

JUNE 2009



GUIDANCE TO BE MADE AVAILABLE BY THE COURT SERVICE FOR LIPS IN, AND OTHERS NEW TO, THE FAMILY COURTS, IN CASES WHERE CHILDREN ARE INVOLVED

SUMMARY

This guidance aims to give information to people who are involved in family court cases without a solicitor. People who represent themselves are known as Litigants In Person (LIPs). These notes have been written to help you to prepare your case. They also explain the stages of the process, the court and so on. To avoid confusion, the word Judge has been used throughout the notes, though your case may be heard by a Magistrate rather than a Judge. The notes offer some practical advice but do not cover everything. At the end, there are some suggestions for obtaining further information.

Introduction: how the courts approach cases involving children

The Family Courts run at different levels but all use the same law (see appendix) and always aim to act in the best interests of the child. This was set out very clearly in the Children Act 1989.

The family courts always try to help both parents to continue, after separation or divorce, to play an important role in their children's lives, unless there is a good reason, supported by evidence, not to do so. This is often known as shared parenting, or co-parenting.

Shared parenting means that children are brought up in the care of, and with the guidance of, both parents following separation or divorce. Shared parenting does not mean that the child's time is necessarily divided equally between the two parents, though that is an option which should always be considered first unless there is good reason to advise otherwise. In England, a recent estimate was that 11% of children in separated families share their time equally between both parents.

A role for both parents in the upbringing of the child means that the child spends a meaningful amount of time with each parent regularly, and both parents are involved in key decisions concerning their child. What those roles will be will depend on the circumstances of each case. They will often involve the child having overnight contact with each parent. Both

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adults should be consulted about important decisions in the child's schooling, health, religion, hobbies and so on. (A fuller list is provided in the section below on the legal background.)

Shared parenting also means that neither parent should regard their child as a way of getting back at their ex-partner. Children are people in their own right and should not to be moved around to suit the parents. It is important to try to separate your own feelings and concentrate on what is best for the children.

Representing yourself in the Family Court

An increasing number of people appearing in the family courts find that they represent themselves: Litigants in Person (LIPs), as they are known in legal language. HM Courts Service and the magistrates and judges understand that many people will wish to do this, or feel that, often for financial reasons, they have no other choice. The court will make every effort to ensure that you feel your case has had a fair hearing. The court will not expect you to know family law and practice to the standards of solicitors and barristers, though you will be expected to put your case carefully and clearly.

In your own interests, and those of your children, you will wish to prepare your case as carefully as possible, to make sure that you make your case clearly to the court. This leaflet aims to introduce you to what you need to do to achieve that. At the end some sources of more detailed advice and help are suggested.

McKenzie Friends

You may wish to be accompanied by a friend or someone else to give you moral support. Or you may wish to bring someone who is not a barrister or solicitor but has some knowledge of how the family courts work. Anyone who attends the court with you in any of these roles is called a McKenzie Friend. They can attend the court, take notes, quietly offer advice and be a source of emotional support. They are not allowed to speak on your behalf, unless the Judge expressly asks them to do so. LIPs usually speak for themselves.

A McKenzie Friend might join in any discussion before the hearing which takes place between the solicitor or barrister for the other party and you. He or she does not usually go into the conciliation part of the hearing with the CAFCASS officer, but if you want them there, it is worth asking: it is sometimes allowed. It is not usual for a solicitor or barrister to be present either. In general terms, where the solicitor goes, your McKenzie Friend can reasonably be expected to go.

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It is worth letting the court know, and your ex-partner's solicitor, if you plan to be accompanied by a McKenzie Friend. The solicitor can object, though such objections are rare. Magistrates and Judges generally allow LIPs to have a Mackenzie Friend. The guidance issued by the President of the Family Court on 14 October 2008 says:

“A litigant in person wishing to have the help of a McKenzie Friend (MF) should be allowed such help unless the Judge is satisfied that fairness and the interests of justice do not so require. The presumption in favour of permitting a MF is a strong one.”

