

## CLB Website

### Links from Life Cycles of an Application in the Family Courts

#### Adversarial proceedings.

This is the system of law where (normally) two sides are pitched against each others, trying their best to set out their own case as strongly as they can, and trying to demolish or weaken the case of their opponent. The objective is to 'win' the case and gain whatever benefits that will bring for one party or the other.

The distinction is clearest in trials for criminal offences, where the 'prosecution' sets out the case for a guilty verdict, presenting evidence that the alleged crime was committed, and the 'defence' does the opposite.

The evidence presented is generally selected for favouring one side or the other, and will be examined favourably or critically according to the stance of the adversaries.

There are regular allegations in the criminal courts that the prosecution knows of evidence, but conceals, evidence that would help the 'other side'. And sometimes vice-versa. As if the 'prosecution' felt it was their job to convict the innocent and the job of the 'defence' to get an acquittal for the guilty. This would appear to happen all the time in the family courts.

It is usually contrasted with 'inquisitorial' methods, where an attempt is made to investigate the issues in dispute and promote what seems to be the just or best outcome. In the case of a crime, an investigation is made into what happened by some person or agency that is supposed to be impartial and what should be done about it by way of appropriately charges is proposed.

In the family courts the actual hearings are adversarial, the person who starts the proceedings is called the Applicant, occasionally the claimant or the petitioner, the other side is called the Respondent, occasionally the defendant. The proceedings are a contest between them.

Other parts of the system are Inquisitorial. The reports by CAFCASS and Social Services attempt to explore the situation and make recommendations.

#### C100

This is the basic form for a court order, especially Child Arrangements Orders, the one most often asked for as it governs the basic organisation of parenting time and other disputes between parents. Get a copy online from HM Courts and tribunal service/form finder.

## CAFCASS and safeguarding and welfare reports.

Children and Family Courts Advisory and Support Service. This is a government body accountable to the Ministry of Justice but with independence in day to day matters. It is a social work agency responsible for advising the family courts on the welfare of children that come before their jurisdiction. Its main workload is what is called 'public law', that is children who have come before a family court as a result of the intervention of Social Services. This is usually because they have been considered as suffering (or to be at risk of) harm or neglect.. This has to be sufficient for state intervention to be called for.

They are also concerned with 'private law'. This is the area that this charity deals with. This is where (normally) divorced or separated parents cannot agree on child rearing arrangements and seek a decision from the family courts.

'Private law' parents are likely to come across CAFCASS in at least three situations.

- 1) When an application has been made to the family courts. Their first role is to establish whether or not there is a safety risk. They will check official records, especially with the police and social services about whether there is anything known that might trigger concerns. They will also ring your ex and yourself to see if there are any allegations and what you have to say. This is then reported to the first hearing.
- 2) At the first hearing – often but not always – there will be a CAFCASS officer. Here, they are likely to have two roles. The first is, to advise the court/judge. The second is to see if an agreement can be reached that will avoid, or reduce the issues in, a legal contest.
- 3) The main 'welfare report'. In the majority of cases the judge/court in the first hearing will order one of these.

It is easier to say what they should do, than what actually happens, which is very variable. Sometimes for good reasons. For example, at the time of writing, their inability to meet the children and parents face to face.

The officer preparing the report should meet and talk to both parents and others directly involved. She, or occasionally he, should meet and observe the children, talking to them about their needs and feelings if they are of sufficient age and maturity. This should be without their parents. She should also observe the children with both their parents in their own homes.

The report obviously contains details about the children and their parents. It should address the criteria in the '*welfare checklist*' of the overarching law, the Children Act 1989 (as amended) See the section on that on this website. It should summarise how the enquiries were made, and the observations made on them. The views of the parties should be reported on accurately, and the questions in dispute outlined. Finally it should outline the conclusions and recommendations. This will almost invariably outline suggested divisions of parenting time. The regular rota. The arrangements for holidays and special occasions. Other issues in dispute. It will often include suggestions about how the parents should behave towards each other.

Read also the section on how to deal with CAFCASS and other report writers,

## Change of Residence

This is where, following courts accepting that there has been such severe opposition to a child having a relationship with the other parent (in practice nearly always their father) that they order that the children should live with him instead. It should be their mother whom they visit.

This is often the ultimate sanction in extreme cases. It does happen, but very rarely. It may be the only option sometimes, but there are a host of problems. The children usually, as is right and natural, love their mother. If there is 'parental alienation' involved the children may have absorbed the view of the other parent that has been imposed on them, they may genuinely fear and hate him. The 'other parent' may indeed be clearly the better one, and in a position to be a primary carer. But the problems of making the change...

Do not expect it often. The threat of it, however, sometimes works. And of course, it would not if never carried through.

## Child Arrangements Orders

This is the basic and commonest order given by the family courts. It governs the division of parenting time, when the children are to be with which parent, and other disputes between them. Application is via a C100, see above.

## Contact Centres

These are locally run, and mostly voluntary services in which parents (or other family members) can spend time with children when it has been court ordered or agreed that the parent should not be seeing them outside. A variety of organisations run them. They differ in where they are - often in faith buildings or other community venues. They are governed by the charity NACCC (National Association of Child Contact Centre).

