PREPARED FOR THE FAMILY JUSTICE REFORMS?

THE SINGLE FAMILY COURT

The single family court came into effect on 22nd April 2014. It was created under the Crime and Courts Act 2013. The principal effect of this major structural change is that the family law jurisdiction, currently exercised by the county court and the magistrates' court will be transferred to the family court, along with much of the business currently undertaken by High Court judges. The family court will exercise jurisdiction in all family proceedings, except certain proceedings specifically reserved to the High Court (eg international child abduction). The court's powers are to be aligned across all levels of judiciary and may be exercised by any judge of the family court including magistrates, subject to rules or directions about the allocation of particular types of case to a specified tier of judge. There are no longer separate care centres an family hearing centres.

Each area has a Designated Family Centre (DFC) in a central location. The Designated Family Judge (DFJ) sits at the principal location at which hearings take place. There may be one or more hearing centres. There is a single point of entry for the issue of applications for the entire local family court. There is centralised and unified administration, principally at the DFC. There will be:

a) Centralised back office,

b) Centralised gate-keeping and allocation team, and

c) Centralised listing.

Munby J has said that the principles in b) and c) will be subject to local variation where circumstances require "so long as the basic principles of the single point of entry and a centralised and unified administration for the entire local family court are not compromised." He has said that because of its complexities such variations will be necessary in London.

The most visible changes to the courts are in London. The Principal Registry of the Family Division as First Avenue House in Holborn has become the new Central Family Court. The magistrates from Wells Street Court have moved into the building as has the Court of Protection. HHJ Altman is the DFJ for the Central Family Court. The Family Drug and Alcohol Court is to continue as part of the Central Family Court.

Two new courts for West and East London have also opened. The West London Court is based at Hatton Cross as the Designated Family Centre with Her Honour Judge Carol Atkinson as the Designated Family Judge (DFJ). The premises for the East London Family Court have fallen through so the administration and some of the judges of the East London

Family Court will be based at Gee Street with the other judges sitting at the Royal Courts of Justice. The new DFJ is Her Honour Judge Judith Rowe.

Family work has stopped in Lambeth, Clerkenwell and Shoreditch, Wandsworth, Woolwich and Bow County Courts. Several Family Proceedings Courts have closed including Stratford, Uxbridge, Brent and Bexley.

In areas outside London the experience for the vast majority of court staff, judiciary, practitioners and litigants is likely to be almost identical to what happens now – the same people will be doing the same thing, mostly in the same place. Longer term the government will be able to deploy judiciary more efficiently, as well as close and amalgamate court buildings with much less difficulty. It allows for future cuts to be made much more easily.

Judges of the family court and allocation of work

The family court shall be composed of:

a) One of the following:

   i) A judge of district judge level;

   ii) A judge of circuit judge level; or

   iii) A judge of High Court judge level; or

b) Two or three lay justices (preferably a man and a woman).

A justices' clerk or an assistant to a justices' clerk may make a decision on allocation alone or with a district judge or circuit judge. Initially it was likely to have just been the justices' clerk or assistant but Ryder J's modernisation plans introduced the idea of "gatekeeping teams". Ryder J expected the new system to preserve the right to appeal to the circuit judge on a refusal to allocate to the preferred level of judge. The applicant should be able to express a preference as the level of judge on the issue of proceedings but a litigant in person might benefit from the court determining the right level of judicial expertise for the case.

While justices' clerks are not judges of the family court by virtue of Justices' Clerks and Assistants (Amendment) Rules 2014 they are able to carry out specified functions of the family court or of a judge of the court. There are certain aspects of undefended divorces or dissolution of civil partnerships which might be part of their functions. The district judge's box work on special procedure is seen as an inefficient use of their time.

THE FAMILY COURTS (COMPOSTION AND DISTRIBUTION OF BUSINESS) RULES 2014.

Schedule 1 sets out the allocation level of different types of proceedings. The relevant ones as far as mediators are concerned are set out in the table below. The schedule needs to be checked to see whether the type of proceedings have been allocated and if not, then the gatekeepers will be deciding the level of judge based on:

a) The need to make the most effective and efficient use of the local judicial resource and the resource of the High Court bench that is appropriate, given the nature and type of application;

b) The need to avoid delay;

c) The need for judicial continuity;

d) The location of the parties or any child relevant to the proceedings; and

e) Complexity.

TYPE OF PROCEEDINGS	**LEVEL OF JUDGE**
Matrimonial Causes Act 1973	District Judge
Children Act 1989 Schedule 1	District judge
Civil Partnership Act 2004	District judge

There is no mention of s8 Children Act applications in the Schedule so the decision about which level of judge is appropriate will be decided by the gatekeepers. If proceedings are ongoing then an application will be allocated to the level of judge who is dealing with the ongoing proceedings. The lay justices are prohibited from granting certain remedies in the family court including freezing injunctions (Schedule 2).

