

The Practice Direction below is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Bridget Prentice, Parliamentary Under Secretary of State, by authority of the Lord Chancellor.

## **PRACTICE DIRECTION**

# **THE REVISED PRIVATE LAW PROGRAMME**

**Effective from 1<sup>st</sup> April 2010**

## **1 Introduction**

- 1.1 The Private Law Programme has achieved marked success in enabling the resolution of the majority of cases by consent at the First Hearing Dispute Resolution Appointment (“FHDRA”). It has been revised to build on the successes of the initial programme and to take account of recent developments in the law and practice associated with private family law.
- 1.2 In particular, there have been several legislative changes affecting private family law. The Allocation and Transfer of Proceedings Order 2008 (the “Allocation Order”), requires the transfer of cases from the County Court to the Family Proceedings Court (FPC). Sections 1 to 5 and Schedule 1 of the Children and Adoption Act 2006 which came into force on 8<sup>th</sup> December 2008, amends the Children Act 1989 by introducing Contact Activity Directions, Contact Activity Conditions, Contact Monitoring Requirements, Financial Compensation Orders and Enforcement Orders.
- 1.3 There has been growing recognition of the impact of domestic violence and abuse, drug and alcohol misuse and mental illness, on the proper consideration of the issues in private family law; this includes the acceptance that Court orders, even those made by consent, must be scrutinised to ensure that they are safe and take account of any risk factors. Coupled with this is the need to take account of the duty on Cafcass, pursuant to s16A Children Act

1989, to undertake risk assessments 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).

- 1.4 There is awareness of the importance of involving children where appropriate in the decision making process.
- 1.5 The Revised Programme incorporates these developments. It also retains the essential feature of the FHDRA as the forum for the parties to be helped to reach agreement as to, and understanding of, the issues that divide them. It recognises that having reached agreement parties may need assistance in putting it into effect in a co-operative way.
- 1.6 The Revised Programme is designed to provide a framework for the consistent national approach to the resolution of the issues in private family law whilst enabling local practices and initiatives to be operated in addition and within the framework.
- 1.7 The Revised Programme is designed to assist parties to reach safe agreements where possible, to provide a forum in which to find the best way to resolve issues in each individual case and to promote outcomes that are sustainable, that are in the best interests of children and that take account of their perspectives.

## **2 Principles**

- 2.1 Where an application is made to a court under Part II of the Children Act 1989, the child’s welfare is the court’s paramount concern. The court will apply the principle of the “Overriding Objective” to enable it to deal with a case justly, having regard to the welfare principles involved. So far as practicable 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.

2.2 The court will give effect to the overriding objective when applying this programme and when exercising its powers to manage cases.

The parties are required to help the court further the overriding objective and promote the welfare of the child by the application of the welfare principle, pursuant to s1(1) of the Children Act 1989.

This Programme provides that consideration and discussion of all issues will not take place until the FHDRA when parties are on an equal footing and can hear what is said to and by each other. This excludes the safety checks and enquiries carried out by Cafcass before the first hearing that are required for that hearing and deal only with safety issues.

At the **FHDRA** the Court shall consider in particular -

- a) 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.
- b) Risk identification followed by active case management including risk assessment, and compliance with the Practice Direction 14<sup>th</sup> January 2009: "Residence and Contact Orders: Domestic Violence and Harm".
- c) Further dispute resolution.
- d) The avoidance of delay through the early identification of issues and timetabling, subject to the Allocation Order.
- e) Judicial scrutiny of the appropriateness of consent orders
- f) Judicial consideration of the way to involve the child.
- g) Judicial continuity

### **3 Practical Arrangements Before the FHDRA**

3.1 Applications shall be issued on the day of receipt in accordance with the appropriate Rules of Procedure. It is important that the form C100 is fully completed, especially on pages 1, 2, 3, 10 and 11 otherwise delay may be caused by requests for information.

3.2 If possible at the time of issue, and in any event by no later than 24 hours after issue, or in courts where applications are first considered on paper, by no later than 48 hours after issue, the court shall

- i) send or hand to the Applicant
- ii) send to Cafcass

the following:

- a) 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)
- b) the Notice of Hearing,
- c) the Acknowledgment Form C7,
- d) a blank Form C1A
- e) the Certificate of Service Form C9.
- f) information leaflets for the parties .

3.3 Save in urgent cases that require an earlier listing, the fully effective operation of this Practice Direction requires the FHDRA to take place within **4** weeks of the application. Where practicable, the first hearing must be listed to be heard in this period and in any event no later than within **6** weeks of the application. Where, at the time of introduction of this Programme, the Designated Family Judge/ Justices' Clerk determines that it is not practicable to list the first hearing within 4 weeks, they should, in consultation with HMCS and Cafcass, formulate a timetable for revisiting the position and managing to list the FHDRA within 4 weeks.

- 3.4 Copies of each Application Form C100 and Notice of Hearing shall be sent by the court to Cafcass in accordance with 3.2 above.
- 3.5 The Respondent shall have at least 14 days notice of the hearing where practicable, but the court may abridge this time.
- 3.6 The Respondent should file a response on the Forms C7/C1A no later than 14 days before the hearing.
- 3.7 A copy of Forms C7/C1A shall be sent by the court to Cafcass on the day of receipt.
- 3.8 **NOTE:** This provision relates to cases that are placed in the FHDRA list for hearing other than by direct application in accordance with the procedure referred to in paragraph 3.1. Such listing may follow an application under the Family Law Act 1996, or a direction by the Court in other proceedings. In all such cases, or where the Court adjourns proceedings to a ‘dispute resolution hearing’ (sometimes called ‘conciliation’), this will be treated as an adjournment to a FHDRA, and the documents referred to in para 3.2 must be filed and copied to parties and Cafcass for safety checks and enquiries, in the same way.
- 3.9 Before the FHDRA Cafcass shall identify any safety issues by the steps outlined below. Such steps shall be confined to matters of safety. Neither Cafcass nor a Cafcass Officer shall discuss with either party before the FHDRA any matter other than 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 also can be taken into account.

