



JUDICIAL  
COLLEGE

# FAMILY COURT REFERENCE CARDS

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# Other orders

The following is a list of orders referred to in the Family Court Bench Book which have no corresponding reference in this guidance.

Always consult your legal adviser and your Family Court Bench Book if such an order is requested.

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## Private law orders

- Specific issues.
- Prohibited steps.
- Family assistance.

## Public law orders

- Contact with a child in care.
- Education supervision.
- Secure accommodation.
- Child assessment.
- Recovery.

## Family protection orders

- Occupation.

**The following cards are summary reference information only. Always consult your legal adviser.**

# Welfare principle and welfare checklist

**For full details, refer to Section 2 of your Family Court Bench Book.**

## What is it?

- The welfare principle states that when a court decides any question relating to the upbringing of a child, the child's welfare shall be the court's paramount consideration.
- The welfare checklist is a non-exhaustive list of factors to be taken into account to determine the welfare of the child.

## What must we take into account for Children Act 1989 cases?

- The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).
- His physical, emotional and educational needs.
- The likely effect on him of any change in his circumstances.
- His age, sex, background and any characteristics of his.
- Any harm that he has suffered or is at risk of suffering.
- How capable each of his parents, and any other person in relation to whom we consider the question to be relevant, is of meeting his needs.
- The range of powers available to the court under this Act in the proceedings in question.

## When must we take it into account?

- See the cards for relevant orders.

Note that when the court is deciding whether to make, vary or discharge a child arrangements, specific issue and prohibited steps order or is deciding on parental responsibility, the starting point is that it must presume, unless the contrary is shown, that involvement of the parent in the life of the child will further the child's welfare (from Autumn 2014).

### **What must we take into account for Adoption and Children Act 2002 cases?**

- The child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding).
- The child's particular needs.
- The likely effect on the child throughout their life of having ceased to be a member of the original family and become an adopted person.
- The child's age, sex, background and any of the child's characteristics.
- Any harm that the child has suffered or is at risk of suffering.
- The relationship that the child has with relatives, and with any other person in relation to whom we consider the relationship to be relevant, including:
  - the likelihood of any such relationship continuing and the value to the child of its doing so;
  - the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop and otherwise to meet the child's needs; and
  - the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

### **When must we take it into account?**

- See the cards for relevant orders.

# Allocation of proceedings

**For full details, refer to Section 3 of your Family Court Bench Book.**

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## What is it?

- The Family Court (Composition and Distribution of Business) Rules, Practice Directions and President's Guidance set out where family proceedings must be commenced, the process for gatekeeping applications and the criteria for allocation to the appropriate level of judge.
- Where allocation is not specifically covered by the rules, the gatekeeping team must have regard to:
  - the need to make the most efficient and effective use of the local judicial resource;
  - the need to avoid delay;
  - the need for judicial continuity;
  - the location of the parties or of a child;
  - complexity.
- The court must keep allocation under review at every hearing.
- It may be appropriate for a case to be re-allocated to a different tier of judge for resolution of a single issue and then to be allocated back to magistrates.



# The Public Law Outline (PLO 2014)

The Public Law Outline 2014 is contained in the President's Practice Direction, *Care, Supervision and other Part 4 Proceedings: Guide to Case Management*. It prescribes the main principles by which public law children cases should be managed by every member of the family judiciary. You should have your own copy of the complete document. The following extract contains the main actions, and the days by which they must be completed. Note that care and supervision applications must be disposed of without delay and within 26 weeks. Extensions may be allowed if required to deal with the case justly, but must not be granted routinely and must be specifically justified.

Pre-proceedings	Stage 1 - Issue and allocation (Day 1 – 2)
The pre-proceedings checklist sets out which documents should be attached to the application and filed at court or disclosed on request to a party to the case.	The court will: <ul style="list-style-type: none"><li data-bbox="810 649 1540 677">• Allocate the application to the correct tier of judge.</li><li data-bbox="810 700 1540 767">• Identify the need for any urgent preliminary hearing or contested interim care order.</li><li data-bbox="810 789 1300 817">• Give standard directions on issue.</li><li data-bbox="810 840 1276 868">• Appoint the children's guardian.</li></ul>

