

Settlement Conferences Protocol as to Basic Principles

Aims and Objectives

The role of the Settlement Conference is to facilitate discussion of the issues, clarify information, analyse issues and promote understanding between the parties with a view to helping to identify solutions (including solutions which may be addressed by the consent of the parties and not necessarily within the Court process).

It is the parties and not the Judge who determines whether there is agreement on any of the issues and whether an order will flow following such agreement.

Authority for Scheme

The basis under which the scheme operates has the approval of the President of Family Division.

Training

All Judges who operate this scheme have received appropriate training including observation of Settlement Conferences.

Participation

All parties must consent to a Settlement Conference by signing a document in the form of Annex 1.

They must also be provided with the information as to the process on the basis of the document in Annex 2.

Participation in the scheme is voluntary.

Any party may withdraw from the Settlement Conference at any time and this will not, in any way, prejudice their case.

Status of Settlement Conference

For the purposes of the pilot, a Settlement Conference has the status of an Issue Resolution Hearing. Where parties have legal aid, the Settlement Conference will be paid to providers as a further IRH if unsuccessful, and as a Final Hearing if successful.

Judicial Continuity

A Judge who conducts the Settlement Conference should not be the Case Management Judge (unless all parties are agreed). If the Settlement Conference

does not result in a resolution of all issues, the Judge who conducts the Settlement Conference must not be the Judge who conducts the Final Hearing. Further, the Judge who conducts the Final Hearing will not speak to the Settlement Conference Judge about the Settlement Conference.

Confidentiality/Privilege

Anything which is said by the parties during the course of the Settlement Conference Process is confidential to the Settlement Conference. This relates also to what the Judge has said to the parties and what the parties have said to the Judge or to each other.

Any proposals made by any party shall not be referred to in the event that the matter is not settled save where issues are agreed and may be recorded as such.

However, it should be made clear to all parties, at the outset of the Settlement Conference, that if it is discovered during the process of the Settlement Conference that a child is at risk of significant harm, the Judge will immediately end the Settlement Conference and will take appropriate steps to protect the child.

Transparency

The Settlement Conference will be recorded on audio recording equipment which shall be preserved by HMCS.

Listing

Settlement Conferences must be capable of being listed as a matter of priority so that delay is not encountered in the proceedings.

Generally, a Final Hearing should be listed so that all parties are aware of the availability of such a hearing if the Settlement Conference does not resolve some or all of the issues.

Role of Judge

For the purpose of the Settlement Conference, the Settlement Conference Judge will have access to the Court bundle (or such documents as the parties agree) and a case summary.

For the purpose of enabling the parties to have direct involvement in the Settlement Conference, the Judge may directly engage with any of the parties. Such involvement will only be in the presence of the relevant party's legal representative who may raise an objection to such dialogue taking place without giving a reason. In the event of such objection, the Judge will respect the legal representative's position without question.

Although the procedure is flexible, a party is never to be seen without his/her legal representative. If a party is not represented in Public Law cases, the Guardian will be present. In Private Law cases, CAFCASS generally and, if appropriate, to welfare issues, will be present.

No pressure will be brought to bear on any party with a view to reaching agreement.

Exceptionally, and where the parties agree, one party can be seen by the Judge (without the other parties being present) but that will only happen in the presence of their legal representatives. This is generally to be considered only if protective of Article 6 rights of the parties e.g. a litigant wishes to speak to a Judge without the other parties being present so that he/she is not prejudiced in any final hearing which may follow and there can be no risk of prejudice to other parties.

Where the Judge addresses a litigant with a view to probing issues, the legal representative is free to engage or object to any question or raise any issues. The Judge will not ask the legal representative as to his or her view on any issue as that may potentially embarrass the legal representative/party and go behind the legal/professional privilege.

A Judge can give a neutral evaluation if the parties indicate that they wish this to be expressed. However, a Judge should point out that another Judge may disagree and should further point out any other limitations on his/her opinion.

Pressure

At all stages of the Settlement Conference, the Judge will repeat that there is no pressure to agree anything. Further, a hearing date is available for full determination of the issues.

If there is any issue as to lack of understanding/capacity of any party or any affect of emotional pressure or vulnerability, the Settlement Conference must be terminated.

If a party has learning disabilities/mental health issues/or any other such issues as impact upon full participation, a Judge will be fully aware of this and only communicate with that party in a manner which is appropriate and upon appropriate advice from all parties and, in particular, that party's legal representative.

Judges must appreciate/be aware that a Judge/Court setting often intimidates a parent or vulnerable party. It is possible for a parent/litigant to answer a question/provide a response which is intended to please the Judge but does not reflect a true wish or need.

