand the respondent on bail or in custody to appear before the court on a later date. If the court is considering a remand in custody, the respondent must be given the opportunity to be legally represented.
6. The attendance at court of the arresting officer is not necessary and a written statement from the arresting officer as to the circumstances of the arrest should normally be sufficient.
7. Any remand may be in custody or on bail. Bail may be unconditional or subject to whatever conditions the court considers to be appropriate to ensure that they do not interfere with witnesses or otherwise obstruct the course of justice.
8. In appropriate circumstances, a remand may be requested in order to enable a medical examination and report to be made on the respondent's mental or physical condition.

Proving the breach

9. The court must be satisfied that the respondent was aware of the terms of the order. In certain limited circumstances, the court may proceed to deal with a breach even if there has not been formal service, provided it is satisfied that the respondent was aware of the order and knew what they were doing was a breach. The legal adviser's guidance should always be sought before doing so.
10. Evidence of the arrest may usually be in written form, as may evidence of the breach, but if the respondent is challenging the breach they are entitled to have all relevant witnesses attend for cross-examination. That can frequently lead to an adjournment.
11. The standard of proof is the criminal standard and not the civil standard. The burden of proof is on the applicant.

Enforcement powers open to the court

Breach of a non-molestation order is a criminal offence triable either way and punishable in the magistrates' court to a sentence of imprisonment of up to six months and/or a fine not exceeding the statutory maximum. In the Crown Court, the maximum penalty is five years. The court will be assisted by the Magistrates' Court Sentencing Guidelines – Breach of protective order.

Note: the powers in this section also apply to a non-molestation order in the event that any breach is not being prosecuted as a criminal offence.

12. Where the court is satisfied that the respondent has breached an occupation order, the court may either:
 - a. order the respondent to pay a fine not exceeding £5,000, or
 - b. commit them to custody for a period not exceeding two months.
13. The court has power to suspend any committal to prison on whatever terms and conditions the court considers appropriate. If considering a committal to prison or a suspended committal, the respondent must be offered the opportunity to be legally represented. In enforcement proceedings, the focus of the court is more on ensuring future compliance with the court's orders than punishment. Protection of the vulnerable is the court's aim but, particularly on a first breach, the court will think carefully before ordering immediate committal.
14. If the court is satisfied that the respondent is suffering from mental illness, or severe mental impairment, and the justices are satisfied that the respondent has breached an occupation order, non-molestation order or an exclusion requirement, there may be power to make a hospital order or guardianship order under the Mental Health Act 1983. If considering one of these orders, seek the advice of a legal adviser.
15. As an alternative to proceeding to enforce the order, it may be appropriate for the court to consider the variation or discharge of an occupation or non-molestation order.

16. Such an application may be made by the respondent or the person on whose application the order was originally made.
17. The court has power to vary or discharge a non-molestation order of its own motion without application, provided that the order was made by the court, in the same manner, of its own motion without application.
18. The power to vary or discharge the order includes power to vary or discharge any power of arrest attached to the occupation order

Breach of a Domestic Violence Protection Order

19. On arrest for breach of a DVPO, P¹⁰ will be brought before the magistrates' court in custody within 24 hours to be dealt with and may be further remanded by the court. The proceedings are civil and, as for the civil route above, the court has power to impose a penalty of £50 a day for every day P is in default (up to £5000) or commit P to custody for up to 2 months.

¹⁰ The definition of 'P' can be found in Section 11, paragraph 28.

SECTION 13 – WELFARE CHECKLISTS

Introduction

Sections 13 and 14 deal with welfare checklists and reasons. Whilst the relevant welfare checklist must be considered when the court is arriving at its decision, it is clear from recent case law that this should not be a mechanistic approach. Checklist considerations will be part of the court's evaluation of all the options which are realistically possible, in order to arrive at the outcome which will best meet the child's needs.

Welfare checklist – Children Act 1989

All the following points on the welfare checklist need to be considered:

- The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding).
- Their physical, emotional and educational needs.
- The likely effect on them of any change in their circumstances.
- Their age, sex, background and any characteristics of which the court considers relevant.
- Any harm which they have suffered or are at risk of suffering.
- How capable each of their parents and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs.
- The range of powers available.

Welfare checklist – Adoption and Children Act 2002

All the following points on the welfare checklist need to be considered:

- The child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding).
- The child's particular needs.
- The likely effect on the child (throughout their life) of having ceased to be a member of the original family and become an adopted person.
- The child's age, sex, background and any of the child's characteristics that the court or agency considers relevant.
- Any harm (within the meaning of the Children Act 1989) that the child has suffered or is at risk of suffering.
- The relationship that the child has with relatives, with any person who is a prospective adopter and with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including:
 - the likelihood of any relationship continuing and the value to the child of doing so
 - the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs
 - the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

Note that in placing a child for adoption, an adoption agency in Wales must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

SECTION 14 – REASONS CHECKLISTS

Introduction

1. Magistrates are required by the rules to give written reasons for their decisions and must state clearly their findings of fact. The purpose behind the giving of reasons is to explain the court's decision and to demonstrate how it arrived at its conclusion.
2. When making an order or refusing an application, the court or one of the magistrates must announce its decision and either its findings of fact and reasons, or a short explanation of the decision. It is the responsibility of the justices' clerk or assistant justices' clerk, in consultation with the magistrates, to make notes of the reasons for the court's decision and any findings of fact, before the court makes an order or refuses an application. The order and written reasons must be handed out to the parties by close of business on the same day, or if that is not practicable and the proceedings are on notice, no later than 72 hours from when the court announced its decision.
3. Your reasons will be read by the parties and their representatives and also by the child when they become old enough to understand them. In reaching a decision, a structured approach is required and by following a structure magistrates can ensure that all issues raised have been addressed and that the correct threshold in public law proceedings has been applied.
4. It is also vital that any other court looking at the reasons will be able to see why the court has reached its decision. This can be at a later hearing, upon transfer or on appeal. The appellate court must be satisfied that the magistrates have applied the law correctly and have taken into account what they should have, and have not taken into account inappropriate matters.
5. This section of the bench book is intended to assist in the process of structuring reasons in the main areas of family work. If magistrates find themselves dealing with one of the less common areas of work, they should apply the same principles they have found here, but they should consult their legal adviser for specific advice.

6. Some panels use pro formas that can be helpful, but each case is different and is unlikely to 'fit' exactly into the pro forma. Therefore, this section sets out some 'checklists' that can act as an aide-memoire when you are drafting the reasons with your legal adviser. Attached to some of the checklists are examples of pronouncements that can be included in your reasons.
7. Remember that each case usually involves a balancing of risk and it is important that your reasons set out this balancing exercise.
8. What does the appeal court consider? A judge hearing an appeal will be examining your reasons closely. All appeals are dealt with as a review unless an enactment or practice direction provides otherwise, or the court considers it in the interests of justice to hold a re-hearing.

Emergency protection orders

All of the following points need to be covered:

- Whose application, for what and in respect of whom, to include reference to parents/persons with parental responsibility for the child.
- Opposed/unopposed.
- If without notice, explain why the court is dealing with the application on that basis.
- Apply the guidance issued in *X County Council v B* [2005] and *Re X* [2006].
- See also *Section 6 – Public Law Orders*, paragraph 23.
- Documents read/evidence heard.
- Brief summary of background to include how the child came to the attention of Social Services.
- In contested cases on notice, summarise each party's case.
- Make findings of fact on relevant issues that should be succinct but sufficiently clear to inform any party not present as to the reasons why an emergency order was necessary.

- Refer to criteria in the 1989 Act (i.e. that court is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:
 - they are not removed to accommodation provided by or on behalf of the applicant; or
 - they do not remain in the place in which they are then being accommodated).
- No order principle – justify the need for an order or for refusing to make the order.
- State the order and duration and the reasons for making the order for the period specified (that should be the minimum necessary).
- If an exclusion requirement is to be inserted into the order, explain the findings for that requirement by reference to the conditions in the Act. The conditions are:
 - that there is reasonable cause to believe that, if the relevant person is excluded from a house in which the child lives then:
 - the child will not be likely to suffer significant harm even though the child is not removed to accommodation provided by or on behalf of the applicant or does not remain in the place in which they are then being accommodated, or
 - in the case of an order made on grounds of enquiries being frustrated, the enquiries will cease to be frustrated, and
 - that another person living in the house (parent of the child or some other person) is able and willing to give to the child the care that it would be reasonable to expect a parent to give to them and consents to the inclusion of the exclusion requirement.
- It may be necessary to refer to the arrangements for contact (especially in the case of a very young baby) and to make directions relating to contact or to medical/psychiatric examination.

- Such a draconian decision requires a clear statement of why it is found to be justified on the evidence before the court. Address Human Rights Act issues.

Interim care/supervision orders

All of the following points need to be covered:

- Whose application, for what, in respect of whom and including reference to child's parents/persons with parental responsibility.
- Opposed/unopposed.
- Documents read/evidence heard.
- Brief summary of the case to include how the child came to the attention of Social Services. If the parties have prepared a statement of agreed facts, insert them here.
- If contested case, include any facts agreed and disputed facts and summarise each party's case including any case law cited.
- Make limited findings of fact (whether this is a contested hearing or not) and include limited findings on any case law cited.
- Refer to threshold criteria – reasonable grounds to believe.
- If application to remove from parental care, consider whether the child's safety requires interim protection/immediate separation.
- Make clear the welfare of the child has been the paramount consideration and the relevant aspects of the welfare checklist have been taken into account in deciding whether and what order to make.
- No order principle – justify the need for any order to be made and address Human Rights Act issues.
- State order made and duration.

- If an exclusion requirement is to be inserted into an interim care order make findings in respect of that requirement by reference to conditions in the Act. The conditions are that:
 - there is reasonable cause to believe that if the relevant person is excluded from a house in which the child lives, the child will cease to suffer or cease to be likely to suffer significant harm, and
 - that another person living in the house (whether a parent of the child or some other person) is able and willing to give to the child the care that it would be reasonable to expect a parent to give them and that person consents to the inclusion of an exclusion requirement.
- Consider timetabling in accordance with the timetable for proceedings and the Timetable for the Child – current arrangements/future arrangements. Make any necessary directions including directions relating to medical/psychiatric assessments, in accordance with the practice directions on experts. The directions may be dealt with by the legal adviser.

Note: If the order made goes against the recommendation of the Cafcass/CAFCASS Cymru officer, specific reference must be made in the reasons as to why the bench find that such an order is appropriate, making reference to relevant factors in the welfare checklist.

Care/supervision orders – final orders

All of the following points need to be covered:

- Whose application, for what and in respect of whom.
- Opposed/unopposed.
- Documents read/evidence heard.
- Brief history of court proceedings to date, i.e. explain when and what previous orders have been made in these proceedings.
- Either adopt previous reasons for background, e.g. 'The background to these proceedings is set out fully in the Justices' Reasons dated xxxx', or insert the statement of agreed facts prepared by the parties.
- Update situation and include reference to the permanence provisions of the care plan.
- In a contested case, include any facts agreed and summarise each party's case including any case law cited.
- Identify the key issues.
- Make findings of fact on relevant issues including findings on any case law cited.
- Identify the harm and/or the likelihood of harm and what it is attributable to, setting out risks to the child and strengths in the family.
- Refer to the threshold criteria – the court is satisfied that _____.
- Decide and explain what will be best for the child, having had regard to the social work and Cafcass/CAFCASS Cymru analyses.
- Make clear the welfare of the child has been the paramount consideration and the relevant aspects of the welfare checklist have been taken into account in deciding whether and what order to make.

- No order principle – justify the need for any order to be made and address Human Rights Act issues. Which order is proportionate and necessary, if any?
- State order made.
- Refer to contact arrangements (this may be necessary either because an order as to contact with a child in care has been applied for, or to demonstrate that the bench are aware of power to make orders under the Act but that there is no need for such an order in this case, for example, ‘We understand that the local authority propose to allow X and Y reasonable contact with their children as follows...’).

Note: If the order made goes against the recommendation of the Cafcass/CAFCASS Cymru officer, specific reference must be made in the reasons as to why the bench find that such an order is appropriate, making reference to relevant factors in the welfare checklist.

Family assistance orders

All of the following points need to be covered:

- Explain that in private law proceedings for a s.8 order or a special guardianship order, the court may make a family assistance order. Give reasons for making or not making that order.
- Consider if appropriate for Cafcass/CAFCASS Cymru/a local authority officer to advise, assist and befriend any person to be named in the order. Make findings as to why this is necessary and appropriate.
- Obtain oral or written report from either Cafcass/CAFCASS Cymru or the local authority as to whether it would be in the best interests of the child, and if so, how the family assistance order could operate, and for what period.
- Set out the views and opinions of any person to be named in the order and that consent of every person named (except the child) has been given.
- If s.8 order is being made, decide whether to direct the officer to give advice and assistance on establishing, improving and maintaining contact with the child and any person(s) named.
- If making a s.8 order, decide whether to direct the officer to report on the operation of the s.8 order, and report on whether the order should be varied or discharged.
- Agree length of order – up to 12 months.

Child arrangements orders

All of the following points need to be considered:

- Whose application, for what and in respect of whom to include reference to the child's parents/persons with parental responsibility.
- If it is alleged/there is reason to suppose domestic abuse or risk of such abuse, consider content of Practice Direction 12J 'Child Arrangements and Contact Orders: Domestic Violence and Harm'
- Opposed/unopposed.
- If opposed, is an activity direction appropriate?
- Documents read/evidence heard/risk assessment noted.
- Brief summary of background including what prompted the application to be made. If this hearing is the final hearing after interim order or one of a series of interim hearings, adopt previous reasons for background and give brief updating information. If interim hearing, is contact in the interests of the child, in particular, can the safety of the child and residential parent be secured before, during and after any contact?
- If the application is agreed, include any agreed statement of facts prepared by the parties.
- If domestic abuse suggested, scrutinise any consent order carefully.
- If contested, include any facts agreed and then summarise each party's case including any case law cited.
- Make findings of fact on relevant issues including findings on any case law cited.
- Make clear the welfare of the child has been the paramount consideration and the relevant aspects of the welfare checklist have been taken into account in deciding whether and what order to make.

