

## Draft/CHILD ARRANGEMENTS PROGRAMME

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### **1. Resolution of disputed arrangements for children**

- 1.1 This Child Arrangements Programme (the 'CAP') applies where a dispute arises between separated parents and/or families about the arrangements concerning children.
- 1.2 The CAP is designed to assist families to reach safe agreements where possible out of the court setting. If parents / families are unable to reach agreement, and a court application is made, the CAP encourages swift resolution of the dispute through the court.
- 1.3 **Dispute Resolution Services:** It is well-recognised that negotiated agreements between adults enhance long-term co-operation, and are better for the children concerned. Therefore, separated parents and families are strongly encouraged to attempt to resolve their disputes concerning children outside of the court system. This may also be quicker and cheaper.
- 1.4 Dispute Resolution Services, including mediation, are available to provide opportunities for parents and families to work in a positive and constructive way, and should be actively considered and attempted where it is safe and appropriate to do so. Information about mediation and other dispute resolution services is available widely (see 'Signposting Services for Families' below).

- 1.5 It is not expected that those who are the victims of domestic violence and abuse to attempt to mediate or otherwise engage in dispute resolution services away from the court. It is also recognised that drug and/or alcohol misuse and/or mental illness are likely to prevent couples from accessing mediation or similar services. These risk factors are likely to have an impact on arrangements for children. Court Orders, even those made by consent, must be scrutinised to ensure that they are safe and take account of any risk factors.
- 1.6 **Parenting Plans:** In order to create comprehensive and clear arrangements for children on separation, or later where disputes arise, families are encouraged to work with each other to develop a Parenting Plan. A Parenting Plan is designed to help separated parents (and their families) to work out the best possible arrangements for children; the Plan should be consistent and reliable for everyone, including the children concerned.
- 1.7 **Attendance at MIAM:** Before making a family application to the court (a 'relevant family application' as defined in para.20 below), the person who is considering making such application must attend a family mediation and assessment meeting (referred to here as 'a Mediation Information and Assessment Meeting' or MIAM). At the meeting, information will be provided about mediation of disputes of the kinds to which the relevant family application relates, ways in which the dispute may be resolved otherwise than by the court, and the suitability of mediation, or of any such other way of resolving the dispute, for trying to resolve any dispute to which the particular application relates.
- 1.8 The proposed applicant (or that person's legal representative) must contact a family mediator to arrange for the proposed applicant to attend this meeting, at which family mediation and other forms of alternative dispute resolution will be discussed.
- 1.9 A family mediator means a mediator who is a member of a mediation organisation affiliated to the Family Mediation Council (and therefore is subject to the Family Mediation Council's Code of Conduct); and is authorised to undertake Mediation Information and Assessment Meetings by the professional practice consultant supervising the mediator's practice.
- 1.10 A proposed applicant is not expected to attend a Mediation Information and Assessment Meeting where any of the circumstances set out in the Annex to the CAP (below) [NB this is likely to be amended by rules to support *Clause 10 Children and Families Bill 2013*].
- 1.11 Information on how to find a family mediator may be obtained from local family courts or national online database (see 'Signposting Services for Families' below).
- 1.12 The proposed applicant (or the proposed applicant's legal representative) should provide the mediator with contact details for the other party or parties to the dispute ('the proposed respondent(s)'), so that the mediator can contact the proposed respondent(s) to discuss that party's willingness and availability

to attend a Mediation Information and Assessment Meeting.

- 1.13 The proposed applicant should then attend a Mediation Information and Assessment Meeting arranged by the mediator. If the parties are willing to attend together, the meeting may be conducted jointly, but where necessary separate meetings may be held. If the proposed applicant and proposed respondent(s) do not attend a joint meeting, the mediator will invite the proposed respondent(s) to a separate meeting unless any of the circumstances set out in the Annex applies.
- 1.14 The Family Mediation Council sets the requirements for mediators who conduct MIAMs. In summary, a mediator who arranges a MIAM with one or more parties to a dispute should consider with the party or parties concerned whether public funding may be available to meet the cost of the meeting and any subsequent mediation. Where none of the parties is eligible for, or wishes to seek, public funding, any charge made by the mediator for the MIAM will be the responsibility of the party or parties attending, in accordance with any agreement made with the mediator.

