How we can help.

The life cycle of a Family Law Case

Disclaimer. *What is said here is not formal advice, if that implies legal responsibility for it. You must confirm for yourself. CLB/FNF cannot accept liability. Please tell us about any mistakes, possible misunderstandings or any ways in which what we say can be improved.*

Where a word is in *italics,* click on it. There is an explanatory link/

Stage one, the Break up:

If you were not living together, go to 3)

1) The recognition that the romantic relationship is over.

It takes two to make a relationship work, only one to end it.

If you do or did not want it to end, that is not something we can help with much, but see *sources if help* especially the personal counselling agency *Relate.*or for those with a faith, service that they may provide. These will of course accord with the teachings of that faith**.**

The most important part of the marriage or relationship, however, is surely the obligation to nurture the children jointly. That is something the courts, and ourselves, can help with. Concentrate on that.

Being diverted from it will do you no good, and most likely do you harm.

2) The end of joint living.

Should I leave? Legal proceedings are a*dversarial.* If you leave, you may be represented as having walked out on the relationship, the home, and the children. If you stay, a father is in a very exposed position. It is easy for his partner to allege *domestic abuse.* Your protestations of innocence may be disregarded. Click *how to guard yourself against allegations* for what you can do in response.

You may be served, often without warning, an *Ouster order* or a *Non Molestation Order.* The police may arrest you on flimsy evidence, and make you subject to bail conditions which prevent you from re-entering the family home .The links say what these are and what your options are.

3) Divorce proceedings, if relevant.

This is again something outside the remit of the charity. But by and large, with one important point below, the grounds for divorce and the proceedings for it don't affect the decisions about the parenting arrangements of the children. These latter ones are our concern. There is one grounds for divorce, that the relationship has irretrievably broken down, but it has to be for some cited fault of one or both parties. There are moves to remove this requirement. This should stop an opportunity to make accusations, which is all to the good. But the Family courts largely ignore what is said as grounds for divorce. Though if one party agrees that he or she did things that affect child welfare, this means they will be used later.

The big proviso is the house and its value if you own it. Beware the financial arrangements for divorce being based on the assumption that the children will need to be housed with just one parent, the other requiring only to rent a bedsit. Or some such assumption. This can leave one parent having difficulties accommodating children with (usually) the father.

What is best for the children should come first, ethically, financially and therefore should come first in timing. Try to get the finances of the divorce postponed until arrangements have been made for the children.

4) Are the arrangements for the children to spend time with you satisfactory?

If they are, you would probably not be here! But even if they are, you may need to be cautious about how secure they are. People and situations change. For example, one of you might form a new relationship. Or move away. The children's needs will change as they grow older. Unforeseen issues may emerge, or unexpected things happen. For this reason, we suggest you have a *Parenting plan.*

5) Attempts to resolve differences/difficulties.

Avoid going to court if you possibly can. Its slow, stressful, and expensive. Worst of all, it often makes the relationship with your ex worse. Your children risk ending up with less time with you than they might have had.

One reason for going to court, which nearly all of us are tempted by, is this. To 'have your say' in an official forum. An absolute <u>No</u> to that. The psychological need is understood. Find another way. Court proceedings should be about what arrangements are best for the children. That involves putting their needs above yours. What you do and say should be totally about how a full relationship with you will benefit them. Attempts to do anything else, for example saying what you privately feel about your ex, will almost certainly backfire. After all, you chose her as the mother of your children.

If you can come to a satisfactory agreement, take it. One of the tests for a fair outcome is perhaps that both sides are equally dissatisfied.

You will need a *parenting plan* or an equivalent. Many agencies can help. See the parenting plan section. Or it can be done totally informally. Before a court application is accepted you

will have had to go to *Mediation,* unless this has been tried and failed or there have been allegations of domestic abuse. Of course if mediation works, excellent. It can have benefits if the gap is closed, but not completely. Or even if the parties get to know better the views of the other side. This helps the ability to compromise. If you cannot compromise, you will at least know what the differences are. Do not over react to allegations!

There is of course a downside to mediation. Three problems in the view of this charity. 1) It can be another obstacle to overcome. 2)It often causes delay, during which time the children are often under the total control of one parent. 3)The official bodies of mediators, to their credit, say they must treat both parties equally, but any agreement 'out of court' is in the shadow of what courts will decide. Mediation will not have fair outcomes until the courts take a balanced view.

5) Applying for [a] *Court Order[s]*

The most common application is for a *Child Arrangements Order.* Also relevant are *Specific Issues Orders* and *Prohited Steps Orders.* These are, unusually for the Law, self-explanatory.

This note will therefore deal with *Child Arrangements Orders.* The form needed is *C100,* obtainable (free) from any Court building (in theory) and downloadable (again free) from www.courtsandtribunalsservice/formfinder.