- If the order to be made is an interim order, consider paragraphs 25 - 27 of Practice Direction 12J: Child Arrangements and Contact Order: Domestic Violence and Harm.
- No order principle – justify the need for any order. Address Human Rights Act issues.
- Is a family assistance order appropriate?
- If making final child arrangements order consider:
 - Directions as to how it is to be carried out.
 - Imposing conditions to be complied with.
 - Period for which to have effect.
- Consider making parental responsibility orders where appropriate.
- Should Cafcass/CAFCASS Cymru be asked to monitor order – if so, specify period up to 12 months.
- Should an Activity Condition be made – if so state terms/order and whether Cafcass /CAFCASS Cymru to monitor.
- State order – attach warning notice. See *Section 9 – Children Act Private Law Orders*.

Note: If the order is made or refused against the recommendation of the Cafcass/CAFCASS Cymru officer, specific reference must be made in the reasons as to why the bench find that such an order is appropriate, making reference to relevant factors in the welfare checklist.

Enforcement orders

All of the following points need to be covered:

- Whose application, and why, what prompted application.

- Check person had copy of order or had been informed of its terms, and the content of the warning notice.
- Opposed/unopposed.
- Documents read/evidence heard.
- If application agreed, include any agreed statement of facts prepared by the parties.
- If contested, summarise each party's case, including any law cited.
- Make findings of fact as to whether satisfied beyond reasonable doubt that person has failed to comply with child arrangements order.

OR

- Has person satisfied you on a balance of probabilities that they had reasonable excuse for failing to comply with child arrangements order – make findings. If so, the application for an enforcement order will be dismissed.
- The welfare of the child.
- State how satisfied that the order is necessary to secure compliance with the child arrangements order, and is proportionate in relation to the seriousness of the breach.
- Information from Cafcass/CAFCASS Cymru/other evidence as to availability of unpaid work and accessibility. Also, make clear you have considered the likely effect on the person and taken into account religious beliefs, education and work commitments.
- Check person is habitually resident in England and Wales and it is not an 'excepted' order.
- Make order 40-200 hours unpaid work in 12 months.
- Decide whether to suspend order for such period as is specified or if of immediate effect.

- Attach warning notice setting out consequences of non-compliance and powers of Cafcass/CAFCASS Cymru to refer back to court.
- Consider whether to order Cafcass/CAFCASS Cymru to monitor and report non-compliance.

Breach of enforcement orders

All of the following points need to be covered:

- Whose application, and why, what prompted application.
- State that person had been informed of the warning notice, and, that the enforcement order is still in force.
- Opposed/unopposed.
- Document read/evidence heard.
- Make findings of fact as to whether satisfied beyond reasonable doubt that person has failed to comply with the unpaid work requirement.

OR

- Has person satisfied you on a balance of probabilities that they had reasonable excuse for failing to comply – make findings. If so, the application for breach will be dismissed.
- Extent to which person has complied with the order.
- State the effect on the person of the proposed amendment due to breach (more hours etc.). Explain how this is required in order to secure compliance with the contact order and how it is proportionate to the seriousness of the failure to comply with the child arrangements order and the original enforcement order.
- Amend order or make second order.
- Attach warning/order and consider whether Cafcass/CAFCASS Cymru to monitor.

Financial compensation orders

All of the following points need to be considered:

- Whose application, and why, what prompted application.
- State how person aware of content of contact order and warning notice.
- Opposed/unopposed.
- Documents read/evidence heard.
- Make findings as to whether or not a person has caused financial loss to the applicant through breaching a contact order. Determine if the person had a reasonable excuse for not complying. Assess the amount of the financial loss.
- Consider welfare of the child.
- Assess the financial circumstances of the person who has caused the loss.
- Determine the amount of compensation, which must not exceed the financial loss suffered by the applicant.
- Announce decision, direct payment terms and remind that any sum is recoverable as a civil debt.

Prohibited steps/specific issue orders

All of the following points need to be considered:

- Whose application, for what and in respect of whom to include reference to the child's parents/persons with parental responsibility.
- Opposed/unopposed.
- If without notice, explain why the court proceeded on that basis.
- Documents read/evidence heard.
- Brief summary of background including what prompted the application to be made. If the application is agreed, include any agreed statement of facts prepared by the parties.
- If contested, include any facts agreed and summarise each party's case including reference to any case law cited.
- Make findings of fact on relevant issues including findings on any case law cited.
- Make clear the welfare of the child has been the paramount consideration and the relevant aspects of the welfare checklist have been taken into account in deciding whether and what order to make.
- No order principle – justify the need for an order making explicit reference to the restriction imposed in the Act i.e. no court shall make a specific issue order or prohibited steps order with a view to achieving a result that could be achieved by making a residence or contact order. Address issues relating to the Human Rights Act.
- State order/refuse order.

Note: If an order is made or refused against the recommendation of the Cafcass/CAFCASS Cymru officer, specific reference must be made in the reasons as to why the bench find that such an order/refusal is appropriate making reference to relevant factors in the welfare checklist.

Parental responsibility orders

All of the following points need to be considered:

- Whose application, for what and in respect of whom to include reference to the child's mother.
- Opposed/unopposed.
- Documents read/evidence heard.
- Brief summary of background to the application. If application is agreed include any agreed statement of facts prepared by the parties.
- If contested, include any agreed facts and summarise each party's case including reference to any case law cited.
- Make findings of fact on relevant issues to include specific reference to the three conditions set out in *Re H* (1993) (commitment, attachment, applicant's reason for applying) and any other case law cited. Address Human Rights Act issues.
- State order/refuse order.

Note: If order is made or refused against the recommendation of the Cafcass/CAFCASS Cymru officer, specific reference must be made in the reasons as to why the bench find that such an order/refusal is appropriate.

Secure accommodation orders

All of the following points need to be considered:

- Whose application, for what and in respect of whom, to include reference to the parents/persons with parental responsibility for the child.
- Opposed/unopposed.
- Documents read/evidence heard.
- Brief summary of background including what prompted an application to be made. In an agreed case, insert any statement of agreed facts prepared by the parties.
- In a contested case, include any facts agreed and summarise each party's case including any case law cited.
- Make findings of fact on relevant issues including findings on any case law cited.
- Refer to criteria in the Act, i.e. that it appears that the child has a history of absconding and is likely to abscond from any other accommodation and if they abscond is likely to suffer significant harm or that if they are kept in any other description of accommodation are likely to injure themselves or other persons.
- No order principle, paramountcy principle and welfare checklist do not apply so do not refer to them.
- Make order or refuse order.
- Explain the reasons for length of order chosen.
- If interim order, explain what further enquiries are necessary before final length of order can be assessed.
- The court has determined that the order is compliant with the principles of the Human Rights Act 1998 because:

- The court has the power to make such an order as is prescribed in the Children Act 1989 and the regulations made under the Act.
- The order pursues the legitimate aim of protecting the health or morals of [insert name(s)] or protecting the rights of others, namely [insert name(s)].
- The order is proportionate in that it is the minimum intervention necessary to ensure that_____.
- The parties and the child/ren have rights to an independent and impartial tribunal, disclosure, an adversarial hearing, reasons and decisions made within a reasonable time. The court has concluded that _____.

Note: If the order is made or refused against the recommendation of the Cafcass/CAFCASS Cymru officer, or its duration is not in accordance with that recommendation, specific reference must be made in the reasons as to why the bench find that such an order/refusal is appropriate.

Special guardianship orders

All of the following points need to be covered and referred to:

- Whose application it is and include reference to child's parent/guardian or those with parental responsibility.
- Opposed/unopposed.
- Documents read which must include a report from the local authority/evidence heard.
- Brief summary of the case to include what prompted the application to be made. If the application is agreed, include any agreed statement of facts prepared by the parties.
- If a contested case, include any facts agreed and any disputed facts and summarise each party's case including any case law cited.
- Make necessary findings of fact and include findings on any case law cited.
- Make clear the welfare of the child has been the paramount consideration and the relevant aspects of the welfare checklist have been taken into account in deciding whether and what order to make.
- Contact. If a special guardianship order is appropriate, before making the order the court must consider whether to make provision for contact within a child arrangements order and the discharge of any s.8 orders in force.
- Cafcass/CAFCASS Cymru recommendations. If the court goes against the recommendation a clear explanation must be given.
- No order principle – justify the need for the order to be made and address Human Rights Act issues (see *Section 2 – General Principles in Family Cases*).
- Give the decision.

Placement orders

All of the following points need to be covered and referred to:

- Opposed/unopposed.
- Documents read/evidence heard.
- Brief summary of the case to include why the local authority is making the application. If parties have prepared a statement of agreed facts insert them here.
- If a contested case, include any facts agreed and any disputed facts and summarise each party's case including any case law cited.
- Make findings of fact and include findings on any case law cited.
- Which of the following applies:
 - the child is subject of a care order, or
 - the court is satisfied that the threshold conditions for the making of a care order are met, or
 - the child has no parent or guardian.
- Where the child has a parent or guardian, is the court satisfied that the:
 - parent/guardian consented and has not withdrawn that consent, or
 - parent/guardian's consent should be dispensed with? (Because the parent cannot be found, lacks capacity to give consent or the child's welfare requires the consent to be dispensed with.)
- Make clear the welfare of the child throughout their lifetime has been the paramount consideration and the relevant aspects of the welfare checklist have been taken into account in deciding whether to make an order. Evaluate all the options, taking into account all the negatives and positives of each option, deciding globally and holistically which option best meets the court's duty to consider the child's welfare as paramount.

- Children’s guardian’s recommendations – if the court goes against the recommendation a clear explanation must be given.
- No order principle – does the child’s welfare ‘require’ adoption? The court must adopt the least interventionist approach and consider all of the options before coming to a decision. Address Human Rights Act issues (see *Section 2 – General Principles in Family Cases*).
- Contact – is any order necessary?
- Give the decision.

Adoption orders

All of the following points need to be covered and referred to:

- Whose application this is, including reference to the child's parents/guardians.
- Opposed/unopposed.
- Documents read/evidence heard.
- Brief summary of the case to include how the child comes to be living with the applicants. If the application is agreed, include any agreed statement of facts prepared by the parties.
- If a contested case, include any facts agreed and any disputed facts and summarise each party's case including any case law cited.
- Make necessary findings of fact and include findings on any case law cited.
- Dependent on the basis of the application (e.g. foster parent or placement by an agency) is the required period of residence satisfied? – see *Section 15 – Adoption*, paragraph 3.
- Under which of the three possible regimes was the issue of parental consent considered:
 - Placement by an adoption agency i.e. where the child has been placed by an adoption agency with prospective applicant adopters and the court is satisfied that:
 - the child was placed with the consent of each parent/guardian and the consent of the mother was given when the child was at least six weeks old, or
 - the child was placed under a placement order, and
 - no parent/guardian opposes the making of the adoption order (if a parent or guardian has been given leave to oppose the making of the order then the court must proceed under condition c. below and consider dispensing with the consent of the parents), or

- the child is free for adoption by virtue of a court order, or
- in all other cases where the residence conditions are satisfied, consider if:
 - the parent/guardian consents to the application
 - the parent/guardian gave advance consent that has not been withdrawn, and does not oppose the application, or
 - the parent/guardian's consent should be dispensed with.
- Where the court has to consider dispensing with the parent's/guardian's consent the court may do so only if satisfied that:
 - the parent/guardian cannot be found or is incapable of giving consent, or
 - the welfare of the child requires the consent to be dispensed with.
- Make clear the welfare of the child throughout their lifetime has been the paramount consideration and the welfare checklist has been taken into account in deciding the orders available and which, if any, is the most appropriate. Evaluate all the options, taking into account all the negatives and positives of each option, deciding globally and holistically which option best meets the court's duty to consider the child's welfare as paramount.
- What, if any, recommendation is made by Cafcass/CAFCASS Cymru? If the court goes against this recommendation a clear explanation must be given.
- No order principle – does the child's welfare 'require' adoption? Address Human Rights Act issues (see *Section 2 – General Principles in Family Cases*). All of the options must be evaluated globally and holistically. The court must adopt the least interventionist approach and consider all of the options before coming to a decision.
- Contact under the Adoption and Children Act 2002 – is any order necessary? The court must consider whether there should be arrangements for allowing any person contact with the child, and must consider any proposed or existing arrangements and obtain any views of the parties to the proceedings.
- Give the decision.

Occupation orders and non-molestation orders

(See *Section 11 – Family Law Act – Domestic Violence Orders* for more detailed information.)

All of the following points need to be considered:

- Whose application, for what and in respect of whom.
- Who are the parties and why are they connected parties (associated persons).
- Whether respondent is present in court today and if they are not present or represented, should the court proceed in their absence.
- Is the court satisfied that the applicant/applicant's solicitors effected personal service of the application form, statement of the applicant and notice of hearing on the respondent, pursuant to Rule 10.3(1) FPR, on (date)?
- Opposed/unopposed.
- Has the applicant, if applying for an occupation order, sent a copy of the application to the mortgagee/landlord with a notice in Form FL416 informing them of their right to make representations, pursuant to Rule 10.3(3) FPR?
- Consider whether it is appropriate for magistrates to hear the application for a non-molestation order and occupation order, for example if the applicant is under 18 years of age, or if there are disputed questions as to a party's entitlement to occupy.
- Documents read/evidence heard, and any agreed statement of facts prepared by the parties, including reference to any case law cited.
- Make findings of fact on relevant issues. Having regard to the above findings, state whether the respondent poses a serious threat to the applicant and child/ren.
- State, if dealing with an application for a non-molestation order, whether order to secure their health and safety. State terms of the order. Remind that any breach will be a criminal offence.

