

Case management hearings: how to prepare for success in private children cases

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Introduction

- Overview of CMHs
- FHDRA, PTRs and DRAs
- Interim child arrangements
- Appeals
- Practical tips
- Questions

Case Management Hearings – Overview

- What are CMHs?
- Context – s8 Children Act 1989:
"child arrangements order" means an order regulating arrangements relating to any of the following—
 - (a) with whom a child is to live, spend time or otherwise have contact, and
 - (b) when a child is to live, spend time or otherwise have contact with any person

Overriding Objective

- FPR 1.1 – the overriding objective:
- (1) These rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly, having regard to any welfare issues involved.
- (2) Dealing with a case justly includes, so far as is practicable –
 - (a) ensuring that it is dealt with expeditiously and fairly;
 - (b) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
 - (c) ensuring that the parties are on an equal footing;
 - (d) saving expense; and
 - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The Court's Duty to Manage Cases

- FPR 1.4:
- (1) The court must further the overriding objective by actively managing cases.
- (2) Active case management includes–
 - Timetabling
 - Identifying issues
 - Deciding issues
 - Controlling evidence
 - Helping parties settle
 - Dealing with as many aspects of the case as it can on one occasion

Key Principles - Reminder

- PD 12B para 11.1:

Section 1 of the Children Act 1989 applies to all applications for orders concerning the upbringing of children. This means that –

- (1) the child's welfare is the court's paramount consideration;
- (2) delay is likely to be prejudicial to the welfare of the child, and
- (3) a court order shall not be made unless the court considers that making an order would be better for the child than making no order at all.

First Hearing Dispute Resolution Appointment (FHDRA) - Overview

- PD 12B para 14:
- When? Week 4-5 following issue
- Notice? 14 days where practicable or as specified by court
- Cafcass officer to attend
- Documentation
 - (a) C100 application, and C1A (if any);
 - (b) Notice of Hearing;
 - (c) C7 response and C1A (if any);
 - (d) Cafcass safeguarding letter/report.
- Aim – resolve dispute / identify issues and make directions

FHDRA Issues – Safeguarding

- Cafcass to speak to parties and produce safeguarding letter
- Disclosure of safeguarding letter
- Risk of adjournment

FHDRA Issues – Allocation

- Allocation decision will be considered at FHDRA
- [President's Guidance on Allocation and Gatekeeping for Proceedings under Part II of the Children Act 1989 \(Private Law\)](#)
- Factors to consider – paragraph 7:
 - (a) The need to make the most effective and efficient use of the local judicial resources that is appropriate, given the nature and type of application;
 - (b) The need to avoid delay;
 - (c) The need for judicial continuity;
 - (d) The location of the parties or of any child relevant to the proceedings; and
 - (e) Complexity.

FHDRA Issues – 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”
- Section 7 Report – “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” (s7(1)(c))
- Section 37 investigation
- Expert evidence

FHDRA Issues - Directions

- Directions “required to ensure the application is ready for a Dispute Resolution Appointment or final hearing”
- Statements
- Drug / alcohol testing
- Police disclosure
- Whether to list Fact Finding Hearing
- Interim contact
- Listing next hearing
- Special measures

Whether to List a Fact Finding Hearing

- PD 12J para 16-17
- *Re H-N [2021] EWCA Civ 448 para 37:*
 - (i) The first stage is to consider the nature of the allegations and the extent to which it is likely to be relevant in deciding whether to make a child arrangements order and if so in what terms (PD 12J.5).*
 - (ii) In deciding whether to have a finding of fact hearing the court should have in mind its purpose (PD 12J.16) which is in broad terms, to provide a basis of assessment of risk and therefore the impact of the alleged abuse on the child or children.*
 - (iii) Careful consideration must be given to PD 12J.17 as to whether it is 'necessary' to have a finding of fact hearing, including whether there is other evidence which provides a sufficient factual basis to proceed and importantly, the relevance to the issue before the court if the allegations are proved.*
 - (iv) Under PD 12J.17(h) the court has to consider whether a separate fact-finding hearing is 'necessary and proportionate'. The court and the parties should have in mind as part of its analysis both the overriding objective and the President's Guidance as set out in 'The Road Ahead'."*

Listing a Fact Finding Hearing

- PD 12J para 19 – considerations when listing:
 - Key facts in dispute
 - Scott Schedules
 - Evidence required
 - Statements
 - Third party disclosure
 - How evidence is challenged (eg QLR)
 - PTR
- PD 12J para 20 – must fix a DRA to follow

Pre-Trial Review

- PD 12J para 19(m): “ to ensure directions have been complied with and all the required evidence is available”
- Ready for trial?
- Determine allegations
- Witnesses
 - Permission for third party witnesses to give oral evidence
 - Witness template

Dispute Resolution Appointment - Overview

- PD 12B para 19 – list following section 7 or other report if “considered likely to be helpful in the interests of the child.”
- Section 7 to author to attend only if directed
- The court will (para 19.3):
 - (1) Identify the key issue(s) (if any) to be determined and the extent to which those issues can be resolved or narrowed at the DRA;
 - (2) Consider whether the DRA can be used as a final hearing;
 - (3) Resolve or narrow the issues by hearing evidence;
 - (4) Identify the evidence to be heard on the issues which remain to be resolved at the final hearing;
 - (5) Give final case management directions

P v F [2023] EWHC 2730 (Fam)

- Limit to court's power at DRA
- Clarifies PD 12B para 19.3(3): *(At the DRA the Court will – (3) Resolve or narrow the issues by hearing evidence)*
- [42]: *Whilst a judge undertaking a Dispute Resolution Appointment is required to consider the extent to which the remaining issues between the parties can be resolved at that hearing, and to assist the parties to do so with a frank evaluation of the evidence, **this cannot extend to making final orders where it is clear that a party continues to contest the matter and to seek a different outcome.** Where a party continues to dispute the outcome of the proceedings at the Dispute Resolution Hearing, PD12B provides a clear way forward, either in the form of hearing evidence at the Dispute Resolution Appointment in order to resolve or further narrow the issues or in the form of final case management directions towards a final hearing.*

Interim Contact

- Can be raised at any stage of the proceedings
- The court will be cautious
- Lack of information will be a barrier to the interim contact
- Is the factual matrix agreed?
- Risks to children will be a bar to interim contact
- Cafcass/LA recommendations hold significant weight
- Get creative

Appeals

- FPR Part 30 deals with appeals
- Time is of the essence
- Notice of appeal
- Skeleton arguments
- What will the court consider when looking at case management appeals?
- Delay will be a significant factor
- Do not panic if permission to appeal is not granted

Practical Tips

- Briefs
- Bundles
- Position statements
- Managing clients' expectations
- Litigants in person
- Orders

Questions