



EDUCATION OTHERWISE

**Home Education:
Information for
Parents who do
not agree to
Home Education**

SUMMARY

Education Otherwise is the charitable organisation which has been supporting home educated families for nearly fifty years. Our information sheets are based on our knowledge and expertise, supported where appropriate by legal advice.

Key Messages

- 1) **Parents should consult each other over decisions:** Parents must consult each other over major education decisions.
- 2) **Home education is often misunderstood:** Parents may need reassurance over understandable concerns.
- 3) **Choices should be child centred:** Home education should be in the best interests of the child and children's wishes and feelings are important.
- 4) **CAFCASS reports are usually followed by the Court:** Parents should ensure that they provide factual and clear information to CAFCASS officers.
- 5) **Court hearings can be positive opportunities:** Court proceedings are intimidating, but they do allow parents to explain their wishes and feelings.
- 6) **Parents must act reasonably:** The Court will expect parents to act reasonably at all times.
- 7) **Parents must comply with the law:** Court orders must be followed unless there is very good reason not to do so.
- 8) **Reassure the child:** Whatever the outcome of Court proceedings, parents should try to show a united and reassuring front to the child.
- 9) **Children should be given age appropriate information:** Children should be told enough to understand what is happening, but no more.

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Introduction

Education Otherwise is the charitable organisation which has been supporting home education and home educating families for nearly years.

For most parents, the choice to home educate is a lifestyle choice, requiring significant commitment in terms of time and resources; it is not something that parents generally decide to do without a great deal of research and thought. The decision to home educate can be made for a great

many reasons, such as: protecting the child's mental health, or their physical health, wanting to travel widely, wanting to spend more time together as a family, providing for a child's special interests, a child having special needs, being bullied, or simply a child being less well suited to a school environment.



**Home
education is
of equal
status in law,
to school
education**

The choice of how to educate the child is that of the parent, provided that the education is suitable to the child's 'age, ability, aptitude and to any special educational needs (the child) may have'¹.

Education Otherwise has obtained advice from King's Counsel (KC, is a title given to a senior barrister) in order to help us to provide accurate advice to parents. The instructed KC specialises in public law and education law, is a former part-time Chair of the Special Educational Needs and Disability Tribunal and a current 'A list' member of the Equality and Human Rights Commission's Panel of Preferred Counsel. He also trains lawyers and others, in education and public law.

This fact sheet is based on qualified legal advice including advice obtained by our instructed KC. However, parents should of course obtain their own legal advice and should not use this fact sheet as a substitute for independent legal advice.

December 2025

¹ Education Act 1996 s7

Education is compulsory, school is not

Education is compulsory for all children in England and Wales from whichever date is soonest of the 1st January, 1st April, or 1st September after the child attains five years of age. Education remains compulsory to the last day in June, of the academic year during which the child attains 16 years of age (by the end of the summer holiday period).

Schools most usually accept children from age four years, but that child remains below compulsory school age and the parent can opt to not provide an education to the child until they become of compulsory school age.

The duty to ensure that the child receives a suitable education is a duty upon the parent, regardless of how the child is educated and this derives from the Education Act 1996 s7:



‘The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable— (a) to his age, ability and aptitude, and (b) to any special educational needs he may have, either by regular attendance at school or otherwise’.

This means that home education is of equal status in law to school education and a parent may elect to home educate at any point during the child’s compulsory education years. In fact, home education is the default position, as a child does not become a registered school pupil until such point as a parent elects to register that child in a school.

(Please see our information sheet on frequently asked questions for Special School information and information relating to school attendance orders).

Decisions to home educate a child

All parents with parental responsibility are entitled to be involved in significant decisions about how their child will be educated and to make that decision together, other than in very limited circumstances, such as if a child is in care or where a specific Court order affects that position. This applies irrespective of whether the parents live together.

A mother will always have parental responsibility, but fathers may not if they are not named on the child's birth certificate. If a father does not have parental responsibility, the mother may legally make decisions about the child's education without consulting the father, but it is usually not wise to do so. This is because a child's best interests are almost always served by involving both parents in this decision.

A parent without parental responsibility can make an application to the Court to obtain it, at the same time as applying for decisions relating to how the child is to be educated. An application for parental responsibility will almost always succeed and mothers should not rely on lack of parental responsibility to act unilaterally.

Even when there is a Court order stating that a child lives with one parent, the other parent retains the right to be consulted in order to make joint decisions over important issues. These include invasive medical interventions, changes of name, changes of religion, moves at distance away from the normal place of residence and significant education decisions.

If the other parent has no contact whatsoever with the child, it is unlikely that the parent with whom the child lives would be in a position to consult with that parent about decisions, however, this does not exclude that parent from making an application to the Court in respect of education, if they later realise that the parent with whom the child lives has made a decision without their knowledge.

Previous lack of interest in a child will not prevent a Court from making an order in respect of education, although these factors will be taken into account by the Court. This is because an application to the Court in respect of the child's interest will be taken to indicate that the parent does have an interest in the child's wellbeing.

