

Children Order drafting checklist

for cases involving allegations of domestic abuse and/or high conflict cases

This checklist has been developed by Resolution's Domestic Abuse, Children and Drafting Committees for use in cases involving allegations of domestic abuse and in high conflict cases.

The template Children Orders are a useful starting point for ensuring the enforceability of any agreement reached.

This checklist is designed to support members when drafting Orders, in cases where there is the possibility of ongoing control being exerted by the domestic abuse perpetrator and/or in high conflict cases, to:

- strengthen the enforceability of the Order, and
- reduce the amount of negotiating between the parties once the Order has been made.

The drafting considerations below will not be appropriate in every case, and the bargaining strength of both parties will have an impact on how the Order is drafted.

It is important to recognise the possibility that the more prescriptive a children Order becomes, the greater the risk it may be “weaponised” and used against a domestic abuse survivor. The challenge lies in balancing the inclusion of sufficient detail to minimise future disputes or enforcement issues with the reality that a child's needs cannot be anticipated in every circumstance. No Order can prescribe a perfectly compromised outcome in every given scenario throughout a child's life. The key is to assess whether any of the points raised in this document would assist in a particular case without causing further harm. Each case must be considered on its own facts, as there are often equally strong arguments for and against including specific provisions in an Order.

In preparing this checklist we have been extremely conscious that inserting provisions intended to prevent future conflict, could, in some cases, be used by a domestic abuse perpetrator to continue their abuse. For this reason, it is essential to consider the short- and long-term implications of including any of the suggestions below in an Order.

1. Where contact is going to be supported/ supervised

- a) Although the precedent Orders deal with who will pay for the contact centre fees, consider specifying who will pay for any ancillary costs such as parking fees and for the child's meals/snacks throughout the session, or any fees, such as entrance fees to an activity, for a breastfeeding mother who needs to be close by to feed a baby who is having contact with the father.
- b) Although it may seem obvious, it can be helpful to include a requirement for the parent with whom the child lives to leave the contact centre during contact, so that the child does not become distressed (and wanting to return) upon seeing them.
- c) Consider specifying whether any extended family members are permitted to attend the supervised/ supported contact, and whether prior notice should be given so that the child and/or the other parent can prepare for their presence during contact/handover.
- d) Consider contingency arrangements for supervised/ supported contact to still take place if the contact centre/agreed contact supervisor is ill, or otherwise unavailable to support/supervise. Are there any agreed third parties that can assist as a back-up ("Plan B")?

2. Indirect contact

- a) Consider including clear ground rules about where the parent with whom the child lives (or indeed the other parent when their child is spending time with them) will be when indirect phone contact takes place. For example, should they provide an undertaking to not be in the same room or listening at the door.
- b) Where it is necessary to protect the location of the parent with whom the child lives, consider setting up a neutral "postbox" for exchanging gifts, school reports and medical information, ensuring that all materials are redacted so that the location remains protected. This could be facilitated via solicitors or an agreed third party to avoid direct communication between the parents, where appropriate.
- c) Consider whether ground rules are required around the use of the children's mobile phones, for example will there be timeframes after which the parent (who the child is not with) cannot call/message the child directly on their phone or contact them through other platforms (such as Roblox).

3. Communication between the parents/ the use of technology

- a) Ensure that any parenting app used does not have GPS tracking enabled and does not allow one parent to prevent messages being sent/received by the other parent.

- b) Consider including in the Order who will pay for any parenting app, and who will initiate the invitation to the other parent.
- c) Although the precedent Orders already restricts the use of parenting apps to the discussion of child-related matters, consider what steps could be taken if one parent uses the app inappropriately. For example, will the other parent delete the app and will contact between the parents then move to being via solicitors or an agreed third party. Including this in the order could help prevent the leaving party being accused of breaching the order and also acts as an incentive for the app to be used appropriately.
- d) Consider whether it should be stipulated that messages should be replied to within a certain reasonable timeframe and that a reply should be contained within the correct thread and not creating new threads which are difficult to keep track of.
- e) Consider whether it would be appropriate to state the frequency of the contact between the parents, and whether messages should be restricted to certain hours (e.g., not sent late at night or very early in the morning).
- f) Encourage your client to establish personal boundaries, such as creating a new email address that they only look at during certain times to minimise distress from receiving messages at a difficult time.
- g) Remind clients to change their passwords on all devices and accounts, avoiding any that an ex-partner will be able to easily guess. The Women's Aid digital security web page (Cover your tracks online – Women's Aid) provides further helpful guidance.
- h) If photos of the children are going to be provided by one parent to the other following a separation, consider including in the order the timeframe that will be needed for that sharing process, how and when this will occur, and how to deal with any related costs.
- i) Consider including ground rules around the posting of photos of children on social media. Ensure clients are aware of their privacy settings and location-sharing features before posting content on social media.
- j) Consider including ground rules about who will attend (and the logistics of) school events such as parents' evenings, prize giving ceremonies, music recitals, "graduations" (with most nursery schools having these sort of events), school plays and sports days. Will the Order specify that each parent will attend a separate date for each event, wherever possible. Will each parent separately communicate with the school, and will both parents be separately registered to receive school information and reports? This will only be safe where the child's location does not need to be kept from a parent.

