

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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The Custody Minefield
Family Law Information

Contents

1. [Introduction](#)
2. [The Children Act and Statutory Principles](#)
3. [Welfare Analysis](#)
4. [Understanding Post April 2014 Court Process and Important Practice Directions](#)
5. [Best Practice: Contents of a Section 7 Report](#)
6. [Specific Learning Difficulties and Document Styles and Fonts](#)
7. [General Formatting Tips](#)
8. [Filing and Serving the Section 7 Report](#)
9. [Attendance at Court](#)
10. [Human Rights and Child Arrangements](#)
11. [Powers of the Court](#)
12. [Developments in Case Law](#)

Appendix A: [Welfare Checklist](#)

Appendix B: [Child Arrangements Programme Process Flowchart](#)

Appendix C: [Practice Direction 12B: The Child Arrangements Programme: Section 14: Reports](#)

Appendix D: [Practice Direction 12J: Child Arrangements and Contact Orders: Domestic Violence and Harm: Sections 21 to 23: Reports](#)

Appendix E: [Draft Court Order Wording: Section 7 Request](#)



MAAPP
MULTIDISCIPLINARY AGENCY APP

Section 7 Guidance written in association with [MAAPP](#), the Multi-Agency Application for the social work profession.

To compliment this guide, we provide a blank Section 7 Report template (click on image to download):

We also provide a draft form with recommended content included in each section (click on image):

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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1. Introduction

The Children Act 1989 (the 'Act') is the principle legislation which governs private and public family law proceedings for children habitually resident in England and Wales.

The Section 7 Report derives its name from Section 7 of the Children Act 1989 which empowers the court to:

- 7(1)(a) ask an officer of the Service [CAFCASS] or a Welsh family proceedings officer; or
- (b) ask a local authority to arrange for -
 - (i) an officer of the authority; or
 - (ii) such other person (other than an officer of the Service or a Welsh family proceedings officer) as the authority considers appropriate,

to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

2. The Children Act and Statutory Principles

A number of guiding principles govern Children Act proceedings.

First and foremost, the child's welfare must be the court's paramount consideration (commonly referred to as the 'Paramountcy Principle').

The Act also considers delay and the impact on child welfare:

1(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

A third statutory principle under the Act is the 'No Order Principle':

1(5) where the Court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order ... unless it considers that doing so would be better for the child than making no order at all.

3. Welfare Analysis

When considering arrangements which impact upon the child and their welfare, the court and those reporting to the court should make reference to the 'Welfare Checklist' set out at Section 1(3) of the Children Act 1989 (see [Appendix A](#)).

4. Understanding Post April 2014 Court Process and Important Practice Directions

In April 2014, Parliament's Children and Families Act made amendments to the Children Act 1989 and introduced a more formalised process for the management of cases. In private family law, this process is called the Child Arrangements

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



Programme ('CAP'). A flowchart exists for that process and is reproduced in [Appendix B](#).

Practice Directions issued by the court set out the detail of the process for case management.

Social workers asked to undertake Section 7 reporting should be particularly aware of Practice Direction 12B which provides in-depth information in relation to proceedings under the new Child Arrangements Programme. Of particular note is Section 15 of Practice Direction 12B:

- The concept of the 'timetable for the child' is introduced from public to private family law. Court proceedings should be timetabled so that the dispute can be resolved as soon as safe and possible in the interests of the child.
- CAFCASS or, if appropriate, the local authority are encouraged to make recommendations for stepped phasing-in of contact arrangements (medium to longer term recommendations) within Section 7 reports, so far as they are able.
- Section 15 also suggests, where active involvement or monitoring is required, the use of a monitoring order under Section 11H of the Children Act 1989 or a family assistance order.

Practice Directions related to Section 7 Reporting

Section 14 of Practice Direction 12B provides a process for reporting in proceedings related to child arrangements, and is reproduced in our [Appendix C](#).

Reporting in cases where domestic violence or abuse is at issue

Social workers should also be intimate with Practice Direction 12J which relates to child arrangements proceedings where the issue of risk is raised in relation to domestic violence or abuse. Sections 21 to 23 of Practice Direction 12J specifically relate to reporting and are reproduced in our [Appendix D](#).

5. Best Practice: Contents of a Section 7 Report

The social worker should refer to the court order which calls for the Section 7 report in the individual case. A draft of the wording likely to be provided in the order is set out in [Appendix E](#). The order should set out the matters which the report should address and include the date for filing and serving the report.