## **2. Resolution of Disputed arrangements for children during proceedings**

- 2.1 Even if proceedings are before the court, the Judge or Magistrate is obliged to consider, at every stage, whether alternative dispute resolution is appropriate.
- 2.2 The parties should also actively consider alternative dispute resolution even if proceedings are issued and are ongoing.
- 2.3 If the court considers that alternative dispute resolution is appropriate, the court may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate:
- 2.3.1 to enable the parties to obtain information and advice about alternative dispute resolution; and
- 2.3.2 where the parties agree, to enable alternative dispute resolution to take place.
- 2.4 It is to be noted that some courts operate in-court mediation schemes with providers contracted to the Legal Aid Agency; information about such arrangements should be advertised in the local court.

## **3. Signposting services for families**

- 3.1 Parties who seek advice on resolution of their disputes about children are recommended to access services using the following resources:
- 3.1.1 For general advice on separation services and options for resolving

disputes: [sortingoutseparation.org.uk](http://sortingoutseparation.org.uk)

- 3.1.2 To find the nearest privately or publicly funded mediation service including a MIAM: [www.familymediationhelpline.co.uk](http://www.familymediationhelpline.co.uk)
- 3.1.3 For advice to LiPs on separation: the form 'CB7': <http://www.cafcass.gov.uk/media/168195/cb7-eng.pdf>
- 3.1.4 For forms: [www.gov.uk](http://www.gov.uk).
- 3.1.5 For Cafcass: [www.cafcass.gov.uk](http://www.cafcass.gov.uk) or [www.wales.gov.uk/cafcasscymru](http://www.wales.gov.uk/cafcasscymru)
- 3.1.6 For advice on funding of dispute resolution services and representation: [www.legalservices.gov.uk](http://www.legalservices.gov.uk)
- 3.2 For Parenting Plans: see Cafcass "Putting Your Children First: A Guide for Separated Parents".
- 3.3 For public funding issues, note that the Legal Aid Agency (LAA) will provide funding for Mediation Information and Assessment Meetings (MIAMs) and family mediation for all those who are eligible.
  - 3.3.1 Where at least one party is eligible, the LAA will cover the costs of both MIAMs to encourage any non-eligible client to find out about the benefits and suitability of mediation without incurring any costs.
  - 3.3.2 Eligible parties who participate in family mediation may also receive independent legal advice connected to the mediation process and where a settlement is reached can receive legal advice to draft and issue proceedings to obtain a consent order.
  - 3.3.3 Parties may find out if they are likely to be eligible for legal aid at the following link: <https://www.gov.uk/check-legal-aid>
  - 3.3.4 To find the nearest publicly funded mediation service a client can use the find a legal advisor or family mediator justice website at the following link: <http://find-legal-advice.justice.gov.uk/>

#### **4. Local Good Practice**

- 4.1 The CAP is designed to provide a framework for a consistent approach to the resolution of the issues in private family law in England & Wales.
- 4.2 Local practices and initiatives can be operated in addition to, and within, the framework.

**5. Application to court**

5.1 With the exception of those cases which are:

5.1.1 Urgent, and application is made for emergency relief (see 'Urgent and Without Notice Applications' below); or

5.1.2 Listed in the Annex to the CAP,

an application to court for determination of issues concerning a child can be made only after a MIAM has taken place (at which meeting alternative dispute resolution services will have been considered).

5.2 The application for a Child Arrangements order or other Children Act 1989 private law order shall be made on the relevant prescribed form.

5.3 The Applicant will be required, [on the form FM1/amended C100], to confirm attendance at a Mediation Information and Assessment Meeting or specify that an exemption applies.