The justices' clerks are able to reconsider on his or her own initiative the allocation of a case. This is intended to provide for occasions on which a justices' clerk (as the case manager for a case allocated to magistrates) considers, possibly on the receipt of a Cafcass safeguarding letter prior to a FHDRA, that a case should be heard by a district judge.

The pool of potential family judges has been widened but it is likely that the current arrangements for ticketing or nomination of judges to undertake particular types of work will continue in some form, to ensure appropriate training and experience. It is anticipated that the great majority of family proceedings will continue to be dealt with by circuit judges, district judges and magistrates sitting as judges of the family court. Where appropriate (eg due to exceptional difficulty or complexity) a case may be allocated for hearing by a High Court judge sitting in the family court, but it will no longer be necessary, or even appropriate, to transfer a case to the High Court to secure a hearing before a High Court judge.

Where a decision of the family court has been made by a person in the top classes (High Court judges and above) that decision must be followed by the judge in the lower classes and by legal advisers and assistant legal advisers. The provisions effectively re-create for the family court the rules of precedent which provide that, for instance, a district judge is bound to follow a decision of a High Court judge.

<u>Financial Remedies Unit at the Central Family Court</u>

A newly created Financial Remedies Unit (FRU) has been set up consisting of specialist circuit and district judges. The intention is that FRU will focus on the expeditious hearing of financial cases in a more efficient and effective way whilst preserving the high quality of decision making that has become the hallmark of the PRFD. 3 full time financial courts dealing with First Appointments, FDRs and interim applications are operating – initially 8 courts in total have been assigned.

Some policies are already in place which include the creation of a dedicated FRU email address and dedicated named court officers. Where parties can agree directions which avoid the First Appointment they can follow an alternative procedure known as the Accelerated First Appointment Procedure. This at the moment is being run as a pilot project. It effectively allows the parties to email into the court certain documents including a draft consent order at least 14 days from the date of the First Appointment. The consent order contains a note of the costs spent already by the parties and a date for the FDR should be obtained before the paperwork is submitted. A district judge will consider the paperwork and a response given by email at least 7 days prior to the date of the First Appointment.

There is an aspiration that the FDR will be listed approximately 3 months after the First Appointment and a Final Hearing approximately 4 months after the FDR. There is also an aspiration that the same judge will take all hearings in a case between and including the First Appointment and the FDR and another judge dealing with all hearings after the FDR including the Final Hearing.

CHILD ARRANGEMENT PROGRAMME (CAP)

The introduction of the CAP coincides with start of the single family court. The CAP is in relation to private law children disputes and is designed to create a more accessible system with greater emphasis on the pre-proceedings stage and non-court dispute resolution. The CAP was drafted by the Private Law Working Group chaired by Mr Justice Cobb. The name of the programme is designed to tie in with the new child arrangement orders under the Children And Families Act 2014 but it is also a reminder that the child is at the centre of the process.

Residence and contact orders have gone out with the bath water and are replaced by two types of child arrangement orders: the first can regulate where and with whom the child lives and the second where and with whom the child spends his or her time. The idea is to reduce hostility between parents who attach considerable significance to a label (particularly where residence was concerned).

I have set out in Appendix one the final version of the Practice Direction 12(B) CAP 2014 issued 22nd April 2014.

<u>Changes to MIAMs and the new forms</u>

The new MIAMs procedure is set out in the revised Practice Direction 3A (see Appendix Two). The most important point is that the Applicant is now **required** to attend a MIAM

whilst the Respondent is **expected** to have attended. The exemptions to attending have also been changed and the final version settled on following consultation includes that the parties are participating in another form of non-court dispute resolution relating to the same or substantially the same dispute. Solicitors are likely to argue that their negotiations are a form of non-court dispute resolution and they will be able to sign the form without referring to a mediator.

The form FM1 is only used in limited circumstances (see separate table produced). Mainly the mediator will be signing part of either the Form C100 in Children Act proceedings or part of the Form A in financial remedy proceedings. The parts of the form that we need to sign are identical but what it has meant is that the Form A which used to be a single page document has turned into a 12 page document!

APPENDIX ONE

PRACTICE DIRECTION 12(B) CAP 2014

1. When does the Child Arrangements Programme Apply?

   1.1 The Child Arrangements Programme ("the CAP") applies where a dispute arises between separated parents and/or families about arrangements concerning children.

   1.2 The CAP is designed to assist families to reach safe 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, the CAP encourages swift resolution of the dispute through the court.

   1.3 It is well-recognised that negotiated agreements between adults enhance long-term co-operation, and are better for the child concerned. Therefore, separated parents and families are strongly encouraged to attempt to resolve their disputes concerning the child outside of the court system. This may also be quicker and cheaper.