- a) In order to inform the court of possible risks of harm to the child in accordance with its safeguarding framework Cafcass will carry out safeguarding enquiries, including checks of local authorities and police, and telephone risk identification interviews with parties.
- b) 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.
- c) Cafcass shall record and outline any safety issues for the court.
- d) 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.
- e) At least 3 days before the hearing the Cafcass Officer shall report the outcome of risk identification work to the court by completing the Form at Schedule 2.

#### **4 The First Hearing Dispute Resolution Appointment.**

- 4.1 The parties and Cafcass Officer shall attend this hearing. A mediator may attend where available.
- 4.2 At the hearing, which is not privileged, the court should have the following documents:
  - a) C100 application, and C1A if any
  - b) Notice of Hearing
  - c) C7 response and C1A if any
  - d) Schedule 2 safeguarding information
- 4.3 The detailed arrangements for the participation of mediators will be arranged locally. These will include:
  - a) Arrangements for the mediator to ask the parties in a particular case to consent to the mediator seeing the papers in the case where it seems appropriate to do so.

- b) Arrangements for the mediator to ask the parties to waive privilege for the purpose of the first hearing where it seems to the mediator appropriate to do so in order to assist the work of the mediator and the outcome of the first hearing.
- c) In all cases it is important that such arrangements are put in place in a way that avoids any pressure being brought to bear in this connection on the parties that is inconsistent with general good mediation practice.

4.4 At the FHDRA the Court, 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.

4.5 The Cafcass Officer shall, where practicable, speak separately to each party at court and before the hearing.

4.6 In the County Court, the Court shall have available a telephone contact to the Family Proceedings Court listing manager, diary dates for the appropriate Family Proceedings Court, or other means by which the County Court, at the time of the hearing, will be able to list subsequent hearings in the Family Proceedings Court.

## **5 Conduct of the Hearing. The following matters shall be considered**

### **5.1 Safeguarding:**

- a) The court shall inform the parties of the content of any screening report or other information which has been provided by Cafcass,

unless it considers that to do so would create a risk of harm to a party or the child. The court may need to consider whether and how any information contained in the checks should be disclosed to the parties if Cafcass have not disclosed it.

- b) Whether a risk assessment is required and when.
- c) Whether a fact finding hearing is needed to determine allegations whose resolution is likely to affect the decision of the court.

## **5.2 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. 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.
- 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 Parenting Information Programmes or other activities, whether by formal statutory provision under section 11 Children Act 1989 as amended by Children and Adoption Act 2006 or otherwise?

## **5.3 Consent Orders:**

Where agreement is reached at any hearing or submitted in writing to the court, no order will be made without scrutiny by the court. 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.

#### **5.4 Reports:**

- a) Are there 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 5.2 above. 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. 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.
- b) Is there a need for an investigation under S.37 Children Act 1989?
- c) 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.

- d) Is any expert evidence required in compliance with the Experts' Practice Direction?

**5.5 Wishes and feelings of the child:**

- a) Is the child aware of the proceedings?  
How are the wishes and feelings of the child to be ascertained (if at all)?
- b) How is the child to be involved in the proceedings, if at all, and whether at or after the FHDRA?
- c) If consideration is given to the joining of the child as a party to the application, the court should consider the current Guidance from the President of the Family Division. Where the court is considering the appointment of a guardian ad litem, it should first seek to ensure that the appropriate Cafcass manager has been spoken to so as to consider any advice in connection with the prospective appointment and the timescale involved. 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.
- d) Who will inform the child of the outcome of the case where appropriate?

**5.6 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) List for final hearing, consider the need for judicial continuity (especially if there has been or is to be a fact finding hearing or a contested interim hearing).

### **5.7 Transfer to FPC:**

The case should be transferred to the FPC, pursuant to the Allocation and Transfer of Proceedings Order 2008 unless one of the specified exceptions applies. The date should be fixed at court and entered on the order.

## **6 The Order**

6.1 The Order shall set out in particular:

- 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) If it be the case, the fact of the transfer of the case to the Family Proceedings Court with the date and purpose of the next hearing
- h) If it be the case, the fact that the case cannot be transferred to the Family Proceedings Court and the reason for the decision.
- i) Whether in the event of an order, by consent or otherwise, or pending such an order, the parties are to be assisted by participation in mediation, Parenting Information Programmes, or other types of parenting intervention, and to detail any contact activity directions or conditions imposed by the court.

6.2 A suggested template order is available as set out in Schedule 1 below.

## **7 Commencement and Implementation**

7.1 This Practice Direction will come into effect on April 1<sup>st</sup> 2010. So that procedural changes can be made by all agencies, the requirement for full implementation of the provisions is postponed, but in any event it should be effected by no later than October 4<sup>th</sup> 2010.

#### **SCHEDULE 1**

The suggested form of Order which courts may wish to use is PLP10 which is available from Her Majesty's Court Service.

#### **SCHEDULE 2**

Report Form on outcome of safeguarding enquiries. See version for Cafcass in England and for CAFCASS CYMRU in Wales.

Sir Mark Potter  
President of the Family Division

Date