5.4 [Page 1 of the C100 / The Form FM1] must be completed and signed by the mediator, and countersigned by the applicant or the applicant's legal representative, where either:

5.4.1 the applicant has attended a Mediation Information and Assessment Meeting; or

5.4.2 the applicant has not attended a Mediation Information and Assessment Meeting and

(a) the mediator is satisfied that mediation is not suitable because another party to the dispute is unwilling to attend a Mediation Information and Assessment Meeting and consider mediation;

(b) the mediator determines that the case is not suitable for a Mediation Information and Assessment Meeting; or

(c) a mediator has made a determination within the previous four months that the case is not suitable for a Mediation Information and Assessment Meeting or for mediation.

5.5 In all other circumstances, [Page 1 of the C100 / the Form FM1] must be completed and signed by the applicant or the applicant's legal representative.

5.6 The C100 form may be obtained from the Family Court or from [www.gov.uk](http://www.gov.uk).

5.7 If possible at the time of issue, and in any event by no later than one working day after issue, or in courts where applications are first considered on paper, by no later than two working days after issue, the court shall

(a) send or hand to the Applicant the following:

- i) a copy of the Application Form C100, (together with Supplemental Information Form C1A) (if provided) (references to form C1A are to be read as form C100A following the introduction of this replacement form),
  - ii) the Notice of Hearing,
  - iii) the Acknowledgment Form C7,
  - iv) a blank Form C1A,
  - v) the Certificate of Service Form C9,
  - vi) information leaflets for the parties
- (b) send to Cafcass the documents at (i) and (ii) above.

## **6. Allocation and Gatekeeping**

- 6.1 It is important that the form C100 is fully completed, especially on [pages 1, 2, 3 and 5], otherwise there may be a delay in processing the application; where the form is not fully completed, the court staff may make requests for further information before the application form is accepted for issue.
- 6.2 The application shall be considered by the Gatekeeping Judge (a Legal Adviser &/or District Judge) (“the Gatekeeper(s)”) within one working day of the date of receipt in accordance with the appropriate Rules of Procedure.
- 6.3 An application for a relevant family application shall be allocated to a level of judge in the Family Court in accordance with the President’s Guidance on Allocation and Gatekeeping (private law). The allocation shall be governed by the Allocation Schedule.
- 6.4 The Gatekeeper(s) shall be able to issue Directions on Issue [on Form CAP01] in the following circumstances:
- 6.4.1 where it appears to the Gatekeeper(s) that the Applicant has not attended a MIAM or that the reason for not attending a MIAM is not satisfactory, the Gatekeeper(s) can direct the Applicant to attend a MIAM before the FHDRA;
  - 6.4.2 where it appears that an urgent issue requires determination, the Gatekeeper(s) may give directions for an accelerated hearing;
  - 6.4.3 Exceptionally, where it appears that directions need to be given for the service and filing of evidence, the Gatekeeper(s) may give directions for the filing of evidence.

**7. Judicial continuity**

- 7.1 All private law cases will be allocated to a level of justice/judge within The Family Court upon issue.
- 7.2 Continuity of Judicial involvement in the conduct of proceedings from the FHDRA to the making of a final order should be the objective in all cases.
- 7.3 Where the case has been allocated to be heard before Magistrates, the expectation of judicial continuity should apply where
- 7.3.1 There has been a hearing to determine findings of fact,
- 7.3.2 A decision yet to be made in the interests of a child by a court depends upon rulings or judicial assessments already made in the proceedings,
- in which case, the legal adviser and at least one member of the bench (preferably the chairman) should provide that continuity.