2. Signposting services for families

   2.1 Services: Where a dispute arises in relation to a child, or children, parents and families are encouraged to obtain advice and support as soon as possible.

   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:

      (1) For general advice on separation services and options for resolving disputes: www.sortingoutseparation.org.uk

(2) To find the nearest mediation service including a MIAM: www.familymediationhelpline.co.uk

(3) For advice to Litigants in Person ("LIPs") on separation: the form "CB7": www.cafcass.gov.uk/media/168195/cb7-eng.pdf

(4) For Cafcass (England): www.cafcass.gov.uk;

(5) For Cafcass Cymru (Wales): www.wales.gov.uk/cafcasscymru

(6) For advice on legal aid for dispute resolution services, advice and representation at court and to find a legal aid solicitor or mediator: www.gov.uk/check-legal-aid

(7) For advice about Contact Centres, what they offer and where they are: www.naccc.org.uk

(8) For general advice about sorting out arrangements for children, the use of post-separation mediation and/or going to court: www.advicenow.org.uk

(9) For general advice about sorting out arrangements for children: www.the parentconnection.org.uk

(10) For court and other forms: www.gov.uk

(11) For help at court, the Personal Support Unit: www.thepsu.org

2.4 Parenting plan: A parenting plan is widely recognised as being a useful tool for separated parents to use 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 a dispute which has arisen. It is likely to be useful in any event for assisting arrangements between separated parents.

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:

(1) Cafcass "Putting Your Children First: A Guide for Separated Parents"

(2) A draft Parenting Plan to complete: www.cafcass.gov.uk/mediat/190788/parenting_plan_final_web.pdf

2.8 Publically funded mediation and/or 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:

(1) 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.

(2) 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.

(3) Parties may find out if they are likely to be eligible for legal aid at the following ling: www.gov.uk/check-legal -aid

(4) To find the nearest publicly funded mediation service a client can use the find a legal advisor or family mediator justice website at the following link: 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: www.justice.gov.uk/legal-aid-for-private-family-matters

3. 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 the relevant terms is attached in the Annex at the end of this document.

4. The child in the dispute

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 (www.cafcass.gov.uk/mediat/179714/fyypb_national_charter_1013.pdf)

4.3 The child or young person should feel that their needs, wishes and feelings have been considered in the arrangements which affect them.

4.4 Children should be involved, to the extent which is appropriate given their age and level of understanding, in making the arrangements which affect them. This is just a relevant where

(1) The parties are making arrangements between themselves (which may be recorded in a Parenting Plan), as when

(2) Arrangements are made in the context of dispute resolution outside away from the court, and/or

(3) 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 may want to know the child's view. This may be communicated to the judge in one of a number of ways:

(1) 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;

(2) By the child being encouraged (by the Cafcass officer of WFPO, or a parent or relative) to write a letter to the court;

(3) In the limited circumstances described in section 18 below, by the child being a party to the proceedings; and/or

(4) 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)

5. <u>Resolution of disputed arrangements for children</u>

5.1 Dispute Resolution Services, including mediation, are available to provide opportunities for parents and families to work in a positive and constructive way, and should be actively considered and attempted where it is safe and appropriate to do so. Information about mediation and other dispute resolution services is available widely (see "Signposting Services for Families" – section 2 above).

5.2 It is not expected that those who are the victims of domestic violence and abuse should attempt to mediate or otherwise engage in dispute resolution services away from the court. It is also recognised that drug and/or alcohol misuse and/or mental illness are likely to prevent couples from making safe use of mediation or similar services. These risk factors are likely to have an impact on arrangements for the child. Court orders, including those make 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 (below), before making a family application to the court (a "relevant family application" as defined in paragraph 23 below), the person who is considering making such application must attend a family MIAM. At the meeting, information will be provided about mediation of disputes of the kinds to which the relevant family application relates, ways in which the dispute may be resolved otherwise than by the court, and the suitability of mediation, or of any such other way of resolving the dispute, for trying to resolve any dispute to which the particular application relates.

5.4 The proposed applicant (or that person's legal representative) must contact a family mediator to arrange attendance at this meeting, at which family mediation and other forms of dispute resolution will be discussed.

5.5 A family mediator means a mediator who is a member of a mediation organisation affiliated to the Family Mediation Council (and is therefore subject to the Family Mediation Council's Code of Conduct), and is authorised to undertake MIAMs by the professional practice consultant supervising the mediator's practice.

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

5.7 Information on how to find a family mediator may be obtained from local family courts or national online database (see "Signposting Services for Families" – section 2 above).

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

5.9 The proposed applicant, and where they agree to do so, the proposed respondent, should then attend a Mediation Information and Assessment Meeting arranged by the mediator. If the parties are willing to attend together, the meeting may be conducted jointly, but where necessary separate meetings may be held.

