

PRACTICE DIRECTION UPDATE: No. 1 of 2022

The amendments to existing Practice Directions, and the new Practice Direction 36Z, supplementing the Family Procedure Rules 2010 are 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 are approved by Lord Wolfson QC, Parliamentary Under-Secretary of State, Ministry of Justice.

The provisions in this Practice Direction Update come into force as follows:

Provision	Coming into force date
Amendments to Practice Direction 27B	On the day after the date on which this Practice Direction Update is signed
Amendments to Practice Direction 36M	On the day after the date on which this Practice Direction Update is signed
New Practice Direction 36Z	21 February 2022

Signed:

_____ Date: _____

Sir Andrew McFarlane
The President of the Family Division

Signed:

_____ Date: 27 January 2022 _____

Lord Wolfson QC
Parliamentary Under-Secretary of State, Ministry of Justice

PRACTICE DIRECTION 27B – ATTENDANCE OF MEDIA REPRESENTATIVES OR DULY AUTHORISED LAWYERS AT HEARINGS IN FAMILY PROCEEDINGS

(1) In paragraph 5A.2, in each of sub-paragraphs (a), (b) and (c) for “4A.3” substitute “5A.3”.

(2) In paragraph 5A.3 for “4A.2” substitute “5A.2”.

PRACTICE DIRECTION 36M – PILOT SCHEME: ONLINE SYSTEM FOR CERTAIN PUBLIC LAW PROCEEDINGS AND EMERGENCY PROCEEDINGS RELATING TO CHILDREN

(1) In paragraph 1.3(e) for “1 February 2022” substitute “31 March 2022”.

NEW PRACTICE DIRECTION 36Z - PILOT SCHEME: PRIVATE LAW REFORM: INVESTIGATIVE APPROACH

(1) After Practice Direction 36Y insert new Practice Direction 36Z as set out in the Annex to this Update.

PRACTICE DIRECTION 36Z – PILOT SCHEME: PRIVATE LAW REFORM: INVESTIGATIVE APPROACH

This Practice Direction supplements FPR Part 36, rule 36.2 (Transitional Arrangements and Pilot Schemes).

Scope and interpretation

1.1 This Practice Direction is made under rule 36.2 and establishes a Pilot Scheme (referred to as “the Pilot Scheme”) to allow certain applications, and stages in proceedings relating to such applications, to follow a procedure different to that specified in the Family Procedure Rules 2010 (“the FPR”) and supporting Practice Directions.

1.2 This Practice Direction comes into force on 21 February 2022.

1.3 The Pilot Scheme applies where all of the following conditions are met-

(a) the application is for-

(i) a section 8 order;

(ii) an enforcement order;

(b) the application is started in the family court sitting at a location specified in paragraph 1.4; and

(c) the application is filed in the period commencing 21 February 2022 and ending at the end of 21 February 2024.

1.4 The locations of the family court referred to in paragraph 1.3(b) are-

(a) Bournemouth;

(b) Caernarfon;

(c) Mold;

(d) Prestatyn;

(e) Weymouth;

(f) Wrexham.

1.5 In this Practice Direction, “enforcement order” has the meaning given in rule 12.2 FPR.

Purpose of the Pilot Scheme

2.1 The purpose of the Pilot Scheme is to assess the use of new practices and procedures to allow for applications specified in paragraph 1.3(a) of this Practice Direction to follow a revised court process. The revised process has been designed for all court users, but with a particular focus on improving the experience of the family court and outcomes for survivors of domestic abuse, including children and litigants in person. The pilot seeks to test a more investigative approach, featuring earlier gatekeeping and information gathering to enable earlier triaging decisions and to front-load engagement with parties rather than engaging through multiple hearings. The court will also seek to hear the voice of the child more clearly through each case in this pilot, with the aim that appropriate engagement and communication are considered throughout proceedings. A more holistic, multi-agency approach is planned, with the court engaging and developing positive working relationships with key local partners such as mediators and local authorities. A review stage during the pilot process will aim to ensure that court orders meet the welfare needs of the child and reduce the number of cases which come back to court.

Modification of the FPR and Practice Directions during operation of the Pilot Scheme

3.1 During the operation of the Pilot Scheme the FPR and supporting Practice Directions will apply to cases falling within the Pilot Scheme as modified by paragraphs 4.1 to 7.2.

Modification of rules in the FPR

4.1 In rule 12.5-

(a) for paragraph (1) substitute-

“(1) When proceedings have been issued to which pilot Practice Direction 36Z applies, the court will consider the appropriate steps to take in accordance with Practice Direction 12B (Pilot) and rule 12.12.”; and

(b) In the words in parentheses at the end of the rule, for the second sentence substitute-

“Practice Direction 12B (Pilot) sets out the procedure for cases under the Pilot Scheme referred to in Practice Direction 36Z.”.

4.2 In rule 12.7-

(a) in paragraph (1), after “5B” insert “and in accordance with Practice Direction 12B (Pilot)”;

(b) in paragraph (2), for “12B” substitute “12B (Pilot)”.

4.3 In rule 12.13-

(a) for “final hearing”, in each place those words appear, substitute “Decision Hearing”;

(b) after sub-paragraph (5) insert-

“(Details in relation to Decision Hearings are set out in Practice Direction 12B (Pilot).)”.

4.4 In rule 12.14, in paragraph (2)(c) for “12B” substitute “12B (Pilot)”.

4.5 In rule 12.15-

(a) for “final hearing”, in both places those words appear, substitute “Decision Hearing”; and

(b) at the end of the rule insert-

“(Details in relation to Decision Hearings are set out in Practice Direction 12B (Pilot).)”.

4.6 Omit rule 12.31.

4.7 In rule 25.6 for “the First Hearing Dispute Resolution Appointment” substitute “the Safeguarding Gatekeeping Appointment/ Case Management stage”.

Modification of Practice Directions

5.1 In Practice Direction 2C, in the Table-

(a) after the row relating to FPR rule 12.73(1)(b) insert-

“Practice Direction 12B (Pilot) - paragraphs: 9.3 13.2 13.3 13.4 13.6 13.7 14.4 15.1 16.1 17.1(c)	Where: (a) the proceedings have not yet been allocated to a level of judge in the family court; (b) the proceedings have been allocated to lay justices; or (c) the proceedings have been allocated to a judge of District Judge level, Circuit Judge level or High Court judge level and the allocated judge indicates that a justices’ legal adviser may carry out the function in question.
Practice Direction 12B (Pilot) –	Where the function is described as being capable of being carried out by a Gatekeeper, and where the justices’ legal adviser is acting as a Gatekeeper.”

paragraphs	
9.1	
9.2	
9.4	
14.1	
17.1(a)	

; and

(b) omit the row relating to FPR rule 12.31.

5.2 In Practice Direction 12J-

(a) in paragraph 3, after the definition of “abandonment” insert-

““Child Impact Report” means such a report as referred to in Practice Direction 12B (Pilot);”;

(b) in paragraph 5-

(i) for “at the First Hearing Dispute Resolution appointment (“FHDRA”)” substitute “when giving directions for the preparation of a Child Impact Report and when considering the content of a Child Impact Report”;

(ii) for “or CAFCASS Cymru” substitute “Cafcass Cymru, a local authority”; and

(iii) in the first indented bullet point omit “(usually at the FHDRA)”; and

(iv) in the third indented bullet point for “tried” substitute “determined”;

(c) in paragraph 6 for “are present in court” substitute “have been suitably engaged (which may be at a hearing, if the court considers that essential)”;

(d) in paragraph 8 after “information available” insert “in the Child Impact Report”;

(e) for the heading to paragraph 9 substitute-

“Consideration at the Information Gathering and Assessment Stage”;

(f) in paragraph 9-

(i) for “before the FHDRA or other first hearing” substitute “at the Information Gathering and Assessment Stage (Stage 1, PD12B (Pilot))”;

(ii) after “Cymru” insert “as part of the completion of the Child Impact Report”; and