- Consider the necessary duration of the order, which should be the shortest necessary to achieve its aims.
- Orders without notice: do all the circumstances including any risk of significant harm to the applicant or a relevant child if the order is not made immediately justify the making of the order without notice? The court should also consider whether or not it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately. The court should consider making an order without notice where there is reason to believe that the respondent is aware of proceedings but is deliberately evading service.
- If an order without notice is granted, there must be a hearing to reconsider it on an on-notice basis (a 'return hearing') as soon as just and convenient, which should not normally exceed 14 days. The duration of the order and the return date must be clearly set out.
- Power of arrest: having made an occupation order, does the court find that the respondent has used and/or threatened violence against the applicant/and relevant child/ren? If so, the court must attach a power of arrest unless satisfied that the person protected by the order is adequately protected without the power of arrest. If this is an application for an order without notice, the power is discretionary if violence has been used or threatened and there is a risk of significant harm to the applicant or child/ren.
- Human rights: The rights of those concerned under Article 8 of the Human Rights Convention will be affected by the order(s) but you must consider whether, for the necessary protection of the applicant and relevant child(ren), the order(s) are proportionate in all the circumstances.

SECTION 15 – ADOPTION

Adoption proceedings

1. The adoption of children is governed by the Adoption and Children Act 2002. Whenever a court is coming to a decision about the adoption of a child, the paramount consideration of the court must be the child's welfare throughout their life. The court must always consider the whole range of powers and must not make any order under the Adoption and Children Act 2002 unless it considers that making the order would be better for the child than not doing so. The delay principle also applies and the court is required to consider that, in general, any delay in coming to a decision is likely to prejudice the child's welfare. In the case of *Re B-S (Children)* [2013] EWCA Civ 1146, the President of the Family Division pointed out that two things are essential when the court is being asked to approve a care plan for adoption and when it is being asked to make a non-consensual placement order or adoption order. Those are:
 - a. proper evidence both from the local authority and the guardian, addressing all the options which are realistically possible and containing an analysis of the arguments for and against each option
 - b. an adequately reasoned judgment which must show a global holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare.
2. The Adoption and Children Act 2002 provides a checklist which is very similar to the one used in the Children Act 1989. The factors that the court will consider, amongst others, are:
 - a. the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding)
 - b. the child's particular needs
 - c. the likely effect on the child (throughout their life) of having ceased to be a member of the original family and become an adopted person

- d. the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant
- e. any harm (within the meaning to the Children Act 1989) which the child has suffered or is at risk of suffering
- f. the relationship which the child has with relatives, and with any person in relation to whom the court or agency considers the question to be relevant, including:
 - i. the likelihood of any such relationship continuing and the value to the child of its doing so
 - ii. the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs
 - iii. the wishes and feelings of any of the child's relatives, or any such person, regarding the child.

Adoption and placement

- 3. No child can be adopted unless they have resided with the applicants for specified periods preceding the making of the application:
 - a. ten weeks where an adoption agency is authorised to place the child for adoption
 - b. six months where the applicant is a step-parent
 - c. one year if the applicants are local authority foster-parents
 - d. three years in any other case (whether continuous or not) during the period of five years preceding the application.
- 4. An adoption agency can only be authorised to place a child for adoption where either:
 - a. the parents consent, or
 - b. the court has made a placement order.

Placement orders

5. This is an order of the court authorising a local authority to place a child for adoption with any prospective adopters chosen by the authority. On the making of a placement order, parental responsibility for the child is given to the adoption agency and the prospective adopters. The parents' parental responsibility is not extinguished but is shared with the prospective adopters and the agency. It is for the agency to decide on any necessary restrictions of the exercise of parental responsibility.
6. Applications to make or revoke placement orders are specified proceedings and therefore the child will be a party and a children's guardian will be appointed by the court. The guardian will appoint a solicitor to represent the child.
7. Once a placement order is made, only a local authority may remove the child and it continues in force until it is revoked, the child marries or becomes a civil partner, attains 18 years or the adoption order is made in respect of the child. Other consequences of a placement order are:
 - a. any care order which the child is subject to is suspended
 - b. any other order under s.8 Children Act 1989 and any supervision order ceases to have effect
 - c. no prohibited steps, specific issue, supervision or child assessment order can be made
 - d. an application for a child arrangements order may only be made in respect of the child's living arrangements. The applicant must have obtained the leave of the court, and an application for an adoption order been made.
 - e. See paragraph 12 below in relation to contact.
 - f. the child may not be given a new surname or removed from the UK for more than a month unless each parent consents or the court grants leave.

Conditions for making a placement order

8. The court may not make a placement order in respect of a child unless:
 - a. the child is subject to a care order, or
 - b. the court is satisfied that the threshold conditions for the making of a care order are met, or
 - c. the child has no parent or guardian.
9. Where the child has a parent or guardian, the court must be satisfied that:
 - a. they have consented to the child being placed for adoption, or
 - b. the parent's or guardian's consent should be dispensed with.
10. The welfare of the child is the paramount consideration and the welfare checklist, no order and no delay principles apply.

Reports

11. The court will appoint a guardian for the child who is required to advise the court on matters relating to the welfare of the child. The court will also consider any report filed by the local authority giving its reasons for placing the child for adoption and addressing other matters as stipulated by the regulations.

Contact whilst subject to a placement order

12. Before making a placement order, the court must:
 - a. consider the arrangements that the adoption agency has made or proposes to make for allowing any person contact with the child, and
 - b. invite the parties to the proceedings to comment on those arrangements.
13. The court may make an order under s.26 Adoption and Children Act 2002 requiring the person with whom the child lives or is to live to allow the child to have contact with the person named in the order. The court may, of its own initiative, make an order under this section or the following can apply for an order:

- a. the child or adoption agency
 - b. any parent, guardian or relative
 - c. any person in whose favour there was a contact or residence order in force under the Children Act 1989, which ceased to have effect as a result of the placement order being made
 - d. any person who had care of the child as a result of the exercise of the inherent jurisdiction of the High Court, or
 - e. any person who has obtained the court's leave to make the application.
14. The court may make any conditions for contact that it sees fit on the making of a contact order under this section.
15. The welfare of the child is the court's paramount consideration and the welfare checklist, the no order and delay principles apply.
16. A contact order under the Adoption and Children Act 2002 may be varied or revoked by the court or on an application by the child, the adoption agency or the person named in the order.
17. A contact order under this section only has effect whilst the adoption agency is authorised to place the child for adoption.

Adoption

18. An adoption order can be made in respect of a child who has not attained the age of 18 years on the date of the application and is under 19 years on the date of the making of the adoption order.
19. Applicants for an adoption order must satisfy conditions relating to domicile and residence. An application may be made by:
- a. A couple or one person who is not married or a civil partner. A couple may be married, civil partners or living in an enduring relationship. A couple may be two people of different sexes or of the same sex.

- b. Where an application is made by a couple or a single person, they must be 21 years old (there are some exceptions, check with the legal adviser).
- c. A person who is the partner (either married, civil partner or living in an enduring relationship) of the natural parent of the child to be adopted may apply.
- d. An individual who is married or a civil partner may in certain circumstances apply on their own to adopt a child.

Conditions for making an adoption order

20. The court may only make an adoption order if the child has resided with the applicants for the prescribed periods as set out in paragraph 3 of this section and

EITHER:

- a. the parent or guardian consents to the making of the adoption order, or
- b. the parent or guardian has given advance consent to the child being adopted by any prospective adopters and does not oppose the making of the order, or
- c. the parent's or guardian's consent should be dispensed with.

Note: Where a parent has given advance consent to the making of the adoption order, they can only oppose the making of the order with the leave of the court.

OR:

- a. the child has been placed for adoption with the consent of the parent or guardian, or
- b. the child was placed for adoption under a placement order, and
- c. no parent or guardian opposes the making of the order.

Note: Where a child is subject to a placement order or has been placed with the consent of the parents, the application for the adoption order can only be opposed with the court's leave.

OR:

- d. the child is subject to a freeing order.
21. The welfare of the child is the court's paramount consideration and the welfare checklist, the no order and no delay principles apply.
 22. The making of an adoption order operates to extinguish the parental responsibility that any person, other than the adopters, had before the making of the order. Where the applicant is the partner of the parent of the adopted child, the parental responsibility of that parent is not extinguished.
 23. Where the applicants wish their identity to be confidential, they may apply for a serial number to be assigned to them. This number will be used instead of their names.

Reports

24. The local authority is required to submit a report to the court on the suitability of the applicants to adopt the child and regulations stipulate the matters the local authority must address in the report. Where the parents have consented to the placing of the child for adoption, a reporting officer (Cafcass/CAFCASS Cymru) will be appointed who will witness the signature on the consent form and make a report in writing to the court. Where an adoption order is opposed, the arrangements for contact are opposed, or for any other reason the child is made a party, then a children's guardian will be appointed and will file a report with the court. In all other cases, a Cafcass/CAFCASS Cymru officer will be appointed to report on the welfare of the child.

Leave to oppose an application

25. When considering an application by the parents for leave to oppose the adoption application, the court must be satisfied that there has been a change

of circumstances since the making of the placement order, or the giving of consent by the parents to the placement of the child.

26. The welfare of the child is the court's paramount consideration and the no order and no delay principles apply.
27. In the case of *Re B-S* [2013] EWCA Civ 1146, the President of the Family Division made it clear that evaluation of the child's welfare must take into account all the negatives and positives of each of the two options, that is, either giving or refusing the parent leave to oppose. The greater the change in circumstances and the more solid the parent's grounds for seeking leave to oppose, the more cogent and compelling the arguments based on the child's welfare must be if leave to oppose is refused.

Consent

28. The consent provisions apply generally to consent to placement and consent to adoption.

'Consent' to the placement of a child for adoption or the making of an adoption order means:

'consent given unconditionally and with the full understanding of what is involved, but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made'.

29. The persons who have the right to consent are the parent 'having parental responsibility' or the guardian of the child (which includes a special guardian).

Those 'parents' who qualify are:

- a. the birth mother
- b. the birth father where he is married to the child's mother at the time of the child's birth, or if he subsequently marries the mother
- c. an unmarried father if he:
 - i. becomes registered as the child's father, or

- ii. makes a parental responsibility agreement with the child's mother, or
 - iii. is granted a parental responsibility order by the court
 - d. the child's adoptive parent, where the child has been the subject of a previous adoption.
30. Where the application is based on the consent of the parents, a prescribed form signed by the parents or guardian and witnessed by a Cafcass/CAFCASS Cymru officer must be filed with the court.

Dispensing with consent

31. There are only two grounds for dispensing with a parent's consent. These are where the court is satisfied that:
- a. the parent or guardian of a child cannot be found or is incapable of giving consent, or
 - b. the welfare of the child requires the consent to be dispensed with.

Final hearings

32. If the child was 'freed' for adoption under the Adoption Act 1976, or the parent or guardian of the child cannot be found, no notice of the final hearing has to be given to the birth parent(s). Otherwise, there is an obligation on the court to give notice of the date and place of the final hearing of an application for an adoption to birth parent(s) with parental responsibility. In cases where the welfare of the child requires arrangements to be made to ensure that the birth parent(s) and the applicant(s) or the child do not meet at court, see the provisions of Rule 14.16 and the President's Guidance: Listing Final Hearings in Adoption Cases (refer to the legal adviser).

SECTION 16 – THE USE OF EXPERT WITNESSES

Introduction

1. The overriding objective of the Family Procedure Rules is to enable the family courts to deal with cases justly, having regard to any welfare issues involved. The court must further the overriding objective by actively managing cases, which includes **controlling the use of expert evidence**.
2. No one may instruct an expert to provide evidence without permission from the court for use in children proceedings. (There are exceptions in relation to the provision or giving of evidence by the local authority and Cafcass/CAFCASS Cymru officers.)
3. Expert evidence will be restricted to that which is **necessary** to assist the court to resolve proceedings. In deciding whether to allow the instruction of an expert, the court is required to consider:
 - a. any impact which giving permission would be likely to have on the welfare of the children concerned
 - b. the issues to which the expert evidence would relate
 - c. the questions which the court would require the expert to answer
 - d. what other expert evidence is available
 - e. whether evidence could be given by another person on the matters on which the expert would give evidence [**e.g. someone already involved in the case such as a social worker, Children's Guardian or other agency working with the family**]
 - f. the impact which giving permission would be likely to have on the timetable, duration and conduct of the proceedings
 - g. any failure to comply with the Rule on when to apply for permission or any direction of the court about expert evidence, and
 - h. the cost of the expert evidence.

4. When considering whether an expert is necessary and, if so, which type of expert should be instructed, the court must bear in mind that there is a multiplicity of potential experts in the Children Act sphere.
5. Some experts will be working in the NHS in Paediatric or Child and Adolescent Mental Health Services (CAMHS). Other forms of clinical and academic practice include Social Enterprises, Universities, Royal Colleges, Government and Private Practices. Some will be retired from clinical practice. Whatever the employment context, the expert should be able to demonstrate their competence, experience and compliance with the agreed professional standards. A framework of minimum standards for experts has been introduced in the Family Court, which will assist with quality assurance of expert evidence.
6. Deciding on the issues to be resolved and therefore the relevant questions to be answered in the case, and selecting an individual with the correct expertise will help everyone in the case.
7. The wrong questions or inappropriately appointed experts can create problems e.g. the danger of the expert trying to answer irrelevant questions, or comment on matters outside their field of expertise, or not being child-centred.
8. It is vital to identify the problem before selecting the expert. The table below gives examples of the types of question and practitioners who work in the relevant field.
9. Focus the question you wish the expert to resolve. A request for a 'paediatric overview' does not give the expert an indication as to the issues to be decided by the court, and so makes it difficult to give an appropriate opinion.
10. It is essential to identify clearly the issues to be addressed in the letter of instruction (see Practice Direction 25C, para 4.1). This should be finalised and approved by the court at an early stage, and include:
 - a. only those questions that are necessary for an expert to answer

- b. clear timescales for release of all necessary medical and health records to the expert
 - c. the extent of the paginated bundle that will be provided to the expert, including essential reading
 - d. the date for report filing
 - e. a court contact point, in the event that any of these are not provided by the required date (as this will affect the expert's ability to report by the agreed time).
11. Local Family Justice Boards (usually via their multidisciplinary training subgroups), Cafcass and CAF/CASS Cymru can help identify good, independent experts who are able to demonstrate compliance with the quality standards.
12. Consider the following when identifying and selecting an expert:
- a. For NHS based experts this work is usually undertaken outside their NHS contract and is usually done at evenings and weekends, and through booking annual leave for absences: daytime absences from NHS commitments generally require six weeks' notice.
 - b. Some professionals are reluctant to get involved in court work because of the perceived lack of a collegial approach to their instruction and use.
 - c. An expert will be better able to produce a concise, focused report that offers a coherently, reasoned answer if the questions in the letter of instruction are clear. The 'scattergun' approach to questions, or the posing of a very non-specific question in the letter of instruction, does not allow the expert to discern the matter at issue in the case and construct the report in the most helpful way.
 - d. Some experts work as part of consortia or private companies, have taken early retirement to concentrate on court work, or work in an area which is very focused on specialised court based work. Their suitability should be

tested using appropriate, fair criteria including their compliance with published and peer group accepted standards for experts in the family courts.