Domestic abuse can influence the Court if an application is viewed as being part of a pattern of abusive behaviour, but it does not remove parental responsibility and consequently makes no legal difference to rights of consultation. Of course, there will be cases where domestic abuse is so serious that the parent with whom the child lives will not be able to safely consult the other parent and the Court will take that into account if an application is made by the abusive parent.

**Both parents
have a right to
be involved in
significant
decisions about
how their child
is educated**

When parents do not agree

If one parent wants to home educate and the other parent does not agree it is important that the parents discuss the situation together unless it is impossible, or unsafe to do so.

It is important to remember that objections to home education are often due to concerns that the parent might have in respect of the child's social and academic needs, rather than any ill will on the part of that parent. Most adults in the UK would consider school education to be normal and any suggestion of an alternative choice would understandably raise questions for a parent who has never previously considered it.

These are reasonable concerns and parents can address them by:



- **Listening to each other and discussing how any concerns will be addressed;**
- **providing research data which indicates how successful home educated children are both academically and socially;**
- **suggesting a trial period so that both parents can judge more accurately how their child will benefit from home education;**
- **discussing the advantages of home education for family life, such as being able to take holidays at less expensive and crowded times, being able to travel widely and spend more time as a family and**
- **separated parents may welcome the opportunity to have more involvement in the child's life.**

It is important to remember that a parent with whom the child does not live will be influenced by family, friends and negative media reports in respect of home education and to address their reasonable concerns in a considerate way.

Legally, if the other parent does not agree to home education, the parent with whom the child lives should make an application to the Court for permission to home educate the child, if they still wish to do so. Of course, a parent who does not live with the child would be unable to ensure that the child is home educated, so such an application by that parent would be unlikely to succeed. Parents should be aware that applications to home educate a child who is not already home educated, are rarely successful. This can be for several reasons, including that the Court prefers to maintain the status quo (the child's existing arrangements); the parent wishing to home educate does not explain their case well, or the case is badly conceived; the Children

and Family Court Advisory and Support Service officer (CAFCASS) recommends against home education, or the child states that they prefer school.



Children are usually happier if their parents can agree their education



If a parent is already home educating the child and the other parent wishes the child to go to school, that parent can apply to the Court for an order that the child attend school. Either parent can apply to the Court regardless of whether or not they previously agreed to home education, although previous agreement will be considered by the Court if it is evidenced.

Some parents who do not agree to home education may choose not to make an application to the Court due to lack of funds; lack of knowledge that they can do so; not wishing to face the stress of Court proceedings or not wishing to inflict that stress on the child. If the other parent does not make an application to the Court and the parent with whom the child lives is home educating, they can continue to do so.

The best arrangement for a child is usually one that their parents can agree together, taking account of the child's wishes and feelings. Parents who need help to reach a decision can do so through mediation. Details of mediators trained in family Court matters can be found at: <https://www.familymediationcouncil.org.uk/>

Court applications

Any person with parental responsibility can make an application for a Child Arrangements Order (CAO), A Prohibited Steps Order (PSO), or a Specific Issues Order (SIO). These can be combined in one application.

Other people who are closely connected to the child, such as grandparents, can ask permission of the Court to make an application, but may not do so in respect of home education unless the child lives with them.

A CAO is an order about where the child should live, who they should live with, how much time they should spend with the other parent, or what other contact the child should have with the other parent.

A PSO is an order to stop a parent from doing something in respect of the child and is the most usual application made by parents who do not agree to home education.

A SIO is an order which instructs the parent as to what they should do in respect of an aspect of their parenting. Sometimes a parent will apply for a SIO in respect of home education, such as when the parent with whom the child lives has expressed an intention to home educate and the other parent wants the Court to order them not to do so.

An application made in respect of home education can be combined with applications in respect of other matters relating to the child and it is common for this to happen. This is particularly the case where a parent has no, or limited contact with their child, or where the parents disagree about other issues relating to the child, such as the child's religion, or medical care.



In some cases, a previous Court order has restricted the parent from making an application to the Court without permission². If that is the case, the parent will have to first apply for permission to make an application.

Whichever parent applies for an order is the 'Applicant' and the other parent is the 'Respondent'.

Prior to making an application to Court, most parents are required to attend mediation, although exemptions do apply and can be found in section three of the family Court application form C100. Mediation can help parents to decide what is in the best interests of their child and Courts may order mediation prior to hearing the case, if it has not already been undertaken.

Fees are payable for Children Act applications but parents on low incomes, or means tested benefits, can apply for fee remission using form EX160.

² Children Act 1989 s91 (14)

Mediation can help parents to come to decisions which are right for their child

Making a Court application

The parent making an application to the Court, must complete form C100. Some parents find this form confusing, but most of the questions are straightforward. Question 5b on form C100 should not include a full statement, but just a few lines to explain what your application is about.

If the other parent has been abusive to the Applicant parent, or to the child, a form C1A must also be completed to explain the abuse.

Form C8 can be included if the parent has good reason to not disclose their address to the other parent. If form C8 is used, the Applicant parent should omit their address from all other forms and state 'form C8 completed', where an address is required.

If a parent is on a low income, application for remission of Court fees (not to have to pay) is made on form EX160.