- (iii) for “at the hearing” substitute “in the Child Impact Report”;
- (g) omit the heading to paragraph 11;
- (h) omit paragraph 11;
- (i) omit the first sentence of paragraph 12;
- (j) in paragraph 15-
 - (i) after “at any hearing” insert “, or during any other contact with the court”;
 - (ii) for “judge” substitute “court”;
 - (iii) for “a report under section 7 of the Children Act 1989” substitute “the Child Impact Report”;
- (k) in paragraph 16-
 - (i) in the first sentence for “The court” substitute “As outlined in paragraph 14.2 of Practice Direction 12B (Pilot), the court”;
 - (ii) in sub-paragraph (a) for “any welfare report” substitute “the Child Impact Report, any section 7 or section 37 Children Act 1989 report”;
 - (iii) in sub-paragraph (d)-
 - (aa) for “Violence” substitute “Abuse”; and
 - (bb) for “DVPP” substitute “DAPP”;
- (l) in paragraph 17(a) after “Cymru” insert “or others, including as recorded in any Child Impact Report”;
- (m) in paragraph 18 after “decision” insert “, and this should be noted in the Child Impact Report”;
- (n) in paragraph 19-
 - (i) in the opening paragraph after “should consider” insert “taking into account any information already included in any Child Impact Report”;
 - (ii) for sub-paragraph (a) substitute-
 - “(a) what are the key factual issues in dispute and how should they be set out so that any complaints or allegations made by a party, and the other party’s replies to these complaints or allegations, are clear.”;
 - (iii) in sub-paragraph (b) for “welfare hearing” substitute “Decision Hearing (see Practice Direction 12B (Pilot) Stage 2)”;
 - (iv) omit sub-paragraph (c);

(v) for sub-paragraph (e) substitute-

“(e) directing the parties to describe in short terms the overall experience of being in a relationship and parenting with each other (this may be provided in a written statement or orally at a preliminary hearing if the court considers such a hearing to be essential);” and

(vi) in sub-paragraph (m)-

(aa) for “useful” substitute “essential”; and

(bb) after “available” insert “, in the event that any such matters have not already been addressed as part of the Information Gathering and Assessment Stage set out in Practice Direction 12B (Pilot).”;

(o) for paragraph 20 substitute-

“When conducting any fact finding (or other) hearing, the court should consider the guidance on hearings as set out in paragraphs 23.1 to 23.5 of Practice Direction 12B (Pilot).”;

(p) in paragraph 21(2) after “if appropriate)” insert “as part of a Child Impact Report”;

(q) for paragraph 22 substitute-

“If the court directs that there shall be a fact-finding hearing on the issue of domestic abuse, the Child Impact Report should contain information needed for that hearing, and should be updated after the hearing, to take account of the findings of fact made by the court.”;

(r) in paragraph 28-

(i) for “inquisitorial (or investigative)” substitute “investigative”; and

(ii) after “all involved” insert “(see also the guidance on the conduct of hearings at paragraphs 23.1 to 23.5 of Practice Direction 12B (Pilot));”

(s) in paragraph 29 after “preparing a” insert “Child Impact Report or”;

(t) in paragraph 30-

(i) after “earlier direction for a” insert “Child Impact Report or”;

(ii) for “any report under section 7” substitute “any such report”; and

(iii) for “Any section 7 report” substitute “Any such report”;

(u) in paragraph 32 for “an Officer of Cafcass or a Welsh family proceedings officer” substitute “the involved Cafcass officer, Welsh Family Proceedings Officer or local authority officer”;

(v) in paragraph 33(a) after “consequent report” insert “as part of the Child Impact Report”;

(w) in paragraph 34 for “DVPP” both times it appears substitute “DAPP”; and

(x) in paragraph 38(d) for “set a date for the review consistent with” substitute “make provision for the review consistent with Stage 3 of Practice Direction 12B (Pilot) and with”.

5.3 In Practice Direction 27A

(a) in paragraph 4.2 for sub-paragraph (b) to the end of the paragraph substitute-

“(b) the Child Impact Report, which must contain:

(i) applications and orders;

(ii) statements and affidavits (which must be dated in the top right corner of the front page) but without exhibiting or duplicating documents referred to in para 4.1; and

(iii) experts' reports and other reports (including those of a guardian, children's guardian or litigation friend); and

(c) other documents, divided into further sections as may be appropriate.

All statements, affidavits, experts' reports and other reports included in the bundle must be copies of originals which have been signed and dated.”; and

(b) in paragraphs 4.3(b), (c) and (d) and 4.6 for “final hearing”, in each place those words appear, substitute “Decision Hearing”.

5.4 In Practice Direction 36G-

(a) for the heading to paragraph 9.1 substitute-

“Modification of FPR Practice Direction 12B (Pilot) – Private Law Reform: Investigative Approach”; and

(b) in paragraph 9.4 for “should be provided at the first hearing” substitute “should be sent with the application or provided during the Information Gathering and Assessment stage”; and

5.5 In Practice Direction 36V, in the heading to paragraph 5.1, after “12B” insert “(Pilot)”.

Application of Practice Direction 12B and Practice Direction 12B (Pilot)

6.1 Practice Direction 12B (Pilot) (Private Law Reform: Investigative Approach) as set out in the Annex to this Practice Direction will apply in place of Practice Direction 12B (Child Arrangements Programme).

Disapplication of PD36Q and aspects of PD36Y

7.1 PD36Q (Pilot Provision: Modification of Practice Direction 12B – Coronavirus) does not apply in cases to which this Practice Direction 36Z applies.

7.2 Paragraph 6.1 of PD36Y (Pilot Provision: Temporary modification of Practice Directions 2C, 5B, 12A and 12B – Post-coronavirus) does not apply in cases to which this Practice Direction 36Z applies.

PRACTICE DIRECTION 12B (PILOT) - PRIVATE LAW REFORM: INVESTIGATIVE APPROACH

CHAPTER (I): INTRODUCTION AND CONTEXT

When this Practice Direction applies and Interpretation.

1.1 The procedure set out in this Practice Direction applies where separated parents and/or families cannot agree about arrangements concerning children.

1.2 The procedure is designed to assist families to reach safe and child-focused agreements for their child, where possible out of the court setting. If parents / families are unable to reach agreement, and a court application is made, this procedure encourages swift resolution through the court.

1.3 It is well-recognised that negotiated agreements between adults generally enhance long-term co-operation, and are better for the child concerned. Therefore, separated parents and families are strongly encouraged to attempt to try and reach agreement concerning the child outside of the court system. This may also be quicker and cheaper and any future issues that may arise could be easier to resolve.

1.4 In this Practice Direction, reference is made to “non-court resolution”. Any such reference is to be read as if it were to “non-court dispute resolution” as used in Part 3 FPR.

Signposting Services, Parenting Plans, & Public Funding

2.1 **Services:** If parents and families cannot agree arrangements for children, they are encouraged to obtain advice and support as soon as possible. Information about the impact of separation on children can be found at:

- (a) Voice of the Child of Divorce
<https://www.youtube.com/watch?app=desktop&v=lbTFZ8cvHo4>
- (b) Fegans and Wells Mediation <https://www.wellsfamilymediation.co.uk/blog/Co-parenting%20film/>
- (c) Supporting healthy family relationships Warwickshire County Council
<https://www.youtube.com/watch?app=desktop&v=1ZUWbIBOyL8>
- (d) <https://www.cafcass.gov.uk/2021/03/02/responding-to-feedback-fjypb-top-tips-for-separated-parents-updated/>

2.2 There are many services available for such families, who seek advice about resolving disputes concerning their child.

2.3 The following services are recommended –

- (a) For more information about family mediation and to find the nearest mediation service (including those providing a MIAM): www.familymediationcouncil.org.uk;

- (b) For a Guide about children and the family courts for separating parents (including representing yourself in court): the form 'CB7': <https://www.gov.uk/government/publications/guide-for-separated-parents-children-and-the-family-courts-cb7/guide-for-separated-parents-children-and-the-family-courts-cb7>
- (c) For Cafcass (England): [Parenting together - Cafcass - Children and Family Court Advisory and Support Service](#);
- (d) For Cafcass Cymru (Wales): [Cafcass Cymru: Information about separated parents | GOV.WALES](#) ;
- (e) To find a legal adviser or family mediator: <http://find-legal-advice.justice.gov.uk>;
- (f) To check whether you can get financial help (legal aid) to pay for non-court dispute resolution, &/or advice and representation at court, and to find a legal aid solicitor or mediator: <https://www.gov.uk/check-legal-aid>
- (g) For general advice about sorting out arrangements for children, the use of post-separation mediation, &/or going to court: <http://www.advicenow.org.uk>; <http://www.advicenow.org.uk/advicenow-guides/family/sorting-out-arrangements-for-your-children/>
- (h) For general advice about sorting out arrangements for children: <http://theparentconnection.org.uk/>
- (i) For advice about Contact Centres, which are neutral places where children of separated families can enjoy contact with their non-resident parents and sometimes other family members, in a comfortable and safe environment; and information about where they are: www.naccc.org.uk;
- (j) For the form to apply for a child arrangements order: <https://www.gov.uk/looking-after-children-divorce/apply-for-court-order>;
- (k) For help with taking a case to court without a lawyer, the Personal Support Unit: <http://thepsu.org/>;
- (l) For guidance on representing yourself at court, including a list of commonly used terms that you may come across: <https://www.advicenow.org.uk/family-court>;
- (m) For advice about finding and using a family law solicitor see: Law Society <https://www.lawsociety.org.uk/>, and Resolution (family law solicitors): <http://www.resolution.org.uk>;
- (n) For advice about finding using a family law barrister: see <https://www.barcouncil.org.uk/find-a-barrister.html> and for arrangements for using a barrister directly see <https://www.directaccessportal.co.uk/>.