5.10 The Family Mediation Council sets the requirements for mediators who conduct MIAMS. In summary, a mediator who arranges a MIAM with one or more parties to a dispute should 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 Evidence provided by one party or both, of attempts to resolve a dispute and to focus on the needs of the child is important evidence to introduce at the MIAM, or any subsequent court application.

6. Resolution of disputed arrangement s for children through the Court

6.1 Even if proceedings are before the court, the judge is obliged to consider, at every stage, whether another form of dispute resolution (away from the court) is appropriate.

6.2 The parties should also actively consider dispute resolution away from the court even if proceedings are issued and are ongoing.

6.3 If the court considers that another form of dispute 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:

(1) To enable the parties to obtain information and advice about other forms of dispute resolution; and

(2) Where the parties agree, to enable another form of dispute resolution to take place.

6.4 It is to be noted that 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.

7. Local Good Practice

7.1 The CAP is designed to provide a framework for a consistent approach to the resolution of the issues in private family law in England and Wales.

7.2 Local practices and initiatives can be operated in addition to, and within, the framework.

8. Application to court

8.1 With the exception of those cases which are urgent, where an application is made for emergency relief (see “Urgent and Without Notice Applications” section 12 below) an application to court for determination of issues concerning a child can be made only after a MIAM has taken place (at which meeting other forms of dispute resolution services will have been considered).

8.2 The application for a child arrangements order or other Children Act 1989 private law order shall be made on the relevant prescribed form.

8.3 The Applicant will be required, on the form C100, to confirm attendance at a MIAM or specify that an exemption applies.

8.4 Pages 12 to 13 of the C100 must be completed and signed by the mediator, where either:

(1) The applicant has attended a MIAM; or

(2) The applicant has not attended a MIAM and the mediator is satisfied that

(a) Mediation is not suitable because the respondent is unwilling to attend a MIAM;

(b) Mediation is not suitable as a means of resolving the dispute because the respondent failed without good reason to attend a MIAM; or

(c) Mediation is otherwise not suitable as a means of resolving the dispute.

8.5 In all other cases, the applicant or the applicant's legal adviser should complete page 14 and 15 of the C100 (this applies of the applicant claims an exemption from attending a MIAM).

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

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

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

i) A copy of the Application Form C100 (together with Supplemental Information Form C1A) (if provided) (references to form C1A are to be read as form C100A following the introduction of this replacement form),

ii) The Notice of Hearing,

iii) The Acknowledgment Form C7

iv) A blank Form C1A (if required),

v) Information leaflets for the parties (which must include the CB7 leaflet).

8.9 Unless the applicant has specifically requested to serve the application upon the respondent themselves the Court will serve the respondent with:

i) A copy of the application form C100 (together with supplemental Information Form C1A) (if provided) ;

ii) The Notice of Hearing;

iii) The Acknowledgment Form C7;

iv) A blank form C1A;

v) The Certificate of Service Form C9;

vi) Information leaflet.

8.10 The court shall send to Cafcass/ Cafcass cymru a copy of the Form C100, and the c6 Notice of Hearing no later than 2 working days after the date of issue. This will be in electronic format where possible.

8.11 The court shall not sent to Cafcass/Cafcass Cymru any other application under the Children Act 1989, or any other private law application, unless the court has made a specific direction requesting the assistance of Cafcass/Cafcass Cymru. Therefore, any application which is not in form C100 or which does not contain a direction to Cafcass/Cafcass Cymru will be returned to the court at which the application has been issued.

9. <u>Allocation and Gatekeeping</u>

9.1 It is important that the form C100 is fully completed especially on pages 1,3, 8 and 10 (and in the provision of telephone numbers 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.

9.2 The application shall be considered by the Gatekeeping Judge (a Legal Adviser and/or District Judge) ("the Gatekeeper(s)") within one working day of the date of receipt in accordance with the appropriate Rules of Procedure.

9.3 An application for a relevant family order shall be allocated to a level of judge in the Family Court in accordance with the President's Guidance on Allocation and Gatekeeping (Private Law). The allocation shall be governed by the Allocation Schedule.

9.4 The Gatekeeper(s) shall be able to issue Directions on Issue (on Form CAP01) in the following circumstances:

(1) Where it appears to the Gatekeeper(s) that the Applicant has not attended a MIAM or that the reason for not attending a MIAM is not satisfactory, the Gatekeeper(s) can direct the Applicant to attend a MIAM before the FHDRA;

(2) Where it appears that an urgent issue requires determination, the Gatekeeper(s) may give directions for an accelerated hearing;

(3) Exceptionally where it appears that directions need to be given for the service and filing of evidence, the Gatekeeper(s) may give directions for the filing of evidence.

10. Judicial continuity

10.1 All private law cases will be allocated to a level of justice/judge within the Family Court upon issue.

10.2 Continuity of judicial involvement in the conduct of proceedings from the FHDRA to the making of a final order should be the objective in all cases.