If the application is 'without notice', that is if the Applicant parent is asking the Court to hear it without notifying the other parent, a statement in support of the application can be included. This should explain why the Applicant cannot give notice to the other parent. Without notice hearings are only allowed for limited reasons, which are similar to the reasons for exemption from mediation because of urgency.

The following documents should be sent to the Court:

- **Form C100;**
- **Form C1A if completed;**
- **Form C8 if completed;**
- **the fee of £263 unless fee remission is claimed (cheques should be made payable to HMCTS) and**
- **form EX160 if used.**

If the application is urgent, it is often better to take the documents to the Court and ask to wait to find out when the case will be heard. Parents should check which Court to attend, with their local Court as many are now centralised in regions. Parents should also contact the Court to ascertain if an appointment is required. If taking the application parents should take three copies of forms C100 and C1A.

What to expect

The first step is for the Court to 'issue' your application and allocate a case number. It will then send the application to the child's other parent and CAFCASS. This will include:



Application form C100. This will contain information about what the parent is applying for.

If the Applicant parent is alleging abuse by the other parent, a form C1A will also be included.

Notice of a Court hearing: This will tell the parent when the first Court hearing (appointment at the Court) will be. It will usually be described as a First Hearing Dispute Resolution Appointment (FHDRA).

4. A form C7: this is a form that the parent completes to acknowledge receipt of the application. It is a simple form to complete, although some people are unsure whether, or not they should answer 'yes' to whether or not they intend to make an application.

5. An information leaflet.

Form C7 should be completed in all cases and unless the Court has said otherwise, this must be within 14 days. If the Respondent parent wishes to make an application themselves, it is usually beneficial to do it at the same time, but it can be made later.

If the parent is a victim of abuse, they are able to complete a form C8 and put on the form the reason why they want to keep their address hidden. It is important not to put the address on any other Court documents and to state 'Form C8 submitted'.

It would be an unusual parent who agreed with what the other parent stated in a Court application and it can feel very upsetting to read things contained in the application which the

parent feels to be untrue, or unkind. Parents should remember that each has their own view of what happened in the past and what arrangements should be made for their child and the application is an opportunity for a neutral third party to help to ensure that the decision made is in the best interests of the child.

Home education is not always well understood by professionals

The Court will not want to receive a letter, or statement from the Respondent parent at this stage, to explain or challenge what the other parent says. Parents will have the opportunity to talk to CAFCASS about their situation early in the process.

It is at this stage that parents often consider instructing a solicitor to represent them in the Court. Very few solicitors have experience of home education law and practice, but recommendations can be sought from other home educating parents.

Courts are well used to people representing themselves and this is referred to as being a Litigant in Person (LIP). Parents will not be directly penalised for not being represented. The benefit for LIPs is that it has little or no cost attached. However, even a solicitor who knows little (or nothing) about home education will be able to guide the parent through the Court process and speak for them in Court, relieving a great deal of the stress and anxiety many people feel over going to Court.

Parents can elect to instruct a direct access barrister, instead of a solicitor. Some do understand home education and accept direct access instruction (no solicitor is needed to use them). It is unwise to use the cheapest, or nearest barrister available, as their lack of experience will make them less valuable and they could become more costly as a result. If the parent does use a direct access barrister, they remain a LIP and pay fees up front to the barrister's chambers. Barristers may not accept instalments, and legal aid is not available to pay direct access fees.

A barrister can often use persuasion to arrange a consent order (both parents agree) at an early stage, and they are highly skilled at this. In addition, a barrister will act in the best interests of the instructing parent, provide advice and negotiate on their behalf with the solicitor, or barrister representing the child's other parent.

Each parent will need to gather all of their evidence together and present it in a clear, factual and unemotive way. It is important that both parents concentrate on what is in the best interests of their child and avoid being critical of the child's other parent.

Most parents do not qualify for legal aid for private Children Act cases, although they may qualify if they have evidence of domestic abuse and their income is low, or they are on means tested benefits. It is important that legal aid applications are made promptly, as they can take several weeks to process. In order to apply for legal aid, the parent should find a local solicitor who accepts legal aid work. The solicitor will process the application on behalf of the parent and keep them informed of progress.

It can be possible to ask for an adjournment (delay) whilst a legal aid application is processed, but these are not normally granted under the new process introduced in 2025.

Asking the local authority education officer to meet with the family and to assess the home education, can provide valuable evidence to support the parent's case

If an adjournment is required, the parent should write to the Court explaining the circumstances and asking for an adjournment. Sometimes the Court will require the parent to make an application to adjourn, and the parent would apply using form C2.

Local authority contact

Many parents prefer not to meet with their local authority to discuss their home education provision. However, when a parent becomes aware of a Court application by the other parent, in respect of the child's home education, it is important that they evidence the quality of that education as thoroughly as possible and a positive report from the local authority can be a valuable piece of evidence.

Education Otherwise strongly recommends that parents contact their local authority immediately they become aware of the other parent's Court application, in order to arrange a home visit by the local authority education officer. If a visit from the local authority education officer is arranged, it is sensible to be very open and to 'show case' the child's home education provision. This is because an excellent report from the local authority can be viewed by the Court as weighty evidence in favour of home education.

Parents should be aware that the Court can order that the parent allow the local authority to assess the home education provision in any event.