2.4 Parenting Plan: A Parenting Plan is widely recognised as being a useful tool for separated parents to identify, agree and set out in writing arrangements for their children; such a plan could appropriately be used as the basis for discussion about child arrangements and how parents wish to decide issues concerning their child.

2.5 The Parenting Plan should cover all practical aspects of care for the child, and should reflect a shared commitment to the child and his/her future, with particular emphasis on parental communication (learning how to deal with differences), living arrangements, money, religion, education, health care and emotional well-being.

2.6 A Parenting Plan is designed to help separated parents (and their families) to work out the best possible arrangements for the child; the plan should be understood by everyone, including (where the child is of an appropriate age and understanding) the child concerned.

2.7 For help on preparing a Parenting Plan, see –

(a) Cafcass 'Putting Your Children First: A Guide for Separated Parents';

(b) A draft of a Parenting Plan for parents or families to complete: <https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parenting-together/parenting-plan/>

(c) A draft of a Parenting Plan prepared by Cafcass Cymru for parents or families to complete: [The Parenting Plan: Cafcass Cymru | GOV.WALES](#) (this links to the draft plan in English) or [Y Cynllun Rhianta: Cafcass Cymru | LLYW.CYMRU](#) (this links to the draft plan in Welsh).

2.8 **Publicly funded mediation and/or legal advice:** If parents need access to mediation, and legal advice in support of that mediation, they may be eligible for public funding. The Legal Aid Agency (LAA) will provide funding for Mediation Information and Assessment Meetings (MIAMs) and family mediation for all those who are eligible:

(a) where at least one party is eligible, the LAA will cover the costs of both parties to attend a MIAM to encourage any non-eligible client to find out about the benefits and suitability of mediation without incurring any costs;

(b) the LAA will provide public funding for eligible parties to participate in family mediation and they may also receive some independent legal advice connected to the mediation process and where a settlement is reached can receive legal assistance to draft and issue proceedings to obtain a consent order;

(c) parties may find out if they are likely to be eligible for legal aid at the following link: <https://www.gov.uk/check-legal-aid>;

(d) to find the nearest publicly funded mediation service a client can use the search at <http://find-legal-advice.justice.gov.uk>. Publicly funded legal advisors can be found at: <https://www.gov.uk/check-legal-aid>.

2.9 Public funding for legal advice and/or representation at court is available in limited circumstances. Further information can be found here: <http://www.justice.gov.uk/legal-aid-for-private-family-matters>.

Explanation of terms

3.1 Some of the terms used in this document, and in the websites referred to above, may not be familiar to those who seek help and support.

3.2 A guide to some of the relevant terms is attached in the Annex at the end of this document.

Including the child

4.1 In making any arrangements with respect to a child, the child's welfare must be the highest priority.

4.2 Children and young people should be at the centre of all decision-making. This accords with the Family Justice Young People's Board Charter (<https://www.cafcass.gov.uk/family-justice-young-peoples-board/>). Each decision should be assessed on its impact on the child.

4.3 The child or young person should feel that their needs, wishes and feelings have been considered in the arrangements which are made for them. They should be informed how their needs, wishes and feelings were considered in arriving at any order or reaching any agreement.

4.4 Children should be involved, to the extent which is appropriate given their expressed desire for involvement, any welfare concerns, and their age and level of understanding, in making the arrangements which affect them. This is just as relevant where the parties are making arrangements between themselves (which may be recorded in a Parenting Plan) as when:

(a) arrangements are made away from the court; and/or

(b) the court is required to make a decision about the arrangements for the child.

4.5 If an application for a court order has been issued, the judge will want to know the child's view, where it is possible and appropriate to ascertain this in light of the child's age and understanding. This could be communicated to the judge in one of a number of ways, guided primarily by the child's preferences (where these can be ascertained)–

(a) by a Cafcass officer (in Wales, a Welsh Family Proceedings Officer (WFPO)) providing a report to the court which sets out the child's wishes and feelings;

(b) by the child being supported (by, for example, the Cafcass officer, WFPO or local authority social worker) to write a letter to the court;

(c) in the limited circumstances described in section 13 below, by the child being a party to the proceedings;

(d) by the judge meeting with the child, in accordance with approved Guidance (currently the FJC Guidelines for Judges Meeting Children subject to Family Proceedings (April 2010)). <http://www.judiciary.gov.uk/JCO%2fDocuments%2fJC%2fvoc%2fGuidelines%2fJudges%2fseeing%2fChildren.pdf>; and/or

(e) through a third-party professional trusted by the child, such as a teacher, social worker or support worker (enabled by, for example, the Cafcass officer, WFPO or local authority social worker).

Non-court resolution of arrangements for children

5.1 Services, including mediation, are available to provide opportunities for parents and families to work in a positive and constructive way to resolve arrangements for children. These should be actively considered and attempted where it is safe and appropriate to do so. Information about mediation and other means of resolving issues away from court is

available widely (see Signposting Services - paragraph 2 above – and see also Part 3 FPR).

5.2 It is not expected that those who are the victims of domestic abuse should attempt to mediate or otherwise participate in forms of non-court dispute resolution. It is also recognised that drug and/or alcohol misuse and/or mental illness are likely to prevent parents and families from making safe use of mediation or similar services; these risk factors (which can be discussed at a MIAM - see below, paragraph 5.3) are likely to have an impact on arrangements for the child. Court Orders, including those made by consent, must be scrutinised to ensure that they are safe and take account of any risk factors, in accordance with Practice Direction 12J FPR.

5.3 Attendance at Mediation Information and Assessment Meeting ('MIAM'):

Subject to paragraph 5.6, before making a family application to the court (a 'relevant family application' as defined in paragraph 28.1 below), the person who is considering making such application must attend a family MIAM. A prospective respondent is also expected to attend a MIAM. At the MIAM, the mediator will assess whether there has been, or is a risk of,

(a) domestic abuse; and/or

(b) harm by a prospective party to a child that would be the subject of the application.

Subject to this initial risk of harm assessment, information will be provided by the mediator as appropriate about ways in which arrangements may be resolved otherwise than by the court, and the suitability of mediation (or any other service) for trying to reach resolution.

5.4 It is the responsibility of the prospective applicant (or that person's legal representative) to contact a family mediator to arrange attendance at a MIAM.

5.5 Only an authorised family mediator can carry out a MIAM. An authorised family mediator is a person identified by the Family Mediation Council as qualified to conduct a MIAM.

5.6 A prospective applicant is not required to attend a MIAM where one of the circumstances set out in rule 3.8(1) or 3.8(2) FPR applies.

5.7 Information on how to find an authorised family mediator may be obtained from www.familymediationcouncil.org.uk website which hosts the 'find a local family mediator' database (see also "Signposting Services" – paragraph 2 above).

5.8 The prospective applicant (or their legal representative) should provide the mediator with contact details for the other party or parties involved ('the prospective respondent(s)'), so that the mediator can contact the prospective respondent(s) to discuss their willingness and availability to attend a MIAM.

5.9 The prospective applicant and, where they agree to do so, the prospective respondent(s), should then attend a MIAM arranged by the mediator.

5.10 The Family Mediation Council sets the requirements for mediators who conduct MIAMs. In summary, a mediator who arranges a MIAM should consider any risk factors present and how these should be managed, and should also consider with the party or parties concerned whether public funding may be available to meet the cost of the meeting and any subsequent mediation. Where neither of the parties is eligible for, or wishes to seek, public funding, any charge made by the mediator for the MIAM will be the

responsibility of the party or parties attending, in accordance with any agreement made with the mediator.

