

# Children - Court Procedure

## Overview

This factsheet explains the steps involved in issuing an application for a court order for a child. Please see our factsheet *Children - The Range of Court Orders* for details of the types of orders for which you can apply.



## Prior to making an application

Prior to making an application the intended applicant must attend a Mediation Information and Assessment Meeting (MIAM) with a mediator. There are limited exceptions to this obligation. This is to assess whether or not mediation might prove helpful to resolve the dispute. A Family Mediation and Assessment Meeting Form must be signed by both the applicant and the mediator to confirm that the MIAM has happened. If a MIAM has not taken place, the applicant will need to file a Mediation Form saying why.

## Issue of application

If it is not possible to reach agreement through mediation or via solicitors, an application will usually be filed in the court nearest to where the child lives. If divorce or dissolution proceedings have been issued, then the application about the children will need to be issued in the same court. In some circumstances (for example if a child arrangements application is made), it may be appropriate to adjourn any financial remedy application until after decisions about the children have been made.

The court rules say who should be the other parties to an application concerning a child.

The other parties will almost always include the other parent. Some cases will involve other people or organisations. The other parties are referred to as respondents.

Once the application has been issued a copy of it must be served on all respondents. This must be accompanied by a notice providing the time, date and place of the first hearing, and an acknowledgment of service form. These documents must be served at least 14 days before the first hearing. However, this time period for service can be reduced by a court dealing with an urgent issue (called “abridging the time for service”).

Each respondent must confirm safe receipt, within fourteen days of receiving the application and supporting paperwork. This is done by completing the acknowledgement of service form and returning it to the court.

## First Hearing Dispute Resolution Appointment (FHDRA)

The first court hearing for most applications about children will be a First Hearing Dispute Resolution Appointment – FHDRA. The purpose of the FHDRA is to help the parties resolve some or all of the issues in the dispute, and to manage any unresolved matters through to a resolution.

Before the FHDRA, an officer from the Children and Family Court Advisory and Support Service (CAFCASS) will undertake background checks on the parties. This is to ascertain whether anybody involved with the case has any criminal convictions or other history that might be relevant to the children’s safety and welfare.

At most FHDRA, a CAFCASS officer will be in attendance. He or she, together with the Judge, will help the parties identify solutions to the dispute between them, and if possible to reach agreement. The exact process differs from court to court: some CAFCASS officers will see you prior to going into court, while others will sit with the Judge to discuss the case.

If you are able to reach an agreement on some or all matters, that agreement can be recorded in writing and, if approved by the judge, made into a court order (called a consent order).

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If agreement on all matters cannot be reached at the FHDRA, the Judge will consider what must be done to get your case ready so a court can decide the issue/s. These steps (sometimes called directions) might include:

- The parties to file written evidence
- Third parties to give written evidence (for example, new partners, school teachers etc)
- Preparation of expert reports (for example, from a doctor, educational psychologist, child and adolescent psychiatrist)
- Preparation of a CAFCASS report (sometimes referred to as a Section 7 report)
- Attendance by the child at court to meet and speak with the Judge and/or CAFCASS
- Consolidation of the case with other proceedings (for example, divorce)
- Timetabling the case to trial.

### CAFCASS (Section 7) Report

The court can direct a report from CAFCASS on any question relating to a child. If a report is necessary, the CAFCASS officer will see all the evidence and documents filed with the court. He or she will also see both parties, usually in their homes, and usually both with and without the children present. The CAFCASS officer might also ask to see other important people (for example, new partners, grandparents, etc). The officer will meet the children and speak, in a way that is appropriate given their age and understanding, to them about their wishes and feelings. The CAFCASS officer will also contact schools, social services and any other organisations they consider necessary to complete their report.

The enquiries made will be detailed in the report, which will usually contain a recommendation to the court about the order it should make.

All parties will receive a copy of the CAFCASS report before any trial. This enables them to consider it and to take advice about it. If necessary, CAFCASS could be asked, subject to the court agreeing, to make further enquiries about identified matters. If the CAFCASS report includes a recommendation, all parties ought to consider seriously that recommendation, and whether agreement is now possible.

The CAFCASS Officer will not automatically attend the trial. If, however, a party wishes to ask questions about the report, they can ask the court to direct the CAFCASS Officer to be present.

### Final Directions Appointment

After the CAFCASS report is produced, many Judges like to timetable cases for a final review (sometimes called a pre-trial

review). This is so the court can make sure the case is ready for trial. Any outstanding enquiries can be identified and receive attention in the time remaining before trial.

### Trial

All parties must attend the trial unless the court says otherwise. The child must also attend if he or she has been told to by the court. The court will usually not proceed with a trial if a respondent is not present unless satisfied he or she had reasonable notice of the hearing. Most hearings will be held in private, which means that only the parties and their legal representatives may be in court.

Often, the CAFCASS Officer (if giving evidence at the trial), will give evidence first. He or she may then be asked questions by the parties' lawyers and/or by the Judge. Then, unless the court says otherwise, evidence is given by the applicant (and any supporting witnesses) and then the respondent/s (and any supporting witnesses). Each witness may be asked questions by the other parties' lawyers (called cross-examination) and/or by the Judge.

After hearing all the evidence and any arguments about the law, the Judge will make his or her decision as soon as practicable. In many cases, this will be immediately after hearing the evidence and legal arguments. In some situations, the Judge might take a little time to consider the case before announcing the decision (called reserving Judgment).

However the Judgment is given, the court must explain why it made its decision. The Judge needs to decide any relevant disputed facts. He or she needs to say the legal principles that apply. The decision needs to be capable of being understood.

After the decision, the court will prepare (or sometimes ask the parties' lawyers to prepare) an order that gives effect to the Judgment, which will be served on the parties as soon as possible.

### Interim Hearings

If a situation arises that needs attention before the trial, an interim application can be made. For example, if a party seeks to spend time with the child / children before the trial, he or she can make an application for an interim child arrangements order. The court will manage the case for a shorter hearing dealing with that specific issue, and make appropriate holding decisions informed by what is in the children's interests in the short-term.

Please feel free to discuss your own position and concerns. Contact your nearest office on:

T: 0800 916 9015  
E: enquiries@slatergordon.co.uk  
W: www.slatergordon.co.uk

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