



A guide to explain some words and expressions used in private children cases

Here are some explanations of some words and expressions that are used in private children cases. Private children cases are cases involving disputes about children between individuals. Most often that will be the parents, but it may involve another relative or somebody else.

Court orders are important and they must be complied with. So it is important that you understand what they mean and what they require you to do (or not do). You could get advice from a solicitor or barrister and they will be able to tell you whether you are entitled to legal aid. If you aren't, and you cannot afford to get legal advice or representation, there are other advice agencies available, for example the Citizens Advice. You can also find useful information at the website www.advicenow.org.uk/advicenow-guides/family/sorting-out-arrangements-for-your-children/

Words in **bold** are explained elsewhere in the guide. Explanations are set out in alphabetical order to help you find them easily.

Terms explained

Allocation

When an **application** is made to the **Family Court** a judge and/or legal adviser will decide which level of judge should hear it. That will depend on how difficult (complex) the case is.

Applicant

The person who makes an **application** to the court is called the Applicant. There may be more than one applicant, in which case they may be called the First Applicant, Second Applicant and so on.

Application

Every case has to start with an application using the correct form. You can find the forms at <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do> and guidance about making an application at www.advicenow.org.uk. There will usually be a fee to pay unless your circumstances mean that you are exempt from paying the fee. Ask the court office if you think you might be 'fees exempt'.

Bundles

It is important at hearings that the judge, **parties** and any **witnesses** all have the same documents in order so that they can be referred to easily. If that didn't happen everybody at the hearing would have to search around for documents and that would waste time. It is important that bundles (ring binders or arch lever files) are available at the hearing containing the relevant documents for that hearing. If you are a **litigant in person** the judge will tell you whether you need to prepare a bundle for a hearing.

If you do have to prepare a bundle look at Practice Direction 27A, www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27a which sets out in detail what has to be done.

Cafcass

Cafcass (which stands for Children and Family Court Advisory and Support Service) is an independent organisation which supports the **Family Court** by giving advice to the court about cases. Cafcass may be asked to do a report (usually what is called a **section 7 report**). For more information about what Cafcass does see their website at www.cafcass.gov.uk

Care and supervision orders

Care and supervision orders are not private children orders, however sometimes the court may be concerned in private cases that a child is suffering (or is at risk of suffering) significant harm. The court may ask a local authority to do a **section 37 report** and may at the same time make an interim care order.

A care order gives **parental responsibility** to a local authority who can use that to limit the **parental responsibility** held by parents. Under a care order a local authority may place a child with relatives, friends or foster carers so that the child is kept safe.

A supervision order requires a local authority to supervise the family for up to 12 months.

Child Arrangements Order

A child arrangements order is an order (made under section 8 of the **Children Act 1989**) which sets out with who a child is to live with and when a child is to live, spend time or otherwise have contact with any person. So the court can make a child arrangements order saying that a child is to live with one parent and see the other at certain times. Or the court could say that the child is to live with both parents at certain times.

The Children Act 1989, www.legislation.gov.uk/ukpga/1989/41/contents contains the main provisions relating to children proceedings. Most of the parts relating to private law cases are in sections 1 to 16.

Children's Guardian

The court can appoint a guardian to represent children in private children cases. Usually the guardian will be a **Cafcass** officer, but might also be from NYAS (the National Youth Advocacy Service) or some other professional. The court will only appoint a guardian in cases of significant difficulty where it considers the children need to be separately represented. The circumstances in which the court should appoint a guardian are set out in Practice Direction 16A (paragraph 7.1) www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_16a

When the court appoints a guardian the child also becomes a **party** to the case so that he or she can be represented. The guardian will instruct a solicitor to act for the child and legal aid is available for that purpose. The guardian's appointment ends when the case is over.

Contact

The court may require a person to make sure that a child spends time or otherwise has contact with another person. Usually that will mean the parents, but not necessarily. It could be grandparents or other relatives. Contact here means some sort of involvement with the child. That might be direct contact (seeing the child or speaking over the phone or over the web). Or it might be indirect contact, for example letters, gifts, cards, school reports and photos.

Contact Activity

The court can order a party in the case to take part in an activity designed to improve arrangements for the children involved in the case. Currently the activities the court can direct are a **Mediation Information and Assessment Meeting (MIAM)**, the **Separated Parents Information Programme (SPIP)** and a **Domestic Violence Perpetrators Programme (DVPP)**, each of which is described in more detail in this guide.