Writing down your case

It will help the court to have your case expressed clearly and briefly in writing. You do not have to, but you and the court may find it helpful if you produce a 'position statement' before the first hearing (or perhaps later, if the Judge prefers to attempt to reach agreement at the conciliation hearing without written statements). A position statement simply explains to the court the brief background, why you have needed to make an application to the court, what exactly you are asking the court to do and why it would be in your children's best interests for the court to grant what you are asking. It should be kept SHORT, i.e. no more than 4 x A4 sheets and shorter if possible. Stick to the facts. What is the problem? Why are you here? What do you want the court to order and why?

The position statement should also be set out in the proper court way. An example is provided in the 'Families Need Fathers' Litigation Support Pack. (Details at the end.)

Send the statement to the court at least two days before your hearing is listed. Take copies of it with you to the court, one to give to your ex-partner and one to give to the court in case he or she did not receive it. Have a couple of spare copies for your McKenzie Friend and/or the CAFCASS officer. (see glossary for meaning of CAFCASS officer)

Your first hearing

You will be given a date for the hearing by HM Court Service, as well as a time and an expectation of how long it might take. The courts are very busy and it is difficult to predict how long hearings will take in practice. So please be patient if you are asked to wait a while longer before the hearing

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begins. It is worth arriving at least 30 minutes before the stated time so you won't feel rushed. You will be given time to say what you need to.

When you arrive, find the usher (an official, usually at a desk) and tell them you have arrived. They will want to know if you are the Applicant – the person who has asked for the hearing - or the Respondent – the other parent. You should also tell them if you have a solicitor with you or who your McKenzie Friend is if you are using one.

You may have met your ex-partner's solicitor before, but you probably will not have met their barrister. If there are points you think it would be helpful to discuss informally, by all means approach them. They may approach you, with the same aim in mind. Points settled in this way can often help the court to reach a speedier decision. Ask the court officials if there is somewhere private you can go to have any such discussions. In any event, it is worth introducing yourself to your ex-partner's lawyers. If you have papers to give them, you should do that too before the hearing starts. There is no need to feel put off by the other parent's lawyers. Remember that they are professionals and that they should treat you politely and with respect.

The Conciliation Appointment

As a first step, the court will usually arrange what is known as a Conciliation Hearing, to try and find the best way forward. If possible both parents should try to reach agreement at this stage. The Judge will then draw up an order based on your agreement, known as a consent order. You must think quickly at the hearing, so go well prepared, having worked out exactly what you want to achieve but do not feel that you have to rush what you want to say. Try to remain calm and keep what you say as brief and to the point as possible. Check any possible written agreement (called a draft agreement) carefully and make sure that it reflects what the Judge has decided.

There are broadly three ways of organising these hearings:

Method 1	You will go into court, and a CAFCASS officer (sometimes two) will be present in the court. You and your ex-partner (or their legal representative) will be asked to put your points of view and the Judge will discuss with CAFCASS the best way forward. The Judge will then tell you what has been decided. Usually it will involve further discussion with CAFCASS to see if you can come to an agreement, which will be brought back before the Judge later the same morning. (Sometimes the first hearing may simply identify the issues, try to reach agreement, and that is not possible consider what evidence is needed to
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	resolve the matter at the earliest opportunity.)
Method 2	You will meet a CAFCASS officer at the court before you see the Judge. The purpose of this is to determine what common ground there is between the parties, if any. Negotiation will take place to see if you can come to any greater degree of agreement. Whether there is or isn't agreement, you will go in to see the Judge and the CAFCASS officer will most likely go in with you to explain the differing points of view.
Method 3	Before you have an appointment to attend the court, you will be called to meet with a CAFCASS officer for the purpose of conciliation. There may be several of these meetings. The purpose is to try to get an agreement between you that can then be put before a Judge. If you don't come to an agreement, then you will go to court and meet the Judge, and the usual court process will be followed.

Where the CAFCASS officer is involved in negotiating an agreement, it is expected that he/she will see both parents. (Resource pressures on CAFCASS may mean that they are not involved.) It is best to take a full part in their enquiries. It is better to participate actively in negotiating an agreement rather than having one presented to you that has been agreed by everyone else involved.

