

NOTE

From April 2014 (Children and Families Act 2014), Residence Orders and Contact Orders were replaced with Child Arrangements Order. Prior to April 2014, a Residence Order was a Court Order made under Section 8 of the Children Act 1989, settling the arrangements as to the person with whom a child was to live.

RELEVANT GUIDANCE

[ADCS / Cafcass Good Practice Guidance: determining whether Cafcass or a local authority should prepare a section 7 report](#)

1. Private Law Applications

There has been a significant change to public funding in relation to private law applications to court for any Section 8 Orders of the Children Act 1989. Ultimately unless the person involved has been a victim of domestic violence and can provide proof of such they will be unable to obtain Legal Aid to fund a solicitor to represent them. Accordingly parents / carers may try to reach resolution without making applications to Court or may ask Social Care if they will support any applications they make.

Advising or indicating to any parent / carer that the local authority will support their application must be informed by a recent assessment of all parties.

Social Care may also be asked by an individual to provide a letter to assist them in obtaining Legal Aid. There are specific points that will need to be addressed in any such letter including:

- Be on department letterhead, name the victim and name the perpetrator of the violence;
- Confirm that any assessment in relation to the same has taken place within 24 months of the person applying for Legal Aid funding.

N.B. A pre-proceedings letter or assessment may be sufficient if it contains the above.

The client must also be financially eligible for Legal Aid.

2. Section 7 Reports Introduction

1. Section 7 reports (often referred to as a Welfare report) relate to private law proceedings when the Court is wanting information about a child's welfare, that is to say, what course of action will be best for the child in question. They are required under Section 7 of the Children Act 1989, and apply to applications made by individuals for an Order under Section 8 of the Children Act, 1989, which may be:

- Child Arrangements Order – specifies whom the child is to live and/or with whom the child is to have contact;
- Prohibited Steps Order;
- Specific Issue Order;
- Family Assistance Order.

2. Where a Section 7 report is requested and there is evidence of Domestic Violence and Abuse, the court will require a 'safety and risk assessment' that should be completed by a 'qualified and accredited professional'. (Revised Practice Direction 12J);
3. The social worker does not have a solicitor and no Children's Guardian is appointed as the child is not made a party. However, where there are issues of Domestic Abuse and Violence, a child may have separate representation, depending upon the seriousness and complexity of the matter (see [Practice Direction 12J](#)). A Section 7 report is allocated to the Local Authority if there is current involvement or has been involvement with a family in the recent past. Otherwise they are allocated to CAFCASS;
4. These disagreements most commonly arise after a couple have separated or can sometimes be between parents and grandparents. Feelings often run very high and people tend to take very entrenched positions. These cases have come to you because the parties have not been able to resolve the issues between themselves, even with the assistance of mediation services or the intervention of their solicitors;
5. Social workers are, on occasions, asked by a parent/relative who is considering making an application for a Section 8 Order if they will support their application. A decision to indicate that their application will be supported can only be made if a full assessment of all parties has been completed and the child's wishes and feelings have been obtained;
6. If you have been ordered to do a Section 7 report, you must look at the Court Order, which will have been sent to you by the Court. This will tell you what particular area the Court is seeking your opinion about. You can comment on other areas of concern if you think they are relevant. Importantly, check whether the request for a Section 7 Report requires a response to Domestic Violence and Abuse or comes following a Finding of Fact Hearing in respect to Domestic Violence or Abuse; ensure the Judge's findings and directions are fully read;
7. The purpose of a Section 7 report is to provide the Court with information and advice as to what (if any) Orders should be made to promote the child's welfare. It is not your role to resolve disputes but you may identify opportunities to help the parties to reach agreement;
8. The Court's request for a report will be contained within a Court Order. This will be sent to KMBC Legal Services who will forward this onto MASH. MASH will alert the allocated social worker or create a new referral. If the children who are the subjects of the request are already in receipt of social work services the report should be completed by the allocated social worker;
9. Requests for reports from any of the parties, either directly or through their solicitors should not be agreed to. Reports from the local authority are only completed at the request of the Court;
10. In Private Law proceedings, you are starting with the presumption that the parents/carers are competent and that the problem for the child is that they cannot agree about certain matters, most commonly about where the child lives and with whom the child has contact. You are not seeking to establish a test of significant harm but may be required to evaluate harm and risks to the children and their parent / carer, where there are issues of Domestic Abuse, (see [Practice Direction 12J](#)). Neither are you seeking for the Local Authority to share parental responsibility. However, the fact that the Local Authority is involved with the child

indicates that there are concerns about the child so these should be clearly stated in your report;