Although the Judge should ask all parties at the outset to clarify their position as to the disputed issue, once the Judge has seen the party/parties for consideration of the issues, the Judge will not ask that party if the issue/issues are agreed. He will

allow that party/parties to withdraw from Court to reflect/obtain advice from legal representatives or to have the opportunity to reflect as to how they wish to proceed.

Any party's lawyer is free at any stage to contribute to the process of the Settlement Conference.

No party is required to speak directly to the Judge. At all times a party may refuse to answer a question/engage with the process of the Settlement Conference or leave the process/terminate the Settlement Conference.

Adjournment of Settlement Conference

If a party requests, a Settlement Conference can be adjourned for a period to allow reflection/consideration/further information to be obtained.

The Voice of the Child

Where a child wishes to see the Judge, this may be arranged with the CAFCASS Officer/Reporting Officer/Guardian following the 2010 guidelines.

Orders

Where an agreement has been reached on some or all of the issues, this will be recorded in a Court Order approved by all parties. If there is no agreement, the Order will simply adjourn the case for the trial date.

Fair Process

It is critical to preserve a party's Article 6 and Article 8 rights throughout the process. Each party is entitled, if they wish, to a final trial. This cannot be abrogated by the Settlement Conference process.

Settlement Conference Judges are Judges who have been appropriately trained in the process and who are willing to engage in such a process. They must uphold the law and where appropriate international treaties such as the UN Convention on the Rights of Children and the European Convention on Human Rights during the Settlement Conference and when endorsing any agreement reached between the parties.

Role of Representatives

It shall be the primary role of the parties' legal representatives to ensure that the party they represent remains engaged in the process on a wholly voluntary basis and that a party has a full understanding of the process.

Judgement

In the event of a Settlement Conference resulting in a determination of the issues on which a Judgement is required, the Judge shall, with the consent of the parties hand down an extempore Judgement giving reasons.

Her Honour Judge Margaret De Haas Q.C.
Designated Family Judge for Cheshire & Merseyside
8th November 2016

ANNEX 1

Iagree to taking part in a Settlement Conference.

The nature of the Settlement Conference has been explained to me and I have read the Guidance and/or it has been read to me.

.....

Name and date

ANNEX 2

NATURE OF SETTLEMENT CONFERENCES

Purpose

In both Public Law and Private Law cases, at any stage (but particularly at the Issue Resolution Hearing) a Judge may, with the consent of the parties refer the case to be resolved (if possible) to a Judge at a “settlement conference”.

This is a hearing which will take place before a Judge who is experienced in dealing with such cases.

The purpose is to try to resolve some or all issues or, if possible, to inject a creative or innovative method of resolving the case.

The Judge will not impose any duress or pressure on any parties. Settlement implies that all parties will be in agreement fully to resolve some or all issues.

The settlement conference will be conducted in such a way as the Judge considers appropriate to promote agreement. He/she may see some or all of the parties together or apart. Parties will only be seen individually or in the absence of other parties if all parties consent, this being recognised as exceptional. A party will never be seen without his/her legal representative.

At the end of the settlement conference either there is a resolution of all or some of the issues or there is no resolution.

Where issues are resolved a consent order will be drafted. Where some of the issues are resolved an order will be drafted to reflect this.

Where some issues remain to be resolved or all issues remain to be resolved, the case will be adjourned for final hearing (which ordinarily will already have been fixed). If the case is resolved, the hearing which has been listed for final hearing will be vacated.

Procedure

No party or legal representative is obliged to say anything to the Judge if he/she does not wish to do so. Parties will never be separated from their legal advisers. Legal Advisers are free to speak at any time.

All parties will be given the opportunity to reflect or obtain advice from their legal representatives at all stages during the Settlement Conference.

Although everything said during the Settlement Conference is confidential to the process of the Settlement Conference and will not be referred to at trial, if it is discovered during the process of the Settlement Conference that a child is at risk of significant harm, the Judge will immediately end the Settlement Conference and take appropriate steps to protect the child.

The Judge will speak to each of the parties but anything said by the Judge or the parties is confidential and attracts “negotiation privilege”.

Nothing which the Judge has said or the parties have said will be referred to at the next hearing or at any other hearing.

Any party can withdraw at any time from a Settlement Conference and this will not prejudice their case or lead to an adverse inference at any time.

A Settlement Conference can be listed at an early opportunity so as to avoid delay as it attracts listing priority.

Success

All parties are encouraged to consider settlement conferences as they currently have a success rate of approximately 70%.

HER HONOUR JUDGE MARGARET DE HAAS Q.C.
DESIGNATED FAMILY JUDGE FOR CHESHIRE & MERSEYSIDE