



Information Sheet: Prohibited Steps

It is always best to try and reach an agreement with the person with whom the child lives if this is at all possible. It may be appropriate to consider attending mediation with your former partner to see if an agreement can be reached, however this will only work if you are both willing to attend and negotiate. We can provide details of mediation services if you are considering this.

What is a Prohibited Steps Order?

This is an Order that "Prevents a person with care of a child from doing a specific act without the consent of the Court".

Who can apply for a Prohibited Steps Order?

Any parent or guardian of the child can apply for a Prohibited Steps Order, as can any person with a Residence Order or Parental Responsibility. Any other person needs to obtain the Court's permission. The Court will consider the relationship between the Applicant and the child and whether the application has any merit. It will also consider any risk that there may be of the proposed application disrupting the child's life to such an extent that he may be harmed by it.

What is a Specific Issue Order?

This is an Order "giving directions for the purpose of determining a specific question which has arisen, in connection with any aspect of Parental Responsibility for a child".

What is the difference between Prohibited Steps and Specific Issues?

A Prohibited Steps Order **prevents** a party doing something in relation to the child (e.g. that they should not remove the child from the jurisdiction of without leave of the Court). A Specific Issue Order **determines** a matter in relation to the child (e.g. whether a child should go on a holiday).

How do I get either of these Orders?

An application for a Prohibited Steps or Specific Issues Order can be made on its own or together with an application for any other Order under the Children Act.



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An application can be issued in either the Family Proceedings Court or the County Court - we will advise you which is the most appropriate Court to use. There will be a fee to pay to issue the application, the amount of the fee is £175. If you are in receipt of Public Funding the cost of the Court fee will be met by your Public Funding Certificate, subject to the statutory charge, you will be exempt from paying this.

Public Funding is available to bring such an application provided that the Legal Services Commission considers that there are sufficient merits and you are financially eligible, however you may be required to attend mediation before the Legal Services Commission will grant you a Certificate. We will advise you fully about this.

It is an emergency - how soon can my application be heard?

If there is a genuine emergency i.e. you wish to prevent something that is about to happen or to make something happen quickly you can apply to have your application heard without notice to the other party i.e. without the other person being there. This is sometimes referred to as an ex parte application.

The application can be issued as soon as we are in funds or Public Funding is granted - if appropriate. A statement of your case will be prepared for the Court to read, however the Court may also wish to hear oral evidence from you. If an application is made without notice to the other party it will have to be served personally upon the person against whom it is made. It will not be effective until it is served as they will not know about it until this time. An application made without notice will be for a limited period of time until the Court can have a full hearing with all parties present. The other party has a right to have their side of the situation considered by the judge.

Once the application has been issued, it will be passed to CAFCASS and the application will be dealt with under the "Dispute Resolution" process.

Dispute Resolution

The First Stage:

When there has been an application to the Court about your child(ren), the court arranges for you to meet a CAFCASS Family Court Adviser to discuss your application and what options are open to you and the court.

The meeting (which may last for up to an hour) is aimed at helping you to reach an agreement and will take place at the CAFCASS offices. First, you will be seen by the



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CAFCASS Family Court Adviser who will discuss your views and any concerns you have. He or she will need to be made aware of any possible risk to yourself or your children. A joint meeting may also be arranged with the CAFCASS Family Court Adviser and the other party with the aim of reaching an agreed plan for your child. At this joint meeting you may reach an agreement. The CAFCASS Family Court Adviser may record the details with you or may encourage you to discuss them with your solicitor.

You may feel that some further time is needed to consider ideas to help resolve your differences. You may need to try out a temporary arrangement, which could be reviewed at a future court date.

If at any time, issues arise that concern the CAFCASS Family Court Adviser, and he or she decides it is not in the child's best interests to continue Dispute Resolution, the court would be advised and Dispute Resolution procedure will cease and will proceed through the Court process and will either proceed to a Hearing or a "Welfare Report".

A "Welfare Report" will address "Welfare Issues" such as allegations that one party to the proceedings abuses drugs/alcohol/has a criminal record/is violent etc. A Welfare Report usually take approximately 20 weeks to prepare and the Court will list your case for another short hearing after the report is ready.

The parties will be required to see the Welfare Officers at their Offices, and explain their case. This is usually a meeting with both parties, however you can request separate appointments if you feel strongly about this. The Welfare Officer may also wish to see the child, and if appropriate, to ask the child's view.

Will my child be involved?

Your child(ren)'s views are important and, in law, have to be taken into account when official decisions are being made about them.

The CAFCASS Family Court Adviser will discuss with you how your child(ren) should be involved.

Child(ren) should not be brought to court.

The Welfare Officer may also wish to make home visits to examine the current and proposed homes for the child.

The Welfare Officer will make a recommendation at the end of the report as to how the Court should deal with the application. It may be that during the preparation of the report



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an agreement will be reached in which case the parties can ask the Court to make an Order at the next hearing.

If the matter is to be listed for the Court to make a decision, the parties and any witnesses they wish to call will be required to prepare a statement of their evidence for the Court. These statements must be sent to the Court and to the other parties by a certain date fixed by the Court.

At the final hearing, you will be represented by a Solicitor from this Firm, or by a Barrister. The Court will hear evidence on oath from the parties and their witnesses who will be cross examined by the representatives for the other parties. The hearing will be in a closed Court where the public are not allowed to watch.

Either party can require the Welfare Officer to attend the hearing and give evidence if they do not agree with the report or its conclusions.

The Court must then make a decision as to what if any Order should be made. The Court will base its decision on the "Welfare Checklist". This is a list of factors set down by the Law that the Court **MUST** consider in all contested proceedings. These factors are:-

The ascertainable wishes and feelings of the child, considered in the light of his age and understanding

The child's physical, emotional and educational needs

The likely effect on the child of any change in the child's circumstances

The child's age, sex, background and any characteristics that the Court considers relevant

Any harm suffered or likely to be suffered by the child

How capable each parent, and any other person in relation to whom the Court considered the question to be relevant, is of meeting the child's needs

The range of powers available to the Court in the proceedings in question.

The Court will consider the above in the light of the evidence it has heard and read and also the recommendation of the Welfare Officer. The Court will always start from the presumption that there should be contact for natural parents, and the welfare of the child is the Court's paramount consideration.

If the Family Proceedings Court makes an Order it must give its reasons in writing stating why they have made that Order.



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The hearing will be in a closed Court where the public are not allowed to watch.

What is the No Order principle?

The Court **MUST** consider whether it is in the best interests of the child to make no Order where arrangements have been agreed between the parties.

The Court may consider that undertakings from the other party are sufficient i.e. their solemn promise to the Court not to do something. We will advise you whether undertakings are appropriate in the circumstances. Undertakings are enforceable as are Court orders.

What happens if the other party refuses to comply with the Order?

If you are granted an Order and the person upon whom it is served does not comply you can apply for enforcement of the Order.

The type of enforcement depends on what the Order relates to and whether it was made in the Family Proceedings Court or the County Court, however the ultimate sanction is imprisonment. We will advise you in more detail about this if it becomes appropriate.

What if I am not happy with the Order made?

In some circumstances you can appeal against an Order if the Court has made a mistake in Law or has not attached sufficient importance to evidence it has heard. We can advise you as to whether you have grounds to appeal.

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.