The following information sets out best practice for Section 7 report writing.

Header: The Header of the document should include the case number (taken from the court order requesting the Section 7 Report).

Footer: The Footer of the document should include the page number.

Front Page: The front page should include:

- the name of the report ("Section 7 Report"),
- the name of the court in which proceedings have been issued (e.g. "Luton Family Court"),
- the case number,
- the name and address of the social worker/report author,

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



- a confidentiality statement.

The Confidentiality Statement Wording should read:

“This report has been prepared for the court and should be treated as confidential. Subject to rules of court it must not be shown nor its contents revealed to any person other than a party or a legal adviser to such a party.”

The relevant rules of the court to which the above statement refers are rules 12.73 and 12.75 of the Family Procedure Rules 2010 and Practice Direction 12G.

Local Authority Name and Social Worker

Qualifications: This section should include:

- the name of the Local Authority;
- the name and qualifications of the Practitioner;
- the date the report was completed; the date upon which the report was filed with the court and sent to the parties (if unrepresented) or their solicitors.

Nature of Proceedings: A brief description of the orders applied for by the parties.

Matters at Issue: The matters which the court has directed the Section 7 Report covers. This should be taken from the order which requests the Section 7 Report.

Family Composition: The next section should identify:

- the names and addresses of the parties and subject children, their dates of birth, relationships to each other, and ethnicity.

- It is important to check that no party applied to the court for their addresses to be withheld from the other party.

Enquiries Undertaken

This section should include the nature of enquiries undertaken and the dates of enquiry including:

- List sources of information;
- Who was interviewed, whether face-to-face or by telephone;
- Observations of children, including contact;
- Telephone calls;
- Reasons if children not seen;
- Reasons if children not seen with either or both parties;
- Any other relevant enquiries including checks made (schools, health, probation, police) and any other previous involvement.

Documents Read

- File;
- Reports;
- Statements;
- Assessments.
- People not interviewed and relevant enquiries that were not possible, with reasons
- Use of interpreters

Relevant Background Information (Details will depend on the nature of the case)

- History of court proceedings (if any).
- A brief history of the relationship between the parties.

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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- The history of Children's Services involvement and other Agency interventions where relevant.
- Existing arrangements for residence and contact.
- Significant other people.
- Relevant issues such as domestic violence, child abduction, disruption during contact, allegations of abuse, health, education, criminal conviction details etc.

Applicant and Respondent Information:

To include:

- Living situation
- Attitude to and reasons for application
- Attitude/understanding of children's needs/wishes regarding this application
- Proposals
- Specific concerns, with supporting evidence
- Response to other party's allegations if a matter at issue.

Children:

- Description of the family relationships and attachments.
- Observations of children and relationships with parents.
- Information about the child's domestic situation, schooling, ethnicity, religion, language, disabilities and any special needs.
- Whereabouts of interested parties in relation to the children.

Parties: Applicant and Respondent

- A brief summary of each of the parties' current circumstances/relationships and views on the application.
- Context of the dispute (as it affects the children and of the steps taken during the enquiry to help reduce and manage conflict/tensions).
- Attitude to and reason for application/opposition
- Attitude to children's needs/wishes if not covered in the Welfare Checklist.
- Proposals and specific concerns/allegations with any evidence.
- Use of assessment tools (e.g. parenting plan) if appropriate.

Other relevant information

- Other Agency involvement.
- Significant others, new partners, grandparents, older siblings etc.
- Expert's reports.

Welfare Checklist

Each aspect of the Welfare Checklist (taken from Section (1)(3) of the Children Act 1989) should be addressed separately for each child. Where any aspect is not seen to be relevant to the case, this should be acknowledged with the reasons why.

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his or her age and understanding);
- (b) his or her physical, emotional and educational needs;
- (c) the likely effect on him or her of any change in circumstances;

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



- (d) his or her age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he or she has suffered or is at risk of suffering;
- (f) how capable each of his or her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his or her needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

Welfare Checklist

Assessment

- Comment upon whether parties can manage their own proposed arrangements.
- Your analysis should be logical and based on the information contained within the Section 7 Report.
- By reference to the items on the [welfare checklist](#), form a summary assessment, which would best meet the child's needs.
- Where relevant, reference should be made to the acceptance or otherwise of expert advice, with the reasons for departing from any expert recommendation clearly explained.
- Avoid speculation and base your analysis upon evidence and matters you believe can be proven.
- Outline options including pros and cons.
- State if any agreement reached is in the child(ren)'s best interests.
- If significant risk to a child has been identified, include action comment and/or action proposed and/or taken.