There are two sorts of 'contact' in them. 'Supported' contact where children and parents spend time together freely within the building. There are usually facilities and equipment and helpful staff (usually volunteers) on hand but they will not get involved. Nor do they make any report or make any statement for use elsewhere.

'Supervised' contact is where a professional is simply an observer who will write a report for use by the courts or others on the nature and quality of the parent/child interaction. Fees are payable for both.

Such centres are an indispensable part of an assessment of the qualities of a parent where these have been called into question. They should be part of a process in which, if all goes well, the relationship of a child with an excluded parent is progressively relaxed.

Excluded parents, however, should be aware of a move that is likely given the adversarial nature of the family courts. It may become clear to the 'other side' - the parent with primary control or, very often, the person 'representing' her, that the Court is going to allow a child a relationship with their excluded parent. In response, they will seek to make the circumstances of it as unfavourable as possible. This may include confining it to a contact centre and opposing or delaying relaxation of the restrictions.

Any contact is better than none for the child, but sessions in a contact centre should be, unless there are contra-indications, a stage towards a free relationship.

## Consent Orders

This is where the parents have made an agreement between themselves, but formal legal authority is sought for it. It being a court order makes it binding and enforceable. It might be an agreement made outside the court, for example with the help of a mediator or anyone else. It might arise from the First Hearing. Perhaps with the help of the CAFCASS officer, or negotiations between the parties, perhaps with their representatives in the court building but outside the court itself at any stage. As with all orders and agreements, it is important to ensure that it covers all the issues that need to be covered.

You cannot appeal against a court order that consented to.

## Court Fees

Go to HM Courts and Tribunals Service, Civil and Family Court fees. That has the full and up to date list. They are put up from time to time.

The current fee for a CAO is £215 (May 2020)

There are exemptions for people on (very) low incomes, certain benefits and few savings. See [www.gov.uk/government/publications/apply](http://www.gov.uk/government/publications/apply) for help with court and tribunal fees.

## Domestic abuse

See also *Legal aid*.

This charity does not condone abuse in any way. Even if provoked or in anger at some behaviour, it is an unacceptable response. Even self-defence should be the minimum necessary.

The only support we offer to people who have inflicted abuse either on a child or their ex or anyone else, is this. To become better parents, partners and people in future. Allegations of it have become nearly standard in family court proceedings. We do not believe or disbelieve any or all of them. Decisions about children (half of them of course girls) should be based on evidence and assessment of the parenting qualities of the individuals involved and parties and not on stereotypes. Either of sex or gender, nor race, nor religion nor sexual orientation or any of the other unacceptable grounds for discrimination.

There has always been an incentive for people in the family courts to make credible allegations about the character, conduct or parenting of the other party (and if they are true, correctly). The more recent changes, called LASPO (Legal Aid, Sentencing and Punishment of Offenders) denied legal aid in family proceedings in nearly every case unless there are allegations of domestic abuse involved. This gave an additional incentive to Legal firms to make use of such allegations.

Allegations of domestic violence and abuse come up in three situations.

1) Alleged criminal conduct. This is outside the scope of this charity, unless it affects children's proceedings. It's a matter for the police and the criminal justice system. Anyone who inflicts or threatens violence either to an adult or a child can be guilty of any number of crimes. But more recent additions have added emotional, psychological, sexual and financial abuse. They can either be on incident or part of a pattern or incidents. In London, information is on the police website [www.met.police.uk/advice](http://www.met.police.uk/advice).

Any of these things, in order to amount to a crime, have to reach a threshold that makes it a crime, and for a conviction, it has to be proved 'beyond reasonable doubt'. Some people think that if they have been brought before a court and found 'not guilty', they have been 'proved innocent' and that should be the end of the matter. Similarly, if the police have decided to take 'No Further Action'. Not so. In the family courts the level of proof is 'the balance of probabilities.' People accused of domestic violence and abuse and found 'not guilty' are not necessarily regarded as innocent in the family courts. They could be guilty, but not 'beyond reasonable doubt'.

People who have a conviction are wasting their time in the family courts claiming a miscarriage of justice. See *If you do not have clean hands*.

2) The CAFCASS safeguarding report. This involves the CAFCASS officer contacting the police and Social Services for anything known to them about the parties and their children. What they find out and report will influence the First Directions hearing and especially the time the children spend with the 'other parent' pending a final hearing.

3) The fuller CAFCASS welfare report as part of the process leading to a final order. That report should contain the views of both parties and therefore any allegations, denials and counter allegations that they have made against the other. It is likely to include any observations that the officer has to make on them, and the basis for them.

You or your representative will have a chance to question the CAFCASS officer during the hearing.

## How the courts are organised.

If you think you have made sense of how the UK courts are organised, you have probably oversimplified.

Luckily most of the time, you will not need to know. Your issues will be in the family courts.

The family courts are different from two other sorts of courts. The ones that deal with crimes, and the ones that deal with other sorts of disputes between private citizens, such as conflicts between neighbours.