10.3 Where the case has been allocated to be heard before magistrates, the expectation of judicial continuity should apply where

(1) There has been a hearing to determine findings of fact,

(2) 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, the legal adviser and at least one member of the magistrates bench (preferably the chairman) should provide that continuity.

11. Key welfare principles

11.1 Section 1 of the Children Act 1989 applies to all applications for orders concerning the upbringing of children: This means that:

(1) The child's welfare is the court's paramount consideration;

(2) Delay is likely to be prejudicial to the welfare of the child; and

(3) 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.

11.2 The principles contained in the following provisions of the FPR shall also apply:

(1) Rule 1 The "overriding objective" will apply, so that the court will

(a) Deal expeditiously and fairly with every case;

(b) Deal with a case in ways which are proportionate to the nature, importance and complexity of the issues;

(c) Ensure that the parties are on an equal footing;

(d) Save unnecessary expense;

(e) Allot to each case an appropriate share of the court's resources, while taking account of the need to allot resources to other cases.

(2) Rule 3, and Practice Direction 3A (but note that the Annexes have been incorporated into this document);

(3) Rule 4 “Case Management Powers”;

(4) 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).

(5) FPR Part 16 (Representation of Children) (and see also section 18 below)

(6) FPR part 22 (Evidence);

(7) FPR Part 25 (Experts);

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

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

11.4 The court shall exercise its powers flexibly. The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing.

12. Urgent/Without Notice Applications

12.1 Where an order is sought as a matter of exceptional urgency, an application may be made to the court for an emergency order without the requirement for the applicant to have attended a MIAM.

12.2 Applications to court made “Without Notice” to the respondent shall be determined by reference to the provisions of Practice Direction 18A paragraph 5.1, and Practice Direction 20A, paragraph 4.3-4.5FPR (noting particularly paragraph 4.3 (c).

12.3 Without Notice Orders should be made only exceptionally, and where:

(1) If the applicant were to give notice to the respondent this would enable the respondent 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 are very rare indeed; or

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

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

12.4 hearing should specify:

(1) The reason(s) why the order has been made without notice to the respondent,

(2) 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

(3) The right of the respondent to apply to vary or discharge the order.

12.5 Following any urgent/"without notice" hearing, unless all issues have been determined or the application has been dismissed without any further directions given, the judge shall refer the application to the Gatekeeping team responsible for the area in which the child resides for a decision on allocation and venue of hearing, whereupon a copy of the C100 shall be sent to Cafcass for safeguarding checks, and (depending on the Gatekeeping decision) the file shall be sent to the court where future hearings will take place (if at a different court centre from the court where the urgent hearing occurred).

13. Safeguarding

13.1 In applications for child arrangements orders (but not necessarily for specific issue or prohibited steps orders), before the FHDRA (see section 14 below) Cafcass/Cafcass Cymru shall identify any safety issues by the steps outlined below.

13.2 Such steps shall be confined to matters of safety. The Cafcass Officer or (in Wales) the Welsh Family Proceedings Officer (WFPO) shall not discuss with either party before the FHDRA any matter other than one which relates to safety. The parties will not be invited to talk about other issues, for example relating to the substance of applications or replies or about issues concerning matters of welfare or the prospects of resolution. If such issues are raised by either party, they will be advised that such matters will be deferred to the FHDRA when there is equality between the parties and full discussion can take place which will be a time when any safety issues that have been identified can also be taken into account.

13.3 In order to inform the court of possible risks of harm to the child Cafcass/Cafcass Cymru will carry out safeguarding enquiries. For all child arrangements orders this will include seeking information from local authorities, and carrying out police checks on the parties. For all other applications received from the court on the form C100, Cafcass/Cafcass Cymru will carry out a screening process and will undertake those checks if the professional judgment of the Cafcass officer, or the WFPO in Wales, such checks are necessary.

13.4 Cafcass/Cafcass Cymru will, if possible, undertake telephone risk identification interviews with the parties and if risks of harm are identified, may invite parties to meet separately with the Cafcass officer, or WFPO in Wales, before the FHDRA to clarify any safety issues.

13.5 Cafcass/Cafcass Cymru shall record and outline any safety issues for the court, in the form of a Safeguarding letter (in Wales, this is called a "Safeguarding report").

13.6 The Cafcass officer, or WFPO, will not initiate contact with the child prior to the FHDRA. If contacted by a child, discussions relating to the issues in the case will be postponed to the day of the hearing or after when the Cafcass officer or WFPO will have more knowledge of the issues.

13.7 Within 17 working days of receipt by Cafcass/Cafcass Cymru of the application, and at least 3 working days before the hearing, the Cafcass Officer or WFPO shall report to the court, in a Safeguarding letter/report, the outcome of the risk identification work which has been undertaken.

