

# Guide to court proceedings about children

Going to court about the children?



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## Going to court about the children?

Having spent over 25 years helping clients with their legal problems and running large family law firms, two well known experts decided to set up Beck Fitzgerald to deliver legal services to clients in a personal and effective way. We hear what our clients have to say about what they want and have embraced modern ways of delivering our services.

Our aim is to enable more clients to get the expert help they need, when they need it, at a price they can afford.

Going to court to sort out arrangements for your children can be a difficult and stressful experience. If there is any possibility of reaching agreement over where they live and who they see this is almost always better for all concerned. Court should really be used as a last resort. If it is impossible to reach agreement, or you think a child is at risk, an application for court may be necessary.

Whether you are the applicant (the person applying for an order) or the respondent (the person responding to the application), you will meet some new terms and need to understand the legal process. This guide is designed to help you understand some of the more common legal terms you may come across and make you feel more comfortable when attending court.

## What is a 'first hearing dispute resolution appointment' 'FHDRH'?

This is the name given to the first court hearing after an application has been made. It is designed to be an informal hearing at which the court can help explore whether or not an agreement is possible. A CAFCASS officer (see below) will be at the hearing and a mediator may also be available. It might be that either can help you narrow the issues so that you can reach agreement. You may well already have attempted mediation before the case has come to court, but the court might request that you try again. The focus of this hearing is to try and reach agreement but if you do not agree, the court can still make an order.

If you can reach agreement, a final order might be made if the court agrees that this is in the child's best interest. If you cannot reach agreement, the court will decide how the case should progress and will probably give you a list of things that need to be done before returning to court for a further hearing - this list is often referred to as the 'directions'. This list will usually include the filing statements (called 'evidence') and often a report from the CAFCASS officer (a 'section 7 report'). This 'evidence' will help the court make a decision for you if you still cannot agree at the next hearing date.

## Who is the CAFCASS officer?

The CAFCASS officer is an independent expert who works for the Child and Family Court Advisory and Support Service ('CAFCASS'). Their role is to advise the court what is in the child or children's best interest. Where you really cannot agree important issues about your children, the CAFCASS officer is usually asked to prepare a report. In preparing that report they will speak to all the people involved and, normally also the children. They speak to the children in a sensitive way to try and understand their views but they will not ask a child directly what they want the court to order. This is because it places too much burden on the children. It is very important to fully co-operate with the CAFCASS officer and be as helpful as possible to them. Although it is tempting to discuss with your child or children what they should say or what they have said to the CAFCASS officer, you should not do this.

### What are safeguarding checks?

In every case concerning children, the CAFCASS officer will have to be asked to conduct some background checks, known as safeguarding. Essentially, the CAFCASS officer will contact the police and social services to ask them to check their databases. If either parent is known to those authorities, the CAFCASS officer will make sure that the judge knows of the reasons why. This will not usually be given to

the parents until the judge has seen it. If there is something in the checks that you would not want to be known to the other party, you would have to raise this with the judge at the FHDRA.

The CAFCASS officer should also have spoken to you both to ask you whether you have any children protection concerns.

The judge should not make any order claims about the children without the safeguarding checks having been completed - even if you are both agreed about what order you want made.

## Do the children need to go to court?

Children over 9 should normally attend the first hearing to make their wishes and feelings known to the CAFCASS officer and when this applies usually younger children come too. It is important that you call the court before the hearing to check whether they want the children to come. Some courts will not have the facilities for children to attend and as there can be a lot of waiting around it is always best to check and if they do have to come with you, to bring lots of snacks, drinks and entertainment such as a book to read. The children do not normally need to attend any further court hearings unless the court asks them to.

## How long will the proceedings take?

Everybody recognises that delay in settling issues concerning children is harmful to them. Court proceedings therefore have set timetables to minimise delay. In reality there is often a delay of 2-3 months from the date you make your first application before the FHDRA (this varies from court to court). If an agreement cannot be reached at the FHDRA there could be further delay in reaching a conclusion about the arrangements as you may need to wait for a CAF/CASS report or other evidence to be filed before a further hearing can be arranged. Sometimes this can take a number of months.

## Final hearing?

If you cannot agree important decisions about the children during the proceedings, the court will fix a final hearing where it will look at all the evidence received and decide what is in the best interests of the children. The court will presume that it is important for both parents to be involved in the child's life unless this would be dangerous for the child or put the child at risk. At the final

hearing you may be required to give evidence. You will be asked to take an oath or affirm that you are telling the truth to the court. You will have a chance to tell the judge your side of the story. You may be asked questions by the other party or their lawyer. The other party will also have the chance to tell the judge their story. After hearing the evidence the judge will either take a short break or make a decision straight away. The judge will summarise what you have said and what the other person has said and give a decision on what should happen with the children's future. The judge will give you reasons for the decision.

## Can you show other people the court documents?

Court documents concerning children are confidential so they should not be shown to anyone who is not involved with the case. There are certain exceptions to this rule: an adviser or trusted confidante can be shown certain papers. However, if you are in doubt, you should ask the court for permission. Breaking the confidentiality rule is a serious offence, known as 'contempt of court' so it is very important to make sure that you do not do this.

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