There are, however, differences in procedure that can give rise to confusion.

The criminal and most civil courts are open to the public, and their decisions can be discussed. The family courts are in private, and it can be a punishable 'contempt of court' to reveal what happens there, or to reveal documentation to people who do not have special rights to see it, such as legally qualified representatives of the parties. Exceptions are where there has been an authorised derogation, for example to a lay advocate or 'McKenzie friend'.

In practice this demand for secrecy is unenforceable. No-one can expect the parents not to talk about something of such importance to their family and friends. And no attempt is made to enforce it. Nor are there more than occasional - and spurious - attempts made to stop people seeking comments and suggestions from, for example, a branch meeting of this charity. This is subject to safeguards which we insist on, namely nothing being said or revealed that identifies individuals. Chatham House rule applies to the meetings.

What is clearly unacceptable, however, is anything overtly 'public' such as talking to the media or identifying children (directly or enabling their identification) on social media. That can lead to prison!

The view of this charity is that the identity of children needs to be protected, but the extent of the secrecy prevents essential discussion of the quality of 'justice' 'dispensed'.

There are differences in the 'burden of proof'. In the criminal courts a 'guilty' verdict can only be given if the question is proven 'beyond reasonable doubt'. In the civil courts it is the 'balance of probabilities.' For example, if the issue is one person's word against another with no 'objective' evidence, it is hard to say something is 'beyond reasonable doubt'. But civil courts, including the family courts, have the power to decide which to believe, on the 'balance of probabilities.' This is jargon for anything more than equally likely. Such a low standard allows prejudice and stereotypes to substitute for individualised evidence and argument. This works to the disadvantage to all members of a group where some unworthy characteristic is thought to be found.

There are also differences in evidence rules. For example, 'hearsay' ('I was not told directly, but x said that...') evidence may be allowed in civil courts but not in criminal courts'

The issues that this charity and this website deal with are almost invariably in the family courts. They involve disputes about the parenting of children. There may be 'crime' or alleged crime involved, if there are issues to do with any abuse of children or partners or ex partners. But the family courts do not deal with this aspect directly. And there can be disputes between family members that are outside the remit of the family courts, such as contested wills, or where relatives can take decisions on behalf of someone without 'mental capacity'.

Issues such as where and with whom the children should live or spend time with, how they should be brought up and educated, what religion they should be taught, leisure and holiday arrangements and all the questions that parents who agree settle among themselves....These are things for the family courts. As are some of the matters to do with marriage and divorce. The finances of marriage and the division of assets on divorce and separation are a matter for them, but only maintenance for the children in exceptional cases.

There is a further distinction in the family courts between 'public' and 'private' cases. If Social Services (a department of local government) are involved, usually because children are considered to be 'at risk' of 'significant' harm or neglect, or in need of official protection, they will be 'public law' cases. The examples that are well known are where the children may have to be removed from the care of their parents, or adopted by others against the will of their parents, called 'forced adoption.'

Children under 'public law' have greater rights to parental involvement than those under 'private law'. They have, for example, a right to a relationship with their parents unless there has been an explicit family court decision that this would be against their welfare.

'Public law' cases are brought to our charity regularly, although they form of minority of those whose parents approach us. The most common examples are where a child has been taken into care, and occasionally 'put up' for adoption, without a father with 'parental responsibility' being taken into consideration in those decisions or even being informed. This is clearly against the law and best practice but happens regularly. When Social

Services are dealing with a mother (occasionally father) whose care of children seems to give 'grounds for concern', they sometimes seem to believe that there may not be a father with something to offer.

The majority of cases are, however, 'private' law. Namely there is no 'public authority' involved. In almost every case, these are parents who cannot agree on who should be with whom and when. Sometimes other things come up. These are the routine issues in 'private' cases in the family courts.

These are the issue this charity deals with.

## How to deal with CAFCASS, Social Services and other official agencies.

Keep a focus on the needs and welfare of your children. That is the ethic of this charity. Remember we do not support fathers or men or those people who approach us. Our task is to promote what is best for the children whose parent has approached us. We do, however, think that in all but exceptional situations the children are going to benefit from a relationship with both their parents in whatever blend or combination of their qualities and faults that best suits their needs and the situation of their children.

This approach is also the best way to get a report that is supportive of children's needs in this respect.

Social workers (and CAFCASS is a social work agency, the same applies to others) vary of course in their personal attitudes and competence. In the experience of this branch, the best is superb and the worse is appalling.

You will get no choice is who is allocated your 'case'. You have to build on the good you find in them and try to bypass any bad. It is hard to remedy any defects.

Remember that they know nothing of you or whatever experience you and your children may have had. Being human, they will probably judge you and your parenting mainly on to how you respond to them. Be helpful to them. Courteous and respectful. Remember how important first impressions are. If you talk about yourself, let it be mainly about what you offer your children.