**8. Key welfare principles**

- 8.1 Section 1 of the Children Act 1989 shall apply to all applications for orders concerning the upbringing of children. This means that:
- 8.1.1 the child's welfare is the court's paramount consideration;
- 8.1.2 delay is likely to be prejudicial to the welfare of the child, and
- 8.1.3 a court order shall not be made unless the court considers that making an order would be better for the child than making no order at all.
- 8.2 The principles contained in the following provisions of the FPR 2010 shall also apply:
- 8.2.1 Rule 1. The 'overriding objective' will apply, so that the court will
- (a) Deal expeditiously and fairly with every case;
  - (b) Deal with a 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 unnecessary 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.
- 8.2.2 Rule 3, and PD3A (but NOTE THAT the Annexes have been incorporated into this document);
- 8.2.3 Rule 4 'Case Management Powers';
- 8.2.4 FPR Part 15 (Representation of Protected Parties) and Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings);
- 8.2.5 FPR Part 16 (Representation of Children) (and see also [§15] below);

- 8.2.6 FPR Part 22 (Evidence);
- 8.2.7 FPR Part 25 (Experts);
- 8.2.8 FPR 27.6 and Practice Direction 27A (Court Bundles).

- 8.3 The court and parties should be conscious of the need to ensure that children are involved, as appropriate in the context of their age and level of understanding, in the decision making process.
- 8.4 The court shall exercise its powers flexibly. The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing.

## **9. Urgent/Without Notice Applications**

- 9.1 Where relief is sought as a matter of urgency, an application may be made to the Court for an emergency order without the requirement for the Applicant to have attended at a MIAM;
- 9.2 Applications to court made 'Without Notice' to the respondent shall be determined by reference to the provisions of PD20A, para.4.3-4.5 FPR 2010.
- 9.3 Without Notice Orders should be made only exceptionally, and where:
  - 9.3.1 If the applicant were to give notice to the respondent this would enable the respondent to take steps to defeat the purpose of the injunction; cases where the application is brought without notice in order to conceal the step from the respondent are very rare indeed;
  - 9.3.2 The case is one of exceptional urgency; that is to say, that there has been literally no time to give notice (either by telephone, text or e-mail or otherwise) before the injunction is required to prevent the threatened wrongful act;
  - 9.3.3 If the applicant gives notice to the respondent, this would be likely to expose the applicant or relevant child to unnecessary risk of physical or emotional harm.

## **10. Safeguarding**

- 10.1 In applications for child arrangements orders (but not necessarily for specific issue or prohibited steps orders), before the FHDRA (see below) Cafcass (the Children and Family Court Advisory and Support Service) shall identify any safety issues by the steps outlined below.
- 10.2 Such steps shall be confined to matters of safety. The Cafcass Officer shall not discuss with either party before the FHDRA any matter other than one which relates to safety. The Parties will not be invited to talk about other issues, for example relating to the substance of applications or replies or about issues



concerning matters of welfare or the prospects of resolution. If such issues are raised by either party they will be advised that such matters will be deferred to the FHDRA when there is equality between the parties and full discussion can take place which will also be a time when any safety issues that have been identified can be taken into account.

- 10.3 In order to inform the court of possible risks of harm to the child in accordance with its child protection policy. Cafcass will carry out safeguarding enquiries, including checks of local authorities and police, and telephone risk identification interviews with parties.
- 10.4 If risks of harm are identified, Cafcass may invite parties to meet separately with the Cafcass Officer before the FHDRA to clarify any safety issue.
- 10.5 Cafcass shall record and outline any safety issues for the court, in the form of a Safeguarding letter.
- 10.6 The Cafcass Officer will not initiate contact with the child prior to the FHDRA. If contacted by a child, discussions relating to the issues in the case will be postponed to the day of the hearing or after when the Cafcass officer will have more knowledge of the issues.
- 10.7 Within 17 days of receipt of the application, and at least 3 days before the hearing, the Cafcass Officer shall report to the court, in a Safeguarding letter, the outcome of the risk identification work which has been undertaken.
- 10.8 Cafcass is required, under s 16A *Children Act 1989*, to undertake risk assessments for the court where an officer of the Service ('Cafcass Officer') suspects that a child is at risk of harm. (References to Cafcass include Cafcass CYMRU and references to the Cafcass Officer include the Welsh family proceedings officer in Wales).