Locating and selecting the appropriate expertise

Type of question to be answered	Expertise required	Likely practitioner (if not able to be dealt with by those already working with the parents or child)
Are the features displayed likely to be the effects of abuse (physical, sexual, neglect)?	Expertise in Child Protection clinical assessment and normal development	<ul style="list-style-type: none"> • General or Community Paediatrician
Is there evidence of developmental delay or learning disability in the child?	Expertise in clinical assessment and normal development in the context of child abuse and neglect	<ul style="list-style-type: none"> • General or Community Paediatrician • Psychologist; Clinical or Educational • Child and Adolescent Psychiatrist
Is there mental illness in the child e.g. depression, post-traumatic stress disorder?	Expertise in clinical assessment of childhood mental illness and disorder	<ul style="list-style-type: none"> • Child and Adolescent Psychiatrist
Is the child displaying emotional and/or behavioural problems?	Expertise in clinical assessment and normal development in the context of child abuse and neglect	<ul style="list-style-type: none"> • Clinical Psychologist • Child and Adolescent Psychiatrist • General or Community Paediatrician
Are there concerns about attachment or bonding between child and parent?	Expertise in clinical assessment of attachment behaviour and normal development in the context of child abuse and neglect	<ul style="list-style-type: none"> • Social worker • Clinical Psychologist • Child and Adolescent Psychiatrist • General or Community Paediatrician

Type of question to be answered	Expertise required	Likely practitioner (if not able to be dealt with by those already working with the parents or child)
Is there criminal behaviour in the child?	Expertise in forensic assessment of childhood mental illness and disorder	<ul style="list-style-type: none"> • Forensic Psychiatrist • Forensic Psychologist • Youth Offending Team
Is there significant parental mental ill-health impacting on the child's wellbeing?	Expertise in clinical assessment of adult mental illness and disorder	<ul style="list-style-type: none"> • General Adult Psychiatrist • Clinical Psychologist
Is there a significant parental drug and/or alcohol problem impacting on the child's wellbeing?	Expertise in clinical assessment of adult mental illness and disorder	<ul style="list-style-type: none"> • Specialist Adult Addiction Psychiatrist or Psychologist
Is there significant parental learning disability impacting on the child's wellbeing?	Expertise in clinical assessment of Adult Learning Disability	<ul style="list-style-type: none"> • Adult Learning Disability Psychiatrist or Psychologist
Are there concerns about parenting skills?	Expertise in practice assessment of adult behaviour patterns, motivation and ability to change or modify behaviour	<ul style="list-style-type: none"> • Clinical Psychologist • Social Worker
What are the significant issues relating to contact, and permanence planning?		<ul style="list-style-type: none"> • Clinical Psychologist • General Adult or Forensic Psychiatrist • Social Worker • Research Social Worker
Is there evidence of significant harm to the child relating to their stage and developmental trajectory?	Expertise in clinical or practice assessment of attachment behaviour and normal development in the context of child abuse and neglect	<ul style="list-style-type: none"> • General or Community Paediatrician • Psychologist; Clinical or Educational • Child and Adolescent Psychiatrist

Medical expert witnesses

Paediatricians

13. Paediatricians are ‘generalists’ for children and young people and include a broad range of skills reflecting the range of children’s health care including identifying causes of problems in inadequate parenting, early experience, and comparing that with possible biological or genetic causes of identified problems.
14. Community paediatricians are usually specialists in child protection, and child development and disability. They may also have a variety of skill areas including fostering and adoption, attachment, behavioural and emotional problems, autistic spectrum disorder, Foetal Alcohol Spectrum Disorders, Attention Deficit Hyperactivity Disorder.
15. General acute and subspecialty paediatricians are usually hospital-based. Paediatricians with subspecialty expertise cover areas such as: neonatal medicine, emergency medicine, paediatric intensive care, paediatric cardiology, neurology, radiology, etc.
16. Paediatricians often work jointly with psychiatrists and psychologists, especially in areas such as learning difficulties, autism and mental disorders, to consider the effects on children’s health by assessing and measuring growth, physical development and general developmental progress, against standardised references where available, and by considering the emotional consequences of harm.
17. Paediatricians will provide a wide range of training and expertise, including knowledge of family functioning and needs, and can perform assessment, specialist investigations, diagnosis and recommendations based upon:
 - a. the child’s and family’s past history including antenatal and perinatal history, inheritable disorders, childhood illnesses, hospital admissions and any other health-related information

- b. collated and interpreted information from all available health sources, e.g. hospital, community, general practice, parental health records and other sources
- c. consideration of the effects of all forms of abuse – physical, neglect, sexual, emotional – on short and long-term problems, as this relates to a child’s growth and physical development, and general social and emotional development.

Psychiatrists

Child and adolescent psychiatrists

- 18. Child psychiatrists have a wide range of training and expertise, and knowledge of family functioning and needs. They offer particular expertise in:
 - a. advising on the diagnosis, management and outlook for children with mental illness and disorders
 - b. identifying causes of problems in inadequate parenting, early experience, and comparing that with possible biological or genetic causes of identified problems
 - c. advice on the likely effects of certain styles of upbringing on child development
 - d. offering advice on the mental impact of physical illnesses or brain disorders such as epilepsy and head injury
 - e. advising on the likely effect of parental mental illness on children, including substance misuse
 - f. advice on contact and its benefits
 - g. advice on parent/child relationships, attachment and bonding.
- 19. Child and adolescent psychiatrists work with a wide range of other professionals including CAMHS staff, social workers and community paediatricians. Detailed assessment of children’s intelligence, educational

attainments or complex assessments of developmental issues are the province of clinical and educational psychologists.

General adult psychiatrists

20. Adult psychiatrists work with patients from 18 years to 65 years. They do not work with children as a specific client group and usually have little specific expertise in direct assessment of children.
21. Psychiatrists frequently work with other professionals, particularly members of the Community Mental Health Team (CMHT), the community psychiatric nurse (CPN), and social workers.
22. The adult psychiatrist can give advice to the court on those adult individuals with mental illness and personality disorder.
23. They will advise on what can reasonably be expected from local psychiatric services and a realistic appraisal of how any particular individual might or might not respond to psychiatric treatment.
24. In relation to proceedings involving children and families, an adult psychiatrist can advise how a parent or guardian may be affected by a mental disorder such that it affects the ability of parents to look after a child.
25. The adult psychiatrist would not usually make a direct assessment of the adult's actual ability to parent, that being the province of the child psychiatrist.
26. The adult psychiatrist can advise what services from Health or Social Services might assist a parent with a mental disorder to act more effectively in the care of the child.
27. An adult psychiatrist would not make a detailed assessment of intellectual function, that usually being the province of the clinical psychologist.

Psychiatrists in learning disability

28. These experts can give evidence on:
 - a. the presence of particular disorders in children and adults, and advise on how these disorders impact on parenting skills and interactions
 - b. psychiatric problems and effects on relationships between the parents, personality functioning, substance misuse and full mental illness
 - c. the potential management of cases and the possibility for therapy and a secure return of children to parental care, as well as advising on future supervision.
29. Learning disability consultants with particular interest in forensic psychiatry would advise on interpersonal aggression.
30. It is less common or appropriate to instruct learning disability consultants to see children for developmental assessment. Clinical psychologists in learning disability or community paediatricians would be more appropriate.

Addiction psychiatrists

31. Addiction psychiatrists are trained as general adult psychiatrists with an additional focus on training in alcohol and drug related problems. Their expertise often includes knowledge of substance use in older adolescents.
32. Addiction psychiatrists are able to offer expertise in:
 - a. substance use, problematic use and dependent/addicted use alone
 - b. substance use, problematic use and dependent/addicted use alone or in combination with psychiatric illness
 - c. the effects or likely effects on emotional and physical health of the adult substance user
 - d. the interplay of substance use, personality and mental illness

- e. the likely or potential effects of particular patterns of substance use upon personal relationships including partners and children
 - f. the diagnosis and treatment of co-existing mental illness and its interface with substance use
 - g. the treatments available for substance-related problems and their applicability to individual cases
 - h. the prognosis with or without treatment.
33. Addiction psychiatrists do not have expertise in family assessments or in the assessment of parenting skills. They may be able to make a collaborative assessment with another expert, e.g. a child psychiatrist or psychologist, in order to more successfully address issues of family functioning in the context of substance use.

Forensic psychiatrists

34. Forensic psychiatrists are trained specifically in forensic psychiatry. The training is a separate programme. They have expertise in serious mental illness, involvement with the criminal justice system and risk assessment. Forensic psychiatrists are able to give advice to the court on:
- a. mental illness
 - b. personality difficulties
 - c. the interplay of personality in mental illness
 - d. the interplay between mental state and risk to others
 - e. the diagnosis and treatment of mental illness and its interface with risk
 - f. prognosis with or without treatment.
35. Forensic psychiatrists do not have expertise in family assessments or in the assessment of parental skills. It is possible that a collaborative assessment with a child psychiatrist could be undertaken in some exceptional cases.

Psychologists

Clinical psychologists

36. Clinical psychologists have particular expertise in human development, behaviour and assessment, including psychometric assessment. They can offer opinion on recommended courses of treatment and likely outcomes. They may have specific experience with children and/or adult clients.
37. Clinical psychologists can give evidence on:
 - a. cognitive assessment of the child (overall abilities, memory function, specific learning problems)
 - b. advice on the manifestation of developmental delay
 - c. assessment and advice on emotional and behavioural problems
 - d. advice on parent/child relationships, attachment and bonding
 - e. advice on care plans, including fostering and adoption arrangements (however, fostering and adoption are difficult topics for most professional experts, except specialist clinical psychologists, community paediatricians, social workers and academics specifically trained in the field)
 - f. advice on conduct problems including young offenders
 - g. advice on the neuropsychological impacts of injury, including head injury
 - h. assessment of the child's overall needs.

Child psychologists in learning disability

38. As working arrangements differ across areas, some clinical psychologists in learning disability will accept referrals of:
 - a. adults only
 - b. adults and children
 - c. forensic learning disabilities.

This should be indicated in the psychologist's CV.

39. These experts are available to comment on:
- a. the degree of learning disability
 - b. behaviour problems and parenting problems associated with learning disability
 - c. overcoming problems such as poor literacy skills
 - d. difficulties with memory function
 - e. neuropsychological problems and autism
 - f. giving advice on the person's ability to understand and adapt their behaviour from the emotional point of view
 - g. assessing risks, e.g. aggression, sex offending and fire-setting
 - h. assessing evidence of post-traumatic stress disorder
 - i. advising on the effects of bereavement and loss
 - j. advising on attachment with respect to learning disability
 - k. the effects of drug and alcohol within the speciality
 - l. treatment needs and prognosis
 - m. fitness to plead.
40. Child and adolescent psychiatrists, and psychologists who work with children both have the expertise to:
- a. establish possibilities for therapeutic change and rehabilitation
 - b. assess the developmental impact on the child's mental health or mental illness of a parent, including substance misuse and experience of abuse
 - c. assess the emotional effects on the child following divorce and contact disputes

- d. assess Gillick competence; (see *Section 17 – Glossary of Terms*)
- e. assess the child's understanding of right and wrong in the case of criminal behaviour.

Educational psychologists

- 41. Educational psychologists will comment on educational issues, the psychology of teaching and learning, and advise on situations where children are failing to learn effectively or where behaviour difficulties impede progress. They are not part of the NHS but the Local Authority Education Service.
- 42. Reports in care proceedings from educational psychologists will focus on:
 - a. a child's progress in school
 - b. a child's educational needs, if changes in school placement are required
 - c. concern about behaviour in the school setting
 - d. fears and anxieties or emotional disturbance that compromise educational progress.

Forensic clinical psychiatrists/forensic psychologists

- 43. Forensic clinical psychiatrists/forensic psychologists will comment on, or undertake:
 - a. a risk assessment of a range of offending behaviours, including fire-setting, sex offending and aggression and violence
 - b. psychometric assessment where relevant
 - c. treatment recommendations
 - d. prognosis.
- 44. Clients with a forensic history and learning disability are usually referred to the Learning Disability Service.

Other disciplines

Clinical neuropsychology

45. Neuropsychology is a study of the way the brain works and how damage e.g. from a road traffic accident, can interrupt normal functioning in specific ways. Complex assessment may require someone with particular expertise in this area.
46. Many psychologists will undertake some neuropsychological assessments on children. However, in complex cases, specific expertise in this area can be sought. The degree of expertise will be indicated in the expert's CV.

Counselling psychology

47. Counselling psychology is a relatively new profession. Increasing numbers of counselling psychologists are employed in the NHS or undertake private practice. Counselling psychologists are skilled in offering a range of psychological therapies and are able to offer insight into options and evaluations in this area. Many also have areas of special interest or expertise, e.g. learning disabilities, the effects of childhood sexual abuse, post-traumatic stress disorder, relationship breakdown, eating disorders. There are areas of overlap with clinical psychology and counselling psychologists are often employed within departments of clinical psychology.