Almost invariably you will have to parent your children jointly with your ex, be respectful of their need for her input too. Stress how what the children should get from you complements what they get from her. If she is hostile and make accusations, express sadness rather than indignation. If you feel wronged, say so firmly but gently. If you have been accused of things, the officer will have to put these to you. That does not mean they have prejudged their truth – they need to know your response. That may need to be denial of them – but denials are more convincing if supported by argument than by anger. The only answer to some is to conduct yourself in a way that makes them seem unlikely. Do not conceal any accusations or evidence against your character, conduct or parenting. They are likely to come out, and your lack of candour will undermine your credibility generally. If you have made mistakes – no one does not – admit to them, show that you understand the other point of view at the same time as countering over reactions. Do not make counter allegations unless absolutely necessary. They risk showing a combative stance where there needs to be collaboration.

Let whoever is making the report lead the interview. Answer their questions clearly and respectfully. You need their support. They do not need yours. If there is something you think they have not addressed, wait for an opportunity to raise it. Almost invariably at some point they will ask you whether there is anything more you want to say, flag it up then. If they don't ask, say there is something more you need to say.

You may need to be more robust in court itself, but always remember that co-operative parenting is best.

## How to guard yourself against false allegations.

If you raise your hand against your ex, you have severely handicapped yourself, and your children.

See the paper elsewhere on this website about how to counter false allegations.

There are some situations that are particularly dangerous. 1)The moment of separation, 2)when you have split up but are still sharing a home, and 3)when the children are handed over.

1) The moment of separation. Almost invariably by the time you read this it will be too late. Mostly both parents are aware that the relationship is poor. There are cases, however, when one party has planned it and has organised things to their advantage before the other has any idea. People who are committed to a relationship or a marriage are particularly likely to be in denial that things are awry. We wish we could have talked to them first!

2) When the relationship has overtly broken down, but the parents are still living together. A claim of an attack, abuse or fear gives a female accuser an enormous advantage. There are unlikely to be any witnesses or corroborating of allegations. The evidence of a woman is more likely to be believed than that of a man, either on the precautionary principle or simple stereotyping.

A man who voluntarily/forced out will be accused of abandoning the family. For you to assess the risks but, our view, this is often the lesser one. Go if you can and have somewhere to go to. Do not go back to the house, even to collect your things without telling your ex, asking her not to be there. Perhaps putting together a pack of things you need in a particular place. Take a witness. If she is none the less there, especially if she has someone with her, beware! Beware!

Do not be alone with her at any time. It may sometimes be wise to have a concealed recording device. Recordings will not be accepted in court (they could have been doctored first) but if the police are called an offer to hand them over may help.

Start keeping a record. Again, this will not be accepted as legal evidence, but it helps you keep tabs on things. People often find that writing things down helps with their shock and distress.

If the first you hear is the delivery of a non-molestation order or an occupation order, (see the notes for that) read it carefully and observe it meticulously. If you break it, even at her invitation, you will be arrested. Try to get a friend or family member to collect your things.

3) At handovers. Much the same applies. Do not be alone. Do not go inside the house or anywhere 'private'. Do not allow her into where you might now be living. If she asks to 'see where the children may be staying' or some similar move, refuse unless someone else can show her. Try to arrange a neutral and public place, be on CCTV if you can. The same applies if you need to discuss anything in person.

## If you do not have clean hands

To repeat, less our position be misrepresented, this charity does not condone any form of abuse. But the fact that some behaviour is repulsive does not mean that someone accused of it is guilty. There are false accusations. And, of course, false denials. This needs to be decided in each individual case according to the evidence and arguments.

If, you have for example, a criminal record, especially about domestic or child abuse but also other related things, like drink driving if you will need to use a car, expect these to count against you. As they would with you if you were deciding the case? Counter arguments can be for example, that they were long ago, you have changed since, that they do not affect your parenting now. Be open and frank. You need to present yourself as possessing honesty and integrity. You will need to counter attempts to inflate their importance and relevance, but not to the extent that seems dismissive of, or denials of, relevant concerns.

Accept that the courts are going to be precautionary. The use of a contact centre may be appropriate. See the entry on that.

If there is a suggestion that you attend a course for perpetrators of domestic abuse, only agree if you accept that you did what you have been accused of, or have been found 'guilty' either in a criminal court or a Finding of Fact. You will not be accepted on or 'pass' the course unless you accept that you were abusive. You will need to show to the satisfaction of the organisers that you understand that your behaviour was both unacceptable and that you have now changed. If you do not accept these terms you will be classed as a continuing risk because unrepentant and unreformed. This includes being in denial of it. To agree to go on a course and be rejected or to be classified as not having made the required progress is worse than saying that you did not do what you have been accused of.

Do not accept what is called a 'caution'. This is where the police offer you this in response to an accusation, saying there will be no further proceedings. Yes, *they* will take no further action, but it will go on the record as, in effect, an admission of guilt.

In the stress of an accusation, especially if you in the cells, to be told that you will be let go and 'you will hear nothing more of it (from us)' is a powerful temptation. But if you ask for the children to have time with you, you will hear much more about this admission of guilt..

## Magistrates

'The court' is jargon for the person (a judge) or a 'bench' of magistrates, usually three. A judge (there is a hierarchy, but this does not concern you) is legally educated, and s/he operates alone. Usually they are able to follow arguments.