13.8 Further, Cafcass and Cafcass Cymru are required, under section 16A Children Act 1989, to undertake (and to provide to the court) risk assessments where an officer of the Service (Cafcass officer or WFPO) suspects that a child is at risk of harm.

14. First Hearing Dispute Resolution Appointment (FHDRA)

14.1 The FHDRA may (where time for service on the respondent has been abridged) take place within 4 weeks, but should ordinarily take place in week 5 following the issuing of the application; at the latest it will take place in week 6 following the issuing of the application.

14.2 The respondent shall have at least 10 working days' notice of the hearing where practicable, but the court may abridge this time.

14.3 The respondent should file a response on the Forms C7/C1A no later than 10 working days before the hearing, unless the court has abridged this time.

14.4 Unless the court otherwise directs, any party to proceedings, and any litigation friend of the parties must attend this (and any other) 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.

14.5 A party may choose to be accompanied at this (or any) hearing by a McKenzie Friend to support them. 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: www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf).

14.6 A Cafcass Officer of WFPO shall attend this hearing. A mediator may attend where available.

14.7 The Cafcass officer of WFPO shall, where practicable, speak separately to each party at court before the hearing in particular where it has not been possible to conduct a risk identification interview with either party.

14.8 The FHDRA provides an opportunity for the parties to be helped to an understanding of the issues which divide them, and to reach agreement. If agreement is reached,

(1) The court will be able to make an order (which in many cases will be a final order) reflecting that agreement;

(2) The court will assist the parties (so far as it is able) in putting into effect the agreement/order in a co-operative way.

14.9 The FHDRA is not privileged. That is to say that what is said at the FHDRA may be referred to at later court hearings.

14.10 By the time of the hearing, the court should have the following documents:

(a) C100 application, and C1A (if any);

(b) Notice of Hearing;

(c) C7 response and C1A (if any);

(d) Cafcass/Cafcass Cymru safeguarding letter/report.

14.11 At the FHDRA the court, in collaboration with the Cafcass Officer, or WFPO, will seek to assist the parties in conciliation and in resolution of all or any of the issues between them. Any remaining issues will be identified, the Cafcass Officer or WFPO will advise the court of any recommended means of resolving such issues, and directions will be given for the future resolution of such issues. At all times the decisions of the court and the work of the Cafcass Officer or WFPO will take account of any risk or safeguarding issues that have been identified.

14.12 The court should have information obtained through safeguarding checks carried out by Cafcass/Cafcass Cymru, to ensure that any agreement between the parties, or any dispute resolution process selected, is in the interests of the child and safe for all concerned.

14.13 The FHDRA will be conducted in the most appropriate way in the interests of the child. In particular the court shall consider the following matters:

- Safeguarding, in this respect:

(a) The court shall inform the parties of the content of the safeguarding letter/report provided by Cafcass/Cafcass Cymru, where it has not already been sent by Cafcass/Cafcass Cymru to the parties, unless it considers that to do so would create a risk of harm to a party or the

child. The court may need to consider whether, and if so how, any information contained in the checks should be disclosed to the parties if Cafcass/Cafcass Cymru have not disclosed the letter/report. The court will further consider:

(b) Whether a fact finding hearing is needed to determine allegations which are not accepted, and whose resolution is likely to affect the decision of the court.

(c) Risk identification followed by active case management including risk assessment, and compliance with the Practice Direction 13th January 2009: Residence and Contact Orders: Domestic Violence and Harm. Further:

(d) If the safeguarding information is (contrary to the arrangements set out in the CAP) not available at the FHDRA, the court should adjourn the application until the safeguarding checks are available. Interim orders (unless to protect the safety of a child) should not be made in the absence of safeguarding checks. And further:

(e) Where the court so directs, a safeguarding letter/report 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.

- MIAM, specifically:

(a) Whether the applicant has complied with the requirement (or direction) to attend a MIAM;

(b) If not, whether the proceedings ought to be adjourned for the applicant to attend a MIAM, with or without the respondent;

(c) Whether the respondent ought to attend a MIAM either jointly with the applicant or alone.

- Mediation, At-Court Mediation assessment, and other Dispute Resolution: allowing the parties the time and opportunity to engage in dispute resolution services away from the court process.

(a) At the FHDRA, the judge will specifically consider whether, and the extent to which, the parties can safely resolve some or all of the issues with the assistance of the Cafcass Officer, WFPO or a mediator.

(b) There will be, at every FHDRA, a period in which the Cafcass Officer, or WFPO, will seek to conciliate and explore with the parties the resolution of all or some of the issues between them if safe to do so. The procedure to be followed in this connection at the hearing will be determined by local

arrangements between the Cafcass manager, or equivalent in Wales, and the Designated Family Judge or the Justices' Clerk where appropriate.

(c) The court will further consider: What is the result of any such meeting at court?