Contact Centre

Contact centres provide a neutral supported place where **contact** with a child can be re-introduced or kept going, particularly where it might be difficult for contact to happen at home or in the community. The centres are staffed by trained volunteers and staff who will support (but not necessarily directly supervise) contact. You can find more information at the website of the National Association of Child Contact Centres (NACCC) www.naccc.org.uk/

Dispute Resolution Appointment

A dispute resolution appointment (DRA) is the name given to a hearing which takes place shortly before a **final hearing**. By the time the DRA takes place any reports and **witness statements** should be available and the court and the **parties** should therefore know what is going to be said at the **final hearing**. The purpose of the DRA is to try to resolve or narrow the issues between the **parties** to the case. Sometimes the court might treat the DRA as an early **final hearing**, hear some **evidence** and make a final decision so that the proceedings can be brought to an end as soon as possible. There will not always be time available to do this, so do not expect it to happen. But do be prepared for the possibility.

Domestic Abuse and Violence

Seeing or hearing domestic abuse and violence is very harmful to children. Domestic abuse has a very wide meaning. It includes: psychological, physical, sexual, financial and emotional abuse as well as threatening, controlling and coercive behaviour.

Domestic Violence Perpetrators Programme (DVPP)

DVPPs may be used in cases where domestic violence and abuse are a concern. The court may require the perpetrator to attend a group programme designed to help deal with abusive behaviour and to improve relationships. For more information see www.cafcass.gov.uk/about-cafcass/commissioned-services-and-contact-activities/dvpp.aspx

Drug/Alcohol Testing

In order to decide whether it is safe for a child to live with or see a parent or other adult, the court may need to find out whether that person is using drugs and/or alcohol. For example, the court may order hair strand or blood tests for a report by a testing laboratory.

Enforcement

If a person disobeys an order the other party may apply to the court for an enforcement order. Disobeying **prohibited steps** or **specific issue orders** is punishable by imprisonment or fine. In addition, disobeying a **child arrangements order** can result in **unpaid work** or **financial compensation**. Before an order can be enforced in this way it must have included a notice warning the parties that if they do not comply with the order they could

be sent to prison or fined and, in the case of a **child arrangements order**, made to do **unpaid work** or pay **financial compensation**. These notices are called penal or warning notices.

It is more important to make sure people do what court orders say rather than just punish them when they don't. So the court will not send somebody to prison or fine them unless it is a last resort.

Evidence

The court may need to decide matters that the **parties** cannot agree about. That may relate to disputed facts (about whether somebody has caused harm, for example) or it may just be a disagreement about what each person believes to be in the best interests of the child (perhaps about where the child should live or go to school). In order to make a decision the court will normally need to hear what the parties say. Sometimes the **parties** may want to bring other people (**witnesses**) to court to support what they are saying. When the court hears from the **parties** or their **witnesses** the court is hearing evidence. The court will also take into account **witness statements** and **reports** as evidence.

When a person gives evidence they are normally required to start by giving an oath on a holy book or by a non-religious affirmation that what they are about to tell the court is the truth. If a person lies under oath they commit the criminal offence of perjury.

Experts/expert evidence

The court may need to know things which require specialist knowledge or expertise. Then the court will need the help of an expert. In a family case that may be a medical expert (for example a **paediatrician**, **psychiatrist** or **psychologist**) or it may involve **drug or alcohol testing** or to establish whether somebody is the father of the child (paternity). Nobody can rely on an expert without the court's permission which must be applied for in advance. The court will only allow an expert if it is necessary to deal with the case fairly. For more detailed information about what you need to do if you want to rely on an expert see www.justice.gov.uk/courts/procedure-rules/family/parts/part_25 and www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_25a

Experts are independent and their first duty is to the court.

Fact finding

The court may hold what is called a 'fact finding hearing'. This is to decide facts that the **parties** cannot agree about, for example whether there has been **domestic violence or abuse** in a relationship. The person who makes an allegation has to prove it, that is show the court that it is more likely than not that it happened (also called the balance of probabilities or the civil standard of proof).

Family Assistance Order

The court may decide that the parties (and the children) need help with the arrangements the court has ordered. In that case the court may make a family assistance order (under section 16 of the **Children Act 1989**) which makes (usually) a **Cafcass** officer or social worker responsible for helping the parties to make the arrangements work by 'advising, assisting and befriending' the 'persons named in the order' – most often the parents and the child. A family assistance order cannot last longer than 12 months.