Often applications that seem straightforward will go before magistrates. These are unpaid volunteers. They have basic training but no more. They are guided in the law, and by a professional, legally trained 'clerk' during hearings.

The family panels of magistrates and those dealing with minor crimes are distinct in theory but often the same people. Attempts are regularly being made to make them more 'representative' but with little success. The highest proportion are recently retired business and professional people or their wives. In urban areas they will often be from the more prosperous suburbs\*.

You need to assess what sort of people you are dealing with. They are quite likely to have traditional views on sex/gender and parenting issues. They are likely to be cautious where there are 'safeguarding concerns.' They may have had – women who have been housewives especially – little experience of people outside their own social world. For some this will be from their work as magistrates on the criminal side. That is mainly dealing with boys and young men from a lower social class who have fallen foul of the police.

Your appearance and 'manners' and particularly distancing yourself from any negative stereotypes that might apply to you, are likely to be crucial.

## Mediation

Before you are allowed a hearing, you must, unless exempt (see below) have attempted to settle your case in 'mediation'. This is where you have gone to a broker in an attempt to settle the case without going to court.

If you can come to a satisfactory agreement, do so. This is obviously quicker and better than what is usually a long drawn out, stressful and expensive process. One that could almost be designed to inflame passions that make co-operative parenting harder afterwards. This is for both of you, so there is a reason for the other party to engage.

Even if you fail to come to a complete agreement, differences can sometimes be narrowed and there may be better understanding of the other point of view.

Mediation can be free with legal aid if your income is low enough.

We hope to have a paper elsewhere on this site on 'How to make the best of mediation'.

But caveats. Make sure there is steady progress. Mediation causes delay. During this time the children are likely to be under the control of the other parent. This can entrench a situation that she may say should not be changed. It can also create an opportunity for parental alienation – see the paper on that elsewhere on this website. Beware the use of mediation simply to spin out the process. You also need to check that any agreement you make is 'fit for purpose.' That it covers all the issues necessary, see the item on Parenting Plans.

An out of court agreement has no legal standing, so cannot be enforced. If it breaks down or is not observed or an unforeseen issue comes up that cannot be resolved informally, you might have to start again at the beginning, with an application for a Child Arrangements Order. In the hearings about that, the existence of an agreement will be evidence, but the court will not feel bound by it. Unless the deal has been turned into what is called an *Order by Consent*. You have to take the initiative to get this. You submit the deal and ask for it to be made a court order.

You are exempt from the requirement to go to mediation if there are allegations of domestic abuse. Or if an attempt to mediate has failed. Often this is because the other party has refused to engage. This needs to be signed off by the mediator before your application for a Child Arrangements Order can proceed. This form is called 'FM1.'

What happens in mediation is 'privileged'. This is jargon for saying that what has happened there cannot be used in any other proceedings. Nor will a mediator provide any statement about it.

## Non Molestation and Occupation ('ouster') Orders

One of the least pleasant – but not uncommon – situation is where a father is, for example, just leaving work as usual. A stranger approaches him, asks his name and when he gives it hands him some papers. They say that he must not, for example, go within a stated distance of his home, contact his wife or the children or have any dealings with them except via solicitors. They or sometimes the 'process server' (namely the stranger who accosted him) say that to do so would be a criminal offence. He will be arrested, often kept in the cells, and charged if he breaks the order. This may take some time to work out, because it is in technical language (we call it 'court speak') that it is not easy even for someone not in shock to understand.

We cannot stress too much, be ultra scrupulous in obeying the order. And beware of traps. We know of one case where a father was told of an emergency affecting his children and could he go immediately....of course he did. The message turned out to be er, misleading and there was no proof of it. The father 'did time'.

'Twice blessed is he who knows his cause is just. Thrice blessed is he who gets his blow in first'

A 'Non-Molestation Order' can, in practice, be obtained almost instantly and for almost any reason provided the applicant says she feels under threat. And without the other party being told that one has been asked for, provided the applicant says she is alarmed about the reaction of the party accused. Legal aid is obtainable for this. Solicitors will, almost without exception, and domestic violence agencies (in our experience) will *invariably* provide the necessary statements, advice and support.

In theory orders made without the other party having been told ('without notice' or 'ex parte') should only be in an emergency but there are ways to bypass this especially for mothers. In theory they should only last until it is possible to hear both sides of the case. A 'return date' of say a week later should be stated. Mostly, in our experience, this does not happen. The 'emergency' order applies longer unless challenged legally, which has to be done at the initiative of and, if representation is needed, at the cost of the person disputing the order.

'Occupation orders' which usually expel the father from the joint home are a bit harder to get, especially if the father is still there and has nowhere else to go. They are less likely to be given without hearing both sides. The person asking for the other to be evicted and prevented from returning usually has to provide more evidence than simply saying she finds things stressful. Having said that, they are too often given all the same.