## Stage 2 – Case Management Hearing

Advocates' Meeting	Case Management Hearing
No later than 2 business days before the CMH.	Not before day 12 and not later than day 18. A Further Case Management Hearing (FCMH) is to be held only if necessary, it is to be listed as soon as possible and in any event no later than day 25.
<p>Advocates will:</p> <ul style="list-style-type: none"><li>• Consider information served.</li><li>• Identify parties' positions for the draft Case Management Order (CMO).</li><li>• If necessary, identify proposed experts and draft questions for them.</li><li>• Identify any disclosure necessary.</li><li>• Notify the court of the need for a contested interim care order or of any issue about allocation.</li></ul> <p>Local authority advocate to file a draft CMO by 11am on the business day before the CMH or FCMH.</p>	<p>The court will give detailed case management directions including:</p> <ul style="list-style-type: none"><li>• Setting the timetable for the child and the timetable for proceedings and deciding whether an extension is necessary.</li><li>• Confirming allocation.</li><li>• Identifying the key issues and the evidence necessary to resolve them.</li><li>• Determining any application for an expert and making appropriate directions in accordance with the Rules and Practice Directions.</li><li>• Directing filing of documents for the Issues Resolution Hearing (IRH).</li><li>• Directing an Advocates' Meeting and issuing the Case Management Order.</li></ul>

### Stage 3 – Issues Resolution Order

#### Advocates' Meeting

No later than 7 business days before the IRH.

Advocates will:

- Review evidence and the positions of the parties.
- Identify advocates' views of the key issues and how they may be resolved or narrowed at the IRH, the further evidence required to achieve this, whether oral evidence should be given at the IRH and the need for a contested hearing, witnesses that are required at the final hearing.

Local authority advocate to file a draft CMO by 11am on the business day before the IRH.

#### Issues Resolution Hearing

To take place as directed by the court, in accordance with the timetable for the proceedings.

The court will:

- Identify the key issues.
- Resolve and narrow the issues.
- Consider whether the IRH can be used as a final hearing.
- If not, identify the evidence required to determine the remaining issues.
- Give case management directions to ensure that the final hearing is effective.
- Issue the Case Management Order.



# Emergency protection order

**For full details, refer to Section 6 of your Family Court Bench Book.**

## **What is it?**

- It is a draconian measure, taken only in extreme circumstances.
- It removes a child who is at risk of harm to (or keeps them in) a safe place.
- It provides limited parental responsibility to the applicant.
- An exclusion requirement regarding a specific individual can also be incorporated.

## **What must we take into account?**

- That there is reasonable cause to believe the child will suffer significant harm if they are not removed to, or kept in, a safe place.
- One day's notice should have been provided, although it is possible to apply without notice.
- If the application is without notice, we must decide whether notice should be given.
- The welfare checklist does not have to be taken into account.
- Human rights issues must be addressed.

### **How long does it last?**

- A specified period of not more than 8 days.

### **Can the order be extended?**

- Yes – an extension can be granted for a further 7 days.

### **How can the order be discharged or varied?**

- On application by a person entitled to apply.

### **Order of submissions/evidence**

- Applicant.
- Respondents with parental responsibility, e.g. parents.
- Other respondents, e.g. grandparents.
- Child's guardian.

NOTE: If child and guardian split, we decide when child goes – evidence and speeches.

### **Order of closing speeches at discretion of court, but usually**

- Respondents.
- Applicant.
- Child's guardian.

# Interim care order

**For full details, refer to Section 6 of your Family Court Bench Book.**

## What is it?

- An order that places the child in the care of the local authority on an interim basis pending a final hearing; the local authority must accommodate and maintain the child.
- It can also be made when adjourning for a s.37 direction to look into a child's circumstances.
- The local authority acquires parental responsibility, shared with the parent(s).
- An exclusion requirement regarding a specific individual can also be incorporated.

## What must we take into account?

- We must be satisfied that, at the time the applicant first took protective measures, there were reasonable grounds to believe that:
  - the child was suffering or was likely to suffer significant harm; and
  - this was attributable to a lack of reasonable parental care or the child being beyond parental control.
- The welfare checklist.
- Reasonable contact is presumed between a child and certain others including a parent or guardian.

### **How long does it last?**

- Until the disposal of the application.

(The position is different where the court makes a s.37 direction asking the local authority to investigate – check with your legal adviser.)

### **How can the order be discharged or varied?**

- On application by a person entitled to apply.

### **Order of submissions/evidence**

- Applicant.
- Respondents with parental responsibility, e.g. parents.
- Other respondents, e.g. grandparents.
- Child's guardian.

NOTE: If child and guardian split, we decide when child goes – evidence and speeches.

### **Order of closing speeches at discretion of court, but usually**

- Respondents.
- Applicant.
- Child's guardian.