Although you should not feel anxious and should have confidence in your legal rights, it is always better to try to agree things outside of the court and to present a consent order to the Judge. Don't attack the other parent but stick to what is in the best interests of the children. Be prepared to compromise.

It is worth remembering that the court's powers are limited to the same range of orders that could be made anyway by agreement between yourself and the other parent.

Directions

The Judge will then make an order detailing the direction in which he/she wishes the case to move forward.

If there are serious allegations, of domestic violence for example, the Judge may decide a finding of fact hearing is necessary. The purpose of this is to investigate the obstacles that are in the way of contact progressing. It is important to remember that a finding of fact does not have the same standard of proof as a criminal hearing. It is decided on the 'balance of probability' and not 'beyond reasonable doubt'.

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If the allegations are less serious, the Judge may order a CAFCASS report. This means an officer from CAFCASS will interview you and your ex separately (usually) and may also talk to the children if they are old enough. They will also probably see both of you with the children. A CAFCASS report may be ordered even if there is a finding of fact hearing ordered too.

The Judge will set out the timeframe in which he/she expects things to happen. If the case is fairly straightforward, he/she might set the timetable for the whole case at this first hearing. He/she would then ask for statements from both you and your ex-partner and give dates by which they are to be sent to the court (filed) and sent to each party (served). He/she will ask you to serve them on CAFCASS too if they are preparing a report.

A further directions hearing will be set for about two weeks after the CAFCASS report is completed.

There may then be an Issues Resolution Hearing, to try to reach an agreement. Cases are not listed for final hearing unless agreement has not been reached at one of these hearings

A final contested hearing may be put in the diary, lasting a half a day or a whole day. More complicated cases may be set down for several days.

If the Judge is making a consent order because you have come to an agreement with the help of CAFCASS at the court, he/she will probably suggest a review hearing 3 or 6 months later, to see how matters can be progressed further.

If one of the parents has a solicitor/ barrister then it is likely that they will be asked to draft any order, though the Judge may do this him/herself. If it is done by the solicitor/barrister, you should check it before it is returned to the Magistrate/Judge for anything that has been left out, or needs to be altered.

What is the court like?

Unless, rarely, your hearing is to be heard by a Circuit Judge, directions hearings do not take place in a courtroom as such. The usher will call all the parties together and you will be shown into an office, known as the Judge's 'chambers'. There are usually two enormous tables in the office, placed together, with one across the head of the other, in a 'T' shape. The Judge will be sitting at one of these and there will be several chairs around the other. Those who are to address the Judge will sit opposite one another and nearest to the Judge. So if you are representing yourself, you will sit opposite the ex-partner's solicitor or barrister if they have one. If you have

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a McKenzie Friend with you, he or she will be expected to sit beside you, but further away from the Judge. If the court CAFCASS officer goes into chambers with you, then they will usually sit at the foot of the table, directly facing the Judge.

The hearing itself will be fairly informal, but there are certain ways of doing things that need to be followed. The Judge will normally ask one person to begin and if there is no CAFCASS officer, this will quite often be the solicitor. You will have an opportunity to speak but first allow the other person to finish speaking to the Magistrate/Judge.

THE FINAL HEARING

A final contested hearing can be a stressful time for everyone involved in court proceedings. This is your opportunity to convince the Judge that you are doing your best to safeguard the best interests of your child.

The final hearing is quite different from the directions hearing you have been attending up to now. For one thing, you may be in a 'proper' court room, whereas up to now you might have been 'in chambers' (the Judge's office).

If your ex-partner has used a solicitor up to now, it is highly likely he or she will be represented by a barrister at the final hearing.

Each written statement for a final hearing is intended to be full and to include all the evidence, unless the Judge directs otherwise.

You should make it as clear as possible. Imagine that this is the only document the Judge will read for the final hearing.

Give brief background information, no more than four or five short paragraphs.

Set out your arguments in a logical order, keeping similar subject matter together.

Anything that you use in support of your statement must be attached at the end of the statement. Each attachment should have a different number, in order, with your initials next to each number.

End by asking the Judge to make the order(s) you are seeking.

How should you behave in the hearings?