Recommendation

- It is your responsibility to make a recommendation to the court.
- You should comment upon whether or not it is appropriate to make no order (under the 'no order principle').
- If an order is appropriate, what should the order be for. This should cover every live application and those orders not applied for but which you consider to be in the child's best interests.
- Where a Family Assistance Order is recommended, set out what work you propose to be carried out, confirm the persons to be named in the Order and if their agreement is given.
- Identify if, in the interests of the child, the court should consider making a direction under Section 91(14) of the Children Act i.e. an order prohibiting any further applications in respect of the child without the permission of the court.
- Identify any necessary further work involved, e.g. reviews by the court, further welfare services involvement or not.
- If significant risk to a child has been identified, include comment on action proposed and/or taken.
- It is essential that you are aware of the [powers of the court](#).

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



6. Specific Learning Difficulties and Document Fonts and Styles

Avoid the use of italics and wherever possible, underlining.

A matter often overlooked are the needs of adults with specific learning difficulties and particularly dyslexia, and formatting styles which make evidence accessible. See our guide on [Dyslexia and the Family Court](#) for advice on document styles, fonts and formatting.

7. General Formatting Tips

- **Paragraphs:** Try not to have any paragraph be too long. Number the paragraphs so they may be easily referred to during proceedings.
- **Font and size:** Ideally use a sans-serif font such as Arial or Calibri which is more accessible for parties with dyslexia.
- **Line spacing:** Set line spacing at 1.5 times which makes the report easier to read.
- **Margins:** Set the left hand margin to at least 2.5cm. Later, your report will be included in a court bundle.
- **Page Numbering:** Include page numbers in the bottom right hand corner of each page.
- **Signed and dated:** Ensure the bottom of the report includes your signature and under this type your name so the report author is clearly identified. Include the date the report was written.

8. Filing and Serving the Report

The order directing that the Section 7 report be undertaken will include the date upon which the report must be filed (arrive at the court) and served (received by the parties to the proceedings).

Where court directed timescales cannot be met, it is important that both the court is notified early, and the parties informed. Where delay results in the parties having an inadequate time to consider the contents of the report and recommendations prior to a hearing, this risks breach of their right to a fair trial under Article 6 of the Human Rights Act 1998, might cause the hearing to be adjourned and depending on circumstances be a matter for appeal.

Where parties are represented, the report should be sent to their solicitors. Where the parties are unrepresented, the report should be sent directly to them.

9. Attendance at Court

The Social Worker responsible for preparing the report will generally need to be present at Court when the application is heard and should be prepared to give evidence in support of the information contained in the report.

10. Human Rights and Child Arrangements

Practitioners should be aware of the judgment from the Strasbourg court (European Court of Human Rights) and guidance in relation to Article 8 of the

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



European Convention on Human Rights (the right to family life):

"...family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."¹

The President of the Family Court provides clear guidance as to the State's responsibility in relation to contact between a child and their parents and this is reproduced below without amendment:²

- a. Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- b. Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- c. There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to

maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

- d. The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.
- e. The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
- f. All that said, at the end of the day the welfare of the child is paramount; the child's interest must have precedence over any other consideration.

R (A Child) [2014] EWCA Civ 1664 is another recent and important judgment with which to be aware, and in particular paragraph 16. In that case there had been a failure to consider all the powers available to the court.

¹ *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332

² *Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



“16. ... The judge has a duty to promote such contact and to grapple with all available alternatives before abandoning hope of achieving some contact. Contact should be stopped only as a last resort and once it has become clear that the child will not benefit from continuing the attempt. The court should take a medium to long term view and not accord excessive weight to what appear likely to be short term and transient problems...”

11. Powers of the Court

In private family law proceedings, the court can make a wide variety of orders. Some of these are set out in statute (Parliament made law), while others derive from common (judge made) law.

Section 8 Orders: These include the new child arrangements orders which replaced residence and contact orders in April 2014, specific issue orders and prohibited steps orders:

Child Arrangements Order means an order deciding:

- (a) with whom a child is to live (residence), spend time or otherwise have contact (contact); and
- (b) when a child is to live, spend time or otherwise have contact with any person;.