Before the Court hearing

The 2025 'Pathfinder' process for applications has changed how applications are treated in most cases. If you have a solicitor, your solicitor should explain the process to you. However, if you do not have a Solicitor, the Court Case Progression Officer (CPO) will contact you to explain what is going to happen. You can ask them any questions you have about the process, but the CPO cannot make decisions about your case or give you legal advice, they are there to explain what is happening.

If you have made an urgent application, the Court will consider it and make any necessary orders before the case is put to the Pathfinder process. Examples of when cases would be treated as urgent (on urgent application) are when there is an imminent risk of abduction, or sometimes, when school start date is really close.

Child Impact Report

The Child Impact Report is intended to provide information to the Court, as early in the process as possible, to enable it to understand the child's situation, wishes and feelings. It is also intended to identify if there are any risks to the parent or child. In order to achieve this aim, the Court will send the application to CAFCASS or to CAFCASS Cymru if the parent lives in Wales. Alternatively, if Children's Social Care is involved with the family, it may be allocated the case at this time. The purpose of this involvement is for the relevant person to prepare a 'Child impact report'. For most practical purposes, these are very similar to previous Children act 1989 s7 reports. For ease, this fact sheet refers to this person as 'CAFCASS' going forward.

After receiving the application, CAFCASS will do checks with Children's Social Care and the Police to ascertain if they are involved with the family. CAFCASS may also contact other professionals which, in home education cases, will usually include the local authority education officer.

The parents will both be contacted by CAFCASS and be given opportunity to explain what is happening, what their views are and why they consider their preferred outcome to be in the child's best interests. As soon as an application is made, the parent should make a bullet point list of the points which they consider to be important, as a reminder of what they need to tell the CAFCASS officer, as it is very easy to forget when the call comes. If the CAFCASS officer does not ask about something that the parent thinks is important, it is fine to tell them about that fact.

The CAFCASS discussion is the first opportunity each parent has to explain their views to the Court. CAFCASS officers are not usually trained in education law and practice, and many do not have any experience of home education. It is important that parents remember to explain their education provision, or their prospective education provision in terms which the CAFCASS officer will be familiar with. A good way to approach this is to explain it in terms which a proud parent would use to describe their child's achievements and education activities to an interested member of the public. This can help to remove the nervousness that comes with talking to a CAFCASS officer.

It is important to remember that the Court is interested in what is in the best interests of the child and the CAFCASS officer will expect each parent's approach to be child centred. No matter how poor each parent's relationship is with the other parent, they should focus on the best interests of the child. This does not mean that concerns cannot be raised with the CAFCASS officer, but parents should focus on how those concerns affect the child whenever possible.

If the child is old enough to be spoken to by CAFCASS, the officer will arrange this with the parent. They will want to speak to the child away from the parent as children can be unintentionally influenced by the presence of a parent, not want to express their wishes and feelings in case they upset the parent or, in some cases, be frightened of the parent. All CAFCASS officers are subject to enhanced DBS checks in order to be able to work with children.



- **It is very important that parents do not coach the child on what to say to CAFCASS, as this can lead to the parent being viewed negatively by the officer.**
- **Parents should not focus on disputes with the other parent but should remain child focussed.**
- **Parents should not be rigid in their approach but be willing to work toward a resolution which will support the child. This means listening to suggestions and considering them properly, rather than rejecting them outright.**
- **If the parent or child has been subjected to abuse by the other parent, the parent should explain this accurately and factually.**

If, after contacting the parent, the CAFCASS officer believes that he or she may be at risk of domestic abuse, they may suggest that a risk assessment is done by a domestic abuse support service. The parent can inform CAFCASS that they would like this to happen or arrange the service themselves. The domestic abuse service will carry out a risk assessment and provide the report to CAFCASS and information from that assessment may be included in the Child impact Report. If you have concerns about this then you can raise them with the domestic abuse service. The domestic abuse service will also offer the parent support through the case.

In some cases, CAFCASS will talk to the judge about their report. This can be at a hearing which the parents are not invited to attend but the Court will keep a record of what is discussed. The Court will decide whether to share any of those communications with the parents.

Once the report is prepared, each parent will usually be sent a copy, however, in some cases, the Court may decide not to share the report or to only share part of a report if there are

safeguarding concerns such as a risk of harm to a child or to a party. The report will make recommendations to the court.

After the Child Impact Report is completed

Once the Child Impact Report has been filed with the Court, a decision will be made about which level of judge should hear the case and a judge will be allocated. That judge decides what steps to take next. The Judge will consider points such as what issues have not yet been agreed, whether to give directions on how to proceed and whether there should be a fact finding hearing. If a fact finding hearing is required, the Court may order an addendum Child Impact Report to take into account the findings of that hearing.

Most parents are worried about the report, and some find them very upsetting. One aspect of this is that it can be easy for a parent to read the report and think that the CAFCASS officer is saying unfair or untrue things about them, when actually they are reporting what the other parent has said, not giving their own opinions. It is important to remember that the CAFCASS officer has to remain neutral and to report both parents' views and wishes.