Allied health professionals

48. Allied health professionals have a range of specialised skills and qualifications. They usually work as part of the multidisciplinary paediatric team, especially in child disability and developmental abnormality, and in the therapy and support of acute and chronic medical conditions. They include the following professionals:
 - a. Speech and language therapists.
 - b. Physiotherapists.
 - c. Occupational therapists.

- d. Podiatrists.
- e. Dieticians.
- f. Play therapists.

Clinical nurse specialists

49. Clinical nurse specialists are senior nurses who have developed expert knowledge in the area of specific childhood illness, e.g. asthma, diabetes, epilepsy, safeguarding. Their experiences give them very considerable knowledge about the psycho-family/social aspects of such diseases.

Counsellors

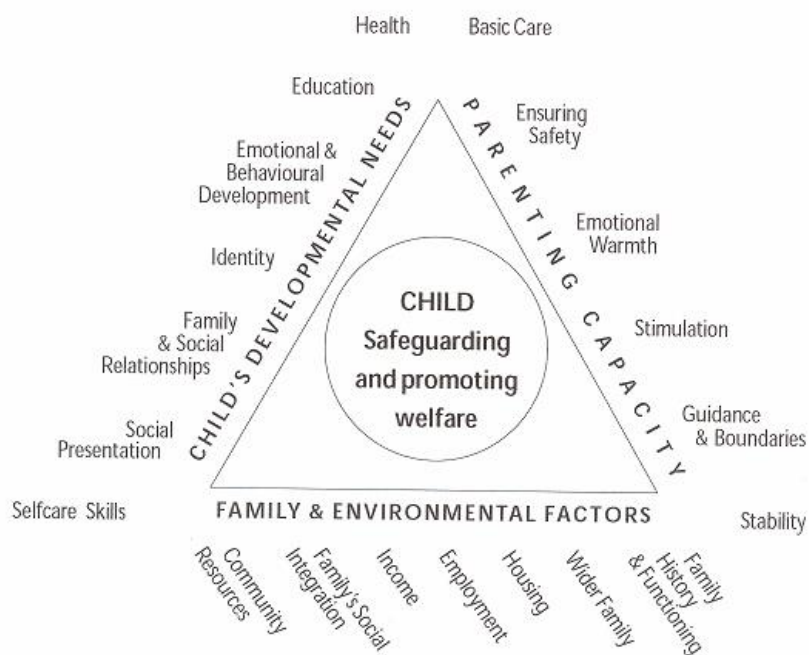
50. 'Counsellors' is a generic term covering an enormous range of expertise, training and experience and ability to make expert assessments. They mostly function in the private and voluntary sector.

Social work

Social worker

51. The social worker will make the application in care proceedings on behalf of the local authority.
52. Social workers would be expected to provide details of the child's situation, a chronology of life events, an analysis of risk, an outline of assessments needed and proposals for the care of the child in the immediate, interim and long-term future.
53. The social worker would expect to comment on the significance of life events for the child, their wishes and feelings and the weight to be given to them, the nature and importance of family relationships, the pattern of attachment, the importance of sibling relationships and the potential for care within the birth family. Their analysis should include reference to the context in which the child and their family live and the pattern of parenting. They would have an opinion on the likelihood of change.

54. Social workers would provide details of the options for the care of the child when placement within the birth family is not supported.
55. Local authorities now assess children in accordance with the 'Framework for the Assessment of Children in Need and their Families'.



56. The Framework defines three inter-related domains, each of which has a number of critical dimensions:
 - a. Social work research experts:
 - (i) Social work academics provide expert evidence in child and family matters based upon their research expertise. This may include evidence where there are different children between parties in respect of contact between children and their birth relatives, the placement of siblings and choices of permanent placements for children with their relatives, foster-carers or with adopters. The evidence of these experts is based upon their own research or that which they have supervised, a synthesis of the research of others or a combination of the two. Much of this research will be published and in the public domain but experts may also have access through the research community to

contemporary studies that may not yet be available in published form.

Research experts rarely need to meet the child or other parties.

b. Independent social worker:

(i) A qualified social worker who is independent from the parties in the case.

c. Social workers, psychologists or psychiatrists have the expertise to consider:

(i) parent child relationships, attachment and bonding

(ii) joint instructions, clear questions and discussion with the experts should result in instructing the most appropriate (single) expert for the particular case.

d. Social work roles. Within the local authority, social workers could be part of:

(i) the Court Work Service Team – working jointly with social workers from other services when a child is the subject of public law proceedings

(ii) the Assessment Service Team – completing initial work with families and children

(iii) the Family Intervention Service Team – working mainly with the families of children whose names are on the Child Protection Register, or who have been the subject of a Family Support Conference

(iv) the Looked After Children Service Team – working with children who are looked after or accommodated by the local authority under voluntary or statutory arrangements

(v) the Adoption Service Team – working for the Adoption and Family Finding Service in recruiting adoptive families and finding adoptive families with children

- (vi) the Family Placement Service Team – working to recruit and support foster-carers for children who need short-term, intermediate or permanent care
 - (vii) the Children with Disability Service – working with children and their families where the child is registered disabled
 - (viii) the Community Support Team – working primarily with looked after children on pathway plans to independence
 - (ix) social workers in other disciplines working with adults with mental health, addiction, or learning disability issues.
- e. Other local authority workers:
- (i) family support worker – working to a qualified social worker to implement agreed care plans. These workers are likely to have related qualifications
 - (ii) contact supervisors – will concentrate on supervising contact arrangements within public law proceedings. They will write reports for the social worker. They are unqualified but will have relevant in-house training
 - (iii) social work assistant – to support the social worker in a range of tasks. They are unqualified but will have relevant in-house training
 - (iv) family centre workers – may be qualified social workers. They will have expertise in individual work with children and parenting assessments.
- f. A social work research expert will often be employed by a university as an academic (lecturer, senior lecturer, reader or professor) or a researcher (research associate, senior research associate or fellow). They may be qualified with a professional diploma as well as a higher degree but a CV should be obtained.

Request for leave for experts

(Any party proposing to instruct an expert should file this information in advance of the Case Management Conference and on any occasion when seeking to appoint an expert. Unless it is an emergency, leave should not be given unless Practice Directions 25A –25E have been complied with.

- What is the expert’s area of expertise? (The court needs a CV with name, discipline, qualifications and expertise.)
- Should this work have been undertaken by the local authority? If yes, why has it not been?
- Has the expert proposed already been contacted? If not, why not?
- Has the expert confirmed that the work is appropriate, within their area of expertise, and that they are available to undertake and complete the work within the timescale identified for the child’s welfare?
- What is the relevance of the expert evidence sought to the issues in the case? Is their evidence **necessary** to assist the court to resolve proceedings? Why is it that the evidence proposed could not be given by Social Services undertaking a core assessment or by the children’s guardian in accordance with their respective statutory duties?
- What specific questions will the expert be asked to address and give an opinion on?
- Is the expert’s evidence needed to address the allegation of:
 - significant harm
 - appropriate order/disposal?
- What is the likely cost of the report? (Both the hourly and global rate should be indicated.) Is the expert’s “terms of instruction” available?
- What is the proposal for the apportionment of the costs?

If applicable, has public funding been approved?

- The reason for this apportionment.
- What is the timescale for preparation of the report?
- Can the expert attend court on the proposed hearing date(s)/can evidence be given in writing or remotely by video link?
- Is this a joint instruction? If not, why not?
- Can the evidence be properly obtained by only one party (e.g. on behalf of the child)?
- Who will be responsible for sending the letter of instruction and by what date? Does the letter conform to the Practice Direction? (Confirm that the expert is aware of their duty/contents of the Practice Direction.)
- What directions are sought concerning disclosing papers/child/timetable/dates for court, etc.?

SECTION 17 – GLOSSARY OF TERMS AND INDEX OF CHILDREN ACT SECTIONS

Glossary of terms

This *Glossary* is intended to provide relatively simple explanations of the most important terms and phrases used in the bench book. There are basically three kinds of entry. First, phrases given a specific meaning within the Children Act 1989 (such as ‘accommodation’) and the Adoption and Children Act 2002 have been included. These are intended to be generally useful to aid familiarisation with the new terminology. Where appropriate they have been cross-referenced to the Children Act 1989 itself, e.g. s.20; where quoted directly from the Act quotation marks are used. Secondly, some legal terms that may be unfamiliar to non-lawyers (such as ‘affidavit’) are included, in order to make the legal terminology more comprehensible. Finally, terms which have specific meanings in child care work (such as ‘assessment’) are included, to clarify what these mean in the context in which they are used.

Terms that are referred to in Practice Direction 12B (CAP) are explained in the Annex to that document at: http://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12b#annex.

Accommodation: refers to a service that the local authority provides to the parents of children in need and their children. The child is not in care when they are being provided with accommodation; nevertheless the local authority has a number of duties towards children, for whom it is providing accommodation, including the duty to discover the child’s wishes regarding the provision of accommodation and to give them proper consideration. [s.20]

Adoption: the total transfer of parental responsibility from the child’s natural parents to the adopter/s.

Adoption agency: a local authority or a registered adoption society that makes arrangements for the adoption of children.

Advocates’ meeting: meeting of lawyers required by the Public Law Outline to be held prior to a case management conference and issues resolution hearing.

Purpose of meeting is to identify and narrow the issues in the case and prepare for the next hearing.

Affidavit: a statement in writing and on oath sworn before a person who has the authority to administer it e.g. a solicitor.

Alternative dispute resolution: method of resolving a dispute other than through the normal court process.

Appeal: generally, an appeal from the Family Court may be by any party to the proceedings against any order or refusal to make an order. The appeal court can make such orders as may be necessary to give effect to its decision.

Assessment: a complex and skilled process of gathering together and evaluating information about a child, their family, and their circumstances. Its purpose is to determine children's needs, in order to plan for their immediate and long-term care, and decide what services and resources must be provided. Child care assessments are usually co-ordinated by social services, but depend upon teamwork with other agencies (such as educational and health). Detailed information about conducting assessments in child protection cases is provided in the *Working Together to Safeguard Children* guidance (March 2013) – see diagram at *Section 16 – The use of expert witnesses*, paragraph 55.

Authorised person: in relation to care and supervision proceedings, this is a person other than the local authority, authorised by the Secretary of State to bring proceedings under s.31 of the Act. This term covers the NSPCC and its officers. Elsewhere in the Act, there is a reference to persons who are authorised to carry out specified functions e.g. to enter and inspect independent schools.

Cafcass/CAFCASS Cymru: the Children and Family Court Advisory and Support Service and its Welsh equivalent are national bodies responsible for the provision of the children's guardians and children and family reporters in family proceedings. They are government bodies which look after the interests of children involved in family proceedings, working with them and then advising the courts on what they consider to be in the children's best interests.

Care order: an order made by the court under s.31(1)(a) of the Act placing the child in the care of the designated local authority. A care order includes an interim care order except where express provision to the contrary is made. [s.31(11)]

Case analysis: a written/oral outline from Cafcass/CAFCASS Cymru.

Case conference: in a child care context, a formal meeting attended by representatives from all the agencies concerned with the child's welfare, which increasingly includes the child's parents, and the Act promotes this practice. Its purpose is to gather together and evaluate all the relevant information about a child, and plan any immediate action which may be necessary to protect the child e.g. seeking a court order. Where the meeting decides that the child and family need support, a key worker will be appointed to co-ordinate an inter-agency plan for work with the child and the family, and the child's name, plus those of any other children living in the same household, may be entered on the Child Protection Register.

Case Management Hearing (CMH): the main case management hearing of a public law case where court identifies issues and gives full case management directions.

Child: a person under the age of 18. There is an important exception to this in the case of an application for financial relief by a 'child' who has reached 18 and is, or will be, receiving education or training. [Sch 1, paragraphs 2, 6 and 16]

Child arrangements order: an order 'requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other'. [s.8]

Child assessment order: an order under s.43 of the Act. The order requires any person who can do so to produce the child for an assessment and to comply with the terms of the order.

Child Protection Plan: a child will be made subject to a child protection plan if, at a child protection conference, it is determined that the child is at continuing risk of suffering significant harm. Generally, these are children considered to be at risk of abuse or neglect. The plan will set out the steps needed to safeguard a child's welfare and minimise risks of harm. Each child's plan is reviewed every six months.

Childminder: a person who looks after, for reward, one or more children under the age of eight for more than two hours in any one day. [s.71]

Children and family reporter (CFR): an officer appointed by Cafcass in private law proceedings to provide a report for the court about the child and the child's family situation and background.

Children's guardian (CG): a person appointed by the court in specified public law proceedings to safeguard the interests of the child. This includes giving appropriate advice to the child, giving instructions to the child's solicitor and advising the court of matters such as the wishes of the child and the options available to the court.

Children in need: a child is 'in need' if:

- 'he is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority
- his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services, or
- he is disabled.' [s.17(10)]

Children living away from home: children who are not being looked after by the local authority but are nevertheless living away from home e.g. children in independent schools. The local authority has a number of duties towards such children, e.g. to take reasonably practicable steps to ensure that their welfare is being adequately safeguarded and promoted.

Civil partner: under the Civil Partnership Act 2004, two people of the same sex who are in a relationship can register as civil partners. Civil partnerships are to be reviewed in the light of the extension of marriage to same sex couples.

Complaints procedure: the procedure that the local authority must set up to hear representations regarding the provision of services under Part III of the Act from a number of persons, including the child, the parents and 'such other person as the authority consider has a sufficient interest in the child's welfare to warrant his representations being considered by them'. [s.26(3)] This procedure must contain an independent element.

‘Concurrent’/‘parallel’/‘twin track’ planning: where more than one permanence option is being explored by the local authority.

Contact: between a child and another person includes visits, stays, outings and communication by letter or telephone. Under s.34 of the Act, the local authority is under a duty to allow a child in care reasonable contact with a number of persons, including the child’s parents.

Contact Activity Condition: imposed at the end of a case when a contact order is made.

Contact Activity Direction: imposed on an interim basis to encourage and facilitate contact.