A child arrangements order may allow that a child lives with more than one person including

when the carers (normally the parents) live in different homes (shared residence). Paragraph 7 of the draft child arrangements order (CAP04) specifically allows for this at the court’s discretion. Order for shared living arrangements may be made even when parents live in different countries³ and do not require the equal division of the child’s time between the homes.

Residence need not be awarded for or when a child arrangements order for contact is made if the matter of residence is not contested.⁴

Again, Section 15 of Practice Direction 12B urges social worker to include plans for the progression of contact within section 7 reports. This might include supported or supervised contact where risks of harm exist, and where supervision can assess the extent to which the risks of harm are genuine. It should be noted that “a decision to require supervision of contact must be supported by evidence.”⁵

Specific Issues: an order to resolve disputes concerning arrangements other than contact and residence. This might involve disputes over the choice of children’s school, medical treatment, religious practice, removing the child abroad (whether permanently or temporarily);

Prohibited Steps: an order which limits an aspect of parental responsibility (such as decisions on medical treatment, attendance at school or taking children abroad).

³ F Children [2003] EWCA Civ 592

⁴ Re G (A Child) [2008] EWCA Civ 1468

⁵ M (Contact: Restrictive Order: Supervision) [1998] 1 FLR 721

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



Parental Responsibility Orders: An order to grant parental responsibility.

Contact Activity Directions including those as part of Enforcement:

- (a) referral of the parents to a Parenting Information Programme (SPIP), or in Wales a WT4C, or mediation;
- (b) other contact activity directions including programmes, classes and counselling or guidance sessions of a kind that—
 - i) may assist a person as regards establishing, maintaining or improving contact with a child;
 - (ii) may, by addressing a person's violent behaviour, enable or facilitate contact with a child;

It should be noted that no person may be required to undergo medical or psychiatric examination, assessment or treatment or to take part in mediation;

- (c) monitoring order: to arrange for a CAFCASS or Welsh family proceedings officer to monitor an individual's compliance with the directions of the court and to report to the court on any failure by the individual to comply with the court's directed contact activities;⁶
- (d) family assistance order 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. The family assistance order may be in place for up to 12 months;⁷

- (e) an enforcement order: a requirement that the person in breach of a child arrangements order undertakes unpaid work (community service). The enforcement order may be suspended;⁸
- (f) an order for compensation for financial loss;⁹
- (g) committal to prison ¹⁰ or suspended committal orders or a fine by way of contempt proceedings.

Other powers available in respect of cases involving contact breakdown:

Orders for shared living arrangements: used in cases where one (or both) parents fail to give due regard to the importance of the other parent in the subject children's lives and to remove the perception that either parent alone is in control;¹¹

Suspended living arrangements (prior to the April 2014 changes, this would have been via a suspended residence order). This is an order "providing for a future transfer of residence upon

⁶ Children Act 1989 Section 11H

⁷ Children Act 1989 Section 16 and Practice Direction 12M

⁸ Children Act 1989 Section 11J

⁹ Children Act 1989 Section 11O

¹⁰ B v S (Contempt: Imprisonment of Mother) [2009] EWCA Civ 548, Re L-W (Enforcement and Committal. Contact); CPL v CH-W and others [2010] EWCA Civ 1253

¹¹ D v D (Shared Residence Order) [2001] 1 FLR 495, A v A [2004] EWHC 142 (Fam), Re K (Shared Residence Order) [2008] EWCA Civ 526

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



the happening (or non-happening) of a defined event”.¹²

Conditional living arrangements. Residence is granted to a parent conditional upon them meeting obligations in respect of contact;¹³

Transfer of living arrangements (residence) as deemed appropriate in the public ‘Minnock’ case and others.¹⁴

The court has made use of temporary foster care in cases where a child was so alienated that an immediate transfer of residence was not possible;¹⁵

Undertakings: The court may sometimes request or a party may volunteer to give an undertaking. An undertaking is a legally binding promise to the court to do something, or not to do something (depending on the circumstances). The correct format for these is set out in Parts 1.1 to 1.6 of Practice Direction 33A.

Non Molestation Orders: A non-molestation order is a type of injunction made under Part IV of the Family Law Act 1996 to protect named individuals from abuse, harassment, threats of and actual violence.