## **11. First Hearing Dispute Resolution Appointment (FHDRA)**

- 11.1 The FHDRA may (where time for service on the respondent has been abridged) take place within 4 weeks, but should ordinarily take place in week 5 following the issuing of the application; at the latest it will take place in week 6 following the issuing of the application.
- 11.2 The Respondent shall have at least 14 days notice of the hearing where practicable, but the court may abridge this time.
- 11.3 The Respondent should file a response on the Forms C7/C1A no later than 14 days before the hearing, unless the court has abridged this time.
- 11.4 Unless the court otherwise directs, any party to proceedings, and any litigation friend of the parties must attend this (and any other) hearing. If a child is a party and represented by a Cafcass guardian, the guardian need not attend directions hearings if represented.

- 11.5 A Cafcass Officer shall attend this hearing. A mediator may attend where available.
- 11.6 The Cafcass Officer shall, where practicable, speak separately to each party at court before the hearing.
- 11.7 The FHDRA provides an opportunity for the parties to be helped to an understanding of the issues which divide them, and to reach agreement. If agreement is reached,
- 11.7.1 The Court will be able to make an order (which in many cases will be a final order) reflecting that agreement;
- 11.7.2 The Court will assist the parties (so far as it is able) in putting it into effect the agreement/order in a co-operative way.
- 11.8 The FHDRA is not privileged. That is to say that what is said at the FHDRA may be referred to at later court hearings.
- 11.9 By the time of the hearing, the Judge/Justices should have the following documents:
- (a) C100 application, and C1A (if any);
  - (b) Notice of Hearing;
  - (c) C7 response and C1A (if any);
  - (d) Cafcass/Cafcass Cymru safeguarding letter.
- 11.10 At the FHDRA the Judge or Magistrates, in collaboration with the Cafcass Officer, and with the assistance of any mediator present, will seek to assist the parties in conciliation and in resolution of all or any of the issues between them. Any remaining issues will be identified, the Cafcass Officer will advise the court of any recommended means of resolving such issues and directions will be given for the future resolution of such issues. At all times the decisions of the Court and the work of the Cafcass Officer will take account of any risk or safeguarding issues that have been identified
- 11.11 The court should have information obtained through safeguarding checks carried out by Cafcass, to ensure that any agreement between the parties, or any dispute resolution process selected, is in the interests of the child and safe for all concerned.
- 11.12 The FHDRA will be conducted in the most appropriate way in the interests of the child. In particular the court shall consider the following matters:
- 11.12.1 **MIAM**, specifically:
- (a) Whether the Applicant has complied with the requirement (or direction) to attend a MIAM;

- (b) If not, whether the proceedings ought to be adjourned for the Applicant to attend a MIAM, with or without the Respondent;
- (c) Whether the Respondent ought to attend a MIAM either jointly with the Applicant or alone.

11.12.2 **Mediation, In-Court mediation, and other Dispute Resolution:** allowing the parties the time and opportunity to engage in dispute resolution services away from the Court process.

11.12.2.1 At the FHDRA, the Judge will specifically consider whether, and the extent to which, the parties can safely resolve some or all of the issues with the assistance of the Cafcass Officer and any available mediator.

11.12.3 **Safeguarding**, in this respect:

- (a) The court shall inform the parties of the content of the safeguarding letter provided by Cafcass, where the letter has not already been sent by Cafcass to the parties unless it considers that to do so would create a risk of harm to a party or the child.

The court will further consider:

- (b) Whether a fact finding hearing is needed to determine allegations whose resolution is likely to affect the decision of the court.
- (c) Risk identification followed by active case management including risk assessment, and compliance with the Practice Direction 14th January 2009: 'Residence and Contact Orders: Domestic Violence and Harm'.