If the judge has directed that a fact finding hearing is necessary, they will give directions to both parents on how to proceed. Most usually, this will include preparing a statement and a schedule of the allegations. If the court decides that one parent has been abusive to the other parent or to the children this will be taken into account when making orders.



Parents must remember that their child is entitled to have the proceedings kept confidential. Child Impact Reports are confidential and may not be published by either parent. This means that parents may not post the report, or any part of the report online, or send copies to third parties not included in the categories of those with whom it is legally acceptable to share them. Publication could be considered to be a contempt of Court if parents do so. What this means is that the parent could be punished by the Court for publishing the information including with a prison sentence. For contempt of court considerations, 'publishing' includes sharing in print, online, in blogs, on social media platforms or in discussion with third parties.

Parents can share the Child impact Reports and other Court documents with certain people, in order to obtain advice and support, unless the Court orders that they may not do so. Parents may not share documents with individuals or organisations not included in the list. Parents should note that this restriction

prevents court materials from being shared with schools as, sometimes, a parent may be investigating whether or not a set school would be suitable for the child and copy documents will be requested by the school. If this happens, the parent should explain that it is not legally possible to share the documentation without consent of the court.

Court documents and reports may be shared with:

- **A solicitor or other legal professional;**
- **a person whom the parent is obtaining legal advice, or assistance from, such as a Mackenzie friend, lay adviser, or someone who provides legal services;**
- **a health care professional, or counselling service in order for the parent to obtain their professional support;**
- **the Child maintenance service, tribunal, or those people described above, when the parent is dealing with a child maintenance appeal;**
- **an adoption panel, or adoption panel medical adviser;**
- **the Children's Commissioner or the Children's Commissioner for Wales to refer an issue to them.**
- **police officers who are investigating an offence, but only the judgement may be shared with such officers and**
- **the Crown Prosecution Service**

Please note that this restriction does not only apply to Child impact Reports, but also to all other court documentation.

Decisions stage

The type of decisions made by the Court will depend on the individual case. There can include making a consent order if both parents have managed to come to an agreement and the Court considers that agreement to be in the child's best interests. In some cases, the Court may arrange a review of the Order at a future date. If no agreement has been reached, the Court may recommend that the parents try mediation or that they agree some of the issues between them. If it is appropriate, the Court may direct a parent to take a parenting course or a course for domestic abuse perpetrators.

The Court may make an 'interim order' which is an order for what must happen until the case is fully considered. It is not unusual for parents to not agree with these orders, often because they feel that CAFCASS did not represent the case accurately or that they have not been listened to. It may be possible to appeal an interim order, but it is usually not productive to do so. This is because the time taken to bring an appeal case and have it heard will usually be

longer than the time required for a final order in the case to be made, rendering the appeal pointless. It is also important to understand that an order cannot be appealed just because the parent disagrees with it, it can only be appealed if there has been a serious procedural error, or the Judge has made an error of law. Normally, permission is required to appeal.

The Court will usually hold a decision hearing if the parents have not managed to agree their differences before this point. It will write to both parents to inform them about what will happen and to provide details of any court hearing.

The purpose of a decisions hearing is for the Court to investigate issues which are not agreed and to decide how they should be dealt with. Both parents will be required to attend the hearing unless the Court gives permission to attend remotely (by video link). Permission to attend remotely would only normally be given if a parent is too ill to attend or physically not able to for other reasons. CAFCASS may also be asked to attend.

In cases which involve domestic abuse, the Court can agree 'special measures', this means that separate entrances and waiting areas could be used or screens could be set up in the courtroom. In these cases, the parents will not be allowed to ask each other questions directly and the Judge will ask those questions. This is intended to help victims to give evidence with the least amount of stress. Victims of abuse can ask someone from a specialist domestic abuse organisation to attend with them, but the court must be informed as soon as possible. The supporter will need to give their details to the Court and to confirm that they understand the rules of confidentiality.

At the decision hearing, the Judge will ask the parents questions and, if either parent has a legal representative, they will ask questions too. If a parent is not represented, they will be able to ask questions themselves unless one is a domestic abuse victim. The Court will want to know what has happened and what the parent believes to be in the best interests of the child. It is crucial that parents focus on the child's best interests and not grievances between them.

Parents should always focus on the child's best interests at all stages of the process

Once the hearing is completed, the Judge will decide what orders to make. This can include making an order that the parents cannot make further applications without the permission of the Court³, but these are only usually included if parents have made repeat applications or if the Court believes that there is another good reason to do so. The Court will also decide how the child should be told about the Order.

Most usually, the Court will arrange a review within a few months to a year later, in order to see that things have settled down and to prevent the need for further hearings if possible.

Very often, parents leave court hearings feeling unhappy, let down or aggrieved by the decisions made. This is usually because the Court has made an order which does not agree with

³ Children Act 1989 s91 (14)

all of the parent's wishes. It is normal to feel that way and parents should allow themselves a few days to recover from the hearing before considering the situation fully.

Attending Court

If parents do not have a solicitor and do not qualify for legal aid, they can still have someone in court with them. This can be a barrister, or a McKenzie friend.

A McKenzie Friend is someone who can provide discrete support to the parent at court by: taking notes; helping with the case papers; quietly giving advice and sitting next to the parent to give moral support.