# Care order

**For full details, refer to Section 6 of your Family Court Bench Book.**

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## **What is it?**

- An order that places a child in the care of the local authority which is required to accommodate and maintain the child.
- The local authority acquires parental responsibility for the child, which it shares with the parent(s).

## **What must we take into account?**

- We must be satisfied that, at the time the applicant first took protective measures:
  - the child was suffering or was likely to suffer significant harm; and
  - that this was attributable to a lack of reasonable parental care or the child being beyond parental control.
- The welfare checklist.
- The permanence provisions of the care plan.
- Reasonable contact is presumed between the child and certain others such as a parent or guardian.

### **How long does it last?**

- Until the child's 18th birthday.

### **Can the order be extended?**

- No.

### **How can the order be discharged or varied?**

- By way of an adoption order, child arrangements order which includes living arrangements, special guardianship order, supervision order or on application.

### **Order of submissions/evidence**

- Applicant.
- Respondents with parental responsibility, e.g. parents.
- Other respondents, e.g. grandparents.
- Child's guardian.

NOTE: The evidence of an expert may be taken out of turn. If child and guardian split, we decide when child goes – evidence and speeches.

### **Order of closing speeches at discretion of court, but usually**

- Respondents.
- Applicant.
- Child's guardian.

# Interim supervision order

**For full details, refer to Section 6 of your Family Court Bench Book.**

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## What is it?

- An order that places the child under the supervision of a local authority, social worker or probation officer on an interim basis pending a final hearing.
- It can also be made when adjourning for a s.37 direction to look into a child's circumstances.
- The supervisor advises, assists and befriends the child.

## What must we take into account?

- We must be satisfied that, at the time the applicant first took protective measures, there were reasonable grounds to believe that:
  - the child was suffering or was likely to suffer significant harm; and
  - this was attributable to parental care or the child being beyond parental control.
- The welfare checklist.

## How long does it last?

- Until the disposal of the application.

(The position is different where the court makes a s.37 direction asking the local authority to investigate – check with your legal adviser.)

### **How can the order be discharged or varied?**

- On application by a person entitled to apply.

### **Order of submissions/evidence**

- Applicant.
- Respondents with parental responsibility, e.g. parents.
- Other respondents, e.g. grandparents.
- Child's guardian.

NOTE: If child and guardian split, we decide when child goes – evidence and speeches.

### **Order of closing speeches at discretion of court, but usually**

- Respondents.
- Applicant.
- Child's guardian.

# Supervision order

**For full details, refer to Section 6 of your Family Court Bench Book.**

## What is it?

- An order that places a child under the supervision of a local authority, social worker or probation officer.
- The supervisor advises, assists and befriends the child.

## What must we take into account?

- We must be satisfied that, at the time the applicant first took protective measures:
  - the child was suffering or was likely to suffer significant harm; and
  - that this was attributable to parental care or the child being beyond parental control.
- The welfare checklist.

## How long does it last?

- For a maximum of 1 year, but not beyond the child's 18th birthday.

## Can the order be extended?

- Yes – 1 year at a time to a maximum length of 3 years.

## How can the order be discharged or varied?

- By way of a care order or by application.

## Order of submissions/evidence

- Applicant.
- Respondents with parental responsibility, e.g. parents.
- Other respondents, e.g. grandparents.
- Child's guardian.

NOTE: The evidence of an expert may be taken out of turn. If child and guardian split, we decide when child goes – evidence and speeches.

## Order of closing speeches at discretion of court, but usually

- Respondents.
- Applicant.
- Child's guardian.

# Parental responsibility order

**For full details, refer to Section 9 of your Family Court Bench Book.**

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## What is it?

- An order giving the applicant all the rights, duties, powers, responsibilities and authority which, by law, a parent of a child has in relation to the child and their property.

## Who can apply?

- Father without parental responsibility.
- Spouse or civil partner of a parent with parental responsibility (i.e. a step-parent).
- Second female parent.

## What must we take into account?

- The child's welfare is our paramount consideration.
- All the relevant circumstances, and in particular when considering an application made by a natural father:
  - degree of commitment shown;
  - degree of attachment; and
  - reasons for applying for the order.
- Different considerations may apply in relation to other applications.

## **Parental responsibility can also be acquired in other ways**

- See the Family Court Bench Book.

## **How long does it last?**

- Until the child's 18th birthday, unless brought to an end earlier.

## **How can the order be brought to an end earlier?**

- By order of the court on the application of:
  - any person with parental responsibility; or
  - with the leave of the court, the child.
- On the making of an adoption order.

## **Order of submissions/evidence**

- Applicant.
- Respondent.