A non-molestation order can be made for a specific period of time, or until a further order is made by the court.

It is important to be aware that restrictions set out in the non-molestation order and the order itself do not come into force until served on the named parties (if

the order is made without the other party present in court).

Occupation Orders: An occupation order affects who can live in, or live in part of the family home. It is a type of injunction made under Part IV of the Family Law Act 1996 and can have the following effects.

Occupation orders are intended to determine temporary living arrangements to give the applicant and respondent time to sort out where they will live and how they will divide their property. Again, such orders are generally made where the applicant and/or relevant children are at risk of significant harm and/or where the conduct of one or both parties has made such an order necessary.

An occupation order can be made for a period of up to 6 months, and then extended for further periods of 6 months (unless the applicant had no rights to occupy, whereupon the order can only be extended once).

An occupation order may allow named parties to;

- stay in the home;
- allow them to return to the home if they have left;
- restrict them to part of the home; from them from visiting the neighbourhood where the home is located;

¹² Re L-W (Children) [2010] EWCA Civ 1253 at paragraph 107

¹³ M (Children) [2012] EWHC 1948 (Fam)

¹⁴ H (Children) [2014] EWCA Civ 733

¹⁵ S (A Child) EWCA Civ 325, W (A Child) [2014] EWCA Civ 772

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



- provide that 'home rights' do not cease on the death of the spouse or civil partner or upon termination of the marriage or civil partnership.

An occupation order is a draconian measure given that an application may risk someone being forced from their home. These orders should only be made in exceptional circumstances (but exceptional circumstances are not limited to threats or acts of violence).

For an application for an occupation order to succeed, the circumstances must pass one of two 'tests'. The first test being the 'balance of harm' test.

Balance of Harm Test: When deciding whether to make an occupation order, the judge will consider whether the applicant or any relevant child is likely to suffer significant harm due to the conduct of the respondent if the occupation order is not made. Under (section 33(7) of the Family Law Act 1996), the court will make the order unless it appears:

- a. the respondent or any relevant child is likely to suffer significant harm if the order is made; and
- b. the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

In essence... are the applicant and/or children at risk of significant harm... and, if an order is made, will that cause more harm than if the order was not made.

If the judge does not find sufficient reason under this 'balance of harm' test, an application might still be

brought under the 'core criteria test' (under section 33(6) of the Family Law Act 1996).

Core Criteria Test: Matters which are considered under this second set of criteria are:

- a. the housing needs and housing resources of each of the parties and of any relevant child;
- b. the financial resources of each of the parties;
- c. the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
- d. the conduct of the parties in relation to each other and otherwise.

The making of an occupation is a serious matter, and the order is normally made where there are incidences of domestic violence.

Where the respondent has not made threat of violence or caused violence to the applicant or a relevant child, the judge has the discretionary power to accept an undertaking as an alternative to making an occupation order (see section 46 of the Family Law Act 1996).

12. Developments in Case Law

Practitioners will wish to be aware of the following case law and guidance from the senior courts.

12.1 Wishes and Feelings

Social work practitioners should be acutely aware that the Welfare Checklist requires that the children's "ascertainable" wishes and feelings are determined and considered. It is important that the

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



Practitioner considers whether the wishes and feelings are rational and proportionate and not take “expressed” wishes and feelings at face value.

Failure in this regard can bring stark criticism, an example being in the case *H (Children)* [2014] EWCA Civ 733:

"72. The social worker, JW, who is warm, caring and committed, urges me to leave the children living with the mother because that is what they say they want. Until I enforced contact she was also saying that there should be no contact, because that is what the boys say they want. The proof of that pudding has been very much in the eating, on present showing. I have more than once stressed in this case, as in others, that the word used in the Children Act about wishes and feelings is "ascertainable" and not "expressed". "Ascertainable" often means that the Court has to look at actions rather than words."

12.2 Decisions on whether to take up contact not being left to the child

Not an uncommon recommendation where children appear wholly opposed to contact albeit their wishes are disproportionate and the resident parent deemed to be influencing their position.

Lord Justice Thorpe held “whilst it seems on the face of it to conform with the children’s wishes and feelings, in reality it burdens them with a

responsibility that they should not be asked to bear at their respective ages of 12 and 13.”¹⁶

Similarly, a recommendation that there be a ‘breathing space’ will not progress matters and leaves the children subject to the harm described by Parker J in [Section 12.1](#) and likely in a situation where their views will entrench.