A McKenzie friend is not allowed to address the Court (speak on behalf of the parent) unless the Judge, or Magistrates give them permission to do so.

A McKenzie Friend cannot sign documents on behalf of the parent and must comply with the relevant Guidance which is available online at: <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/mckenzie-friends-practice-guidance-july-2010.pdf>

McKenzie friends do not generally charge fees, but there are some people who advertise their services as McKenzie friends and will charge fees. Parents should be very careful to check any service they are thinking of using, as McKenzie friends are not regulated; many are not insured; many are not registered with the Information Commissioner's Office for data protection purposes and it is not uncommon for them to charge very high fees. Most McKenzie friends are also unqualified.

Very few Courts allow children to attend the Court buildings and parents should not take children to the hearing, unless the Court instructs them to do so. Court staff are not able to look after children and there are no childcare facilities in courts. If it is necessary to take a child to court, parents should arrange for an adult to stay with them during the hearing, as they will not be allowed in the courtroom.

Parents worry about what to wear to court, but they are not expected to buy special clothes to wear and should dress in clean clothes which are neat and tidy. Of course, people should not judge parents by what they wear, but if they are dirty, or scruffy it may appear to be disrespectful.

Parents worry about how to address the Judge or Magistrates, but they need not do so, as Judges and Magistrates understand that this is a new experience and that parents are nervous.

- The proper title for a Magistrate is 'Your Worship', but it is perfectly acceptable to say 'Sir', or 'Madam';
- if the Judge is a District Judge they should be addressed as 'Sir', or 'Madam';
- if the Judge is a circuit Judge they should be addressed as 'Your Honour' and
- a High Court Judge (parents are very unlikely to have to go to the High Court) should be addressed as 'My Lord' or 'My Lady'.



Provided that the parents are polite, the Court will not be concerned by formalities of address.

Some parents are concerned by the formal style of the Court as some are imposing, traditional buildings, but a great many are newer, more functional buildings. The Court will have a foyer, or reception area with chairs where parents can wait. Some will have a snack bar and there will be a cold water dispenser in most court foyers. All courts have toilet facilities.

Most usually, there will be small rooms at the side of the foyer where parents can talk to their solicitor, or barrister if they have one. The Court room itself will be well signposted and if they are worried, parents can ask a member of staff where they should go.

It is important to remember that every person entering the Court building will be checked by security staff on the way in and parents must not take anything dangerous with them, such as knives and forks or other metal objects.

The courtroom itself will be set out so that the Judge, or Magistrates face the room with their backs to the wall. The seating will have desks in front of them. If parents are not represented and are unsure where to sit, the usher will help them.

Recording in Court is strictly forbidden and parents could get into trouble if they try to record the hearing. Mobile phone must be switched off in the Courtroom.

Children are entitled to expect their parents to act in their best interests and the Court will expect the parents to try to agree as much as possible

Whether the parents are represented or not, the CAFCASS officer will try to work with them in order to achieve an agreement.

If parents have a solicitor, or barrister acting for them, they will help to negotiate on the parent's behalf to try to reach an agreement. If parents are able to reach an agreement and the Court believes that the agreed arrangements are safe and in the child's best interests, the Court will make a consent order to formalise the agreement. This is no different to an order which the Court decides, other than it helps both parents to feel that they have had their views considered.

If parents are not able to agree with each other, or if the CAFCASS officer, or the Court feels that the agreement would not be safe for the child, the Court will order what should happen next.

What to tell the child

Children almost always love both of their parents and no matter how angry a parent is, they should avoid saying unkind, or negative things about the other parent to the child, or in the child's hearing.

An older child should be given a simple and factual explanation of what is happening, but younger children should not be made aware of the Court proceedings, as it could cause them a lot of worry if they are told about a process which is beyond their understanding. Some parents want to explain 'their truth' to the child and this can be inappropriate if it involves negative information about the other parent. Short, factual information is easier for children to cope with and reduces their concerns.

It is important that parents do not coach the child (tell them what to say) and that they reassure the child that they do not have to make any decisions, as the adults will do that. This can help to avoid the child feeling torn between their parents. Most children of parents who do not live together will have two homes, one with each parent, even if one is only for short visits and they need to feel comfortable in both.

Many parents worry that their child will be at risk from the other parent and sometimes those worries are justified. However, discussing the other parent with the child in a negative way can backfire badly in court, as it can be viewed as abusive of the child.

It would be highly unlikely for the Court to order the child to have unsupervised contact with a parent who has admitted domestic abuse, or who has been found to have been abusive. It would also be unlikely when CAFCASS has concerns about abuse, or the Court is intending to have a 'fact finding' hearing.

The Court may order 'interim' contact between the child and the parent they do not live with. This could be indirect, by sending emails, or by letter, or it could be supervised contact at a contact centre, or possibly unsupervised contact if there are no concerns about domestic abuse. Interim contact is just contact which is to take place before the final hearing.