Family Court

Since April 2014 there has been a single Family Court which deals with all family proceedings, including all private law cases. The Family Court consists of magistrates (also called lay justices) district judges and circuit judges. Cases are allocated to different levels of judge depending on complexity.

Family Procedure Rules

The Family Procedure Rules, www.justice.gov.uk/courts/procedure-rules/family/rules_pd_menu, are the rules and practice directions which set out what the court and **parties** must do when dealing with family proceedings. When rules and practice directions are mentioned in this guide, it means the Family Procedure Rules. In particular Rule 12 and Practice Direction 12B relate to private law cases.

Female Genital Mutilation Protection Orders

You can apply if you or someone you know is at risk of female genital mutilation.

File and serve

Sometimes you might be told in an order to 'file and serve' something. 'File' means to send to the court and 'serve' means to send to any other parties in the case (and anybody else the order says).

Final hearing

At a final hearing the court will hope to conclude the proceedings with either an agreement between the **parties** or an order about any remaining issues or child arrangements. It is important that the case is brought to an end as soon as possible so that the parties can move on and make their **parental responsibility** work without continuing to look to the court for an answer. The court will not fix any more hearings unless it is really necessary and in the interests of the child.

Financial Compensation Order

If somebody disobeys a **child arrangements order** (usually by failing to make sure that a child spends time or has contact with another person) the court may order the person who has failed to comply to pay **financial compensation** to the other person, for example for wasted travel or other expenses.

First Hearing Dispute Resolution Appointment (FHDRA)

Normally the first hearing the court will hold is called the First Hearing Dispute Resolution Appointment. The purpose of that hearing is to try and resolve as many issues as possible. Many cases resolve completely at this point. A Cafcass officer should be on hand to speak to the parties and advise the court. Some courts also have a **mediator** available. If the case does not resolve completely then the court will set what has to happen so that any remaining issues can be dealt with properly. You may hear this referred to as case management or the court giving directions.

The court may at this hearing also make short term orders about arrangements for the children (interim orders). Otherwise the court might fix another hearing for that to be considered (an interim hearing).

Forced Marriage Protection Orders

A Forced Marriage is one that takes place without the full and free consent of both parties.

A Forced Marriage Protection Order can help if you are being forced into a marriage or are already in a forced marriage.

Harm

You may find the word 'harm' referred to, for example in the **welfare checklist** and in connection with **domestic abuse and violence**. It has a very wide meaning in children cases. It means the ill-treatment or impairment of health or development of a child. That includes through seeing or hearing the ill-treatment of somebody else (seeing or hearing domestic violence for example). Health means physical and mental health. Development means physical, intellectual, emotional, social and behavioural development. Ill-treatment includes sexual abuse and non-physical ill-treatment.

Interpreters

If a **party** or **witness** is unable to understand spoken English or has a hearing difficulty an interpreter may be needed at hearings.

If you have a hearing difficulty which means that you would not be able to follow the hearing without the help of an interpreter you should let the court know and an interpreter will be arranged for you.

You'll be given an interpreter if your case involves children, domestic violence or **forced marriage** or a **female genital protection order**. You might still be able to get an interpreter if it doesn't, but only if all of the following apply:

- you can't afford to pay for an interpreter yourself
- you don't qualify for legal aid
- you don't have a friend or family member who the judge says can act as your interpreter

See www.justice.gov.uk/courts/interpreter-guidance for more information.

Lay representative

A lay representative is somebody who is not a qualified lawyer but who the court allows to speak on behalf of a **party** in the case. The court will not usually allow a lay representative because they are not covered by a code of conduct or professional insurance in the same way that qualified lawyers are. That said, the court may consider it if it will help to resolve the case fairly. See also **McKenzie friend**.

Legal Aid (Public Funding)

Since April 2013 legal aid (also called public funding) has been available in private children cases to pay for legal representation only in limited circumstances. Usually legal aid will only be given to a party who has been a victim of domestic abuse or violence. In very exceptional cases the Legal Aid Agency (which is the agency responsible for legal aid) may grant Exceptional Case Funding. You can check whether you might be able to get legal aid by visiting the Legal Aid Agency website www.gov.uk/check-legal-aid

Litigation friend

The court will assume that the **parties** are able to make their own decisions in relation to the case. If a **party** cannot make a decision for himself or herself because of some impairment of the mind or brain the court may decide that they need a litigation friend. That may be a friend or relative, provided their interests do not conflict with those of the **party** concerned. Otherwise it may be necessary to ask the **Official Solicitor** to act as litigation friend. If the court has decided that a **party** needs a litigation friend, the case cannot proceed without a litigation friend being appointed.