5.11 Mediation is a confidential process; none of the parties to the mediation may provide information to the court as to the content of any discussions held in mediation and/or the reasons why agreement was not reached. Similarly, the mediator may not provide such information, unless the mediator considers that a safeguarding issue arises.

5.12 However, it is important that the parties, or either of them, introduce at the MIAM (or any subsequent court application) any other evidence of attempts to reach resolution and to focus on the needs of the child.

Resolution of arrangements for children through the Court

6.1 The judge is obliged to consider, at every stage of court proceedings, whether non-court resolution is appropriate.

6.2 The parties should also actively consider non-court resolution even if proceedings are issued and are ongoing.

6.3 If the court considers that another form of non-court resolution is appropriate, the court may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate:

(a) to enable the parties to obtain information and advice about non-court resolution; and

(b) where the parties agree, to enable non-court resolution to take place.

6.4 Where the court adjourns proceedings, it shall give directions about the timing and method by which the parties must tell the court if any of the issues in the proceedings have been resolved.

6.5 Some courts operate an at-court mediation scheme, and at-court MIAMs, with providers contracted to the Legal Aid Agency. Some mediators may prefer to conduct mediation outside of the court premises. A mediation assessment may be possible at court; alternatively, the court may help in making an appointment with a local mediator for a MIAM or for mediation. Information about mediation arrangements should be advertised in the local court.

Local Good Practice: Pilot Scheme

7.1 Local practices and initiatives can be operated within the framework provided for in this Practice Direction. It is expected that local practices will include the development of indicative timescales for cases to proceed from application to conclusion.

CHAPTER (II): PROCEDURE

Application to court

8.1 Unless one of the MIAM exemptions applies (see rule 3.8 FPR), an application to court for determination of most issues concerning a child (see the definition of 'relevant family application' in rule 3.6 FPR and paragraphs 11 and 12 of PD3A) can be made only after a MIAM has taken place (at which meeting mediation and other forms of non-court resolution will have been considered). One of the exemptions may be that the case is

urgent, in which case see 'Urgent and Without Notice Applications' in paragraph 10 below. The grounds for urgency are defined in rule 3.8(c) FPR.

8.2 The application must be made on the relevant prescribed form.

8.3 For section 8 Children Act 1989 applications, the applicant will be required, on the form C100, to confirm attendance at a MIAM or specify that an exemption applies **unless** the application is for a consent order, or if the application concerns a child who is the subject of ongoing emergency proceedings, care proceedings or supervision proceedings, or if the child concerned is already the subject of an emergency protection order, care order or supervision order (see paragraphs 11 and 12 of PD3A).

8.4 The relevant part of the form C100 must be completed showing that either –
(a) the applicant has attended a MIAM; or

(b) the applicant has not attended a MIAM and claims one of the exemptions (rule 3.8(1) FPR) - exemptions include (but are not limited to) evidence of domestic abuse, child protection concerns, urgency, previous MIAM attendance or exemption; or

(c) an authorised family mediator confirms in the form that he or she is satisfied that–

- (i) mediation is not suitable because the respondent is (if more than one respondent, any one of them is) unwilling to attend a MIAM;
- (ii) mediation is not suitable as a means of resolving the dispute because the respondent (if more than one, any of them) failed without good reason to attend a MIAM; or
- (iii) mediation is otherwise not suitable as a means of resolving the dispute.

8.5 The C100 form may be obtained from the Family Court or from www.gov.uk.

8.6 If the parties have previously prepared a Parenting Plan, this shall be attached to the Form C100.

8.7 It is important that the form C100 is completed in full (including the provision of telephone numbers, e-mail and postal address of the relevant parties), otherwise there may be a delay in processing the application. Where the form is not fully completed, the court staff may request further information before the application form is accepted for issue. It is also important that the form C100, the Acknowledgement Form C7 and, where applicable, any Supplemental Information Form C1A are fully and accurately completed to enable the court to make appropriate decisions about allocation and case management.

8.8 If possible at the time of issue, and in any event ideally by no later than one working day after issue, or in courts where applications are first considered on paper ideally by no later than two working days after issue, the court shall send or hand to the Applicant the following –

- (a) in the case of an application being made on a form C100:
 - (i) a copy of the application form C100 (together with the Supplemental Information Form C1A);
 - (ii) information leaflets for the parties;
 - (iii) directions on issue;

- (b) in the case of an application being made on a form C79:
 - (i) a copy of the application form C79;

- (ii) information leaflets for the parties;
- (iii) directions on issue.

8.9 Unless the applicant requests to do so, or the court directs the applicant to do so, the court will serve the respondent(s) with the following–

- (a) in the case of an application being made on a form C100:
 - (i) a copy of the application form C100 (together with Supplemental Information Form C1A, if provided);
 - (ii) the Acknowledgement Form C7;
 - (iii) a blank form C1A;
 - (iv) information leaflet for the parties;
 - (v) directions on issue;
- (b) in the case of an application being made on form C79:
 - (i) a copy of the application form C79;
 - (ii) the Acknowledgement Form C7;
 - (iii) information leaflet for the parties;
 - (iv) directions on issue.

8.10 As soon as possible after completing initial gatekeeping (see section 9 below), the court staff shall contact the applicant by telephone to acknowledge receipt of the application and provide information to the applicant on the process which is to be undertaken. This telephone contact should also be attempted with the respondent a reasonable period of time after the acknowledgement form C7 has been sent to the respondent.

8.11 As soon as reasonably possible after the court has carried out initial gatekeeping (see section 9) and has attempted to make contact with the applicant as set out in paragraph 8.10, the court shall send to Cafcass / Cafcass Cymru copies of-

- (a) the Form C100 (and the form C1A, if supplied) or the Form C79, as applicable; and
- (b) any Form C8 or other document stating that contact details are to be kept confidential.

These will be sent in electronic format where possible.

8.12 The respondent(s) must send the Acknowledgement Form C7 and, where applicable, the Supplemental Information Form C1A, to the court as soon as possible and in any event within 14 days after receiving the application, unless the court has specified a shorter time.

8.13 On receipt of the Acknowledgement Form C7 and any Form C1A filed by the respondent(s), the court shall send a copy of each form to Cafcass/ Cafcass Cymru, in electronic format where possible, and shall send copies to the applicant.

Initial Gatekeeping

9.1 The question of the level of judge to whom an application should be allocated can be made by a nominated Justices' Legal Adviser and/or nominated District Judge ('the Gatekeeper(s)') in accordance with the Family Court (Composition and Distribution of Business) Rules 2014, either –

- (a) as soon as possible after receipt of the application, at this initial gatekeeping stage; or

(b) at any point until and including the Safeguarding Gatekeeping Appointment/ Case Management stage (see paragraph 14 below).

It is for the Gatekeeper(s) to decide at what point it is appropriate to make the allocation decision, within the parameters set out above. Making an allocation decision at the initial gatekeeping stage could be appropriate where, for example, the case is a returning case (see paragraph 9.4 below) or a case of particular complexity.

9.2 A Gatekeeper (or two Gatekeepers, acting jointly) or the judge (where one has been allocated) shall be able to-

(a) issue Directions on Issue;

(b) direct that the applicant or the parties attend a MIAM before the case progresses to the next Stage, where, on the basis of information provided on the application form and any additional information provided on a C1A Supplemental Information Form, the court considers that the exemption from attending a MIAM has not been validly claimed, unless the court considers that in all the circumstances of the case the MIAM requirement should not apply to the application in question (the court will have particular regard to the matters set out in rule 3.10(3) FPR when making this decision);

(c) give directions for an accelerated hearing, where it appears that an urgent issue requires determination;

(d) give directions for the service and filing of evidence.

9.3 Following consideration of compliance with the MIAMs requirement, in any case that the court has determined does not require an urgent determination, the court must refer the application to the persons or bodies who are to undertake the Information Gathering and Assessment and contribute to the Child Impact Report.

9.4 **Returning and related cases.** Cases should be checked for previous or ongoing proceedings relating to the same child, and any related injunction proceedings, prior to gatekeeping. (It should be noted that court staff cannot search for placement and adoption proceedings, given there is restricted access to such files.) If a case is flagged as returning, the Gatekeeper should engage with the last judge (if possible) to determine the appropriate approach in light of the risk profile, case details and length of time since the last application. If the last judge is not available, the Gatekeeper should engage with another judge of equivalent level for instruction on what approach should be taken.