4. Where the children are spending time with both parents in person

- a) While term-time and holiday arrangements are usually dealt with in the Order, consider also including school inset days. Specify who will have the children on those days and what the handover arrangements are, taking into account one or both parents may be working.
- b) Consider including in the Order if there should be duplicate sets of clothing/items in each house, so that arguments do not arise about moving belongings between properties and to prevent the burden falling on the child. Examples include school uniform, sports kits and equipment, musical instruments, school shoes and lunchboxes.
- c) Where it is not possible to maintain two sets of various items/clothing in both houses, consider including provisions in the order about the children returning with clean/dry clothes, so that the receiving parent does not need to wash and dry clothes late at night before a school day.
- d) If the children are to be returned late in the evening, consider including provision for the children to be bathed and fed before their return, so that the parent they are returning to is not required to undertake these tasks late at night.
- e) Consider setting out who can and cannot be present at handovers, and whether a neutral third party should facilitate them to avoid the parents coming into direct contact, so that the presence of someone (whether that is the other parent or a third party) does not cause distress for one or both of the parents or place them in danger.
- f) Consider including recitals around the introduction of new partners. For example, will either parent want to meet the new partner before they are introduced to the child, or before any overnight stays take place with that partner present. Does that relationship have to be of sufficient duration before a child can be introduced to the partner? While we appreciate the court will often want to avoid interfering with the exercise of parental responsibility, these issues often cause significant concern in practice.
- g) Consider including provision for significant family events (e.g. weddings and funerals) that occur while the children are with the other parent. Will there be an agreed default for swapping days, or will missed time not be replaced? If a swap is to take place, will it occur on the nearest weekend, or at another time further down the line, for example during the next school holidays.
- h) If the children are very attached to the family pet, consider whether the pet (e.g. a family dog) will travel with the children between homes.
- i) Consider attaching a colour-coded contact timetable to any order, so that both parents can easily understand the proposed timetable.

5. If contact cannot take place/there are breaches

- a) If one parent has a history of lateness, consider including a provision in the Order that the time that the child is returned late is to be made up, in the other parent's favour, at a later date. This may help highlight from the very beginning that there are consequences for persistent lateness.
- b) If a parent is running late returning a child, for example due to unavoidable traffic, consider specifying in the Order how to communicate these sort of delays and whether there is a grace period, for example 15 minutes, before "make-up time" starts accruing.
- c) Consider clarifying in the Order what should happen if a child is unwell on the day they are due to travel to another parent. For example, should contact still take place, with the other parent providing care, unless the child requires urgent medical attention?
- d) If a parent cannot have a child with them during their allocated time, and if the other parent similarly cannot care for them due to pre-existing plans, consider whether the Order needs to outline that it is for the parent with whom the child should be with that is to source and fund alternative childcare, after having given the other parent the right of first refusal.

6. Financial considerations if the parents are not married/there are no separate Schedule 1 proceedings

- a) Where there is no other forum in which financial matters can be dealt with, consider outlining in the Order who will fund the children's clubs/extra-curricular activities, and how. For example, will the school communicate directly with that parent, copying in the other?
- b) Consider whether it will be helpful to have an agreed amount stated in the Order for extra-curricular activities, for example the first £500 per year will be agreed and taken from a joint fund and anything thereafter will need to be agreed directly between the parties. This may save one parent having to go to the other parent until the costs become greater. However, bear in mind that continuing to have a joint account may well be another opportunity for financial control to be exerted over a parent. Parameters can be included about the sort of clubs that would be pre-agreed, for example set sporting activities/musical lessons.
- c) Consider including as much detail in the Order as possible, preferably by way of undertakings (or at least recitals) on who will pay for before/after school clubs, school trips, school uniform, school lunches, sports equipment, optician costs, dental costs etc. These are often issues left to the parties to have to negotiate themselves long after the Court/solicitors interventions and can be sources of tension.

- d) Consider carefully the mechanics for how payments will be made, for example will a set amount be placed into a joint account each month based on an estimate of the total costs?
 - e) Try and avoid, if possible, a system where the domestic abuse survivor is only able to claim back money from the perpetrator, for the above child-related expenses, on the production of a receipt (which are often scrutinised and leads to constant ongoing ties/control).
 - f) In some cases, it may be appropriate for the Order to specify that the only financial contribution will be child maintenance. However, this rarely covers the larger ad-hoc costs. The more thought that is given about this issue when the Order is drafted the less likely there will be a need for an ongoing negotiation/bargaining between the parties into the future.
- ## 7. Miscellaneous
- a) In relation to passports, note that the parent who applies for a child's passport has greater control over cancelling or reapplying for it. Consider an undertaking for a redacted Order to be disclosed to the Home Office in relation to passports, and for the Order to state that, notwithstanding the agreement for X parent to apply for the passports, permission is given for either parent to cancel/apply for new passports, in the event that the passports are lost or stolen or there are other emergencies.
 - b) Where transparency Orders apply, and journalists are permitted to attend hearings, consider whether any ground rules are required to avoid the hearing being used as a media circus and attract undue publicity.
 - c) Although the President has issued guidance about child-friendly judgments and judges communicating with children about the outcome of a case, consider including in the Order details of whether either of the parents are going to speak to the child about the hearing outcome (either after or pending any communication from the judge). Consider whether that will be joint, and/or if agreed wording will be included in the Order to avoid disputes arising.