In many cases, unless homeless is a risk for example, the main immediate effect is moderate inconvenience. Having to avoid certain places, not being able to make arrangements straightforwardly, for example to see the children. The main effect of these orders, however, is to skew the future of the case. It is diverted from what are the best parenting arrangements for the children, and towards alleged threats to the mother. That is too often the purpose.

How to respond? The odds are heavily stacked in favour of the accuser, not least because she will have advice of people who know how to use lots of things 'in the small print'. One counter move is to make undertakings – and ask for them to be mutual. That neither of you will send abusive texts for example. Making undertakings that are binding on you only may be better than a 'Non Mol' but risk provoking a point that will be made later – that there must have been some reason.

## Parenting Plans

These are agreements between the parents about arrangements for the children. The central part will be the sharing of parenting time. When the children are to be with which parent as part of a regular routine, for holidays and for special occasions, such as their and their parents' birthdays and other family events. They should cover things that are likely to disrupt the standard arrangements, such as they or their parents being ill, the schools or nurseries closing for some reason and a host of other issues.

They often start with a statement of intent – the commitment of both parents to put their children first and to co-operate fully. To keep the other fully informed and similar things.

There are many templates, go on to Google for Parenting Plans. You may wish to follow one, or suggest your own. But you should none the less look at several in order to compile a checklist of things that need to be covered, and how disagreements should be settled.

We would like there to be an FNF suggested one. Two items not always included which we would like to see. 1) That children should not be in institutional day care – with a childminder for example – when parental care is available. And 2) that when the children lose time with the parent they see less of, they should be given it back later rather than lose it.

## Preparing statements/Position statements

These have to be prepared according to their purpose and role. This therefore has to be general.

The first thing, therefore it to be just that. What is this statement *for*? Does it provide the information that is needed at this point? The central question is 'What do you want to see happen as a result of this?

The second point is, make it brief. It should not normally be more than 750 words. If there is more to say, and it cannot be cut down try one of these.

Highlight the key points. They are several ways of doing this. One suggestion is to use larger type for the main points.. The development of these points, and back up examples can be smaller, and possibly indented too. This way a reader can pick out the central issues but is free to choose whether they want more detail.

Make liberal use of spacing.

Always number the key issues, so that in any cut-and-thrust discussion, the thing you are talking about can be readily identified.

Once you have done a draft, leave it several hours and re-read it before preparing a final version. You will notice mistakes, things left out or poorly expressed.

Get someone else to read it, to get an idea of how it will seem to someone other than you.

Remember the test of a good statement is not whether it represents your thoughts and feelings, but the effect it has on the people it needs to influence.

## Prohibited steps and Specific Issue Orders.

Perhaps unusually for the legal system, these are mostly self-evident.

The most common PSO, in our experience, is forbidding children being taken to a country which is not a signatory to the Hague Convention on Child Abduction, where their return could not be guaranteed. Or (a recent case in the branch) a mother seeking to take your girl for a 'holiday' in Somalia. We know of one case where an intensely Catholic father was forbidden to take his children to Church more than once on Sunday!

PSOs are often given 'without notice', that is with only one side being heard, as happened in the Somali case. This lasts until a 'return date' where both sides

Occasionally they are used as a conflict tactic. To create an impression that a parent might do something that would put a child at risk.

The most common SIOs are about religion and education. What faith they should be brought up in, where they should go to school. They may have a role where children have special needs, though in some of these cases a detailed CAO would be enough.

## Relate and other Counselling Agencies.

Counselling and 'Mediation' may overlap, and some agencies do both. The key difference is this. Mediation is trying to find a positive outcome to specific issues in dispute. It involves both parties. Counselling is about personal feelings, attitudes., how you handle relationships and related things. It is often individual.

'Relate' deals with all relationship issues. Family and relationship disputes, friendships, any personal problems among or inflicted on gays or bi-sexual or transsexuals, bereavement and so on. It's a national organisation and is likely to have a branch near you. The quality of any counselling you get anywhere obviously depends on the individual helping and their suitability to the person approaching them, but Relate's standards and training are high quality.

Other counselling agencies with a high reputation are OnePlusOne, and the Tavistock Clinic. The last is reportedly likely to go deeply into things and may have a psychoanalytical (Freudian) bent.

There are many more individual services. Check their credentials.

If you are in acute distress, contact the Samaritans. This is a national telephone based service.

If there are mental health issues involved, try Mind. A very useful website and also a telephone helpline and local activities.

## The Right State of Mind

Family break up can trigger the strongest emotions humans feel. The forthcoming research, part funded by this branch, will show the impact of this on individuals.

There are also stereotypes in the response of others. The family courts and those around them are not exempt. Broadly, if women get upset, unless it is quite uncalled for, it triggers sympathy and a wish to help. If men do, it indicates lack of control, weakness and sometimes unfitness to cope with children. The adversarial nature of family court proceedings means that if you ex is represented, an attempt will be made to exploit them

How to cope with the pressures is one of the topics in the branch's next workshop, scheduled (subject to all the hazards of the Covid-19 pandemic) for 3 October 2020. Watch for the relevant talks.

