

Private law children act court procedure

Issue of application

Applications are usually started in the County Court but are occasionally started in the Family Proceedings Court (Magistrates Court). In a divorce or dissolution case the proceedings are started in the same court as the divorce of dissolution.

Once the application has been issued the applicant must serve a copy of the application together with notice of the time, date and place of the hearing or directions appointment on each respondent at least 14 days before the hearing or the directions appointment. In cases requiring an urgent hearing, an application can be made for the time of service to be reduced from 14 days. This is called "abridging time for service".

Once the respondent has received the application they must file an acknowledgement within 14 days.

Directions appointment

Once issued the court will usually list the case for a directions appointment. There can be several directions appointments during a case. They can take place at the court's own motion or as a result of a request made by one of the parties.

The Family Court Advisory and Support Service (CAFCASS) look after the interests of children and young people involved in cases in the family courts. CAFCASS will only work with families on referral from the court. In most county courts a CAFCASS officer or other trained mediator will be available at the first directions appointment. Parties will either be asked to attempt to agree matters with the assistance of the CAFCASS officer or mediator before seeing the district judge, or may be referred to mediation once the judge has considered the circumstances of the case. If agreement can be reached between the parties at the first appointment, a consent order (order by agreement) can be entered into to record the arrangements for contact, residence and any other matters. For example, the consent order can also include details of which person will be

responsible for the collection and return of the child to and from contact. There is however a "no order" principle under the Children Act and therefore it may be the case that where parties have reached an agreement the judge is reluctant to embody that agreement into an order.

If agreement cannot be reached at the first appointment the district judge will consider what directions need to be given to progress the case. This will usually involve:-

- The ordering of both parties to file a statement on the issues in dispute
- Whether it is appropriate for people other than the parties to the proceedings to give evidence such as new spouses, grandparents, school teachers etc.
- The ordering of experts reports (e.g. medical or educational)
- The ordering of a Section 7 Report- CAFCASS Report
- The ordering of the child's attendance
- Ordering the consolidation of the case with other proceedings (e.g. divorce)
- Listing the case for a final or interim hearing

Section 7 – CAFCASS report

The welfare officer will be able to inspect the court file relating to the case and will receive copies of all statements and evidence filed in relation to the dispute. They will also see both parties (often on several occasions) preferably in their homes and with and without the children present. The impression that the welfare officer forms of a parent is vital and therefore it is important that parties cooperate with the welfare officer fully. The welfare officer will also see the children on their own if they are old enough for this to be of benefit. In addition, the welfare officer will make whatever other enquiries they consider to be appropriate in a particular case. For example, they may well visit the children's school, visit other relations and contact any social workers who have been involved with the family.

Having carried out their investigations the welfare officer will then prepare a report for the court, setting out the investigations they have made and the conclusions they have reached. The report may make a recommendation as to whom should have a residence order and what level of contact with the other parent there should be.

Both parties to the proceedings will receive a copy of the CAFCASS report before the date of the next hearing. This therefore enables the parties to consider the CAFCASS officer's recommendations and, if necessary, seek clarification from the CAFCASS officer on their report and investigations. If the CAFCASS officer does make recommendations which are in favour of the other party a party will need to seriously consider whether they wish to proceed with their application or whether agreement can be reached prior to a final hearing. In reality it is always an uphill battle to obtain a residence order if the welfare officer has made a recommendation for the other party to have or retain residence.

A welfare officer is not required to attend hearings unless the court orders. The parties may wish the CAFCASS officer to be in attendance at the hearing if they wish to challenge the officer on any of their findings or if, for example, they feel that they have in any way misreported conversations or have not made clear recommendations. If the CAFCASS officer is required to attend court, the parties have the opportunity at the final hearing to cross-examine the officer.

Final directions appointment

After the filing of the CAFCASS report and before the final hearing most courts will usually list a final directions appointment. This gives the court an opportunity to consider the findings of the CAFCASS report and see if agreement can be reached between the parties without the need for a final hearing. It also gives the court the opportunity to consider what further evidence may be required before the case can proceed to the final hearing.

Final hearing

All parties and, if appropriate, the child, must attend the hearing unless the court directs otherwise. The court must not begin a case in the absence of a respondent unless it is proved that he had reasonable notice of the hearing or the circumstances of the case justify proceeding. If the respondent appears but the applicant does not, then the court can refuse the application, or, if it has sufficient evidence it can proceed in the absence of the applicant. If neither the applicant nor the respondent appear then the court may refuse the application.

Most hearings and directions appointments in the County Court will be in chambers and in the Family Proceedings Court they may be held in private. Unless the court directs otherwise evidence should be adduced in the following order:-

1. the Applicant;
2. any party with parental responsibility for the child;
3. other respondents;
4. guardians (if appointed, which is rare in private law cases);
5. the child, if he is a party and there is no guardian.

The court must keep a note of the substance of any oral evidence given at a hearing or a directions appointment.

Order

After the final hearing the court must make its decision "as soon as is practicable". Where making an order or refusing an application the court must state any findings of fact and the reasons for the court's decision. If a Section 8 order is made it must be recorded in the appropriate form and as soon as possible the court must serve a copy of the order on the parties and on any person with whom the child is living.

Interim applications

This is a request for a hearing for an interim order to be made until a final hearing has taken place. It follows the normal procedure as outlined above but any evidence given by the parties and witnesses is likely to be short. As well as announcing the decision as to who should have a residence or contact order pending the final hearing the court will usually order a welfare report. Other directions can be requested if they are required (for example a direction that the parties should file statements within a certain period).

G O R V I N S F A M I L Y L A W

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