11. The Court usually sets a timescale of 12-16 weeks for the work to be completed. The deadline for submission of the report to the Court will be specified in the Order. It is important that the report is filed as directed and the court timescales are adhered to. Where there are reasons for delay, such as repeated failed appointments with the parties, the court must be notified, in writing. The letter should indicate a revised timescale for completion;
12. Keep the parties aware of your emerging conclusions so that the report does not contain surprises. Inform them that it is for the Court or their solicitor to provide them with a copy of your report. Your report is usually due to be filed 14 days before the Hearing;
13. These reports do not go through Legal Panel and you are not represented legally if you have to attend Court. However, you do not need to attend Court unless required to do so by the Court.

Note: Practice Direction 12J

[President of Family Division circular: Practice Direction PD12J – Domestic Abuse](#)

This revised Practice Direction came into force in October 2017 to set out what the Family or High Court should do where it is alleged, admitted, or there is reason to believe, that a child or party has experienced Domestic Abuse perpetrated by another party. Or, there is risk of such abuse.

It presumes that a parent's involvement in a child's life is beneficial for the child, but acknowledges that domestic abuse is harmful for children and puts them at risk of harm whether they are directly subject to abuse or are a witness to it, or if they live in a home where domestic violence is perpetrated. Harm can be physical, emotional or psychological. It can also be indirect where it impairs the parenting capacity of one or both of the parents.

It therefore seeks to challenge the 'presumption' of Contact in requiring the court, where there is evidence of Domestic Violence and Abuse, to ensure that any arrangements for the child and the parent / carer who has been subject to Domestic abuse and in the child's best interests.

In addition to the established definitions of 'Domestic Violence', the Practice Direction also includes culturally specific forms of abuse like forced marriage, dowry-related abuse and transnational marriage abandonment, (i.e. where a husband deliberately leaves his foreign national wife abroad in order to prevent her asserting her matrimonial and resident rights in the UK. Sometimes this includes financial resources and may involve children who are separated from their mother).

The court must at all stages of the proceedings and particularly at the First Hearing Dispute Resolution, consider whether Domestic Abuse is raised as an issue by the parties or CAFCASS, or otherwise and must:

- Identify the factual and welfare issues;
- Consider the nature of the allegations, admission or evidence and its relevance in deciding whether to make a Child Arrangements Order and whether terms should be applied;
- Give directions for any contested issues on this issue to be heard as soon as possible;

- Ensure that where domestic violence is proven, and there is a Child Arrangements Order in place, any arrangements protects the safety and wellbeing of the child and parent who cares for the child and that neither are exposed to further harm.

Throughout the Practice Direction, the concept of harm also applies to the parent who has suffered Domestic Violence and Abuse as well as the child, and the court is required to carefully consider the impact of such behaviour on both child and carer as part of the outcome of the court's directions and orders.

Finding of Facts Hearings

Where there are any disputes over allegations of domestic violence and abuse, the court should determine as quickly as possible if it is necessary to conduct a Finding of Fact hearing, and should consider the views of the parties and CAFCASS; what other evidence may be available to assist the court and determine the facts; whether it will impact upon the issues before the court, and whether a fact Finding Hearing will be a proportionate response to the matters disputed.

Where a Fact Finding Hearing is required, the court should provide clarity as to the process for this and determine the range of issues, including the key facts that are in dispute.

The same judge / chairperson involved in the Finding of Fact hearing should be involved in any subsequent hearings.

Interim Orders: where the court gives directions for a fact Finding Hearing or there are disputed and undetermined allegations, an interim Child Arrangements Order should not be made unless the court are satisfied that it is in the interests of the child and the order would not expose the child or other parent to an unmanageable risk of harm.

Outcomes

Where there is a finding of fact, the court should individually apply the Welfare Checklist with the issue of domestic violence taking into account any expert evidence, together with any harm that either the child or the parent has suffered, or is likely to suffer, should a Contact order be made.