If contact at a contact centre is ordered, the Court will decide who should pay for the contact centre. Some are free, but if there is a cost, this can be paid by both parents, or by one parent. The Court would need to know whether the parent could afford to pay and would not usually ask a parent on a very low income to do so. There are different types of contact centre, most are either 'supervised' contact centres where staff supervise the contact, or 'supported' contact centres, which are often run by volunteers and are used when there are no safety concerns. Contact centres can be found by searching online at the National Association of Contact Centres: <https://nacc.org.uk/>

If the case is a complex one, there may be further court hearings before the final order is made and this depends upon the facts of each case and how readily the parents are able to agree the issues between them.

The CAFCASS interview

Parents often ask if they can record the CAFCASS interview and this is a difficult decision to make. A private individual can record anything that they wish for private use, with some important exemptions, such as in court, on military bases and other sensitive establishments. Consequently, they can legally record CAFCASS.

Many CAFCASS officers treat recording interviews, or any suggestion of recording interviews, negatively despite their internal guidance being open to it. If the CAFCASS officer is aware that a parent is recording the interview, they may report this to the Court in a negative light.

It would be extremely unwise to record an interview with the child, whether the child is aware, or not. This is because of legal precedent in which Mr Justice Jackson said:

'It is almost always likely to be wrong for a recording device to be placed on a child for the purpose of gathering evidence in family proceedings, whether or not the child is aware of its presence' (M v F (2016) EWFC29).

In addition, the Family Justice Council is clear that covertly recording children is almost always harmful because it breaches the child's privacy and causes long term emotional harm. It can also damage a parent's relationship with the child.

Parents often want to record because they feel that they will otherwise be misrepresented. However, the Court will decide whether or not that recording can be used in evidence and may concentrate more on the fact that covert recording invades the recorded person's privacy. The act of recording could be more significant than the recording content, especially if it invades someone else's privacy, is viewed as harming a child or is part of controlling behaviour.

Parents can have someone with them during an interview and there are also no court rules, or CAFCASS policies which prevent a third party from being with the child for their interview. The CAFCASS officer will usually try to persuade the parent to allow the child to be interviewed alone, but they cannot insist on this. However, parents who insist on a child being accompanied could be viewed as controlling the child.

It is very important that parents tell the truth to the CAFCASS officer, as they will check up on any information that is given to them. It is also important that the parents remain child centred, as the case is about the child.

If the child's other parent has behaved in a way that the parent considers to be inappropriate, they should explain why they consider the behaviour to be inappropriate, rather than making personal criticisms of the other parent. It is good to explain what the other parent does positively too, where their actions are in the child's best interests. An angry parent criticising the other parent will not be viewed positively by the CAFCASS officer.

Parents who are positive and enthusiastic about their child's home education during the CAFCASS interview are more likely to give a good impression of the home education, which should be reflected in the CAFCASS report.

**The CAFCASS
interview
provides
parents with
an excellent
opportunity to
explain the
value of home
education and
why it is in the
child's best
interests**

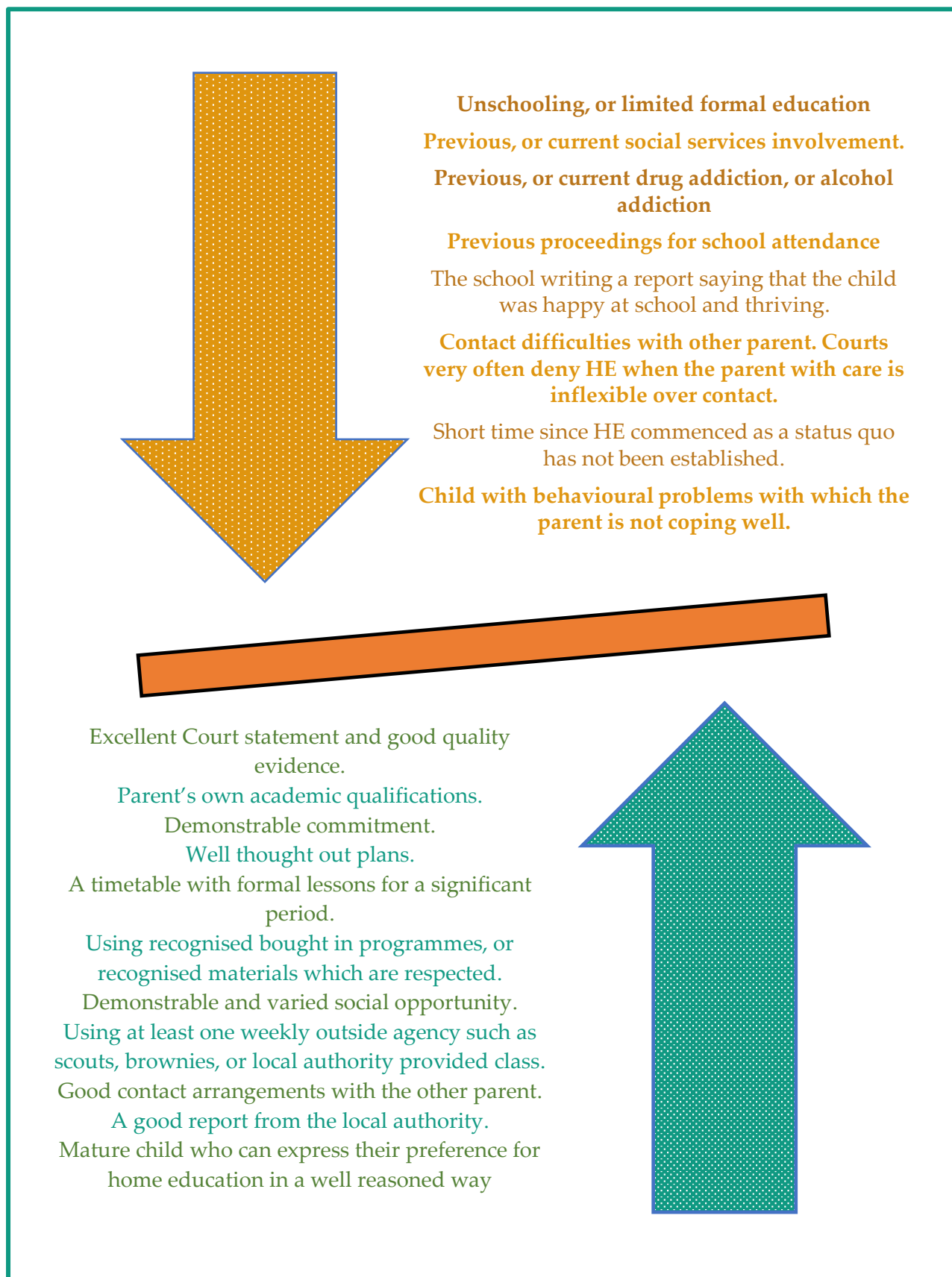
Most parents are unhappy with the Child Impact Report when they read it and many will say that the CAFCASS officer is 'biased' in favour of men, women, or against them. Of course, bias can happen, but it is rarely the case that the report is biased. Most usually, the parent is dealing with a highly emotionally situation and feeling vulnerable to what they perceive as criticism. This can happen even where the report is in fact, recommending in line with the parent's wishes.