Core assessment: assessment undertaken by the local authority in accordance with the Framework (see *Assessment*).

Day care: a person provides day care if they look after one or more children under the age of eight on non-domestic premises for more than two hours in any day. [s.71]
In relation to the local authority provision of day care, it refers to any form of supervised activity provided for children during the day. [s.18 (4)]

Development: ‘physical, intellectual, emotional, social or behavioural development’.
[s.31(9)]

Disabled: a child is disabled if ‘he is blind, deaf, or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed’.
[s.17(11)]

Disclosure interview: a term sometimes used to indicate an interview with a child, conducted as part of the assessment for suspected sexual abuse. It is misleading, since it implies in some people’s view, undue pressure on the child to ‘disclose’, and therefore the preferred term is ‘investigative interview’.

Duty to investigate: the local authority is under a duty to investigate in a number of situations. The general investigative duty arises where the local authority has ‘reasonable cause to suspect that a child who lives, or is found, in [its] area is

suffering, or is likely to suffer, significant harm'; it must make such enquiries as it considers necessary to enable it to decide whether it should take any action to safeguard or promote the child's welfare.

Educational psychologist: a psychology graduate who has had teaching experience and additional vocational training. Educational psychologists perform a range of functions, including assessing children's educational, psychological, and emotional needs, offering therapy, and contributing psychological expertise to the process of assessment.

Education supervision order: an order under s.36(1) which puts the child under the supervision of a designated local education authority.

Education welfare office (EWO): provides social work support to children in the context of their schooling. While EWOs' main focus used to be the enforcement of school attendance, today they perform a wider range of services, including seeking to ensure that children receive adequate and appropriate education and that any special needs are met, and more general liaison between local authority education and social services departments. Their approach is primarily supportive and directed towards children's educational entitlements.

Emergency protection order: an order under s.44 which the court can make if it is satisfied that a child is likely to suffer significant harm, or where enquiries are being made with respect to the child and they are being frustrated by the unreasonable refusal of access to the child. The effect of the order is to operate as a direction to any person in a position to do so to comply with any request to produce the child, and it authorises the removal of the child or the prevention of the child's removal. The order gives the applicant parental responsibility for the child. [s.44]

Enforcement Order: an order that a party to a child arrangements order can apply for if the court order is not complied with. The court can order unpaid work 40 – 200 hours.

Evidence: s.96 of the Act allows a child, who does not in the opinion of the court understand the nature of an oath, to give evidence if the court considers that the child understands that it is their duty to speak the truth and that they have sufficient understanding to justify the evidence being heard. Section 7 and s.41 permit the

inclusion of what would be hearsay evidence, i.e. evidence of a fact not directly seen or heard by the witness, in reports written by social workers, court welfare officers and guardians.

Family assistance order: an order under s.16 of the Act requiring either a Cafcass or CAF/CASS Cymru officer or a social worker to 'advise, assist and befriend' a named person for a period of up to 12 months or less. The named person can be the child's parents, guardian, those with whom the child lived or who had contact with the child, and the child.

Family centre: a centre which the child and parents, and any other person looking after the child, can attend for occupational and recreational activities, advice, guidance or counselling, and accommodation while receiving such advice, guidance or counselling. [Sch 2, para 9]

Family Group Conference: an opportunity to engage friends and wider family members, either to support parents or to provide care for the child, whether in the shorter or longer term.

Family Panel: family magistrates are 'judges of the Family Court', which ensures that they have the appropriate powers for decision-making in the new court. They are members of their family panel, which represents their views, liaises with other bodies on their behalf and advises on the need for new family magistrates and chairmen. Family panel magistrates will have been selected and will have undergone specialist training on the family jurisdiction.

Fieldworker (field social worker): conducts a range of social work functions in the community and in other settings, e.g. hospitals. Most fieldworkers have their own case-load and, following career progression, undertake supervision of others and/or specialise either with a particular group, e.g. older people, or in a particular function, e.g. running the home-help service. In many but by no means all local authorities, specialist social workers have been appointed to co-ordinate child protection work and offer particular expertise, e.g. in conducting joint investigative interviews with police officers.

Financial Compensation Order: an order that the court can make if a party has breached a child arrangements order and caused the other party financial loss as a result e.g. the cost of a holiday.

Foster-carer: a foster-carer provides substitute family care for children. A child looked after by the local authority can be placed with local authority foster-carers under s.23(2)(a). Local authority foster-parents must be approved; however arrangements can be made to approve foster-carers on a temporary basis. Foster-carers are subject to the limit of three children unless they are siblings or the local authority grants them an exemption. Under the Act, Part IX regulates the private foster-care of children where they have been accommodated for 28 days or more.

Genogram: a family tree setting out in diagrammatic form the family's background.

Gillick competent: this refers to whether a child under 16 is capable of consenting to or refusing medical treatment. Whether or not the child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required.

Guardian: where a child has no parent with parental responsibility, a person may be appointed to act as the guardian of the child. The person appointed will have parental responsibility for the child and the order will last until the child's 18th birthday. An appointment can be made either by order of the court in any family proceedings or by written instrument. This is not to be confused with a children's guardian who is appointed by the court to protect a child during court proceedings (see *children's guardian*) or with a special guardian (see *special guardian*).

Guidance: local authorities are required to act in accordance with the Guidance issued by the Secretary of State. However, the Guidance does not have the full force of the law, but is intended as a series of statements of good practice and may be quoted or used in court proceedings.

Harm: defined as 'ill-treatment or the impairment of physical or mental health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another'. Ill-treatment includes sexual abuse and forms of ill-treatment that are not physical, and development covers physical, intellectual, emotional or social behavioural development. [s.31(9) Children Act 1989]

Health: physical or mental health.

Ill-treatment: includes sexual abuse and forms of ill-treatment that are not physical.

In care: refers to a child in the care of the local authority by virtue of an order under s.31(1)(a) or an interim order under s.38 of the Act.

Independent reviewing officer (IRO): the IRO is a registered social worker who oversees the local authority care planning process for each child, participates in any review of that child's case and ensures that their current wishes and feelings are given full consideration. Their main task is to ensure that the care plan for the child fully reflects the child's current needs and that the actions set out in the plan are consistent with the local authority's legal responsibilities towards the child. This is carried out in two ways – chairing the child's review, and monitoring the child's case on an ongoing basis.

Independent visitor: the local authority in certain sets of circumstances appoints such a visitor for a child it is looking after. The visitor appointed has the duty of 'visiting, advising and befriending the child'. [Sch 2, para 17]

Inherent jurisdiction: the powers of the High Court to make orders to protect a child that are not based on statute and are outside the established wardship jurisdiction.

Initial Social Work Statement: means the local authority statement first lodged in public law cases.

Injunction: an order made by the court prohibiting an act or requiring its cessation. Injunctions can be either interlocutory, i.e. temporary, pending the outcome of the full hearing, or perpetual.

Inter-agency plan: a plan devised jointly by the agencies concerned in a child's welfare that co-ordinates the services they provide. Its aim is to ensure that the support offered meets all the child's needs, so far as this is practicable, and that duplication and rivalry are avoided. The plan should specify goals to be achieved, resources and services to be provided, the allocation of responsibilities, and arrangements for monitoring and review.

Interim care order: an order made by the court under s.38 placing the child in the care of the designated local authority. The order can last until the disposal of the application.

Interim supervision order: an order made by the court under s.38 placing the child under the supervision of the designated local authority. The order can last until the disposal of the application.

Investigative interview: the preferred term for an interview conducted with a child as part of an assessment following concerns that the child may have been abused (most notably, in cases of suspected sexual abuse). In many areas, these interviews are conducted jointly by specially trained social workers and police officers, in order to reduce the number of times children are expected to tell their story and for information to be gathered in ways that make it acceptable as evidence, if the need arises.

Issues Resolution Hearing (IRH): the hearing before the final hearing in public law cases where the court resolves and narrows the issues and identifies any remaining key issues needing adjudication.

Key worker: a social worker allocated specific responsibility for a particular child. In residential settings, this will be the person who will maintain an overall interest in the child's welfare, and will often undertake specific work with the child on a day-to-day basis. In a fieldwork child care setting, the key worker is appointed at a case conference, and is responsible for co-ordinating the work done with and for the child by the different agencies, e.g. health, education, housing.

Letter before proceedings: a written notification from the local authority to parents/those with parental responsibility informing them of the local authority's plan to apply to court for a care or supervision order and what the parents can do to avoid court proceedings.

Local Authority Case Summary: a summary of the local authority case which is to be filed before the Case Management Hearing.

Local Safeguarding Children Board (LSCB): this body has replaced the Area Child Protection Committee. It is based upon the boundaries of the local authority

and provides a forum for developing, monitoring and reviewing the local child protection policies, and promoting effective and harmonious co-operation between the various agencies involved. The core membership includes representatives from the local authority, health bodies, police, probation, youth offending team and Cafcass/CAFCASS Cymru. LSCBs issue guidelines about procedures, tackle significant issues that arise in specific cases, offer advice about the conduct of cases in general, make policy and review progress on prevention, and oversee inter-agency training.

Looked after: a child is looked after when they are in local accommodation provided by the local authority. [s.22(1)]

McKenzie Friend: any person permitted by the court to sit beside an unrepresented litigant in court, to assist by prompting/taking notes/giving advice – see *Practice Guidance: McKenzie Friends (Civil and Family Courts)* (July 2010).

Mediation: family mediation is a way of attempting to settle disputes between couples after separation or divorce. The mediator will be qualified and impartial and will assist both parties to express their concerns and needs to each other. The mediator may also suggest a solution, but cannot tell the parties what to do. Mediation may take place at the court or at other venues.

Monitoring: where plans for a child, and the child's safety and wellbeing, are systematically appraised on a routine basis. Its function is to oversee the child's continued welfare and enable any necessary action or change to be instigated speedily, and at a managerial level, to ensure that proper professional standards are being maintained.

Official Solicitor: an officer of the Supreme Court who acts on behalf of children in certain cases. When representing a child, the Official Solicitor acts both as a solicitor as well as a guardian.

Overriding Objective: the factors the Family Court and all court users should work to, to enable cases to be dealt with justly.

Paramountcy principle: the principle that the welfare of the child is the paramount consideration in proceedings concerning children.

Parent: the mother or father of a child. Depending on the legislation under which an application is made, this can include a father without parental responsibility. In any application, always check with your legal adviser whether the definition includes fathers without parental responsibility.

Parental responsibility: defined as ‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’. [s.3(1)] Parental responsibility can be exercised by persons who are not the child’s biological parents and can be shared among a number of persons. It can be acquired by agreement or court order, or registration of the natural father’s name on the birth certificate.

Parties: parties to proceedings are entitled to attend the hearing, present their case and examine witnesses. The Act envisages that children will automatically be parties in care proceedings. Anyone with parental responsibility for the child will also be a party to such proceedings, as will the local authority. Others may be able to acquire party status. A person with party status will be eligible for legal aid in order to be legally represented at the hearing. If you have party status you are also able to appeal against the decision. Others who are not parties may be entitled to make representations. For further information on this, refer to the Rules of Court.

Permanency planning: deciding on the long-term future of children who have been moved from their families. Its purpose is to ensure them a permanent, stable and secure upbringing, either within their original family or by providing high-quality alternative parenting, e.g. living permanently with grandparents or other relatives, or being adopted. Its aim is to avoid long periods of insecurity or repeated disruptions in children’s lives. Hence it should be completed speedily, preferably within six months of a child first moving away from home.

Placement orders: an order of the court authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the local authority.

PLO: The Public Law Outline – the Practice Direction on case management in public law proceedings.

Police protection: s.46 allows the police to detain a child or prevent their removal for up to 72 hours if they believe that the child would otherwise suffer significant harm. There are clear duties on the police to consult the child, if this is practicable, and to notify various persons, e.g. the child's parents and the local authority, of their action.

Preliminary hearing: a hearing to clarify matters in dispute, to agree evidence, and to give directions as to the timetable of the case and the disclosure of evidence.

Prohibited steps order: an order that 'no step which could be taken by a parent in meeting his parental responsibility for a child, and which is a kind specified in the order, shall be taken by any person without the consent of the court'. [s.8(1)]

Protected Parties: adult parties who lack capacity (within the meaning of the Mental Capacity Act 2005) to conduct proceedings and so who must have a representative (a litigation friend, next friend or guardian ad litem) to conduct them on their behalf.

Recovery order: an order which the court can make when there is reason to believe that a child who is in care, the subject of an emergency protection order or in police protection has been unlawfully taken or kept away from the responsible person, or has run away or is staying away from the responsible person, or is missing. The effect of the recovery order is to require any person who is in a position to do so to produce the child on request, to authorise the removal of the child by any authorised person, and to require any person who has information as to child's whereabouts to disclose that information, if asked to do so, to a constable or officer of the court. [s.50]

Refuge: s.51 enables 'safe houses' legally to provide care for children who have run away from home or local authority care. However, a recovery order can be obtained in relation to a child who has run away to a refuge.

Regulations: refer to the supplementary powers and duties issued by the Secretary of State under the authority of the Act. These cover a wide range of issues, from secure accommodation to the procedure for considering representations, including complaints, and have the full force of law.

Rehabilitation: in a child care context, the process of working with children and parents, and providing resources and support to enable children to return home to be brought up in their families, for the children's needs to be met, and to help overcome the problems that led to their needing to live away.

Representations: see *Complaints procedure*.

Residential social worker: provides day-to-day care, support and therapy for children living in residential settings, such as children's homes. Until recently, most residential social workers were unqualified. As the importance and demands of their work have become increasingly recognised, more training opportunities are being provided.

Respite care: a service giving family members or other carers short breaks from their caring responsibilities. It is intended to support the care of people, e.g. those with disabilities or infirmities, in the community who might otherwise need to be placed in full-time residential care.