Urgent and Without Notice Applications

10.1 **Urgent:** Where an order is sought as a matter of urgency, an application may be made to the Court for an emergency order without the requirement for the Applicant to have attended at a MIAM. The categories of urgent application justifying such an exemption are set out in rule 3.8(c) FPR and include cases in which:

(a) there is a risk to the life, liberty, or the physical safety of the prospective applicant or his or her family, or his or her home;

(b) any delay caused by attending a MIAM would cause:

(i) a risk of harm to the child;

(ii) a risk of unlawful removal of a child from the United Kingdom or a risk of unlawful retention of a child who is currently outside England and Wales;

(iii) a significant risk of a miscarriage of justice;

(iv) unreasonable hardship to the prospective applicant;

(v) irretrievable problems in dealing with the dispute (including the irretrievable loss of significant evidence);

(c) there is a significant risk that in the period necessary to schedule and attend a MIAM, proceedings relating to the dispute will be brought in another state in which a valid claim to jurisdiction may exist, such that a court in that other State would be seized of the dispute before a court in England and Wales.

10.2 **'Without Notice'**: Applications to court made 'Without Notice' to the respondent(s) shall be allocated in accordance with the Family Court (Composition and Distribution of Business) Rules 2014, and determined by reference to the provisions of Practice Direction 18A, paragraph 5.1, with further regard to the principles set out in Practice Direction 20A, paragraph 4.3-4.5 FPR (noting particularly paragraph 4.3(c)).

10.3 Without Notice Orders should be made only exceptionally, and where –
(a) if the applicant were to give notice to the respondent(s) this would enable the respondent(s) to take steps to defeat the purpose of the injunction; cases where the application is brought without notice in order to conceal the step from the respondent(s) are very rare indeed; or

(b) the case is one of exceptional urgency; that is to say, that there has been literally no time to give notice (either by telephone, text or e-mail or otherwise) before the injunction is required to prevent the threatened wrongful act; or

(c) if the applicant gives notice to the respondent(s), this would be likely to expose the applicant or relevant child to unnecessary risk of physical or emotional harm.

10.4 Any Order which follows an emergency 'without notice' hearing should specify:
(a) the reason(s) why the order has been made without notice to the respondent(s);

(b) the outline facts alleged which have been relied upon by the court in making the order, unless the facts are clearly contained in the statement in support; and

(c) the right of the respondent(s) to apply to vary or discharge the order.

10.5 **Gatekeeping decisions in urgent and without notice cases**: Following any urgent hearing or any return hearing following an initial 'without notice' hearing, unless all issues have been determined or the application has been dismissed without any further directions given, the judge may either:

(a) make the necessary gatekeeping decisions in order to move the case forward to Stage 1 (below); or

(b) alternatively, refer the application to the relevant Gatekeeping team to make the necessary gatekeeping decisions.

10.6 In either event, a copy of the C100 or C79, as applicable, shall be sent to Cafcass/ Cafcass Cymru for safeguarding checks, and (depending on the Gatekeeping decision) the file shall be sent to the court where any future hearings will take place (if at a different court centre from the court where the urgent hearing occurred).

Stages of the Pilot Scheme

11.1 Following the initial gatekeeping referred to above, all applications to which this Practice Direction applies (other than those resolved via an urgent or without notice hearing) must follow these Stages:

Stage 1: Information Gathering and Assessment

Stage 2: Interventions and/or Decision Hearing

Stage 3: Review.

Details in relation to each of these Stages are set out below. Specific provision about applications for enforcement orders is set out at paragraphs 17.1 to 17.4.

Stage 1: Information Gathering and Assessment

12.1 The purpose of this Stage is to take a proportionate, child welfare focussed approach to actively investigate the impact of issues presented in the application (and any additional information requested as part of this Stage) on the child - through engagement and assessment. This Stage comprises the following steps:

Child Impact Report

13.1 This Stage must begin with the gathering of information to complete a **Child Impact Report**. This will involve, at a minimum:

- (a) safeguarding checks (see paragraph 13.8);
- (b) parental/party engagement – to involve initial contact to understand from parties what their circumstances are and get their perspectives on what they consider to be in the best interests of the child;
- (c) direct or indirect (for example, via digital means or through a third party) engagement with the child (in a means consistent with their welfare needs and determined as appropriate in accordance with their age and understanding), to determine their circumstances, preferences for engagement and initial wishes and feelings;
- (d) a DASH (or equivalent) risk assessment where Domestic Abuse is a feature of the case;
- (e) consideration of any other cases involving the child or parties that are relevant to the case management of the case.

13.2 The court will determine who should be involved in this information gathering. This may involve, for example, officers of Cafcass or Cafcass Cymru, local authority officers, Independent Domestic Abuse Advisers or Domestic Abuse Support Workers.

13.3 Cafcass or Cafcass Cymru will undertake safeguarding checks (see paragraph 13.8 below) and will likely lead on other work for the Information Gathering and Assessment stage. However, if the court determines that a local authority has relevant recent involvement with the family involved in the proceedings, then the court may consider the local authority should lead on other work for the Information Gathering and Assessment stage. The court may reach this conclusion at the outset of the proceedings, or upon receipt of information collected during the course of the preparation of the Child Impact Report.

13.4 **Content of the Child Impact Report.** There should be liaison between those undertaking the Information Gathering and Assessment stage and the court: see paragraph 13.6 below. Ultimately, the content of the Child Impact Report will be determined by the court. The court may consider it appropriate for the Child Impact Report to be relatively “light touch”, depending on the circumstances of the case, for example in a case which is returning recently after a final order was made. In any event, the Child Impact Report may include any or all of the following:

- (a) the application form and any response filed with the court;
- (b) information obtained from each party, and the child, on their circumstances, background, wishes and other relevant information;
- (c) safeguarding information;
- (d) evidence ordered by the court;
- (e) details of any information obtained from external sources relevant to the child/parties;
- (f) any “DASH” or other risk assessment, where domestic abuse is a feature of the case;
- (g) details of any requested participation directions ahead of any court hearings (see Part 3A FPR);
- (h) any previous orders made in the proceedings;
- (i) recommendations for next steps, made by those involved in compiling the Child Impact Report, which may include:
 - (i) referral to out-of-court services such as mediation;
 - (ii) referral to support services such as a WT4C, SPIP or DAPP before a Decision Hearing;
 - (iii) recommendation to fix a fact finding hearing, if not already completed;
 - (iv) recommendation about what is in the best welfare interests of the child;
 - (v) recommendation to fix a Decision Hearing.

13.5 The Child Impact Report must be filed with the court once it is complete.

13.6 **Communication with the court.** During the course of the preparation of the Child Impact Report, those involved in its preparation will exercise their professional judgment in considering what should be included in the Child Impact Report. They must communicate with the court to the extent that they, or the court, consider appropriate in order to ensure that the Child Impact Report can be completed and to ensure that the court retains oversight of what information is being sought. This communication should take place in the manner determined by the court, for example, in writing or, if essential, at a directions hearing. The court should also determine the extent (if any) to which the parties should be involved in any such communication between those preparing the Child Impact Report and the court.

13.7 In the event of any communication with the court as referred to at paragraph 13.6 which takes place during the preparation of the Child Impact Report in the absence of the parties, the court must keep a clear record of the matters considered and discussed during that communication and must consider whether, and if so how, to share such a record with

the parties. Any communication by the parties with the court must be in accordance with rule 5.7 FPR.

13.8 **Safeguarding checks.** In order to inform the court of possible risks of harm to the child Cafcass / Cafcass Cymru will carry out safeguarding enquiries as part of the Information Gathering and Assessment stage. A record and outline of any safety issues must be included in the Child Impact Report.

13.9 For all applications for child arrangements orders, safeguarding checks will include seeking information from local authorities and carrying out police checks on the parties. They may include seeking information from others if that is necessary in the professional judgment of the Cafcass Officer or the Welsh Family Proceedings Officer. For all other applications, Cafcass / Cafcass Cymru will carry out a screening process and will undertake those safeguarding checks if in the professional judgment of the Cafcass officer or the Welsh Family Proceedings Officer such checks are necessary. Safeguarding checks must be undertaken in any case where domestic abuse has been raised as an issue.

13.10 **Reports** which are to form part of the Child Impact Report may be ordered where there are welfare issues or other specific considerations which should be addressed in a report by Cafcass/Cafcass Cymru 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 5.1 (“Non-court resolution of arrangements for children”).