## **Order of closing speeches at discretion of court, but usually**

- Respondent.
- Applicant.

# Child arrangements order

**For full details, refer to Section 9 of your Family Court Bench Book.**

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## Pre-application

- Anyone who wishes to apply for a private law order must attend a family Mediation Information and Assessment Meeting (MIAM), unless exempted.

## What is it?

- An order that determines the person with whom the child in question is to live, spend time or otherwise have contact and when the child is to live, spend time or otherwise have contact with any person.

## Who can apply?

- As of right: any parent, guardian, special guardian or a step-parent with parental responsibility.
- With leave: anyone else, including the child.
- The court is able to make an order on its own motion.
- The local authority cannot apply.

## What must we take into account?

- The welfare checklist, if the order is opposed.
- The paramouncy and no order principles.

Domestic violence – requires careful scrutiny even if agreement is reached.

### What else should be considered?

- Parental responsibility is a further consideration for the court.
- Where the order relates to the child's living arrangements, it ensures that:
  - the child's surname is not changed without the written consent of all those with parental responsibility for the child or leave of the court; and
  - the child is not removed from the UK without the same consent as above for more than one month.

### What powers and duties exist under the order?

- The court can make an order:
  - containing directions as to how it is to be carried out;
  - imposing conditions that must be complied with; and
  - that it is to have effect for a specified period.
- The court can request Cafcass or CAFCASS Cymru to monitor and report back on certain individuals' compliance with the order for a maximum period of 12 months.
- The court must attach a warning notice to orders. (See Sections 9 and 14 of your Family Court Bench Book for full wording.)

# Child arrangements order (continued)

**For full details, refer to Section 9 of your Family Court Bench Book.**

## **When does it cease to have effect?**

- On the child's 16th birthday (or on their 18th birthday if directed by the court).
- Where the order relates to the child's living arrangements, on the child's 18th birthday, unless the court directs that it should cease to have effect earlier.
- If both parents with parental responsibility live together for a continuous period of 6 months.
- On the making of some other orders (consult your legal adviser).

## **How can the order be discharged or varied?**

- On the application of anyone entitled to apply for a s.8 order.
- On the application of anyone on whose application the order was made.

## **Order of submissions/evidence**

- Applicant.
- Respondent.

### Order of closing speeches at discretion of court, but usually

- Respondent.
- Applicant.

Note that the court has a wide discretion in the conduct of proceedings when dealing with litigants in person.

# Activity direction/Activity condition

## What is it?

### Activity direction

- The court can make an activity direction:
  - when the application is in dispute; and
  - when the court is considering whether to make, vary or discharge a child arrangements order;
  - requiring a party to the proceedings to participate in an activity which would help to establish, maintain or improve the involvement of a party in the life of the child concerned;
  - except on final disposal.
- The court can also make an activity direction when considering breach of a child arrangements order.

### Activity condition

- The court can make an activity condition:
  - when making or varying a child arrangements order;

- requiring an individual to take part in an activity which would help to establish, maintain or improve the involvement of a party in the life of the child concerned.

### What must we take into account?

- Information relating to the activity and the effect on the person in question – report can be requested from Cafcass or CAF/CASS Cymru.
- The activity must be appropriate, within reasonable travelling distance and administered by a suitable provider.
- The effect on the person includes conflict with religious beliefs and interference with work or education.
- Welfare of the child is paramount.

# Enforcement order/Order for financial compensation

## Enforcement order

### What is it?

- An unpaid work requirement of 40 to 200 hours.
- The court can make an enforcement order if satisfied beyond reasonable doubt that a person has failed to comply with the child arrangements order, unless there is a reasonable excuse for non-compliance.
- The court may only make an enforcement order or an order for financial compensation on application – please check with your legal adviser as to who may apply.

### What must we take into account?

- Must be necessary and proportionate.
- Availability of unpaid work in the area.
- Effect on the person of the order, including conflict with religious beliefs and interference with work or education.

- Welfare of the child.

This information should be available in a report from Cafcass or CAFCASS Cymru.

### Breach of enforcement orders

- The court can, if satisfied that the person has failed to comply with the enforcement order, increase the number of hours up to the maximum of 200 or extend the 12 month limit for compliance.

### Order for financial compensation

- The court can compensate for financial loss resulting from breach of a child arrangements order. The order is enforceable as a civil debt.
- The court may not make an order where it is satisfied that the person in breach had a reasonable excuse for not complying.

### What must we take into account?

- Finances of the person in breach.
- Welfare of the child.