The main problem with filling in theC100 form, unless you have literacy or language problems, is psychological. It looks long and complicated. But if you approach it when you have peace of mind and are methodical, or get help from FNF, its much simpler. It mainly asks for details about your children and you and what you are seeking and why. But, at this stage, only the most basic requests. You only need to say that you want better arrangements for your children to see you. You will need carefully crafted statements later on, but not yet.

If you think that your children are at risk of harm, or that there is urgency, fill in the supplementary form C1A. Again, only basic details.

Send (recorded delivery) 4 (four) copies to the nearest family court (google) or deliver them yourself. Together with your *Court fee.* Get a receipt. Their going astray is not exactly unknown. Keep one for yourself and *start a file of documents, which is your bundle.*

Within a few days you should get an acknowledgement and a court reference number. Do not lose that! You should also get a date and place for the first hearing.

6) The 'safeguarding check'

This is a check, carried out by *CAFCASS,* a social work agency specialising in advising the family courts, into whether anything is on official records of the *police* or *social services* about the parents. Whether either of you have a criminal conviction or your children have been in care or on an 'at risk' register or things like that. A CAFCASS official will almost certainly ring you and ask questions. Look up *How to deal with CAFCASS and official agencies.* CAFCASS will present a brief written report to the court on the basis of this.

This paper will continue on the assumption that there is nothing negative to report about you. If not, look at this link. *If you do not have clean hands.*

7) The first hearing

This is called the FHDRA. You will get used to the jargon. First Hearing Dispute Resolution Appointment. A real mouthful, but actually if you absorb it slowly, it makes sense. It will be before a judge or a group of magistrates. See *How the Courts are organised.*

There may be an attempt to get an agreement that avoids the need for any further action. There may be a CAFCASS officer there to 'assist'

It is imperative, therefore, that you are prepared for this hearing. Remember the slogan, hope for the best but be prepared for the worst.

And the worst is this. The 'authorities', such as the courts and CAFCASS just want the case disposed of. Your ex, and still more those supposedly acting for her, if she is legally represented, may just want YOU disposed of, as far as your joint children are concerned. Everyone but you knows the rules and how to operate them. The others are calm and professional, they have been here many times before. You don't know the scene and are in a high level of stress. Things can happen very quickly. You may come under pressure to make instant decisions, or to accept suggestions, when you don't really know what is going on or its implications.

Read our advice *the right state of mind.*

Read our advice *should I be represented if so, by whom?*

If a half acceptable agreement is on offer, obviously take it. But you need to be sure that it is a good agreement for the children! For this, look at the section on *Parenting plans.* Your children need to have both enough time with you, and for it to be suitably organised. For example, it fits in with your work. And an agreement needs to cover all the important issues, and things that might occur. You need to have a fairly clear idea of what you think the children will need and what you can provide for them. Together with what can be agreed to in discussions and to accommodate the need and wishes of the other parent - and what cannot. If in doubt be cautious, and don't agree. The discussion and negotiations can continue. A FHDRA hearing can only make *orders by consent!*

The Court (this overall terms means a single judge, or a group of three amateur *magistrates)* will look over the paperwork and decide what needs doing next. That is likely to be arrangements for a further hearing, and what the parents (or their advisers) need to do beforehand, usually *preparations of statements.* A report from *CAFCASS* is nearly always asked for.

However, a very important issue is what the arrangements for the children are to be in the meantime. That is likely to be some weeks at the least and can be a lot longer. The discussion of this may well be very brief and the decisions pretty arbitrary. Practicalities can be more complicated than the court wants to deal with and they may leave it to the parties to sort out. So its up to discussions between them and/or their representatives. If the children's time with you has been considerable, you should ask for this to be preserved as much as possible. If they have not have much time with you, and unless the children are babies or only a little older, ask for this. That they be with you every second week-end, and hopefully for some time mid week. See the paper, arguingfor parenting time with your children on the website. Lots of children end up with no contact at all until the proceedings are over. This is an appalling defect when it occurs.

If you are accused of any sort of abuse, however much this is contested, or if the *safeguarding report* has turned anything up, an attempt is likely to be made to disallow contact. A counter is to ask for it to be in a *contact centre.* Go for the best arrangement you can get, but do not refuse any. Your children, unless there is something alarming, will need and want it.

8) After the first hearing

The first hearing should settle what you need to do and the timings. Do them! The court is very likely to have ordered a *CAFCASS Welfare Report (Section 7)*. You, and your ex, will be asked for *position/witness statements.* There are likely to be more hearings, each one of which will set out a 'road map' for the next, until the Final Hearing.

On paper, the authorities would like to see the same judge, or the same magistrates, preside over all the hearings. So they know what has happened before. In practice, it rarely happens because of administrative tangles. In theory, those presiding should have read the papers. Do not rely on this. If the case has been conducted well, ask for the judge to 'reserve the case' to him/herself. Sometimes they suggest this themselves. This means that future hearings will be before them. This does too often cause delay if they are not available. If there is a different judge, or a new 'bench' (panel of amateur magistrates) be ready to fill them in. Have a spare *bundle* to lend them!