13.11 If a report is ordered in accordance with section 7 of the Children Act 1989, the court should direct which specific matters relating to the welfare of the child are to be addressed. Welfare reports will generally only be ordered in cases where there is an issue as to with whom the child should live, spend time, or otherwise have contact with. A report can also be ordered:

(a) if there is an issue concerning the child's wishes;

(b) if there is an alleged risk to the child; and/or

(c) where information and advice is needed which the court considers to be necessary before a decision can be reached in the case.

13.12 General requests for a report on an application should be avoided; the court should state on the face of the order the specific factual and/or other issue which is to be addressed in the focused report.

13.13 In determining whether a request for a report should be directed to the relevant local authority or to Cafcass/Cafcass Cymru, the court should consider such information as Cafcass/Cafcass Cymru 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.

13.14 The court may consider whether there is a need for an investigation under section 37 Children Act 1989.

13.15 A copy of the order requesting the report and any relevant court documents are to be sent to Cafcass/Cafcass Cymru 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.

13.16 Is any expert evidence required? If so, section 13 Children and Families Act 2014, and Part 25 of the FPR must be complied with. The court will need to consider carefully the

future conduct of proceedings where the preparation of an expert report is necessary but where the parties are unrepresented and are unable to fund the preparation of such a report.

Rule 16.4 children's guardians

13.17 The court should be vigilant to identify the cases where a rule 16.4 children's guardian should be appointed.

13.18 Where the court is considering the appointment of a children's guardian from Cafcass/Cafcass Cymru, it should first ensure that enquiries have been made of the appropriate Cafcass/Cafcass Cymru manager in accordance with paragraph 7.4, Part 4 of the Practice Direction 16A. This should either be in writing or by way of case discussion with the relevant Cafcass service manager; for cases in Wales, the 'hotline' protocol agreed with Cafcass Cymru will ensure that such a discussion can take place. The court should consult with Cafcass / Cafcass Cymru, so as to consider any advice in connection with the prospective appointment, and the timescale involved.

13.19 When the court decides to appoint a children's guardian, consideration should first be given to appointing an Officer of the Service or WFPO. If Cafcass/Cafcass Cymru is unable to provide a children's guardian without delay, or if there is some other reason why the appointment of a Cafcass officer is not appropriate, the court should (further to rule 16.24 of the FPR) appoint a person other than the Official Solicitor, unless the Official Solicitor expressly consents.

13.20 In considering whether to make such an appointment the Court shall take account of the demands on the resources of Cafcass/Cafcass Cymru that such an appointment would make. The court should also make clear on the face of any order the purpose of the appointment and the timetable of any work to be undertaken.

13.21 Any children's guardian appointed should carry out their duties and functions in accordance with the provisions of the FPR, and contribute to the Child Impact Report accordingly.

Safeguarding Gatekeeping Appointment/ Case Management following the filing of the Child Impact Report

14.1 **Allocation:** following receipt of the Child Impact Report, the Gatekeepers must decide to which level of judge the application is to be allocated (if not already allocated - see paragraph 9.1). The allocation decision must be made in accordance with the Family Court (Composition and Distribution of Business) Rules 2014, together with Guidance issued by the President on 'Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 (Private Law Proceedings) and the Allocation Schedule.

14.2 **Further steps:** following receipt of the Child Impact Report, the judge to whom the case has been allocated must determine what steps are necessary to enable the application to proceed to Stage 2. This may involve consideration of any or all of the following:

(a) what, if any, issues are agreed and what are the key issues to be determined?

(b) Is there a need for findings of fact to be made? What are the specific issues where finding of fact is required? If fact-finding is determined to be required, a decision should be made on-

- (i) whether a preliminary hearing is essential (see also Practice Direction 12J in relation to cases where domestic abuse is in issue);
- (ii) the timing and nature of the fact-finding hearing, for example whether there should be a standalone fact-finding hearing or whether fact finding should take place at the same time as the Decision Hearing.

Parties, and any other necessary people or agencies, should then be engaged to gather the necessary evidence and information for the fact-finding hearing to take place.

If fact-finding is required, the court will need to consider, following the fact finding hearing, whether further information is required to be added to the Child Impact Report, although this may not be required for all cases. (See paragraphs 23.1 to 23.5 below for information on hearings).

(c) Is further engagement with external agencies, such as schools, nurseries, the local authority and GPs, required to determine matters relating to the child?

(d) Are there any interim orders which can usefully be made (e.g. indirect, supported or supervised contact) pending any Decision Hearing?

(e) What, if any, directions are required to ensure the application is ready for any Decision Hearing – any further statements, disclosure from bodies such as Local Authorities or the police, reports etc (see paragraph 14.2)?

(f) Should the application be listed straight away for a Decision Hearing?

(g) The case should be managed by the allocated judge unless there is good reason for it to be re-allocated (especially if there has been or is to be a fact finding hearing or a contested interim hearing). This is also important for returning cases.

(h) Should the child be engaged further to ensure the court remains aware of their preferences and wishes and feelings?

(i) Is input, or further input, required from an IDVA or Domestic Abuse Support Worker?

14.3 If an updated Child Impact Report is prepared as a result of any directions of the court as outlined above, this must be filed with the court. In any event, at the end of Stage 1 the Child Impact Report must be updated and filed with the court.

14.4 **Disclosure of the Child Impact Report.** When considering this, the court must take into account safeguarding issues. In this respect –

(a) the court must consider whether to inform the parties of the content of the Child Impact Report. The parties must be informed of the content, unless the court considers that to do so would create a risk of harm to a party or the child. The court may determine that only part of the content should be disclosed.

In determining any such risk of harm, the court will specifically consider all the information before the court, including the safeguarding information in the Child Impact Report, including any Supplemental Information Form(s) C1A filed by the parties.

(b) The court must consider whether the content of the Child Impact Report (or part of it) ought to be attached to any referral to a supported or supervised child contact centre in the event the court directs supported or supervised contact.

(c) The court must consider whether the content of the Child Impact Report (or part of it) ought to be attached to any other referral to local support services, such as mediation or therapeutic support for the child or parties.

Stage 2: Interventions and/or Decision Hearing

15.1 At this Stage, the court must exercise its discretion as to how to enable the application to proceed to a conclusion. This may involve, for example:

(a) the court using its powers under section 11A of the Children Act 1989 to make an activity direction (being a direction requiring an individual who is a party to the proceedings to take part in an activity that would, in the court's opinion, help to establish, maintain or improve the involvement in the life of the child concerned of (i) that individual or (ii) another party to the proceedings;

(b) recommending to the parties that they pursue suitable and appropriate alternative means of non-court resolution, such as mediation or arbitration, or interventions such as counselling or parenting programmes, to arrive at an agreement or narrow the issues between the parties ahead of any future Decision Hearing;

(c) considering the appropriate means of monitoring and review of any agreement that is made between the parties;

(d) considering whether it would be appropriate to make a Consent Order where any agreement is made between the parties (see paragraphs 24.1 and 24.2 below);

(e) holding a Decision Hearing.

15.2 At a Decision Hearing, the court will-

(a) investigate the issues and make decisions on those issues which are not agreed and do so by encouraging the parties to focus on the best interests of the child;

(b) exercise its discretion as to what order (if any) to make on the application;

(c) give directions about the Review stage (see paragraphs 16.1 to 16.3 below); and

(d) consider how the decision of the court should be communicated to the child.

Stage 3: Review

16.1 When determining what directions to make about the Review stage, the court must take into account any recommendations made in the Child Impact Report and its statutory powers to require further involvement with the parties to the case, including:

(a) section 11H of the Children Act 1989 (monitoring contact);

(b) section 16 of the Children Act 1989 (family assistance orders);

(c) making interim orders on the application, with provision for a further report or hearing (or both).

16.2 The question of what provision to make for the Review Stage is a matter for the court's discretion. In exercising that discretion, the court should consider the following guidance:

(a) the intention is that the Review should be a means of contacting the parties, including the child where appropriate, to determine how the order is working for them;

(b) the focus of the Review should be on the safety of parties and children, post-order support to parties and follow up or signposting to sources of support, not on providing legal advice or dealing with complaints regarding the court process;

(c) the focus of the Review should not be on checking on order adherence, unless the court considers that appropriate, for example, in the context of an order under section 11H of the Children Act 1989;

(d) the Review would normally take place 3 to 12 months from the point at which the order is made;

(e) the risk profile of the case will likely be relevant in determining the format of the Review;

(f) the Review is not intended to be ongoing support over a period, rather specific instances of contact at agreed times;

(g) a Review is likely to be suitable for the majority of cases, although there is the potential that it may not be required or suitable for every case;

(h) the Review will not usually involve a hearing, unless the court so determines, having received advice from those who have made contact with the parties. In such cases, the court will wish to consider making an interim order on the application, to facilitate a return hearing after the Review;

(i) if the court makes an order under section 11H or section 16 of the Children Act 1989, the court has discretion to determine the extent of any engagement by the officer involved: this might be "light touch" or more in-depth, depending on the facts of the case.