12.3 Threshold of harm from alienation

Several judgments, where the extent of harm caused through alienation and by children being suborned into a resident parent’s false allegations are worth noting. In these, the court looks to expert evidence on the long-term welfare harm.

In *D (Children)* EWCA Civ 496:

"Dr Cameron and Mrs Proven consider that abandoning [T] to the pressures of his mother’s belief system would run a real risk of distorting and warping his psychological development so profoundly that in his adult years, he could be emotionally crippled and unable to form trusting relationships with others."

In *W (A Child)* [2014] EWCA Civ 772, the child was removed to temporary foster care prior to residence being reversed and awarded to the father. Lord Justice Ryder comments:

"21. I ask the question rhetorically: given the court’s findings, how could the judge leave the child with the mother? No level of sufficient support and necessary protection was described by anyone. To leave the child without protection

¹⁶ *S (Children)* [2010] EWCA Civ 447

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

www.thecustodyminefield.com



would have been unconscionable. One has only to consider physical abuse to a child that gives rise to a similar index of harm to understand that such a position was untenable. The submission made on behalf of the mother that her care of the child had in all (other) respects been good or even better than good simply misses the point. More than that level of care was needed to protect this child from her own mother.”

In H (Children) [2014] EWCA Civ 733, Mrs Justice Parker warns of the risks posed to children and the need for professionals to understand this:

“74. I regard parental manipulation of children, of which I distressingly see an enormous amount, as exceptionally harmful. It distorts the relationship of the child not only with the parent but with the outside world. Children who are suborned into flouting court orders are given extremely damaging messages about the extent to which authority can be disregarded and given the impression that compliance with adult expectations is optional. Bearing in mind the documented history of this mother's inability to control these children, their relationship with one another and wholly inappropriate empowerment, it strikes me as highly damaging in this case. I am disappointed that the professionals in this case are unable truly to understand this message. The recent decision of the Court of Appeal, Re M (Children) [2013] EWCA Civ 1147 requires to be read by all practitioners in this field. Lady Justice Macur gave firm and clear guidance about the importance of

contact. Parents who obstruct a relationship with the other parent are inflicting untold damage on their children and it is, in my view, about time that professionals truly understood this.”

12.4 Skype Contact for Young Children

In R (A Child: Relocation) [2015] EWHC 456 (Fam), the judge endorses the opinion of the social worker, Miss Mills:

“61. Miss D. thought that Skype could be beneficial for a child even as young as two because the child could see who they were talking to, but the mother’s proposals do not take account of time lag, competing interests in a child’s life, what a two year old talks about on consecutive days, etc. Also leaving aside the technology and timing issues, the disadvantages of Skype – as any user will know – are all too often the lack of clarity of image, the sound delay even if short, and, as Miss Mills colourfully notes in her closing submissions, “You can’t hug Skype”.

12.5 Facts and reasons need to underpin recommendations

While a public family law case, Re W (Adoption Application: Reunification with Family of Origin) [2015] EWHC 2039 (Fam) highlights the need to avoid the use of opaque language and ‘psychobabble’ which saw considerable criticism in that case. The reporting officer should not express opinion which is not supported by evidence, is outside of their qualifications or beyond their expertise.

Section 7 Reports

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Where recommendations are made, these need to be supported by facts and explained. The Practitioner should avoid supposition and conjecture.

Practitioners should be aware of guidance from the President of the Family Court on the matter of hearsay evidence:

"Of course the court can act on the basis of evidence that is hearsay. But direct evidence from those who can speak to what they have themselves seen and heard is more compelling and less open to cross-examination. Too often far too much time is taken up by cross-examination directed to little more than demonstrating that no-one giving evidence in court is able to speak of their own knowledge, and that all are dependent on the assumed accuracy of what is recorded, sometimes at third or fourth hand, in the local authority's files."¹⁷

12.6 The need for judges to see through their strategy

Clear guidance has been handed down in respect on non-compliance. In *A (A Child)* [2013] EWCA Civ 1104, Lord Justice McFarlane gave guidance:

'If, as part of that strategy, the court makes an express order requiring the parent with care to comply with contact arrangements, and that order is breached then, as part of a consistent strategy, the judge must, in the absence of good reason for any failure, support the order that he

or she has made by considering enforcement, either under the enforcement provisions in CA 1989, ss 11J-11N or by contempt proceedings. To do otherwise would be to abandon the strategy for the case with the risk that a situation similar to that which has occurred in the present case may develop; to do otherwise is also inconsistent with the rule of law."