11.12.4 **Dispute Resolution:**

- (a) There will be at every FHDRA a period in which the Cafcass Officer, with the assistance of any Mediator and in collaboration with the Court, will seek to conciliate and explore with the parties the resolution of all or some of the issues between them if safe to do so. The procedure to be followed in this connection at the hearing will be determined by local arrangements between the Cafcass manager, or equivalent in Wales, and the Designated Family Judge or the Justices' Clerk where appropriate.

The court will further consider:

- (b) What is the result of any such meeting at Court?
- (c) What other options there are for resolution e.g. may the case

be suitable for further intervention by Cafcass; mediation by an external provider; collaborative law or use of a parenting plan?

- (d) Would the parties be assisted by attendance at Separated Parents Information Programme or other intervention, whether by formal statutory provision under section 11 Children Act 1989 as amended by Children and Adoption Act 2006 or otherwise;

#### 11.12.5 Consent Orders:

- (a) Where agreement is reached at any hearing or submitted in writing to the court, no order will be made without scrutiny by the court.
- (b) Where safeguarding checks or risk assessment work remain outstanding, the making of a final order may be deferred for such work. In such circumstances the court shall adjourn the case for no longer than 28 days to a fixed date. A written notification of this work is to be provided by Cafcass in accordance with the timescale specified by the court. If satisfactory information is then available, the order may be made at the adjourned hearing in the agreed terms without the need for attendance by the parties. If satisfactory information is not available, the order will not be made, and the case will be adjourned for further consideration with an opportunity for the parties to make further representations

#### 11.12.6 Reports:

The court will specifically consider

- (a) Whether there are welfare issues or other specific considerations which should be addressed in a report by Cafcass or the Local Authority. Before a report is ordered, the court should consider alternative ways of working with the parties such as are referred to in paragraph 11.12.4 (Dispute Resolution) above.
- (b) If a report is ordered in accordance with *Section 7* of the *Children Act 1989*, it should be directed specifically towards and limited to those issues. General requests should be avoided and the Court should state in the Order the specific factual and other issues that are to be addressed in a focused report.
- (c) In determining whether a request for a report should be directed to the relevant local authority or to Cafcass, the court should consider such information as Cafcass has provided about the extent and nature of the local authority's current or

recent involvement with the subject of the application and the parties, and any relevant protocol between Cafcass and the Association of Directors of Children's Services.

- (d) The court may further consider whether there is a need for an investigation under *S 37 Children Act 1989*.
- (e) A copy of the Order requesting the report and any relevant court documents are to be sent to Cafcass or, in the case of the Local Authority, to the Legal Adviser to the Director of the Local Authority Children's Services and, where known, to the allocated social worker by the court forthwith.
- (f) Is any expert evidence required? If so, it can only be ordered in compliance with *Part 25* of the *FPR 2010*. This is the latest point at which consideration should be given to the instruction of an expert in accordance with *Rule 25.6(b)* of the *FPR 2010*; the court will need to consider carefully the future conduct of proceedings where the preparation of an expert report is necessary but where the parties are unrepresented and are unable to fund the preparation of such a report.

#### 11.12.7 **Wishes and feelings of the child:**

The court must consider the wishes and feelings of the child, ascertainable (so far as is possible at this hearing) in light of the child's age and understanding. Specifically, the Court should ask:

- (a) Is the child aware of the proceedings?
- (b) Are the wishes and feelings of the child available, and/or to be ascertained (if at all)?
- (c) How is the child to be involved in the proceedings, if at all? Should this be at or after the FHDRA?
- (d) Who will inform the child of the outcome of the case, where appropriate?

#### 11.12.8 **Case Management:**

- (a) What, if any, issues are agreed and what are the key issues to be determined?
- (b) Are there any interim orders which can usefully be made (e.g. indirect, supported or supervised contact) pending final hearing?
- (c) What directions are required to ensure the application is ready for final hearing – statements, reports etc?