Responsible person: in relation to a supervised child, 'any person who has parental responsibility for the child, and any other person with whom the child is living'. With their consent, the responsible person can be required to comply with certain obligations. [Sch 3, paras 1 and 3]

Review: under s.26, local authorities are under a duty to conduct regular reviews in order to monitor the progress of children they are looking after. When holding reviews, local authorities must comply with their duties as given in s.22. Reviews are opportunities to consider progress and any problems and changes in circumstances, and to resolve difficulties, set new goals and plan for the future. They are usually attended by all those with significant responsibilities for the child. The child and their parents should also attend, and be given help and support to participate in the decision making and to make sure their views and wishes are known.

Risk assessment: carried out by Cafcass/CAFCASS Cymru in family proceedings for a private law order whenever the officer is given cause to suspect that the child concerned in those proceedings is at risk of harm. A report is provided to the court in respect of that risk assessment.

Rules: these lay down the procedural rules which govern the operation of the courts

Section 7 report: see *Welfare report*.

Section 8 orders: the three orders contained in the Act which, to varying degrees, regulate the exercise of parental responsibility, i.e. child arrangements, specific issue and prohibited steps orders.

Secure accommodation: s.25 provides for the circumstances in which a child who is being looked after by the local authority can be placed in secure accommodation. Such accommodation is provided for the purpose of restricting the liberty of the child.

Settlement conference: a hearing held to discuss and settle a case. It is a 'without prejudice' hearing, so what is said during the conference is not admissible in evidence, and takes place before a judge with the agreement of all parties.

Significant harm: s.31(10) states: 'Where the question of whether harm suffered by the child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child'.

Social Work Chronology: a schedule from the local authority containing a succinct summary of the significant dates and events in the child's life in chronological order.

Social worker: a generic term applying to a wide range of staff who undertake different kinds of social welfare responsibilities. These include advising and supporting individuals and families during periods of trouble, both within the community and in residential settings; accessing resources, benefits and services; conducting assessments and investigations and monitoring standards of care. Social workers may be employed by local authorities, courts or voluntary organisations (see *Residential social worker, Fieldworker, Education welfare officer*).

Special guardian: is an individual in whose favour a special guardianship order has been made. They have parental responsibility for the child, which they can exercise to the exclusion of all other individuals who have parental responsibility.

Specific issue order: an order 'giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child'. [s.8(1) Children Act 1989]

Step-parent: for the purposes of the Adoption and Children Act 2002, this is someone who is a partner of, whether or not they are married to them, the mother or father (with parental responsibility) of the child who is the subject of the application. For the purposes of the Children Act 1989, a step-parent is a person who is married to or the civil partner of a parent with parental responsibility for the child who is subject to the application.

Supervision order: an order under s.31(1)(b) and including, except where express contrary provision is made, an interim supervision order under s.38. [s.31]

Supervisor: the person under whose supervision the child is placed by virtue of an order under s.31 and s.38. The powers and duties of the supervisor are contained in s.35 and Sch 3.

Timetables: under the Act and the Public Law Outline the court, pursuant to the principle of avoiding delay because it is harmful for the child, has the power to draw up a timetable and give directions for the conduct of the case in any proceedings in which the making of a s.8 order arises, and in applications for care and supervision orders. [s.11 and s.32]

Unpaid Work: work in the community supervised by the Probation Service.

Ward of court: a child who, as the subject of wardship proceedings, is under the protection of the High Court. No important decision can be taken regarding the child while they are a ward of court without the consent of the wardship court.

Wardship: the legal process whereby control is exercised over the child in order to protect the child and safeguard their welfare.

Welfare report: s.7 of the Act gives the court the power to request a report on any question in respect of a child under the Act. The report can be presented by either a Cafcass/CAFCASS Cymru officer or an officer of the local authority. Section 7(4) provides that regardless of any rule of law to the contrary, the court may take

account of any statement contained in the report and any evidence given in respect of matters referred to in the report as long as the court considers them relevant.

Written agreement: the agreement arrived at between the local authority and the parents of children for whom it is providing services. These agreements are part of the partnership model that is seen as good practice under the Act.

Index of Children Act sections

s.4: parental responsibility.

s.7: a direction that a report is prepared: in private law proceedings either by a children and family court reporter, or a local authority.

s.8: private law orders = contact, residence, prohibited steps and specific issues orders.

s.11: contact activity directions and conditions, enforcement orders and orders for financial compensation.

s.14: special guardianship orders.

s.16: family assistance orders.

s.25: secure accommodation orders.

s.31: care and supervision.

s.34: contact with a child in care.

s.37: power of court in private law proceedings to direct that the local authority undertake an investigation into the child's circumstances with a view to commencing public law proceedings.

s.38(1): interim care/supervision orders.

s.38(6): directions in relation to a medical, psychiatric or other examination of the child. This can include what is described as a "residential assessment".

s.50: recovery of an abducted child.

s.91(14): power to restrict the making of any further applications without the leave of the court.

SECTION 18 – HUMAN RIGHTS – A STRUCTURED APPROACH

How does the European Convention on Human Rights affect the work of the court?

The Convention was drawn up after the Second World War in the light of the atrocities that had been perpetrated during that conflict. It provides a set of basic human rights that all people can expect, made enforceable in our courts by way of The Human Rights Act 1998.

The court as a public authority has a duty to act compatibly with the Convention. The practices, procedures and decisions of the court should be carried out in such a way so as not to breach an individual's human rights. This applies to all those affected, e.g. parties, children, witnesses.

Article 6 is the right to a fair trial and should always be at the forefront of your mind – the most common articles are set out on the following page.

The Convention can be a complex area of law. You should always seek the advice of your legal adviser if a Convention point is raised.

A party wishing to raise a Convention point should be required to provide a written outline of their argument including supporting case law. This enables the parties, magistrates and legal adviser to consider the point fully.

Is the Convention engaged?

When you are dealing with any matter in court you should, in addition to considering the domestic law, also consider whether a human rights issue exists.

One of the parties/the court/the legal adviser may raise a human rights point. Seek representations from all parties and advice from your legal adviser before deciding whether a Convention right is, in fact, in issue.

If you proceed, will the individual's Convention right be interfered with?

- If *no*, decide the point without reference to the Convention announcing your reasons.
- If *yes*, continue to follow this structured approach.

Which right is engaged?

It is important to identify which right is engaged at the outset. There are three types of rights:

- absolute
- limited
- qualified.

Each type of right requires a slightly different approach.

Which type of right is it?

The Articles that are most likely to be raised in court are:

Article 5 Right to Liberty and Security (limited).

Article 6 Right to a Fair Trial (part absolute, part limited).

Article 8 Right to respect for Private and Family Life (qualified).

Article 10 Right to Freedom of Expression (qualified).

Article 11 Right to Freedom of Assembly and Association (qualified).

Article 14 Prohibition of Discrimination (qualified).

Has the right been breached?

The fact that a right is interfered with does not necessarily mean that it has been breached. For example, a prison sentence imposed by the magistrates' court will clearly interfere with an individual's right to liberty; the next stage will enable you to decide whether the right is actually breached or whether the Convention allows that interference.

Follow the structure for the type of right that is engaged.

Absolute right

Has there been an interference with the individual's Convention right?

If the answer is yes, then there has been a breach of the right. The absolute rights include the prohibition on slavery and torture and inhuman and degrading treatment

– there are no circumstances when such behaviour would be acceptable under the Convention.

Note: The threshold as to what amounts to, for example, torture or inhuman or degrading treatment, is a high one – the treatment would need to be sufficiently serious to cross the threshold and therefore be a breach.

Limited right

Does the interference fall within one of the lawful exceptions within the article?

Limited rights are those Convention rights that can only be interfered with if the method of interference is set out in the Article itself – for example, Article 5: Right to Liberty and Security, which provides that everyone has a right to liberty, but then goes on to give a list of situations where an individual's right can lawfully be interfered with. These include:

- custodial sentences imposed by a court
- detention to bring someone before the court for an offence or on a warrant
- remands in custody and bail conditions where the court reasonably believes it necessary to prevent offences or a failure to attend.

Each limited article contains an exhaustive list of the exceptions to the right – if the exception is not in the list then there is a breach.

Qualified right

You need to ask three questions:

1. *Is the interference prescribed by clear and accessible UK law?*
2. *Does it pursue one of the legitimate aims set out in the article?*

A qualified right can only be interfered with in order to achieve one of the aims in the article. For example, Article 8 can be interfered with if the interference is in the interests of national security, public safety, the economic well-being of the country, the prevention of disorder or crime, the protection of health and morals or for the protection of the rights and freedoms of others.

3. *Is it no more than is necessary to secure that legitimate aim?*

The interference must be necessary and proportionate.

If the answer is *no* to any of these three questions, then there is a breach.

What is the source of the breach?

Primary legislation? i.e. Acts of Parliament

or

Secondary legislation? i.e. some rules and byelaws

or

Practice or precedent? i.e. case law or the way we have always done things.

What does the Human Rights Act allow the court to do?

Primary legislation:

- Can you find a possible interpretation that will give effect to the Convention right?
- If *yes*, then the law must be applied in this way.
- If *no*, then apply national law as it is.

Secondary legislation:

- Can you find a possible interpretation that will give effect to the Convention right?
- If *yes*, then the law must be applied in this way.
- If *no*, disregard national law so as to give effect to the Convention right.

Practice or precedent:

- Can you find a possible interpretation that will give effect to the Convention right?
- If *yes*, then the law must be applied in this way.
- If *no*, disregard national law so as to give effect to the Convention right.

Appendix A – Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm

This Practice Direction supplements FPR Part 12, and incorporates and supersedes the President's Guidance in Relation to Split Hearings (May 2010) as it applies to proceedings for child arrangements orders.

Summary

1. This Practice Direction applies to any family proceedings in the Family Court or the High Court under the relevant parts of the Children Act 1989 or the relevant parts of the Adoption and Children Act 2002 in which an application is made for a child arrangements order, or in which any question arises about where a child should live, or about contact between a child and a parent or other family member, where the court considers that an order should be made.
2. The purpose of this Practice Direction is to set out what the Family Court or the High Court is required to do in any case in which it is alleged or admitted, or there is other reason to believe, that the child or a party has experienced domestic abuse perpetrated by another party or that there is a risk of such abuse.
3. For the purpose of this Practice Direction –

“domestic abuse” includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;

“abandonment” refers to the practice whereby a husband, in England and Wales, deliberately abandons or “strands” his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother;

“coercive behaviour” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

“controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour;

“development” means physical, intellectual, emotional, social or behavioural development;

“harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another, by domestic abuse or otherwise;

“health” means physical or mental health;

“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical; and

“judge” includes salaried and fee-paid judges and lay justices sitting in the Family Court and, where the context permits, can include a justices’ clerk or assistant to a justices’ clerk in the Family Court.

General principles

4. Domestic abuse is harmful to children, and/or puts children at risk of harm, whether they are subjected to domestic abuse, or witness one of their parents being violent or abusive to the other parent, or live in a home in which domestic abuse is perpetrated (even if the child is too young to be conscious of the behaviour). Children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse, and may also suffer harm indirectly where the domestic abuse impairs the parenting capacity of either or both of their parents.
5. The court must, at all stages of the proceedings, and specifically at the First Hearing Dispute Resolution Appointment ('FHDRA'), consider whether domestic abuse is raised as an issue, either by the parties or by Cafcass or CAF/CASS Cymru or otherwise, and if so must –
 - identify at the earliest opportunity (usually at the FHDRA) the factual and welfare issues involved;
 - consider the nature of any allegation, admission or evidence of domestic abuse, and the extent to which it would be likely to be relevant in deciding whether to make a child arrangements order and, if so, in what terms;
 - give directions to enable contested relevant factual and welfare issues to be tried as soon as possible and fairly;
 - ensure that where domestic abuse is admitted or proven, any child arrangements order in place protects the safety and wellbeing of the child and the parent with whom the child is living, and does not expose either of them to the risk of further harm; and
 - ensure that any interim child arrangements order (i.e. considered by the court before determination of the facts, and in the absence of admission) is only made having followed the guidance in paragraphs 25–27 below.

In particular, the court must be satisfied that any contact ordered with a parent who has perpetrated domestic abuse does not expose the child and/or other parent to the risk of harm and is in the best interests of the child.

6. In all cases it is for the court to decide whether a child arrangements order accords with Section 1(1) of the Children Act 1989; any proposed child arrangements order, whether to be made by agreement between the parties or otherwise must be carefully scrutinised by the court accordingly. The court must not make a child arrangements order by consent or give permission for an application for a child arrangements order to be withdrawn, unless the parties are present in court, all initial safeguarding checks have been obtained by the court, and an officer of Cafcass or CAFCASS Cymru has spoken to the parties separately, except where it is satisfied that there is no risk of harm to the child and/or the other parent in so doing.
7. In proceedings relating to a child arrangements order, the court presumes that the involvement of a parent in a child's life will further the child's welfare, unless there is evidence to the contrary. The court must in every case consider carefully whether the statutory presumption applies, having particular regard to any allegation or admission of harm by domestic abuse to the child or parent or any evidence indicating such harm or risk of harm.
8. In considering, on an application for a child arrangements order by consent, whether there is any risk of harm to the child, the court must consider all the evidence and information available. The court may direct a report under Section 7 of the Children Act 1989 to be provided either orally or in writing, before it makes its decision; in such a case, the court must ask for information about any advice given by the officer preparing the report to the parties and whether they, or the child, have been referred to any other agency, including local authority children's services. If the report is not in writing, the court must make a note of its substance on the court file and a summary of the same shall be set out in a Schedule to the relevant order.

Before the FHDRA

9. Where any information provided to the court before the FHDRA or other first hearing (whether as a result of initial safeguarding enquiries by Cafcass or CAFCASS Cymru or on form C1A or otherwise) indicates that there are issues of domestic abuse which may be relevant to the court's determination, the court must ensure that the issues are addressed at the hearing, and that the parties are not expected to engage in conciliation or other forms of dispute resolution which are not suitable and/or safe.
10. If at any stage the court is advised by any party (in the application form, or otherwise), by Cafcass or CAFCASS Cymru or otherwise that there is a need for special arrangements to protect the party or child attending any hearing, the court must ensure so far as practicable that appropriate arrangements are made for the hearing (including the waiting arrangements at court prior to the hearing, and arrangements for entering and exiting the court building) and for all subsequent hearings in the case, unless it is advised and considers that

these are no longer necessary. Where practicable, the court should enquire of the alleged victim of domestic abuse how best she/he wishes to participate.