12.7 Defective Parenting and State Intervention

Where the Practitioner is considering whether risks to the child warrant section 31 investigation and/or the cessation of contact, they should be aware of the guidance of Baroness Hale:

"...the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."¹⁸

Mr Justice Hedley went into further detail:

"Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. Children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare

¹⁷ View from the President's Chambers, [2013] Fam Law 680

¹⁸ *B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33

Section 7 Reports

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children all the consequences of defective parenting."¹⁹

In respect of Section 31 investigations, his Honour Judge Jack said:

*"The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts."*²⁰

The President of the Family Court endorsed the above guidance in a 2015 judgment.²¹

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¹⁹ *Re L (Care: Threshold Criteria)* (Family Division 26 October 2006)

²⁰ *North East Lincolnshire Council v G & L* [2014] EWCC B77 (Fam)

²¹ *Re A (A Child)* [2015] EWFC 11

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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Appendix A

The Welfare Checklist

Set out at Section 1(3) of the Children Act 1989, the Welfare Checklist reads:

1(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

Subsection 4 of Section 1 of the Act reads:

1(4) The circumstances are that -

- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
- (b) the court is considering whether to make, vary or discharge [F1a special guardianship order or] an order under Part IV.

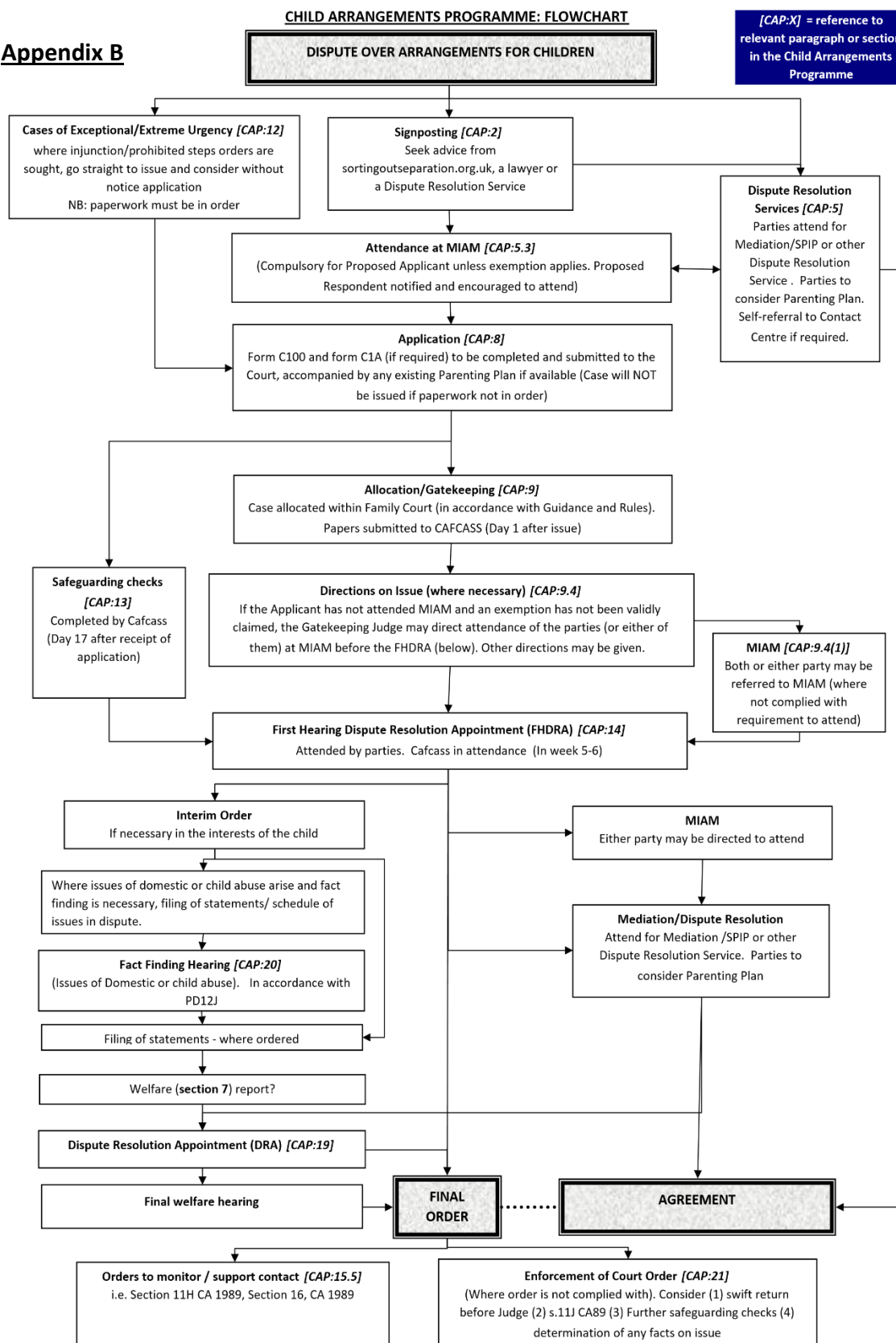
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Appendix B