- (d) Should the application be listed for a Dispute Resolution Appointment?
- (e) Should the application be listed for a final hearing?
- (f) Judicial continuity should be actively considered (especially if there has been or is to be a fact finding hearing or a contested interim hearing).

11.12.9 **Allocation:**

- (a) The Allocation decision will be considered by the Court;
- (b) If it is necessary to transfer / re-allocate the case, the court shall state the reasons for transfer/re-allocation, and shall specifically make directions for the next hearing in the court.

11.12.10 **Order (other than a final order):** where no final agreement is reached, and the court is required to give case management directions, the following shall be included on the order [CAPO2]:

- (a) The issues about which the parties are agreed;
- (b) The issues that remain to be resolved;
- (c) The steps that are planned to resolve the issues;
- (d) Any interim arrangements pending such resolution, including arrangements for the involvement of children;
- (e) The timetable for such steps and, where this involves further hearings, the date of such hearings;
- (f) A statement as to any facts relating to risk or safety; in so far as they are resolved the result will be stated and, in so far as not resolved, the steps to be taken to resolve them will be stated.
- (g) Whether the parties are to be assisted by participation in mediation, Separated Parents Information Programme, or other types of parenting intervention, and to detail any contact activity directions or conditions imposed by the court;
- (h) The date, time and venue of the next hearing.

## 12. **Capacity of Litigants**

- 12.1 [Capacity of Litigants: awaiting Guidance in relation to assessments of capacity of Litigants in Person]

### **13. Evidence**

13.1 No evidence shall be filed in relation to an application until after the FHDRA unless:

13.1.1 It has been filed in support of a without notice application

13.1.2 It has been directed by the Court on the Directions on Issue

13.1.3 It has been directed by the Court for the purposes of determining an interim application

### **14. Timeframe for the child**

14.1 Proceedings should be timetabled so that the court should be enabled to make final orders, as soon as safe and possible, in the interests of the child.

14.2 While it is acknowledged that interim orders may be appropriate at early stages of the proceedings, cases should not be adjourned for a review (or reviews) of contact or other orders/arrangements, &/or for addendum *section 7* report, unless such a hearing is necessary and for a clear purpose that is consistent with the timetable for the child/ren and in the child's/children's best interests.

14.3 When preparing a *section 7* report, Cafcass (or, where appropriate, the Local Authority) is encouraged to make recommendations for the stepped phasing-in of child arrangements (i.e. recommendations for the medium and longer term future for children) insofar as they are able to do so safely in the interests of the child(ren) concerned;

14.4 Where active involvement or monitoring is needed, the court may consider making:

14.4.1 An order under *section 11H CA 1989* (Cafcass Monitoring);

14.4.2 A Family Assistance Order under *section 16 CA 1989* (in accordance with the practice in *PD12M FPR 2010*, and if all named in the order agree to the making of such an order and the child lives (or will live) in the local authority area or the local authority agrees to the making of the order).

### **15. Rule 16.4 guardians**

15.1 The Court should be vigilant to identify the cases where a *rule 16.4* guardian for the child should be appointed. This should be considered initially at the FHDRA.

15.2 Where the court is considering the appointment of a Children's Guardian, it

should first seek to ensure that enquiries have been made of the appropriate Cafcass manager so as to consider any advice in connection with the prospective appointment, and the timescale involved.

- 15.3 In considering whether to make such an appointment the Court shall take account of the demands on the resources of Cafcass that such appointment would make. The court should also make clear on the face of any order the purpose of the appointment and the timetable of any work to be undertaken.

## **16. Dispute Resolution Appointment**

- 16.1 The Court shall list the application for a Dispute Resolution Appointment ('DRA') to follow the preparation of *section 7* or other expert report, or Separated Parenting Information Programme (SPIP), if this is considered likely to be helpful in the interests of the child.

- 16.2 The author of the *section 7* report will only attend this hearing if directed to do so by the Court.