The relevant provisions are in:

- sections 1-3 of the Mental Capacity Act 2005 (www.legislation.gov.uk/ukpga/2005/9/contents)
- Rule 15 (www.justice.gov.uk/courts/procedure-rules/family/parts/part_15) and
- Practice Direction 15A (www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_15a).

Parties who need a litigation friend are called 'protected parties'.

A child who applies to the court in his or her own right will also need a litigation friend unless the child is old enough and has enough understanding to deal with the case without a litigation friend.

Sometimes people think that a person who supports them at court is called a litigation friend, which is not strictly correct. That person is more likely to be a **McKenzie friend**.

Litigant in person

A **party** in the case who is not represented by a lawyer is a litigant in person. There are no different rules for litigants in person and they are bound by the same rules and procedure as a represented party. The court has a duty to make sure that parties in cases are on an equal footing. The court will try to help litigants in person to ensure a fair hearing. However, the court cannot give advice to a **party**.

McKenzie friend

A McKenzie friend is a person who supports a **party** in a case. There are professional McKenzie friends who may charge a fee for their services. Or a McKenzie friend may be a relative, friend or other supporter. Either way there are limits on what a McKenzie friend can and cannot do. A McKenzie friend cannot speak at a hearing on your behalf or question **witnesses** and they cannot conduct the case on your behalf. A McKenzie friend can provide moral support, take notes, help with case papers and quietly give advice.

Mediation/Mediator

Mediation is a form of **non-court dispute resolution** done by mediators. It is very important that separated parents and others try to resolve arrangements for children for themselves. Using a mediator to help in the process is much better than coming to court, which should be a last resort. You can get more information about mediation from the Family Mediation Council website www.familymediationcouncil.org.uk/family-mediation

Mediation Information and Assessment Meeting (MIAM)

Before you can apply to the court for an order in family cases you must attend a Mediation Information and Assessment Meeting (a MIAM) with a family **mediator**. The purpose of a MIAM is to give you information about mediation and to check whether the case might be suitable for mediation. The other **party** to an **application** (the **respondent**) is also expected to attend but does not have to (although the court might order that later on).

There are cases where the requirement to attend a MIAM does not apply, for example cases involving **domestic violence** or **urgent cases**, but you need to check carefully whether that applies to you. The rules are strictly applied.

You can get more information about MIAMs at the website of the Family Mediation Council (FMC) www.familymediationcouncil.org.uk/family-mediation/assessment-meeting-miam/ where you can also find details of family **mediators** in your area authorised to do MIAMs. Also here is a link to a short video about mediation, www.familymediationcouncil.org.uk/family-mediation/

Monitoring orders

The court may ask **Cafcass** to keep a check on (monitor) child arrangements that have been ordered by the court, particularly at the end of a difficult case. **Cafcass** will report back to the court if the order is not kept to.

No order principle

The courts should not impose outcomes on adults concerning children if the adults can resolve matters for themselves. As a result the starting position is that the court will not make an order unless it is better for the child to do so. If there has been a difficult argument over arrangements for a child resulting in the court having to make a decision, it may be that it is better for the child for the court to make an order to ensure as far as possible that what has been decided actually happens. But in very many cases it is enough to note what the **parties** have agreed and an order is simply not needed.

Non-court dispute resolution

This refers to any type of resolution of issues that adults have about children that takes place away from the court (most often **mediation** but it may be counselling or therapy or some other form of help).

Official Solicitor

If a **party** to proceedings needs a **litigation friend** and there is nobody else available the Official Solicitor may be asked to act as **litigation friend**. For more information see the website for the Official Solicitor, www.gov.uk/government/organisations/official-solicitor-and-public-trustee

Paediatrician

A paediatrician is a medical doctor who specialises in the health and development of children. A paediatrician may be asked to help the court by providing a report or giving **expert evidence**.

Parental responsibility

Legally parental responsibility is all the rights, duties, powers, responsibilities and authority that a parent of a child has. The most important aspect of parental responsibility though is responsibility rather than rights.

Mothers always have parental responsibility. Fathers will have it automatically if they are named on the child's birth certificate (since December 2003). They may also get it by agreement with the mother or order of the court. Some **child arrangement orders** also result in parental responsibility being held by parents or others while the order is in force.

