

FACTSHEET No 12:

Statutory Welfare Checklist



When a court is making a decision on any matters relating to a child, its main concern is always the welfare of the child.

The Statutory Welfare Checklist is in Section 1(3) of the Children Act 1989 and sets out 7 criteria that a court should consider when making a decision concerning a child.

1. the ascertainable wishes and feelings of the child concerned

The court will consider the wishes and feelings of the child taking into consideration the age and level of understanding they have. It will also take into consideration whether these wishes and feelings are the child's own or if any outside influences have come into play.

Where there is a difference between the wishes of the child and that of the parent or guardian, as long as the child is of an appropriate age to understand the circumstances and mature enough to make their own decisions, the court will consider the child's wishes above those of the parent or guardian.

2. their physical, emotional and educational needs

The Court will look at who is best placed to cater for the child's emotional, physical and educational needs. In most cases courts believe that a child should stay with their natural parents.

3. the likely effect of any change in the child's circumstances

Where a decision about a change in circumstances could cause more harm than good, courts will always look to make an order that has the least impact or effect on the child's life.

4. their age, sex, background and any characteristics of the child which the court considers relevant

Issues such as religion and culture may be considered by the court when making a decision. It may also take into account the parents or guardians hobbies and lifestyle choices if it feels they will have an impact on the child either immediately or in the future.

5. any harm which the child has suffered or is at risk of suffering

Courts will review details of any previous harm suffered by the child in addition to the risk of any potential future harm which could cause distress and impact on the health and development of the child.

6. how capable each of the parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs

The ability of the parents or guardians to provide care for the child will be considered by the court, including considering a child's particular needs arising from disability or illness or taking into consideration any lifestyle choices parents have that might have an impact on the needs of the child.

7. the range of powers available to the court under this Act in the proceedings in question.

When making its final decision the court will consider all of the legal powers it has at its disposal to ensure that the correct one is used in each specific case.

The Children and Families Act 2014 introduced into the Children Act a new section: **Welfare of the child: parental involvement** This requires the court to presume that the involvement of a parent in the life of the child will further the child's welfare, unless there is evidence to the contrary. Involvement is seen as involvement of some kind, either direct or indirect, but not any particular division of a child's time.

Will this make any difference, in practice?

The principle adopted in mediation is that the needs of the child includes, normally speaking, the need of a child to maintain a relationship with both parents on the presumption that the involvement of both parents in the life of the child will further its welfare. We believe this is also the principle applied by the courts.

So although we can see some merit to the parental involvement principle being made explicit, we are not sure whether it should make any real difference to the proper application of the welfare checklist in practice.

As mediators we always draw parents' attention to the welfare checklist and the legal provisions of the Children's Act. But, actually, these general principles are little more than common sense. We believe most parents are able to apply these kinds of general principles to their situation in a way that enables their children to enjoy the best possible relationship with both parents.

A significant amount of international research shows that the quality of the relationship between a child and its parents is determined not by the number of nights the child spends with either parent, but by the extent to which children feel that their parents co-operate in respect of their living arrangements.

That co-operation is what we aim to achieve in mediation. It is not something that can be imposed by statute law or the courts.