Perhaps it's patronising to say so, but people – perhaps especially men – try to 'man up' in the face of pressure. So remember the ancient Greek (or is it the Biblical book of Proverbs?) about the sailor in a storm who trims his sails rather than the one who tries to tough it out....Your self-care is not only important to you, but to your children. Use other members of your family and friends where available and if needed. Children love maintaining contact with family and friends. Some will fail you, but most of us find someone to support us. But try not to overload one person.

We have mixed feelings about going to your GP unless things are alarming. If it comes out, and it may in hostile cross examination in family court proceedings, it will be used against you.

Your manner in court may count as much as any evidence. Remember that they know nothing about you, your ex and your joint children other than what they have been told. If that is in papers and reports, they may have skimmed them or even not read them at all. So, they judge you, your parenting and the children's relationship with you by the impression you make on them.

Using drink or even legal medications will also often bite back. Similarly, be careful about approaching 'human resources' staff at work. They are agents of your employer and that can be two edged. If you are a Trade Union member, they are variable in personal terms, but they will be on your side.

There will be more tips in our workshop, but a few more. Eat, and to maximum extent possible, sleep normally. Keeping a soft light on and music playing may help nocturnal panics. Often it helps to keep a diary, but a separate one to your one about the children. Draft letters and emails but make absolutely sure you do not send them. Don't fill in the 'to' slot in case you accidentally hit the wrong button!

## Should I be represented? If so, by whom?

Only you can decide this, and crucially an issue is often cost. The hourly cost of a mid-range solicitor is about the national average weekly income.

We can only make a few suggestions about a personal choice, though if you are on a modest or low income there is none.

Many people find the courts a profoundly alien, even hostile environment. While there are rules, procedures and even courtesies expected – solicitors refer to each other as ‘my friend’ and barristers as ‘my learned friend’. Everyone is deferential to the Judge. Even if s/he has got something totally wrong its’ “with respect your Honour, you may perhaps have overlooked....” - There is often foul play. Ethics are too often not apparent, etiquette is. There may be cases where the welfare of the child features. In others it’s like the Coliseum in ancient Rome, some observers describe the family court arena as ‘legalised cage fighting.’.

A few things to take into consideration. Your confidence not only in yourself and in your knowledge of procedures. Your ability to think ahead under stress. The ability to stay focussed on the important thing (the benefits to the children of a relationship with you) while under a flurry of accusations that maybe highly personal. To remain calm under hostile cross examination and attempts to turn the knife in any chinks in your armour....

A person who can do this will, indeed, often do better than someone represented. They can show themselves as they are. However wrong it is, courts may judge people’s qualities as parents by how they behave in court. A representative, on the other hand, is a legal mercenary paid to say things to the advantage of their client. That is the adult parent. The children may have no-one there to advocate their needs. They are, rather, the prizes to be awarded, or shared, according to which parent comes off best in their fight.

There are two points at which representation might be most useful.

The first is at the First Hearing (First Hearing Dispute Resolution Appointment or FHDRA). This is because it may well be your first time in court. If so, you will not know procedure, who the various people and their roles and so on. You will be under stress, not fully understand and may come under intense pressure. Things may happen very quickly. If you are slow reacting, the moment to say something may have gone. The case may be ‘framed’ in the wrong way, for example about what may or may not have happened between you and your ex, rather than focus on what is going to be the best for your joint children. A representative who has been there many times before may be able to explain, react quickly and offer some protection.

Having seen how things are handled will help you to assess better what support you may need later.

The second is the final hearing. Which is of course the crunch one.

If you feel the need for support, who to do it?

Cheapest, but not always easy to find, is a ‘McKenzie friend’. This was originally just someone coming along to offer support, mainly moral, to someone without professional representation. They cannot ‘address the court, unless permission has been granted. This

is sometimes given, especially if a litigant in person is handicapped in some way in speaking for themselves. This cannot be relied on. If the other party is legally represented, that person will often argue that the McK friend should not be allowed to speak, but it is up to the Court. A McK friend can, however, help with advice beforehand, preparation of the case, and can prompt the LIP if, for example, they have overlooked a point.

Some people will do this voluntarily, but most do not. It is a completely unregulated field. There are codes of ethics – ones found via FNF will have subscribed to ours – but they are hard to enforce. Some have a lot of experience, but there is nothing to stop anyone setting up. Charges are between you and them. There is no redress (except litigation in the civil courts – forget it) if anything goes awry. Act on recommendations if you can. FNF cannot officially recommend anyone, but individuals can report on the experience of themselves and others.

The next level is solicitors. They can speak in court, but their main contribution is what they call 'running the case'. That is, offering advice, preparing statements, dealing with the courts and with correspondence. That is often exchanges of letters with the solicitor for the other side, if they have one. This comes expensive, but the more work you do yourself the less it will be. For example, instead of your essentially providing verbally all the information they need for a statement, you can write one for them to suggest amendments to. And keep your dealings with them to business, don't go chatting about your life or relationship history. Their time is your money!

There is an association of solicitors, called Resolution, which has a code of practice that is more child centred than the err, 'professional ethics'. Don't choose one that is not a member.