(d) What other options there are for resolution eg may the case be suitable for further intervention by Cafcass/Cafcass Cymru; should a referral from mediation be made? Is collaborative law appropriate? Should the parties be advised to complete a Parenting Plan?

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

(f) An at-court assessment of the suitability of the parties for mediation.

- Consent orders

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

(b) 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 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 Safeguarding letter/report or if deemed relevant by Cafcass/Cafcass Cymru, a section 16A risk assessment in accordance with the timescale specified by the court. 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.

- Reports:

(a) Reports 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 (Dispute Resolution) above.

(b) 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 a dispute as to with whom the child should live, spend time or otherwise have contact with. A report can also be ordered:

i) If there is an issue concerning the child's wishes, and/or

ii) If there is an alleged risk to the child, and/or

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

(c) 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.

(d) In determining whether a request for a report should be directed to the relevant 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.

(e) The court may further consider whether there is a need for an investigation under Section 37 Children Act 1989.

(f) 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.

(g) Is any expert evidence required? If so, it can only be ordered in compliance with Part 25 of the FPR. This is the latest point at which consideration should be given to the instruction of an expert in accordance with Rule 25.6(b) of the FPR; 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.

- Wishes and feelings of the child:

(a) In line with the Family Justice Young People's Board Charter, children and young people should be at the centre of all proceedings.

(b) The child or young person should feel that their needs, wishes and feelings have been considered in the court process.

(c) Each decision should be assessed on its impact on the child.

(d) The court must consider the wishes and feelings of the child, ascertainable so far as is possible in light of the child's age and understanding and circumstances. Specifically, the court should ask:

i) Is the child aware of the proceedings?

ii) Are the wishes and feelings of the child available, and/or to be ascertained (if at all)?

iii) How is the child to be involved in the proceedings, and if so, how; for example, should they meet the judge/magistrates? Should they be encouraged to write to the court, or have their views reported by Cafcass/Cafcass Cymru or by a local authority?

iv) Who will inform the child of the outcome of the case, where appropriate?

- Case Management

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

(b) Should the matter be listed for a fact-finding hearing?

(c) Are there any interim orders which can usefully be made (e.g. indirect, supported or supervised contact) pending Dispute Resolution Appointment or final hearing?

(d) What directions are required to ensure the application is ready for a Dispute Resolution Appointment or final hearing – statements, reports etc.?

(e) Should the application be listed for a Dispute Resolution Appointment (it is envisaged that most cases will be so listed)?

(f) Should the application be listed straightaway for a final hearing?

(g) Judicial continuity should be actively considered (especially if there has been or is to be a fact finding hearing or a contested interim hearing).

- Allocation

(a) The allocation decision will be considered by the court;

(b) If it is necessary to transfer/re-allocate the case, the court shall state the reasons for transfer/re-allocation, and shall specifically make directions for the next hearing in the court.

- Order (other than a final order): Where no final agreement is reached, and the court is required to give case management directions, the following shall be included on the order [CAP02]:

(a) The issues about which the parties are agreed;

(b) The issues that remain to be resolved;

(c) The steps that are planned to resolve the issues;

(d) Any interim arrangements pending such resolution, including arrangements for the involvement of children;

(e) The timetable for such steps and, where this involves further hearings, the date of such hearings;

(f) A statement as to any facts relating to risk or safety; in so far as they are resolved the result will be stated and, in so far as not resolved, the steps to be taken to resolve them will be stated.

(g) Whether the parties are to be assisted by participation in mediation, Separated parents Information programme, WT4C, or other types of parenting intervention, and to detail any contact activity directions or conditions imposed by the court;

(h) The date, time and venue of the next hearing;

(i) Whether the author of any section 7 report is required to attend the hearing, in order to give oral evidence. A direction for the Cafcass officer of WFPO to attend corut will not be made without first considering the reason why attendance is necessary, and upon what issues the Cafcass officer or WFPO will be providing evidence.

(j) Where both parties are Litigants in person, the court may direct HMCTS to produce a Litigant in Person bundle;

(k) The judge will, as far as possible, provide a copy of the order to both parties before they leave the courtroom, and will, if necessary, go through and explain the contents of the order to ensure they are clearly understood by both parties.

15. <u>Timetable for the child</u>

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

15.2 The judge 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 judge 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 the school term/year;

(d) Any proposed change of school; and/or

(e) Any significant change in the child's family, or social, circumstances.

15.3 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 such other orders/arrangements, and/or for addendum section 7 reports, 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.

15.4 When preparing a section 7 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;

15.5 Where active involvement or monitoring is needed, the court may consider making:

(1) An order under section 11H Children Act 1989 (Cafcass Monitoring);

(2) 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.

16. Capacity of Litigants

16.1 In the event that the judge has concerns about the capacity of a litigant before the court, the judge shall consider the Guidance issued by the Family Justice Council in relation to assessing the capacity of litigants.