# Special guardianship order (SGO)

**For full details, refer to Section 9 of your Family Court Bench Book.**

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## What is it?

- An SGO appoints one or more persons as the 'special guardian' of the child.
- The child's parents retain their parental responsibility, but the special guardian has overriding parental responsibility.

## Local authority report

- Notice must be given to the relevant local authority 3 months before making an application.
- The local authority must prepare a report on the suitability of the applicants.
- The court cannot make an SGO without the local authority report.

## What must we take into account?

- The welfare checklist.
- The paramountcy and no order principles.
- Human rights.

### Other orders

- The court must consider whether a child arrangements order with contact provision should be made.
- The court must consider whether to vary or discharge any existing s.8 orders that are in force.

### When does it cease to have effect?

- When the child is 18 years old.
- When a care order is made.
- When an adoption order is made.
- In the event that the order is discharged.

### Order of submissions/evidence

- Applicant.
- Respondent.

### Order of closing speeches at our discretion, but usually

- Respondent.
- Applicant.

# Non-molestation order

**For full details, refer to Section 11 of your Family Court Bench Book.**

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## **What is it?**

- An order which may require a person not to:
  - use or threaten violence;
  - harass, pester, molest;
  - conduct other specified acts towards another person or child.

(This can be worded to prevent a person acting through third parties.)

## **What is molestation?**

- It requires deliberate conduct that is intended to bring about a high degree of harassment.

## **What must we take into account?**

- All circumstances, including the need to secure the health, safety and well-being of an applicant, a party to other family proceedings or a relevant child.

### **When can an order be made?**

- By free-standing application.
- In any family proceedings to which the respondent is a party.
- Without notice to the respondent in limited circumstances (ask your legal adviser).
- The court may accept an undertaking instead of making an order (when no violence has been used or threatened).

### **How long does it last?**

- For a specified period.
- Until a further order is made.
- If made in other family proceedings, when those proceedings are withdrawn or dismissed.
- Can be varied or discharged upon application by either party.

### **Order of submissions/evidence**

- Applicant.
- Witness(es) for applicant.
- Respondent.
- Witness(es) for respondent.

# Placement order

**For full details, refer to Section 15 of your Family Court Bench Book.**

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## What effect does the order have?

- The order significantly reduces the natural parents' entitlement to challenge the making of an adoption order.
- The natural parents retain parental responsibility, but the adoption agency determines the extent to which they can exercise this power.

## Who applies for the order?

- The local authority must apply for the order.

## Cafcass or CAFCASS Cymru reports

- A report must be obtained from a guardian to advise the court on matters concerning the welfare of the child and the appropriateness of the placement order.

## What must we take into account?

- The welfare checklist for Adoption and Children Act 2002 cases applies.
- If the parents do not consent, the court must be satisfied that they cannot consent or that the welfare of the child dictates that consent should be dispensed with.
- The paramountcy and no order principles.
- Human rights.

## Contact

- Court must consider contact with specified persons while the placement order is in force.
- Any contact order made at this time can be varied or discharged later.

## Order of submissions/evidence

- Always consult your legal adviser.

# Adoption order

**For full details, refer to Section 14 of your Family Court Bench Book.**

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## What is the effect of this order?

- Parental responsibility for the child is vested permanently with the adopters by a court order.
- Any other person's parental responsibility held immediately before the making of the adoption order is extinguished – except for adoptions by a couple where one of the couple is the resident natural parent whose rights are not affected.

## Who can apply?

- Anyone satisfying the requirements relating to domicile and residence.

## What age must the child be?

- Under 18 at the time of the application, and under 19 at the time the order is made.

## Conditions on making an adoption order

- Where a placement order has been made:
  - the child has been placed with the consent of the parents; or
  - there is a placement order; and
  - no parent/guardian opposes the making of the adoption order.

- Where a placement order has not been made:
  - the parent/guardian consents;
  - the parent/guardian has given advanced consent and does not oppose the making of the order; or
  - the parent/guardian opposes the making of the order and the court has determined that the parent/guardian cannot be located or is incapable of giving consent, or the welfare of the child requires consent to be dispensed with.

### **Cafcass or CAFCASS Cymru reports**

- Where the parents consent to the adoption order, the Reporting Officer must prepare a report confirming that consent was freely given.
- Where the parents oppose the order, the child's guardian must prepare a report on the appropriateness of an order.

### **What must we consider?**

- The welfare checklist.
- The paramountcy and no order principles.
- Human rights.
- Post-adoption contact.

### **Order of submissions/evidence**

- Always consult your legal adviser.