9) Findings of Fact Hearings.

If there are 'facts' that the court feels it should take into account in its final decision, but which are contested, it may order an FoF hearing. These are usually, but not always, allegations of abuse or misconduct of one party towards the other or a child or children.

They are best avoided if they can be. For example, if the allegations are minor, long ago or difficult to establish. They are generally about accusations and counter accusations of one party against the other and things in the past. This charity would like, in all but exceptional cases, the parents helped to work together for the future of the children. Too often FoFs delay proceedings and involve extra trouble and expense. This is of course to the advantage of a parent who has control of the children, and especially those who are on legal aid. (And of course those acting for them). If contested successfully however, a Fof can be a remarkable platform for advance.

FoFs are of course unavoidable if there and relevant and serious accusations.

They can be dangerous places for child welfare. They do not directly decide the arrangement for the children's future, but they provide information that the judge or magistrates will take into account in making their final decisions. Consider again our *the right state of mind* and *Should I be represented?*

The person making the allegations is asked to supply details in writing (called a Scott Schedule) usually of alleged abuse, giving dates, details and evidence if any. Such as witnesses and police or medical treatment. If a large number, they will be asked to reduce their number. The person accused is asked to reply and if necessary make their own allegations. Witnesses, which will usually include the accuser and the accused, will be asked to give evidence in person, and will be questioned about them. The arrangements for questioning by an accused Litigant In Person of the evidence of the person making allegations are contested. The two points of view being that the questioning allows an alleged abuser to continue his abuse, the other being that a trial is not fair if questioning of one side of the case is not allowed. It is up to the judge. Precautions, such as screening, or a witness being in remote contact may be asked for. Or a request that questioning not be allowed at all. Should that happen, the accused may ask the judge, or someone appointed by the court to put questions indirectly. This applies only to questioning by the accused in person. If they are represented, their legal representative can cross examine.

The judge has to decide whether the accusations are true or not. On the 'balance of probabilities', that is whether they are (maybe only just) more likely to be true or not. Nothing in between. But they can also say that they cannot come to a finding.

The difference in standards of proof is this. The standard for criminal proceedings is 'beyond reasonable doubt'. For purposes of illustration, 95% likely. The 'civil', and therefore family court standard, is 'balance of probabilities, or 51% likely.

This means that someone 'found not guilty' of a criminal charge, or where the police have decided not to take any action, it may be because only a 95% certainty could be established, although they might be 'guilty' at a 51% probability.

The decisions of a Judge or Magistrates at an FoF are for the court's information in the main story.

9) The CAFCASS report (Section 7 report) and if ordered a deeper report, usually by a social worker (section 37 report) and expert reports.

CAFCASS is nearly always asked to write a report, as advice to the Court. This report is not final, but it usually has recommendations as to what the Court should decide. It should be based, as indeed should the Court, on the *Welfare Checklist* of the overarching law, the Children Act 1989. (That has been tweaked many times since).

CAFCASS has demands upon it grossly in excess of the resources it has to carry them out. Ideally, it should meet and talk to the children, their parents and others involved, observe the children with both their parents in their own homes and without the other parent being there. Their report should give details of the children and their parents, address the Welfare Checklist, and report accurately the points of view of the parents. They should then use their professional – based on experience, training and expertise and free of preconceptions - judgement to put it all together and make recommendations. (Their account of your views should be seen as fair by you. Their description of the view of your ex should be accepted as fair by them.) It should be submitted to you for your comments, which they are not obliged to accept, before being submitted to the Court. And in good time for you or your side to take into account in your arguments to the Court. All while respecting the Children Act Law that delay is against the child's best interests.

Alas, far too often the above does not happen.

See the sections here *CAFCASS, How to deal with CAFCASS and Social Services,* and (again) *The right state of mind.*

Section 37 reports are where they are deeper and more complicated issues. For example, a child or parent has exceptional issues, for example personality defects or severe disabilities. Occasionally a Part 25 application for an expert witness outside the normal range of knowledge or experience of the Courts may be made. These have to be paid for by the parties!

10) The Final Hearings.

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There may well have been several hearings before this, but this is the one that leads to a final order.

At this the Court will consider all the available evidence, read the documents submitted by the parties and others, usually hear from both parties under oath what they have to say and make a decision. Rarely is it less than half a day and may be several days.

The result will be a Court Order. These are of course different according to the nature of the case, what the nature of the dispute is and how complicated it was and the circumstances.