- 16.3 At the DRA the Court will:

16.3.1 Identify the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the DRA;

16.3.2 Consider whether the DRA can be used as a final hearing;

16.3.3 Resolve or narrow the issues by hearing evidence;

16.3.4 Identify the evidence to be heard on the issues which remain to be resolved at the final hearing;

16.3.5 Give final case management directions including:

16.3.5.1 Filing of further evidence;

16.3.5.2 Filing of a statement of facts/issues remaining to be determined

16.3.5.3 Filing of a witness template and / or skeleton arguments

16.3.5.4 Ensuring Compliance with PD27A (the Bundles Practice Direction)

16.3.5.5 Listing the Final Hearing

## **17. Fact-finding hearing**

- 17.1 The court shall conduct a hearing to determine the facts in accordance with



PD12J

## **18. Enforcement**

18.1 [Specific recommendations about enforcement will follow – see the Report of the PLWG]

## **19. Timetable**

19.1 Day 1: Paperwork received. Court office checks whether [there is a Form FM1/the front page has been completed correctly]. The application will not be issued unless [the front page has been completed correctly / there is a completed FM1].

19.2 Day 2: Case considered by Gatekeeping team. Case allocated by Legal Adviser or District Judge in accordance with the President's Guidance. Judge undertaking allocation to check whether [front page of C100/FM1 is completed]. If there has been no MIAM, and there are reasons to believe that the applicant should have attended a MIAM, the allocating judge can direct that a MIAM should take place before the FHDRA.

19.3 Day 17 (i.e. 17 working days after issue): Cafcass provide safeguarding check.

19.4 Week 5 (or latest, week 6): Case listed for FHDRA (before week 5 if requirements of notice have been abridged).

19.5 Thereafter, case may be listed for fact-finding hearing, DRA &/or final hearing

## **20. Relevant Family Application (definition)**

20.1 A relevant family application for the purposes of the CAP is an application in private law except

- proceedings for an enforcement order, a financial compensation order or an order under paragraph 9 or Part 2 of Schedule A1 to the Children Act 1989;
- any other proceedings for enforcement of an order made in private law proceedings; or
- where emergency proceedings have been brought in respect of the same child(ren) and have not been determined.

('Private law proceedings' and 'emergency proceedings' are defined in Rule 12.2)

**Annex: A person considering making an application to the court in relevant family proceedings is not expected to attend a Mediation Information and Assessment Meeting before doing so if any of the following circumstances applies**

1. The mediator is satisfied that mediation is not suitable because another party to the dispute is unwilling to attend a Mediation Information and Assessment Meeting and consider mediation.
2. The mediator determines that the case is not suitable for a Mediation Information and Assessment Meeting.
3. A mediator has made a determination within the previous four months that the case is not suitable for a Mediation Information and Assessment Meeting or for mediation.
4. Any party has, to the applicant's knowledge, made an allegation of domestic violence against another party and this has resulted in a police investigation or the issuing of civil proceedings for the protection of any party within the last 12 months.
5. The parties are in agreement and there is no dispute to mediate.
6. The whereabouts of the other party are unknown to the applicant.
7. The prospective application is for an order in relevant family proceedings which are already in existence and are continuing.
8. The prospective application is to be made without notice to the other party.
9. The prospective application is urgent, meaning:
  - a. there is a risk to the life, liberty or physical safety of the applicant or his or her family or his or her home; or
  - b. any delay caused by attending a Mediation Information and Assessment Meeting would cause a risk of significant harm to a child, a significant risk of a miscarriage of justice, unreasonable hardship to the applicant or irretrievable problems in dealing with the dispute (such as an Irretrievable loss of significant evidence).
10. There is current local authority children's services involvement as a result of child protection concerns in respect of any child who would be the subject of the prospective application.
11. A child would be a party to the prospective application by virtue of Rule 12.3(1).
12. The applicant (or the applicant's legal representative) contacts three mediators within 15 miles of the applicant's home and none is able to conduct a Mediation Information and Assessment Meeting within 15 working days of the date of contact.