In all cases where there is a finding of domestic abuse or it is otherwise established, the court should consider the conduct of both parents towards each other and towards the child and its impact upon the child.

Where any domestic abuse has occurred, but the court, (considering the expert witness assessment and having applied this to the welfare checklist), considers that contact is safe and beneficial for the child, the court should consider whether any conditions are required:

- The supervision of the contact;
- Whether there should be any conditions imposed on the party who is to have contact;
- Whether contact should be for a specified period, or contain provisions for a specified time;
- Whether, considering the interests of the child, the arrangements should be reviewed by the court (and if so, the court should set a date for the review bearing the time table of the child).

Where a direct contact order is not made, the court should consider whether it is safe and beneficial for an indirect contact order to be made.

To undertake the work the Social Worker needs to:

- Read the Court Directions/previous Orders - why has this case come to Court and why now?
- Read Local Authority files about previous Social Work involvement and concerns;
- Contact other agencies involved with the child and access the criminal records for both parties with the agreement of the parties;
- Work with the child to establish wishes and feelings in relation to both parties and about any issues which have been raised in Court. There is an expectation that you will see the child concerned in order to gain their wishes and feelings on the matter in dispute. However, the child must be protected from having to 'take sides' or to feel responsible for taking decisions that are the responsibility of adults;
- Interview both (or more parties) to establish their wishes, their understanding of the concerns and issues of risk, their respective relationships with the child, their understanding of the effects of any conflict upon the child;
- Observe contact between the parties and the child.

Your Report

The report will be informed by a comprehensive assessment and will include:

- The enquiries undertaken, including who was seen and where;
- Details of the family composition;
- The nature of the application which gave rise to the Court ordered enquiry;
- Details of the issues in dispute;
- Whether there is any measure of agreement between the parties;
- The present arrangements for the child;
- The matters set out in the Welfare Checklist - your assessment findings will inform completion of the welfare checklist sections;
- That you have considered the available Orders including the No Order principle;
- The report should reach a reasoned assessment of the options available to the Court, including:
 - The proposals of the parties and their likely consequences;
 - The wishes and feelings of the children (as possibly expressed by a child's representative where one has been appointed, where there has been significant and complex Domestic Violence issues);
 - A recommendation;
 - Appropriate services and supports for the child and their parent/carer that might enable direct or indirect contact where there is a risk of harm through Domestic Violence or Abuse;

- Comment on, or recommend, whether there should be a court review of any arrangements made as a result of Domestic Violence or Abuse;

3. Section 37 Introduction

Although Section 37 enquiries can be ordered by courts in public law proceedings, most of them arise from private law proceedings.

The court may become concerned about a child's welfare during the course of family proceedings in private law. Essentially when ordering Section 37, the court is asking the local authority to consider whether it should be taking further steps to protect the child. The local authority has a duty to make these enquiries under Section 37(2). The timescale and should report its findings to the court within 8 weeks.

Specifically the local authority is asked to consider whether:

- They should apply for a Care or Supervision Order
- Provide services or assistance to the child / family;
- Take any other action in respect of the child.

No party may apply for a Section 37 direction, but any party in family proceedings may suggest it to the court. In carrying out the enquiries the child should be seen and you should consult with other involved agencies.

Consideration will need to be given as to if the concerns are such that the threshold for implementing Safeguarding Procedures are met and a Strategy Discussion convened.

The report will be informed by a comprehensive assessment and must cover the key areas on which the court seeks guidance. This should include:

- The work undertaken for the investigation and completion of the assessment, e.g. who seen / spoken to;
- A conclusion as to whether the child is suffering significant harm attributable to parental care, Domestic Violence and Abuse or lack of care, Section 31(2);
- The reasons for any decision not to apply for an order;

OR

- If the decision is to issue care proceedings then take legal advice as to whether you need to complete the Section 37 report or can instead notify the court that proceedings have been issued;
- Details of any service which will be provided to assist the child / family, particularly where there have been issues of Domestic Violence and Abuse;
- Whether the matter will be subject to any review by the court itself or local authority and when this will take place.

In Knowsley Metropolitan Borough Council all Section 37 reports are to be heard at Legal Planning Meetings to ensure that there is robust oversight and decision making.