The third level is barristers. These are hired orators. They are given the details of the case and argue the case in courts. They don't expect to be dealing with all the administration. Traditionally, solicitors used to provide them with all the information. Barristers spoke to it in court. Now there are 'direct access' barristers. This means that you provide them with the information they need.

The equivalent of Resolution is the *Family Law Bar Association*.

If you are speaking for yourself, either from choice or not, there are various manuals of help.

The best in our view is Reed, Lucy, (3<sup>rd</sup> edition 2017) *Family Courts without a Lawyer*, Bath Publishing, Bath ISBN978-0-993586-1-3. 425 dense informative pages. That of itself says a lot about the 'accessibility' of family law. But it covers aspects of many more cases than will affect you. Dip into the bits that you need. There is an excellent five page index, use it.

## Starting a file (Bundle) of documents.

The technical term for this is a 'bundle'. In all but the very simplest of cases documentation will pile up. It is very much in your interests to start an orderly file. Attenders at our meeting with know the irritation when someone is asked about a court order, and they hold up the meeting searching for it. And then it turns out to be the wrong one, or there are pages missing and so on. Imagine if you were a LIP in court and this happens. How angry the judge will be, how your adversary will play on it, how flustered you will be. You need a systematic folder where you can turn to the relevant document immediately. And put it back correctly, immediately!

### How to Prepare the Bundle (File).

Get a basic folder called a ring binder. Not a shopping bag, and please don't have documents in tight plastic folders, the time for condoms has passed!

Pagination and Indexation. Sounds very simple, it is!

Average bundle is presented in the following format:

A 1- however many eg, 22. This would be the Application.

A 23-(eg)25 would be the court order.

A26-(eg)29 would be the 2<sup>nd</sup> court order.

**KEEP ORDERS IN DATE FORMAT!**

Any further hearings you would just add on the newer court orders, e.g. A 30-32 etc.

Have a coloured marked divider between each section e.g. A/B/C.

Have a printed index and page no (pagination) as your front page. Sometimes people also have a schedule of issues, e.g. dates of birth of the parties, children, outstanding issues etc. Make certain it is short, definitely no more than 2 pages well-spaced.

The index/pagination typed clearly and less than 1 page.

B section. B1- whatever! This is official reports, Cafcass safeguarding letter, Section 7 reports, Social worker reports if applicable. In date order and paginated properly, B1-5 maybe the safeguarding report, B6-20? Section 7 report?

For each hearing just update the index and insert the extra documents as required or ordered.

C section, usually statements from the parties, in date order, and please no endless post-it notes and scribbling everywhere. Same format, C1-5 mothers first statement, C6-10 your statement or whatever number of pages. Second statements same format. In the index also.

D section. This is usually after the hearings have started and orders have been made, Police reports, Lab reports re drugs, alcohol etc. Same format D1-? D2-? D3- to whatever number per report. For each hearing (where this applies) update the index, pagination and the bundle.

NB. Always, always have a spare bundle with you when in Court. This includes the index and pagination. Many times, a hearing has been effective because a party could provide an 'agreed' copy to the court. This would occur where the court admin has failed. It often does!

## Sources of Advice

Streets ahead of all others is *The Custody Minefield* website. Tragedy is, its the sole work of Michael Robinson, now becoming too ill to maintain it. Our very best wishes to him and our salute for what he has done. No-one as good it likely to take it on, but please may it continue in some form.

Very useful and informative, though organised differently from here is, ironically perhaps, the Website of Rights of Women. They will only offer personal advice to women, but the internet does not allow discrimination for their written guides!

There are other websites, such as Child Law Advice [www.childlawadvice.org.uk](http://www.childlawadvice.org.uk) and [childrenslegalcentre.com](http://childrenslegalcentre.com)

Some solicitors offer free or cheap 'taster' advice sessions

The best book is Reed, Lucy (3<sup>rd</sup> ed, 2017) *Family Courts without a Lawyer*, Bath Bath publishing

Look also on the website of the Transparency Project. This is a brave attempt to do the impossible, namely make legal procedures understandable. Their paper on domestic violence, however, states what should happen rather than what does.

## The 'Welfare checklist'

The overarching law is as follows

Children Act 1989

- (1) when a court determines any question with respect to
  - (a) the upbringing of a child or
  - (b) the administration of a child's property....

The child's welfare shall be the courts paramount consideration

The checklist below is further down. This should structure the entire proceedings in the family courts. And hence all your arguments and representations. They should organise, for example, CAFCASS welfare reports.

The seven criteria are quoted from the overarching law, the Children Act 1989 as amended.

The seven criteria set out in the welfare checklist under s1(3) Children Act 1989 are:

- The ascertainable wishes and feelings of the child concerned
- The child's physical, emotional and educational needs
- The likely effect on the child if circumstances changed as a result of the court's decision
- The child's age, sex, backgrounds and any other characteristics which will be relevant to the court's decision
- Any harm the child has suffered or maybe at risk of suffering
- Capability of the child's parents (or any other person the courts find relevant) at meeting the child's needs
- The powers available to the court in the given proceedings