Parental responsibility is very important. Part of that responsibility is about separated parents making sure that they are able to make satisfactory arrangements for their children that are in their interests. It is, in short, the job of bringing up children.

Party

The word party or parties is used in this guide and you will see it in orders. This means those who apply to the court (the **applicant**) and those who are entitled to be heard by the court in response (the **respondent**). Sometimes a child may be party to proceedings, either in his or her own right if the child is of sufficient age and understanding, or because the court has appointed a **children's guardian**.

Penal notice – see Enforcement

Permission to apply

Some people are entitled to apply for orders about children – the parents obviously and some people with whom a child has lived for a certain length of time. Others must get the court's permission before applying for an order. This is dealt with in section 10 of the Children Act 1989, www.legislation.gov.uk/ukpga/1989/41/section/10

Personal Service

Sometimes the rules or the court will say that documents in the case must be 'personally served'. This means that they have to be handed personally to the person who is to be served rather than sent by post. Normally it is better if you do not try to personally serve documents yourself. You could ask a Process Server to do it for you. They will make a statement confirming whether they have been able to personally serve the documents. Otherwise the court might ask the Court Bailiff to deal with it.

Prohibited Steps Order

The court may make an order prohibiting a person from doing something in relation to a child, for example, removing the child from a parent or from school or changing a child's name. This is called a prohibited steps order. Failing to obey it may result in a fine or imprisonment. See also **specific issue orders**.

Psychiatrist

Psychiatrists specialise in the diagnosis and treatment of mental illness and disorders. Some psychiatrists deal with adults, others with children and adolescents. A psychiatrist may be asked to help the court by providing a report or giving **expert evidence** about any mental illness and risks that might result for children.

Psychologist

A psychologist specialises in people's behaviour and mental processes. A psychologist may be asked to help the court by providing a report or giving **expert evidence** about the behaviour of the parties and how that affects the matters the court has to decide.

Respondent

When somebody applies to the court certain other people are entitled to know about the application and to become a party so they can respond. Those people are known as respondents. Everybody with **parental responsibility** will automatically be a respondent. The court may also decide that other people concerned about the child should become respondents so that the court can hear what they have to say.

Right to apply

If a hearing has taken place without you knowing about it (for example because of urgency or a risk of **harm**) you have a right to ask the court to reconsider any order made at that hearing (called a right to apply). You must act promptly and ask the court in writing to reconsider the order (usually by the judge or magistrates who made the order). The court may arrange another hearing for that to be done. You must tell the other party in the case that you have asked the court to reconsider the order.

See also **without notice**.

Safeguarding

At the start of the case **Cafcass** will ask the police and any local authorities for the areas where the parties live or have lived recently to provide any information they have. This may include any criminal records held by the police or child protection or other information held by a local authority. The court should not make an order about children without safeguarding information unless the case is an urgent one requiring an immediate order.

Section 7 report

The court may ask **Cafcass** or a local authority to do a report for the court about a child's circumstances and to make a recommendation to the court about the sorts of orders that it should make. This report is prepared under section 7 of the **Children Act 1989** and it should take into account the **welfare checklist**.

Section 37 report

The court may think that a child is at possible risk of **harm** such that the local authority might consider making an application to the court for a **care or supervision order**. The court can ask a local authority to report under section 37 of the Children Act 1989 whether it intends to apply for a **care or supervision order**. At the same time the court may make an interim (short term) **care order**.

If the local authority is not going to apply for a **care or supervision order** it should tell the court what support (if any) it intends giving the family concerned.

Separated Parents Information Programme (SPIP)

SPIPs are designed to help parents learn more about the effect on their children of separation. They are a form of activity ordered by the court, although in some areas SPIPs may be available before proceedings start (the sooner parents go on such a programme after separation the better).

For more information see the Cafcass website, www.cafcass.gov.uk/about-cafcass/commissioned-services-and-contact-activities/spip.aspx. There is also a short video about SPIPs on YouTube.

Short notice

Sometimes an **application** to the court may be considered so urgent that the usual period of notice cannot be given to the **respondent**. Even so, the court will want to give the **respondent** an opportunity to be heard and may shorten the usual notice so that can be done. This is called giving short notice.

Special Guardian

The court can appoint a special guardian or guardians for a child. Special guardians have **parental responsibility** for the child which they can use to the exclusion of **parental responsibility** held by anybody else, including the parents. So a special guardian will be able to decide about a child's upbringing even if a parent disagrees (although that parent could still apply to the court to decide what was in the child's best interests).