First hearing / FHDRA

11. At the FHDRA, if the parties have not been provided with the safeguarding letter/report by Cafcass/CAFCASS Cymru, the court must inform the parties of the content of any safeguarding letter or report or other information which has been provided by Cafcass or CAFCASS Cymru, unless it considers that to do so would create a risk of harm to a party or the child.
12. Where the results of Cafcass or CAFCASS Cymru safeguarding checks are not available at the FHDRA, and no other reliable safeguarding information is available, the court must adjourn the FHDRA until the results of safeguarding checks are available. The court must not generally make an interim child arrangements order, or orders for contact, in the absence of safeguarding information, unless it is to protect the safety of the child, and/or safeguard the child from harm (see further paragraphs 25-27 below).
13. There is a continuing duty on the Cafcass Officer/Welsh FPO which requires them to provide a risk assessment for the court under section 16A Children Act 1989 if they are given cause to suspect that the child concerned is at risk of harm. Specific provision about service of a risk assessment under section 16A of the 1989 Act is made by rule 12.34 of the FPR 2010.
14. The court must ascertain at the earliest opportunity, and record on the face of its order, whether domestic abuse is raised as an issue which is likely to be relevant to any decision of the court relating to the welfare of the child, and specifically whether the child and/or parent would be at risk of harm in the making of any child arrangements order.

Admissions

15. Where at any hearing an admission of domestic abuse toward another person or the child is made by a party, the admission must be recorded in writing by the judge and set out as a Schedule to the relevant order. The court office must arrange for a copy of any order containing a record of admissions to be made available as soon as possible to any Cafcass officer or officer of CAFCASS Cymru or local authority officer preparing a report under section 7 of the Children Act 1989.

Directions for a fact-finding hearing

16. The court should determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic abuse –
 - (a) in order to provide a factual basis for any welfare report or for assessment of the factors set out in paragraphs 36 and 37 below;
 - (b) in order to provide a basis for an accurate assessment of risk;
 - (c) before it can consider any final welfare-based order(s) in relation to child arrangements; or
 - (d) before it considers the need for a domestic abuse-related Activity (such as a Domestic Violence Perpetrator Programme (DVPP)).
17. In determining whether it is necessary to conduct a fact-finding hearing, the court should consider –
 - (a) the views of the parties and of Cafcass or CAFCASS Cymru;
 - (b) whether there are admissions by a party which provide a sufficient factual basis on which to proceed;
 - (c) if a party is in receipt of legal aid, whether the evidence required to be provided to obtain legal aid provides a sufficient factual basis on which to proceed;
 - (d) whether there is other evidence available to the court that provides a sufficient factual basis on which to proceed;
 - (e) whether the factors set out in paragraphs 36 and 37 below can be determined without a fact-finding hearing;
 - (f) the nature of the evidence required to resolve disputed allegations;
 - (g) whether the nature and extent of the allegations, if proved, would be relevant to the issue before the court; and
 - (h) whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case.
18. Where the court determines that a finding of fact hearing is not necessary, the order must record the reasons for that decision.
19. Where the court considers that a fact-finding hearing is necessary, it must give directions as to how the proceedings are to be conducted to ensure that the matters in issue are determined as soon as possible, fairly and proportionately, and within the capabilities of the parties. In particular it should consider –
 - (a) what are the key facts in dispute;

- (b) whether it is necessary for the fact-finding to take place at a separate (and earlier) hearing than the welfare hearing;
- (c) whether the key facts in dispute can be contained in a schedule or a table (known as a Scott Schedule) which sets out what the applicant complains of or alleges, what the respondent says in relation to each individual allegation or complaint; the allegations in the schedule should be focused on the factual issues to be tried; and if so, whether it is practicable for this schedule to be completed at the first hearing, with the assistance of the judge;
- (d) what evidence is required in order to determine the existence of coercive, controlling or threatening behaviour, or of any other form of domestic abuse;
- (e) directing the parties to file written statements giving details of such behaviour and of any response;
- (f) whether documents are required from third parties such as the police, health services or domestic abuse support services and giving directions for those documents to be obtained;
- (g) whether oral evidence may be required from third parties and if so, giving directions for the filing of written statements from such third parties;
- (h) where (for example in cases of abandonment) third parties from whom documents are to be obtained are abroad, how to obtain those documents in good time for the hearing, and who should be responsible for the costs of obtaining those documents;
- (i) whether any other evidence is required to enable the court to decide the key issues and giving directions for that evidence to be provided;
- (j) what evidence the alleged victim of domestic abuse is able to give and what support the alleged victim may require at the fact-finding hearing in order to give that evidence;
- (k) in cases where the alleged victim of domestic abuse is unable for reasons beyond their control to be present at the hearing (for example, abandonment cases where the abandoned spouse remains abroad), what measures should be taken to ensure that that person's best evidence can be put before the court. Where video-link is not available, the court should consider alternative technological or other methods which may be utilised to allow that person to participate in the proceedings;
- (l) what support the alleged perpetrator may need in order to have a reasonable opportunity to challenge the evidence; and
- (m) whether a pre-hearing review would be useful prior to the fact-finding hearing to ensure directions have been complied with and all the required evidence is available.

20. Where the court fixes a fact-finding hearing, it must at the same time fix a Dispute Resolution Appointment to follow. Subject to the exception in paragraph 31 below, the hearings should be arranged in such a way that they are conducted by the same judge or, wherever possible, by the same panel of lay justices; where it is not possible to assemble the same panel of justices, the resumed hearing should be listed before at least the same chairperson of the lay justices. Judicial continuity is important.

Reports under Section 7

21. In any case where a risk of harm to a child resulting from domestic abuse is raised as an issue, the court should consider directing that a report on the question of contact, or any other matters relating to the welfare of the child, be prepared under section 7 of the Children Act 1989 by an Officer of Cafcass or a Welsh family proceedings officer (or local authority officer if appropriate), unless the court is satisfied that it is not necessary to do so in order to safeguard the child's interests.
22. If the court directs that there shall be a fact-finding hearing on the issue of domestic abuse, the court will not usually request a section 7 report until after that hearing. In that event, the court should direct that any judgment is provided to Cafcass/CAFCASS Cymru; if there is no transcribed judgment, an agreed list of findings should be provided, as set out at paragraph 29.
23. Any request for a section 7 report should set out clearly the matters the court considers need to be addressed.

Representation of the child

24. Subject to the seriousness of the allegations made and the difficulty of the case, the court must consider whether it is appropriate for the child who is the subject of the application to be made a party to the proceedings and be separately represented. If the court considers that the child should be so represented, it must review the allocation decision so that it is satisfied that the case proceeds before the correct level of judge in the Family Court or High Court.

Interim orders before determination of relevant facts

25. Where the court gives directions for a fact-finding hearing, or where disputed allegations of domestic abuse are otherwise undetermined, the court should not make an interim child arrangements order unless it is satisfied that it is in the interests of the child to do so and that the order would not expose the child or the other parent to an unmanageable risk of harm (bearing in mind the impact which domestic abuse against a parent can have on the emotional well-being of the child, the safety of the other parent and the need to protect against domestic abuse including controlling or coercive behaviour).

26. In deciding any interim child arrangements question the court should–
- (a) take into account the matters set out in section 1(3) of the Children Act 1989 or section 1(4) of the Adoption and Children Act 2002 ('the welfare checklist'), as appropriate; and
 - (b) give particular consideration to the likely effect on the child, and on the care given to the child by the parent who has made the allegation of domestic abuse, of any contact and any risk of harm, whether physical, emotional or psychological, which the child and that parent is likely to suffer as a consequence of making or declining to make an order.
27. Where the court is considering whether to make an order for interim contact, it should in addition consider –
- (a) the arrangements required to ensure, as far as possible, that any risk of harm to the child and the parent who is at any time caring for the child is minimised and that the safety of the child and the parties is secured; and in particular:
 - (i) whether the contact should be supervised or supported, and if so, where and by whom; and
 - (ii) the availability of appropriate facilities for that purpose;
 - (b) if direct contact is not appropriate, whether it is in the best interests of the child to make an order for indirect contact; and
 - (c) whether contact will be beneficial for the child.

The fact-finding hearing or other hearing of the facts where domestic abuse is alleged

28. While ensuring that the allegations are properly put and responded to, the fact-finding hearing or other hearing can be an inquisitorial (or investigative) process, which at all times must protect the interests of all involved. At the fact-finding hearing or other hearing –
- each party can be asked to identify what questions they wish to ask of the other party, and to set out or confirm in sworn evidence their version of the disputed key facts; and
 - the judge should be prepared where necessary and appropriate to conduct the questioning of the witnesses on behalf of the parties, focusing on the key issues in the case.
29. The court should, wherever practicable, make findings of fact as to the nature and degree of any domestic abuse which is established and its effect on the child, the child's parents and any other relevant person. The court must record its findings in writing in a Schedule to the relevant order, and the court office

must serve a copy of this order on the parties. A copy of any record of findings of fact or of admissions must be sent by the court office to any officer preparing a report under Section 7 of the 1989 Act.

30. At the conclusion of any fact-finding hearing, the court must consider, notwithstanding any earlier direction for a section 7 report, whether it is in the best interests of the child for the court to give further directions about the preparation or scope of any report under section 7; where necessary, it may adjourn the proceedings for a brief period to enable the officer to make representations about the preparation or scope of any further enquiries. Any section 7 report should address the factors set out in paragraphs 36 and 37 below, unless the court directs otherwise.
31. Where the court has made findings of fact on disputed allegations, any subsequent hearing in the proceedings should be conducted by the same judge or by at least the same chairperson of the justices. Exceptions may be made only where observing this requirement would result in delay to the planned timetable and the judge or chairperson is satisfied, for reasons which must be recorded in writing, that the detriment to the welfare of the child would outweigh the detriment to the fair trial of the proceedings.

In all cases where domestic abuse has occurred

32. The court should take steps to obtain (or direct the parties or an Officer of Cafcass or a Welsh family proceedings officer to obtain) information about the facilities available locally (to include local domestic abuse support services) to assist any party or the child in cases where domestic abuse has occurred.
33. Following any determination of the nature and extent of domestic abuse, whether or not following a fact-finding hearing, the court must, if considering any form of contact or involvement of the parent in the child's life, consider-
 - (a) whether it would be assisted by any social work, psychiatric, psychological or other assessment (including an expert safety and risk assessment) of any party or the child and if so (subject to any necessary consent) make directions for such assessment to be undertaken and for the filing of any consequent report. Any such report should address the factors set out in paragraphs 36 and 37 below, unless the court directs otherwise;
 - (b) whether any party should seek advice, treatment or other intervention as a precondition to any child arrangements order being made, and may (with the consent of that party) give directions for such attendance.
34. Further or as an alternative to the advice, treatment or other intervention referred to in paragraph 33(b) above, the court may make an Activity Direction under section 11A and 11B Children Act 1989. Any intervention directed pursuant to this provision should be one commissioned and approved by Cafcass. It is acknowledged that acceptance on a DVPP is subject to a suitability assessment by the service provider, and that completion of a DVPP will take time in order to achieve the aim of risk-reduction for the long-term benefit of the child and the parent with whom the child is living.

Factors to be taken into account when determining whether to make child arrangements orders in all cases where domestic abuse has occurred

35. When deciding the issue of child arrangements the court should ensure that any order for contact will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.
36. In the light of any findings of fact or admissions or where domestic abuse is otherwise established, the court should apply the individual matters in the welfare checklist with reference to the domestic abuse which has occurred and any expert risk assessment obtained. In particular, the court should in every case consider any harm which the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse, and any harm which the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made. The court should make an order for contact only if it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before during and after contact, and that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent.
37. In every case where a finding or admission of domestic abuse is made, or where domestic abuse is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and the impact of the same. In particular, the court should consider –
 - (a) the effect of the domestic abuse on the child and on the arrangements for where the child is living;
 - (b) the effect of the domestic abuse on the child and its effect on the child's relationship with the parents;
 - (c) whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent;
 - (d) the likely behaviour during contact of the parent against whom findings are made and its effect on the child; and
 - (e) the capacity of the parents to appreciate the effect of past domestic abuse and the potential for future domestic abuse.

Directions as to how contact is to proceed

38. Where any domestic abuse has occurred but the court, having considered any expert risk assessment and having applied the welfare checklist, nonetheless considers that direct contact is safe and beneficial for the child, the court should consider what, if any, directions or conditions are required to enable the order to be carried into effect and in particular should consider –
- (a) whether or not contact should be supervised, and if so, where and by whom;
 - (b) whether to impose any conditions to be complied with by the party in whose favour the order for contact has been made and if so, the nature of those conditions, for example by way of seeking intervention (subject to any necessary consent);
 - (c) whether such contact should be for a specified period or should contain provisions which are to have effect for a specified period; and
 - (d) whether it will be necessary, in the child's best interests, to review the operation of the order; if so the court should set a date for the review consistent with the timetable for the child, and must give directions to ensure that at the review the court has full information about the operation of the order.

Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supported by a parent or relative, is not appropriate.

39. Where the court does not consider direct contact to be appropriate, it must consider whether it is safe and beneficial for the child to make an order for indirect contact.

The reasons of the court

40. In its judgment or reasons the court should always make clear how its findings on the issue of domestic abuse have influenced its decision on the issue of arrangements for the child. In particular, where the court has found domestic abuse proved but nonetheless makes an order which results in the child having future contact with the perpetrator of domestic abuse, the court must always explain, whether by way of reference to the welfare check-list, the factors in paragraphs 36 and 37 or otherwise, why it takes the view that the order which it has made will not expose the child to the risk of harm and is beneficial for the child.

Judicial College
JCPublications@judiciary.uk
www.judiciary.gov.uk