

Annexe 2 – Settlement Conferences: Judicial Guidance May 2016

We are expanding a pilot on a new collaborative approach in dealing with public law family cases. Your area has been chosen to be one of the trial areas.

A settlement conference is a hearing held for the purpose of discussion and settlement of the case. It is a without prejudice hearing that takes place before a judge (who is different to the allocated judge) with the consent of all the parties.

As this is a without prejudice hearing, what is said and discussed during the settlement conference will not be admissible in evidence (except at the trial of a person for an offence committed at the conference or in the exceptional circumstances indicated in *Re D (Minors) (Conciliation: Disclosure of Information)* [1993] Fam 231, [1993] 1 FLR 932). The judge hearing the settlement conference must have no further involvement with the case, other than to make a final order by agreement or a further directions order. The purpose is to try to resolve some or all the issues by agreement. Parties will attend with their legal representatives where instructed, but are encouraged to speak directly with the judge with the aim of settling the case or particular issues.

The judge hearing a settlement conference will be different to that of the trial judge. They will be specially trained in dealing with hearings of this type. The settlement conference judge is a different person. Before the conference, they will have read the case file and might ask the parties questions during the conference.

The judge may not make a final order without the agreement of all parties. All parties must be in full agreement to resolve some or all of the issues.

The purpose is to try to resolve some or all issues or to inject a creative or innovative method of resolving the case.

Process

Settlement conferences should be used in public law cases and data will only be collected on these cases as part of the process evaluation. They will ordinarily take place after an Issues Resolution Hearing (IRH) and are listed as an adjourned IRH. At the IRH, parties will be asked if they consent to take part in a settlement conference to be resolved by a judge, other than the trial judge. The court will need to list for a final hearing date as well as a settlement conference date at IRH stage.

The settlement conference will be conducted in a way the judge considers appropriate to promote agreement. At no stage will there be any pressure on any party to agree any issue.

At the end of the settlement conference either there is a resolution of all or some of the issues or there is no resolution. Sometimes the settlement conference is adjourned for further consideration.

Where issues are resolved a consent order will be drafted. Where some of the issues are resolved an order will be drafted to reflect this.

Where some issues remain to be resolved or all issues remain to be resolved, the case will be adjourned for final hearing as listed at IRH. If the case is resolved, the hearing which has been listed for final hearing will be vacated.

In Liverpool, where the pilot originated, two judges are undertaking settlement conferences. Court staff have expressed that this is a good number for them to work with as it allows them to keep on top of listings, undertake the administrative work that is involved and allows judges to discuss

progress with one another.

Legal issues

The judge will speak to each of the parties but anything said by the judge or the parties is confidential and privileged. This is why it is important for the settlement conference judge to be different from the allocated trial judge and to have no further involvement following a settlement conference.

Nothing which the judge has said or the parties have said will be referred to at the next hearing or at any other hearing.

What is required from you during the pilot?

The pilot will be supported by a small-scale process evaluation. To inform this evaluation, we ask that you complete a short data collection template for each public law case that is scheduled for a settlement conference during the pilot period (see attached template for your information). This will be collected by the nominated HMCTS contact in your court and sent to the Ministry of Justice Analytical Services on a fortnightly basis.

As part of the process evaluation, Ministry of Justice Analytical Services would like to conduct some follow-up research with members of the judiciary who have been involved in facilitating settlement conferences. This will involve a short telephone interview with a social researcher to explore your views and experiences of what worked well, what did not work well, and what could be improved.

The data collection template includes the option to provide your contact details to take part in this research. Interviews are anticipated to take part in July.

We will be contacting you from late June to arrange interview sessions so you can feed back how you think the process is going to Ministry of Justice staff who will be analysing and reporting on the pilot.

How long with the pilot last?

Five months starting from June 2016 and ending in October 2016. We will be collecting the data as outlined above from the commencement of the pilot.

Workshops with HMCTS staff, Cafcass, local authority social workers and lawyers will take place from July.

What will we be collecting?

The forms will help us to collect information on the reasons why a case is referred to a settlement conference, the outcome, estimated time spent on preparing and facilitating the conference, the number of final hearing days listed and the estimated number of days saved.

When speaking to those involved in the workshops and interviews, we hope to understand experiences of the family justice professionals involved, identify lessons learned and good practice to inform the design and delivery of any future arrangements.

Information for the HMCTS, Legal Aid Agency, parents

HMCTS staff have been provided with information on what role they are expected to play during the pilot phase. They will be responsible for collecting data from you and providing it to Ministry of

Justice Analytical Services with all the data you are recording.

The Legal Aid Agency has been informed about the process. During the pilot period it will be paying successful settlement conferences at a final hearing day rate for an IRH. Any unsuccessful settlement conference will be paid on a unit rate as an interim hearing.

A short guide for the parties has been produced and it is advised that parents are provided this before a settlement conference.

Questions and contact

For any questions about the pilot please email leslie.muir@justice.gsi.gov.uk

For any questions relating to data collection in relation to the pilot please email natalie.corbett@justice.gsi.gov.uk