17. Evidence

17.1 No evidence shall be filed in relation to an application until after the FHDRA unless:

(1) It has been filed in support of a without notice application.

(2) It has been directed by the court on the Directions on Issue (CAP01);

(3) It has been directed by the court for the purposes of determining an interim application.

18. Rule 16.4 children's guardians

18.1 The court should be vigilant to identify the cases where a rule 16.4 children's guardian should be appointed. This should be considered initially at the FHDRA.

18.2 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 before the hearing 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.

18.3 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 12.24 of the FPR) appoint a person other than the Official Solicitor, unless the Official Solicitor expressly consents.

18.4 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.

19. Dispute Resolution Appointment (DRA)

19.1 The court shall list the application for a Dispute Resolution Appointment (DRA) to follow the preparation of the section 7 or other expert report, or Separated Parenting Information Programme (SPIP) (or WT4C in Wales), it this is considered likely to be helpful in the interests of the child.

19.2 The author of the section 7 report will only attend this hearing if directed to do so by the court.

19.3 At the DRA the court will:

(1) Identify the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the DRA;

(2) Consider whether the DRA can be used as a final hearing;

(3) Resolve or narrow the issues by hearing evidence;

(4) Identify the evidence to be heard on the issues which remain to be resolved at the final hearing;

(5) Give final case management directions including:

(a) Filing of further evidence;

(b) Filing of a statement of facts/issues remaining to be determined;

(c) Filing of a witness template and/or skeleton arguments;

(d) Ensuring compliance with Practice Direction 27A (the Bundles Practice Direction);

(e) Listing the Final Hearing.

20. Fact-finding hearing

20.1 If the court considers that a fact-finding hearing is necessary it shall conduct that hearing in accordance with revised Practice Direction 12J

21. Enforcement of Child Arrangements

21.1 On any application for enforcement of a child arrangements order, the court shall:

- Consider whether the facts relevant to the alleged non-compliance are agreed, or whether it is necessary to conduct a hearing to establish the facts;
- Consider the reasons for any non-compliance;
- Consider how the wishes and feeling of the child are to be ascertained;
- Consider whether advice is required from Cafcass/Cafcass Cymru on the appropriate way forward;
- Assess and manage any risks of making further or other child arrangements orders;
- Consider whether a SPIP or referral for dispute resolution is appropriate;
- Consider whether an enforcement order may be appropriate, and
- Consider the welfare checklist.

21.2 The Gatekeepers 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.

21.3 The Gatekeepers shall, if considered necessary, direct that further safeguarding checks are required from Cafcass/Cafcass Cymru. On any application for enforcement issued more than three months after the order which is the subject of the enforcement, safeguarding checks shall be ordered.

21.4 The court has a wide range of posers in the event of a breach of a child arrangements order without reasonable excuse.

21.5 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) A contact enforcement order or suspended enforcement order under section 11J Children Act 1989 (Enforcement Order for unpaid work), (see paragraph 21.7 below);

(d) An order for compensation for financial loss (under section 11O Children Act 1989);

(e) Committal to prison or

(f) A fine.

21.6 In the event that the court is considering an enforcement order for alleged non-compliance with a court order (under section 11J Children Act 1989) or considering a compensation order in respect of financial loss (under section 11O Children Act 1989), the court shall in the absence of agreement between the parties about the relevant facts) determine the facts in order to establish the cause of the alleged failure to comply.

21.7 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 preach. 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 contact order.

22. Court timetable

22.1 Working Day 1: Paperwork received. Court office checks whether the revised form C100 has been completed correctly. The application will not be issued unless the form has been completed correctly.

22.2 Working Day 2: Case considered by Gatekeeping team. Case allocated by Legal Adviser or District Judge in accordance with the President's Guidance. The judge undertaking allocation to check whether form C100 has been completed. If there has been no MIAM, and there are reasons to believe that the applicant should have attended a MIAM, the Gatekeeping judge can direct that a MIAM should take place before the FHDRA.

22.3 17 working days from the date of its receipt of the application Cafcass/Cafcass Cymru will provide the safeguarding letter/report to the court (20 days in the area of Cafcass Cymru).

22.4 Week 5 (or latest, week 6) case listed for FHDRA (before week 5 if requirements of notice have been abridged).

22.5 Thereafter, case may be listed for fact-finding hearing, DRA and/or final hearing.

23 .Relevant Family Application (definition)

23.1 A relevant family application for the purposes of the CAP is an application in private law except:

- Proceedings for an enforcement order, a financial compensation order or an order under paragraph 9 or Part 2 of Schedule A1 to the Children Act 1989;
- Any other proceedings for enforcement of an order made in private law proceedings; or
- Where emergency proceedings have been brought in respect of the same child(ren) and have not been determined.

(Private law proceedings and emergency proceedings are defined in Rule 12.2).