



An Overview

CHILDREN PROCEEDINGS

The purpose of this Stowe guide is to prepare you for what will happen if you go through the process of children proceedings.

The majority of applications made to the Court under the Children Act 1989 ask the Court to:

- Determine where a child shall live and how often they should spend time with the other party, or whether there should be an Order for shared care (a "Child Arrangements Order").
- Determine a particular issue e.g. which school a child should attend, whether a child should participate in a religious ceremony, or have a particular vaccination (a "Specific Issue Order").
- Prevent something being done in relation to a child e.g. change of name, change of school, taken out of the country, preventing the child spending time with a specific person (a "Prohibited Steps Order").

When making an Order, the child's welfare will be the Court's paramount consideration. The Court has a "welfare checklist" of factors it will pay close attention to when making a decision.

Attending a MIAM (Mediation Information and Assessment Meeting)

Prior to making an application to the Court, the Applicant (the person applying for the Order) must attend a Mediation Information and Assessment Meeting (a "MIAM") with a mediator. This is to consider whether the dispute is suitable for mediation.

We can arrange this for you, or advise whether a particular exemption applies in your case. The mediator will sign a document confirming the MIAM (or mediation) has taken place. This will form part of the application to the Court.

Issuing the application

The application will usually be issued and heard in the Court closest to the child's home, unless other proceedings are already underway.

Once it receives the application, the Court will set a date for the first Hearing and send a copy of the Application Notice to the other party/ parties (the "Respondent(s)").

The Respondent has 14 days in which to file notification at the Court (an "Acknowledgment") that he/she has received the application and whether it is opposed.

The role of CAFCASS

Before the first Court Hearing, all parties will be contacted by a Children and Family Court Advisory and Support Service ("CAFCASS") Officer who is an independent social worker experienced in assisting parents and children where there is a dispute. Both parties will have an opportunity to express their views to the CAFCASS Officer who will identify the issues and explore any possible areas of agreement.

The CAFCASS Officer will undertake background checks on all parties to ascertain whether the family are known to social services and whether anyone involved in the case has a criminal record. The CAFCASS Officer will consider whether the results of those enquiries are relevant to the child's safety and well being and a safeguarding letter will be sent to the Court for the first hearing.

Procedure:

There are three key stages in most Children Act applications but very few cases proceed to the final stage. In a straightforward case, you can expect the proceedings to take an average of 6 to 9 months to reach the Final Hearing. Most cases settle at either the FHDRA or after receipt of any expert/CAFCASS reports.

Stage 1 – The FHDRA

At the First Hearing Dispute Resolution Appointment (the "FHDRA") the parties should try to negotiate a settlement outside of Court. If resolution is not possible, the Judge will determine what steps need to be taken before the case can be decided. The Court will set a timetable and consider whether it is necessary for:

- The parties to provide written evidence by way of witness statements;
- Expert reports to be prepared (eg. a CAFCASS "Section 7" report, a doctor or educational psychologist's report, or for drug/alcohol testing to take place);

- A Fact Finding Hearing to be timetabled. This is a Hearing for the Judge to decide whether any allegations made by either party are true. Parties will be cross examined on their evidence and, if necessary, experts called. The Judge will hear the evidence and make "findings of fact". Any Fact Finding Hearing will take place before the Final Hearing.

If a CAFCASS report is ordered (also known as a Section 7 report) it may be at least 12 weeks until the next Hearing. The CAFCASS officer will visit the parties in their homes, meet with the child and may contact teachers and other professionals involved in the child's life.

The CAFCASS officer will prepare a report and make recommendations to the Court. This report will often carry significant weight with the Judge.

Stage 2 – The DRA

A Dispute Resolution Appointment ("DRA") is usually listed following receipt of the expert's report and to ensure all of the directions have been complied with, or whether further evidence is required. The Judge will, once again, encourage the parties to try and reach agreement.

The Judge may even provide an indication of the terms upon which he thinks the case ought to be settled.

Stage 3 – The Final Hearing

If no agreement is reached, then all parties and the CAFCASS officer must attend the Final Hearing. Most Hearings are usually held in private, only the parties and their legal teams are permitted to be present. The Judge will decide the issue after reading the reports and statements, hearing oral evidence from the parties and experts and arguments about the law.

If time permits, the Judge will give his/her Judgment and make an Order at the end of the Final Hearing, explaining why he/she reached that conclusion. It may be that Judgment is reserved to a future date to allow the Judge to consider the evidence and prepare a written Judgment.

Whilst there are exceptions, it is rare for either party to be awarded legal costs in Children Act proceedings. Each party should expect to bear their own costs.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowfamilylaw.co.uk