You should not interrupt the person speaking. You will have your turn later. Being respectful to the Judge is simply good manners. The Judge should

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be addressed as 'sir' or 'madam'. It is also best not to make comments under your breath or make gestures to alert the Judge to the fact you disagree with what is being said. It is best to sit still and not glare at your ex-partner. It is also important not to display obvious hostility to your ex-partner even if you feel it. Remember, the Judge is watching you all the time and you do not want to give any reason for him or her to think you are as unreasonable as your former partner is may say that you are. If things are said with which you disagree, make a note on paper to remind yourself to go back to that when you get your turn to speak.

Dress smartly, as if you were going for a job interview. Make sure you go equipped with pen/paper/relevant papers (including copies you wish to give the Judge and the other people involved).

Do not make serious allegations against your ex-partner for which you do not have any supporting evidence. You run the risk of the court or your ex-partner's barrister exposing that you are unable to prove such claims, which could cast doubt on your case more generally.

Make a clear distinction in your own mind and behaviour between giving evidence and cross-examination. 'Evidence' is setting out your case, 'cross examination' is asking questions about the case (see glossary). Do not try to put your case in the latter. If you give evidence first, put your case then and question your ex-partner on his/her case when it is your turn. Alternatively, if your ex-partner gives evidence first, make sure your questions are about their evidence, not an indirect way of putting across your own case.

Relevant forms

There are a number of forms that may need to be filled in, depending on what kind of order you or the other parent are seeking. A full list, and explanations of their purpose, and guidance on how to fill them in, is at HM Court Service's website, at <http://www.hmcourts-service.gov.uk/>.

The most commonly used form is the C100. On this form you ask for orders under section 8 of the Children Act 1989.. These include:

Parental Responsibility

Contact

Residence

Shared residence

Prohibited steps (to prevent the other parent doing something, for example the other parent taking the child to live permanently in a foreign country)

Specific issue (usually to make the other parent do something)

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All section 8 applications can be made at the same time on the same form. You do not have to pay a separate fee for each one. Any additional application forms, except the C1A, you will have to pay for when you have filled them out and put them into the court process.

RESOURCES

Remember that this leaflet is only a brief guide, and does not cover everything. If you want to know more the charity 'Families Need Fathers' has published a guide for LIPs, which you may obtain via their website <http://www.fnf.org.uk/> or their contact details are:

Families Need Fathers
134 Curtain Road
London
EC2A 3AR
Phone: 020 7613 5060

Much helpful information on how the family courts work can be found at: Resolution, at <http://www.resolution.org.uk/>

More is available from the following websites:

Divorce:

<http://www.direct.gov.uk/Audiences/Parents/FamilyIssuesAndTheLaw/Divorce/fs/en>
www.divorceaid.co.uk
www.divorceguideuk.co.uk
www.itsfinished.com
www.ondivorce.co.uk
<http://www.row.org.uk/legal.html>

Legal Matters

www.bailii.org
www.childrenslegalcentre.com
www.clsdirect.org.uk/index.jsp
www.compactlaw.co.uk
<http://www.hmcourts-service.gov.uk/>
www.dads-uk.co.uk
<http://www.justice.gov.uk/>
<http://www.direct.gov.uk/Audiences/Parents/FamilyIssuesAndTheLaw/fs/en>
www.divorceaid.co.uk
www.familieslink.co.uk
www.fnf.org.uk
<http://www.opsi.gov.uk/>
www.jsboard.co.uk
www.naccc.org.uk
<http://www.row.org.uk/legal.html>

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Useful books include:

Baker, John	How to get the Best Cafcass Report
Blomfield and Brooks	A Practical Guide to Family Proceedings
Herring, Jonathan	Family Law
Mitchell, HHJ John	Children Act Private Law Proceedings
Robinson, Michael	The Custody Minefield
Wildblood QC, Stephen	Essential Family Law Cases

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Suggested Appendix

To include:

Brief description of differing levels of Family Courts

Glossary of terms:

Cafcass

Usher

Party

Applicant/Respondent

Directions Appointments

Initial Resolutions Hearing (IRH)

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