16.3 A summary of the Review outcome should be added to the Child Impact Report.

Enforcement of Child Arrangements

17.1 On any application for an enforcement order, the court shall follow the steps and Stages outlined above, subject to the following—

(a) the Gatekeepers must allocate the case to a level of judge at the initial gatekeeping step, in accordance with rule 17 of the Family Court (Composition and Distribution of Business) Rules 2014;

(b) if possible, the case should be allocated to the judge who made the order to which the application for an enforcement order relates;

(c) the Information Gathering and Assessment stage should include further safeguarding checks if determined by the court to be required and, in any

event, for any application for an enforcement order issued more than three months after the order to which the application for an enforcement order relates;

(d) the Information Gathering and Assessment stage should seek to determine the circumstances and allow the court to consider which of the following are required to complete the Information Gathering and Assessment Stage:

(i) in respect of the enforcement order application:

(aa) whether the facts relevant to the alleged non-compliance are agreed, or whether it is necessary to conduct a hearing to establish the facts;

(bb) the reasons for any non-compliance;

(cc) whether an enforcement order may be appropriate (see section 11L Children Act 1989);

(ii) in respect of any other order in relation to the Child Arrangements Order that the court may consider making:

(aa) how the wishes and feelings of the child are to be ascertained;

(bb) whether further advice is required from Cafcass/Cafcass Cymru on the appropriate way forward;

(cc) how to assess and manage any risks of making a further or other child arrangements order;

(dd) whether a SPIP or referral for non-court resolution is appropriate;

(ee) the welfare checklist.

17.2 Once the Child Impact Report is complete, the court shall list any application for enforcement of a child arrangements order for hearing, before the previously allocated judge if possible, within 20 working days of issue. Enforcement cases should be concluded without delay.

17.3 The court has a wide range of powers in the event of a breach of a child arrangements order without reasonable excuse. This range of powers includes (but is not limited to):

(a) referral of the parents to a SPIP, or in Wales a WT4C, or mediation;

(b) variation of the child arrangements order (which could include a more defined order and/or reconsidering the contact provision or the living arrangements of the child);

(c) an enforcement order or suspended enforcement order for unpaid work to be undertaken by the person in breach (see paragraph 17.1);

(d) an order for compensation for financial loss (under section 11O Children Act 1989) to be paid by the person in breach;

(e) committal to prison or a fine for contempt of court.

17.4 Section 11L Children Act 1989 provides that if the court finds that a breach has occurred without reasonable excuse it may order the non-compliant party to undertake unpaid work if that is necessary to secure compliance, and if the effect on the non-compliant party is proportionate to the seriousness of the breach. The court must also consider whether unpaid work is available in the locality and the likely effect on the non-

compliant party. It is good practice to ask Cafcass/Cafcass Cymru to report on the suitability of this order. Section 11L(7) also requires the court to take into account the welfare of the child who is the subject of the order for contact.

CHAPTER (III): GENERAL PROVISIONS

18.1 The remaining sections of this Practice Direction cover points that may be relevant at any or all stages of proceedings.

Timetable for the child

19.1 Court proceedings should be timetabled so that they can be resolved as soon as safe and possible in the interests of the child.

19.2 The court shall, at all times during the proceedings, have regard to the impact which the court timetable will have on the welfare and development of the child to whom the application relates. The court and the parties shall pay particular attention to the child's age, and important landmarks in the immediate life of the child, including –

- (a) the child's birthday;
- (b) the start of nursery/schooling;
- (c) the start/end of a school term/year;
- (d) any proposed change of school; and/or
- (e) any significant change in the child's family, or social, circumstances.

19.3 While it is acknowledged that an interim order may be appropriate at an early stage of court proceedings, cases should not be adjourned for a review (or reviews) of contact or other orders/arrangements, &/or for addendum section 7 report, unless such a hearing is necessary and for a clear purpose that is consistent with the timetable for the child and in the child's best interests. This might be the case, for example, where the court has determined that a further hearing is required to complete the Review stage.

19.4 When preparing a Child Impact Report, Cafcass / Cafcass Cymru (or, where appropriate, the local authority) is encouraged to make recommendations for the stepped phasing-in of child arrangements (i.e. recommendations for the medium and longer term future for the child) insofar as they are able to do so safely in the interests of the child concerned.

19.5 Where active involvement or monitoring is needed, the court may consider making –

- (a) an order under section 11H Children Act 1989 (Monitoring);
- (b) a Family Assistance Order under section 16 Children Act 1989) (in accordance with the Practice Direction 12M FPR, and if all the named adults in the order agree to the making of such an order and if the order is directed to a local authority, the child lives (or will live) within that local authority area or the local authority consents to the making of the order.

Key welfare principles

20.1 Section 1 of the Children Act 1989 applies to all applications for orders concerning the upbringing of children. This means that –

- (a) the child's welfare is the court's paramount consideration;
- (b) delay is likely to be prejudicial to the welfare of the child; and
- (c) a court order shall not be made unless the court considers that making an order would be better for the child than making no order at all.

20.2 Parties, and the court, must also have regard to the FPR in particular the following –

(a) FPR Rule 1. The 'overriding objective' will apply, so that the court will deal with a case justly, having regard to the welfare issues involved and specifically will –

- (i) ensure that the case is dealt with expeditiously and fairly;
- (ii) deal with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (iii) ensure that the parties are on an equal footing;
- (iv) save expense;
- (v) allot to each case an appropriate share of the court's resources, while taking account of the need to allot resources to other cases.

(b) rule 3, and Practice Direction 3A;

(c) FPR Part 4 'General Case Management Powers';

(d) FPR Part 15 (Representation of Protected Parties) and Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties in Family Proceedings);

(e) FPR Part 16 (Representation of Children) (and see also paragraph 13.17);

(f) FPR Part 18 (procedure for Other Applications in proceedings);

(g) FPR Part 22 (Evidence);

(h) FPR Part 25 (Experts) and the Experts Practice Directions;

(i) FPR 27.6 and Practice Direction 27A (Court Bundles).

20.3 Where a fact-finding hearing is required, this shall take place in accordance with Practice Direction 12J FPR.

20.4 The court shall exercise its powers flexibly.

Mediation and other non-court resolution: allowing the parties the time and opportunity to engage in non-court dispute resolution

21.1 Throughout the proceedings, the court will consider whether, and the extent to which, the parties can safely resolve some or all of the issues by means of non-court resolution (see Part 3A FPR).

21.2 The court should consider what options there are for resolution, for example:

- (a) may the case be suitable for intervention by Cafcass/Cafcass Cymru?

- (b) Should a referral for mediation be made?

- (c) Is collaborative law appropriate?

- (d) Should the parties be advised to complete a Parenting Plan?

- (e) Would the parties be assisted by attendance at a Separated Parents Information Programme, (or in Wales, Working Together For Children (WT4C)) or other Activity or intervention, whether by formal statutory provision under section 11A Children Act 1989 or otherwise?

Judicial continuity

22.1 All cases will be allocated to a level of judge within the Family Court as set out in this Practice Direction (see paragraph 9.1).

22.2 Continuity of judicial involvement in the conduct of proceedings from the initial allocation to the making of a final order should be the objective in all cases, including where the judge is a Deputy District Judge or Recorder.

22.3 Where the case has been allocated to be heard before lay justices, the expectation of judicial continuity should apply where –

- (a) there has been a hearing to determine findings of fact; or

- (b) a decision yet to be made in the interests of a child by a court depends upon rulings or judicial assessments already made in the proceedings,

in which case, wherever possible, the hearing shall be listed before the same lay justices; alternatively, it shall be listed before the same the legal adviser and at least one lay justice (preferably the chairman) to provide that continuity. Where a case is adjourned part-heard the court which resumes the hearing shall, wherever possible, be composed of the same lay justices as dealt with the previous part of the hearing (see rule 8 of the Family Court (Composition and Distribution of Business) Rules 2014).