Some people are entitled to apply for a special guardianship order, others need **permission to apply**. First though three months written notice has to be given to the local authority for the area where the child lives so they can prepare a detailed report for the court about the suitability of the **applicant(s)**.

Specific issue order

A specific issue order sets out what must be done in relation to a child, for example, which school the child must attend or which last name he or she will be known by. If you think of a prohibited steps order as saying what people cannot do in relation to a child, a specific issue order tells them what they must do.

Statements – see Witnesses/Witness Statements

Supervised/supported contact

Sometimes contact between a child and another person needs to be supervised or supported. Supervision means somebody keeping a close eye on the contact and being present throughout. The supervisor may be somebody known to the parties (a trusted friend or relative for example) or a professional person at a centre that provides for supervised **contact**. The court will only order contact to be supervised if necessary to protect the interests of a child.

Supported contact does not require constant supervision. It is normally provided at a **contact centre** as a way to help re-introduce contact over a short period.

Unpaid work order

If it is proved that a party has not done what they are required to do by a **child arrangements order** the court can order them to do unpaid work for between 40 and 200 hours. This is also known as an **enforcement order**. The court will ask Cafcass to provide information to decide whether it would be appropriate to make an unpaid work order (including the availability of such work locally).

Unlawful Removal/ Child Abduction

It is a serious criminal offence to remove a child from the UK without the agreement of everybody with **parental responsibility** or permission of the court. Most countries to which a child is unlawfully removed will normally order the child's immediate return. If you are concerned that a child has been unlawfully removed you should take urgent advice from a solicitor. Here is a link to further information about Child Abduction,

www.gov.uk/government/publications/international-parental-child-abduction

Urgent cases

Sometimes **applications** are made to the court without the applicant going to a **MIAM** first. An urgent hearing may also be asked for. Of course anybody applying to the court is likely to feel that their case is urgent but the rules are clear as to what urgent really means. A case is only urgent if there is:

- a risk to the life, liberty or physical safety of the applicant or his or her family or home
- or delay would cause
- a risk of harm to a child
- a risk of unlawful removal of a child from the UK
- a significant risk of a miscarriage of justice
- unreasonable hardship to the applicant
- irretrievable problems in dealing with the dispute (for example loss of significant evidence).

Warning notice – see Enforcement

Welfare of the child

The court's overriding concern when dealing with a child case is the welfare of the child (sometimes called the child's best interests). The court will consider the **welfare checklist**.

It is also important when adults (including courts) make decisions about children that they listen to what the child is saying (the voice of the child). The court will need to consider how the child is to be involved in a case. Much will of course depend on the age and understanding of the child. It may be enough for the child to be seen by a **Cafcass** officer who can report the child's wishes and feelings to the court. Or the child may want to be more directly involved for example by writing a letter or seeing the judge. Sometimes the court will want the child to be separately represented by a **children's guardian**.

The court will also take into account that delay in dealing with the case is likely to be harmful to the child concerned. The court will fix a timetable to avoid any unnecessary delay.

Welfare checklist

When deciding what is in the best interests of a child, the court will take into account the welfare checklist in section 1(3) of the **Children Act 1989**:

- the ascertainable wishes and feelings of the child given his age and level of understanding
- his physical, educational and emotional needs
- the likely effect on him of any change of circumstances
- his age, sex, background and other relevant characteristics

any **harm** he is suffering or is at risk of suffering

- how capable the parents/adults concerned are of meeting his needs
- the powers the court has.

Witness/Witness statements

A witness is somebody who gives evidence to the court. A **party** is a witness when giving **evidence**. A party may call somebody else to give evidence on their behalf and they will be witnesses.

Anybody who is going to give **evidence** to the court must make a written statement of what they are going to say. The court order will set out what has to be done. The parties themselves may find it helpful to use the witness statement template available online

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/c120-eng.pdf>

Without notice

Normally the court will not make any decisions without giving both sides a chance to be heard. Exceptionally the court may be prepared to make an order without notice to one **party**, but only if:

- giving notice would enable to the other **party** to take steps to defeat the purpose of the order or
- there is exceptional urgency, that is there has been literally no time to give notice even by telephone, text or email or
- if notice is given it would expose the **applicant** or child to an unnecessary risk of physical or emotional **harm**.

If the court does make an order without notice a further hearing will be arranged to give an opportunity for the other **party** to be heard.

Also if you were not given notice of a hearing you can ask the court to reconsider any order made – **see right to apply**.