Th order will be read out in court, and should be followed with a written order. It should list all the issues brought to the Court. Check that it does. If you are representing yourself and the other party is legally represented, they may offer to 'help' the Court by typing it up. It is not exactly unknown for them to tweak, or even make significant changes to the advantage of their client. Read it with care. If this has happened take it back to the Judge instantly for correction. Similarly, if there are simple errors, like leaving off one child affected. In the jargon of the court, this is the 'slip rule'.

One tip, ask for provision for a review within a set period, say six months. This means another hearing can be triggered without starting again at the beginning….and paying another fee.

A second tip, ensure that the order has a 'penal notice' attached. This says that consequences will

follow if the order is not respected. FNF has been assured repeatedly that such a notice should be attached to every order. But they cannot be enforced without it. We come across many orders where it has been left off.

The order may well not give you all you want – or all that your ex has asked for, either. Can you appeal? Yes, but it's rarely worth it. The test for a successful appeal is not that the court got it wrong, but it got it badly wrong. So, unless there is something serious and 'on the record'….

11) After the final hearing Implementation and Enforcement if necessary.

The process to get a decision is long and exhausting. The struggle is to make it work. There will almost certainly be hiccups. Things come up that were not foreseen, for example, illness of family member other than the parents. Or unavoidable delays in hand-overs. Or an unexpected visit of a family member or some other opportunity. Some people who have found the process particularly difficult get upset if these happen. If they fear that this may be the beginning of a process to undermine their children's relationship with them, they sometimes over react. It's the spirit of the order, however, that is important. If it is - be understanding over minor details. Let things go that do not make much difference – such as 'matters of principle' Look at things from the children's point of view. Rarely are they concerned about precise timings. What is likely to matter is that they can do what they would like to do. If these somehow always seem to crop in in their time with you, you take them to do them.

Most important, the order can be varied by written agreement between both parties.. Ensure that when parenting time is lost, that it is rearranged rather than cancelled. Stand your ground, however, over important things.

If there are serious, or persistent, problems, or if minor things become cumulatively important, action needs to be taken. Keep a log. Let it include not only the departures from the order to the advantage of the parent with main control, but any respects in which the resident parent has either agreed or refused significant child centred requests from you.

If the lapses mount up, issue a written warning to the other parent.

Some warnings and political points about enforcement hearings.

In proper logic and procedure, the original court order decided what arrangements would benefit the children. Enforcement hearings would decide first, the factual questions, of whether the order had been respected. If so, there would be two follow up issues. The first and more important would be this. What should be done to in order to compensate the children for the time with the excluded parent and his/her family that had been lost?

The second would be, what should be done to ensure that the parent with control respects the rights of her or his children. It would be wrong to represent this as some sort of punishment. The purpose is to ensure that the rights of the children are respected. To take an entirely imaginary example. Suppose a parent was persistently refusing to let a child have the ordered time with the other parent. S/he is then sent to prison for contempt of court (we would say for child abuse). The Judge would say – 'take your mobile phone into the van. Ring me the moment you agree to the arrangements ordered for the benefit of your children, ring me. I will order the van to stop and let you out.'

'By the way,' we would like the Judge to go on, ' its not [the excluded parent] who ordered you to prison. It is me. And it was your decision to go there, rather than promote the welfare of your

children. You should be beware me referring you to the police for child abuse. Depriving your children not only of the love and care of your co- parent, but your own.'

We would like enforcement action not to be taken by the excluded parent. It should be the responsibility of a public agency, acting on information supplied to them. Any more than it is the responsibility of an old lady to prosecute a mugger.

Dream on.

The action for enforcement lies with the excluded parent. You need form C79, fill it in, send it to the Court with the relevant fee. Wait for the procedure to start. We recommend this. Do not act on the first incident of refusal to obey the order, but wait until there have been several incidents, either of a serious breach or many minor ones that have added up to an amount that is concerning.

Expect a reply from the other party or their representative of one of three sorts. The first and best, that the order will be observed in future. Good good. Accept it. We have no statistics, but this result does happen.. Ask for the time the children have lost to be made up, but do not expect that to be offered or ordered.

The second, that the breach was trivial or a one-off. This where your log and evident reluctance to take action is relevant.

The third is that the original order ignored risks to child welfare that are on-going, or that there are new ones. In correct procedure, unless there was an emergency, this 'defence' should be ruled out of order. The parent who is not observing the order should have asked in the correct way for the order to be varied, or set aside, or for a new order. Do not expect this result. The court will hear the arguments. In effect have another hearing.

In practice, too often nothing is done to enforce an order, except this. The moral authority of the court is put behind the original or a varied order. Important in cases where the parent with control is implacable or the child already alienated. The only option may be to apply for a *Change of Residence.* This is another issue, outside the remit of this section.

But helpful in other cases.

Despite all the problems, both experience and such statistics as are available says this

The more determined and persistent is the excluded parent, the more they improve the odds that their children will be allowed a relationship with them and their wider family their side.