Hearings: attendance and conduct

23.1 Unless the court otherwise directs, any party to proceedings, and any litigation friend of the parties must attend any hearing. If a child is a party and represented by a children's guardian, the children's guardian need not attend directions hearings if represented.

23.2 A party may choose to be accompanied at a hearing by a McKenzie Friend to support them. A McKenzie Friend is someone who can provide moral support at court for the party; take notes; help with case papers; quietly give advice on any aspect of the conduct of the case.) If so, the McKenzie Friend must comply with the relevant Guidance (currently set out in the Practice Guidance: McKenzie Friends (Civil and Family Courts): July 2010: <https://www.judiciary.uk/wp->

23.3 A Cafcass Officer, WFPO or local authority officer shall attend any hearing, subject to any direction of the court. A mediator, IDVA or Domestic Abuse Support Worker may attend where available and subject to any direction of the court.

23.4 If the court considers that a fact-finding hearing is necessary, it must conduct that hearing in accordance with revised Practice Direction 12J.

23.5 In respect of a hearing, consideration must be given by the court to:

(a) Part 3A of the FPR (vulnerable persons: participation in proceedings and giving evidence);

(b) whether to hold a fact finding hearing separately to, or at the same time as, a Decision Hearing;

(c) the witnesses needed to resolve the issues;

(d) how to minimise any risk of undue confrontation, harm or trauma occurring at, or resulting from, the hearing, while also ensuring that the hearing is fair to all parties, for example by:

(i) clearly identifying the issues that the court needs to investigate in order to make a welfare decision for the child;

(ii) the court considering how evidence is to be given and tested to ensure that the quality of a person's evidence is not diminished and that participants do not suffer significant distress;

(iii) the court (or Justices' Legal Adviser) putting questions to a party, rather than another party doing so;

(iv) setting clear ground rules for the conduct of the case and for how the hearing will be structured.

Consent orders

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

24.2 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, ideally for no longer than 28 days, to a fixed date. A written notification of this work is to be provided by Cafcass/Cafcass Cymru in the form of an updating Child Impact Report (which may include, if deemed relevant by Cafcass/Cafcass Cymru), a section 16A Children Act 1989 risk assessment). 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.

Capacity of Litigants

25.1 In the event that the judge has concerns about the capacity of a litigant before the court, the judge shall consider –

(a) the Guidance issued by the Family Justice Council in relation to assessing the capacity of litigants [Capacity to Litigate in Proceedings involving Children \(judiciary.uk\)](http://www.judiciary.uk); and

(b) Practice Direction 15B (Adults Who May Be Protected Parties and Children Who May Become Protected Parties In Family Proceedings).

Evidence

26.1 No evidence shall be filed in relation to an application until after the court has issued any case management decisions following the filing of the Child Impact Report, unless –

(a) it has been filed in support of a without notice application; or

(b) it has been directed by the court.

Using the court process appropriately

27.1 Consideration must be given by the court as to whether an application (including a repeat application) could be a sign of a party using the court process as a form of ongoing coercion or abuse against another party.

Relevant Family Application (definition)

28.1 A relevant family application for the purposes of this Practice Direction is an application that –

(a) is made to the court in, or to initiate, family proceedings; and

(b) is of a description specified in the Family Procedure Rules.

Annex

Explanation of terms

Abuse	Any behaviour which causes harm
Adjourn / Adjournment	Where the case, or a hearing, is directed to take place or continue at a later time (which might be on the same day or another day)
Allegation	A claim that someone has done something wrong
Applicant	The name given to someone who is asking the court for a court order
Application	How a person asks the court to do something
Cafcass	Cafcass stands for the 'Children and Family Court Advisory and Support Service'. Cafcass is independent of the courts, social services, education and health authorities and all similar agencies. Cafcass workers (sometimes called 'Family Court Advisers' or 'officers') are specialist social workers who help the court by making safeguarding checks, helping parties at the FHDRA to consider solutions, and if necessary writing reports for the court &/or monitoring arrangements after court.

Cafcass Cymru	This is Cafcass in Wales. Cafcass Cymru is part of the Department of Health and Social Services in the Welsh Government.
Child Arrangements Order	This is an order which will set out arrangements relating to (a) with whom a child is to live, spend time or otherwise have contact, and (b) when a child is to live, spend time or otherwise have contact with any other person.
Collaborative law	One of the ways of trying to sort out disputes away from court; each party appoints their own lawyer, and you and your lawyers all meet together to work things out face to face.
Consent order	When you have reached an agreement with the other parent, which resolves the dispute, the judge may agree to make that agreement into an order called a consent order
Contact centre	A place for a parent to see their child in a neutral and 'safe' environment. 'Supervised' contact centres provide a safe and neutral place for contact. 'Supported' contact centres, which are often run by volunteers, offer a neutral place for contact in cases where no safety concerns exist
Domestic abuse	This term has the meaning given in Practice Direction 12J.
Expert evidence	Evidence and opinions provided by someone with special skills and knowledge (but, for these purposes, does not refer to a social worker employed by, and giving evidence on behalf of, a local authority who is a party to the case).
Fact finding hearing	A court hearing set up for the court to decide on issues of fact or allegations which are in dispute.
Family Assistance order	An order of the court which allows Cafcass or local authorities to provide social-work support to help parties to establish contact arrangements which might otherwise fail
File	This means to send / deliver to the court office
FPR	Family Procedure Rules 2010; the rules of court which govern family cases.
Gatekeeper	The nominated District Judge and/or nominated Legal Adviser responsible for deciding which level of judge in the family court should initially deal with an application, acting alone or jointly
Hearing	The name given to a meeting or court appointment with a judge
Indirect contact	Any contact which is not face-to-face (for example, letters, birthday cards, phone calls).
IDVA	Independent Domestic Violence Advisors (IDVAs) are trained specialists who act as a single point of contact to

	<p>help victims of domestic abuse who are at the most risk of serious injury or death to become safe, ensuring their voice is heard by statutory agencies. An IDVA carries out a risk-assessment to identify a victim's level of risk of abuse (high, medium or standard) and supports them with immediate safety plans, such as accompanying them to court hearings, and implementing longer-term interventions to ensure their safety, such as accessing counselling or mental health services.</p>
Investigation under section 37	<p>Where it appears to a judge that a child is or may be at risk of significant harm and it may be appropriate for local authority children's services to apply for a court order giving them responsibilities towards a family, the judge can direct the local authority to investigate the child's circumstances</p>
Judge	<p>Where the term 'Judge' is used, this refers to any judge of the Family Court including lay justices (magistrates) and judges of the High Court</p>
LAA	<p>Legal Aid Agency; this is the body responsible for providing public funding for legal representation.</p>
McKenzie Friend	<p>A friend or other person who can help you prepare your case and go to court with you to give you support and take notes</p>
MIAM	<p>Mediation Information and Assessment Meeting. At this meeting, a trained mediator will explain what mediation is and how it works, explain the benefits of mediation and the likely costs, answer questions, assess whether the person is eligible for legal aid for mediation, assess whether mediation is suitable in the case. A MIAM should be held within 15 working days of contacting the mediator.</p>
Non-court resolution	<p>A method of solving disagreements outside of court proceedings.</p>
Part-heard	<p>Means a hearing which has started but which has not been finished within the day, and then continues on another day</p>
Party	<p>Someone involved in the court proceedings - either the person who has made the application, or the person(s) against whom the application has been made.</p>
Practice Direction	<p>This is a document which sets out good practice in supporting the FPR (Family Procedure Rules) or other Rules (see above) and /or may contain provisions which could otherwise be contained in rules of court and have same effect as rules</p>
Respondent(s)	<p>This is the name given to the person or people who receive the court application</p>
Rule 16.4 children's guardian	<p>A person (usually a specialist social worker) appointed by the court to look after the interests of a child in the case</p>

Safeguarding	Making sure that people are safe
Section 7 report	A welfare report, prepared under section 7 of the Children Act 1989; the report will be on such matters relating to the welfare of that child as are required to be dealt with in the report; the report may be in writing or oral.
Serve	Delivery of court documents
SPIP	Separated Parents Information Programme; this is available across England, and is for both parents and for grandparents.
Statement	A document setting out what you want to say to the Judge about the case. You should sign it and date it. What you say in the statement must be true.
WFPO	Welsh Family Proceedings Officer. A Cafcass officer in Wales.
WT4C	The Working Together For Children programme which runs in Wales – and is the equivalent of the SPIP (see above)