Section 7 Reports

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Appendix C

Practice Direction 12B: Section 14:

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 ('non-court resolution of disputed arrangements') 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 local 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, section 13 Children and Families Act 2014, and Part 25 of the FPR must be complied with. This is the latest point at which consideration should be given to the instruction of

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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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/lay justices? 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?

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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Appendix D

Practice Direction 12J: Sections 21 to 23:

Reports

The court's Practice Direction 12j sets out the following guidance in relation to section 7 reporting:

21. In any case where a risk of harm to a child resulting from domestic violence or abuse is raised as an issue, the court should consider directing that a report on the question of contact, or any other matters relating to the welfare of the child, be prepared under section 7 of the Children Act 1989 by an Officer of Cafcass or a Welsh family proceedings officer (or local authority officer if appropriate), unless the court is satisfied that it is not necessary to do so in order to safeguard the child's interests.
22. If the court directs that there shall be a fact-finding hearing on the issue of domestic violence or abuse, the court will not usually request a section 7 report until after that hearing. In that event, the court should direct that any judgment is provided to CAFCASS/CAFCASS Cymru; if there is no transcribed judgment, an agreed list of findings should be provided.
23. Any request for a section 7 report should set out clearly the matters the court considers need to be addressed.

Section 7 Reports

A guide to welfare reports in private family proceedings under section 7 of the Children Act

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Appendix E

Wording: Draft Court Order (CAP02): Section: **CASE MANAGEMENT AND OTHER ORDERS/ DIRECTIONS**

Cafcass / CAFCASS Cymru / Local Authority s.7 Reports / s.37 investigation and report.

A [Cafcass / CAFCASS Cymru officer / local authority social worker] is directed to prepare a section 7 report on:

Specify as appropriate, such as:-

- The ascertainable wishes and feelings of the children.
- It is recorded that the [mother/father] alleges that the children have expressed a wish that *[specify]*
- The home conditions and suitability of the accommodation of the [mother/father]
- The concerns of the [mother/father] with regard to *[specify]*
- Whether or not the children's physical/emotional/educational needs are being met by the [mother/father]
- How the children will be affected by the proposed change of *[specify]*
- Whether or not it appears that the children have suffered or at risk of suffering the harm alleged by the [mother/father]
- The parenting capacity of the [mother/father] having regard to the allegations that *[specify]*
- Whether *[Specify]* local authority should be requested to report under section 37 Children Act 1989.

A *[named local authority]* is directed to prepare a section 37 report in respect of the child(ren), the Court being of the view that it may be appropriate for a care or supervision order to be made with respect to the child(ren). The authority shall, when advising the court, consider whether they should apply for a care or supervision order, or provide services or assistance to the child(ren), and/or take any further action.

In the event that the Local Authority considers that it is unable to comply with this direction, it shall no later than 16:00hrs 3 days after service of this order upon it provide to the court in writing its reasons for holding that view. A copy shall at the same time be sent by email to *[insert email address]*

Permission is given for the Court to release [and send to the Local Authority] the safeguarding screening report by Cafcass to the Department, together with all the applications, statements and orders.

[Cafcass / CAFCASS Cymru / the local authority] shall send the report to the court by 16:00 on [date] and at the same time deliver a copy of the report to each of the parties and, if applicable, to their solicitors.