There is no set age at which a child is allowed to decide whether they have contact with the other parent, where they live, or whether they are home educated. However, the older the child the more weight is given to their wishes and feelings. The CAFCASS officer will report on the child's wishes and feelings, but the child can give evidence in other ways in some cases, such as by writing to the Court, or by asking to meet with and talk to the judge. There are strict guidelines about these meetings.

Reports can often explain things which the child has said to the CAFCASS officer, which the parent may be surprised by. This can be because children want to protect their parent from being upset and may not want to tell them that they want to see the other parent, want to be home educated, or want to go to school. It can also be because the child has made a comment out of context; is out of sorts that day; wants to try to help to resolve any problems by agreeing to things they actually do not want, or for a great many other reasons. On rare occasions, this may be because the CAFCASS officer has not understood what the child said. Parents should not question the child about this but should explain in Court why the child might have said what they said .

If there are factual errors in the report, such as dates, names, or addresses, parents should let the CAFCASS officer know in order that they can correct the error. However, if parents do not agree with the report, they should not write to the CAFCASS officer about why they disagree but should raise their concerns in Court.

Factors which influence the Court about home education



The Court statement

If a full hearing is decided, parents may have to write a statement for the Court. Parents are often daunted by having to write a statement and it is usually a very emotional time for them, as their child's future is at stake. No matter how emotional the parent feels, they should remember that the Court wants to hear about the facts and to decide what is in the best interests of the child, a long emotional statement will not be helpful to the parent, or to the Court.

The first paragraph should say: 'I am (name in full) and I live at (address, or 'an undisclosed address' if a form C8 is filed). I make this statement pursuant to the Order of this Court of (date). ('Pursuant to' simply means: 'following on from').

The parent should then write what they want to say in numbered paragraphs. If the statement is the first one, it should include brief details of: when the parents met; when each child was born, when the relationship ended and why.

No matter how much the home education means to the parent, any Court statements should be succinct, factual and not emotive

The parent should clearly describe what happened in factual terms and in a way that the Court can understand. The statement should be succinct but include all of the relevant facts. This is because Judges are human and will not take in the details of a long statement as easily as they can with a shorter one.

The statement should end by saying '*I believe that the facts stated in this witness statement are true*' and then be signed and dated. The statement should be sent to the Court and to the other parent, or their solicitor if they have one.

The statement should address the other parent's objections to home education in a factual way. The easiest way to do this is to start the paragraph by stating: '*The Applicant states that..... This is not correct as.....*' and then explain why that is not correct.

The Court will want to know that the decision to home educate was well thought out and that the education is suitable to the child's needs. The parent should explain why they decided to home educate the child and why they consider it to be in the child's best interests. The parent should also describe how home education has been of benefit to the child.

If the parent has a report from the local authority stating that the education is suitable, they should refer to that report in their statement by saying who wrote it, what their role is and what they said about the home education provision. If the parent does not have a report, it is sensible to invite the local authority to visit to assess the education at the earliest possible stage of the Court proceedings.

Court orders must always be followed, regardless of whether the Order seems fair to the parent, unless there is very good reason not to do so

After the decision hearing

After the decision hearing there may be a further hearing if the case is complex or the judge requires further information. Sometimes, this can be an addendum report by the CAFCASS officer and, in some cases more in-depth reports are ordered.

If the Court is concerned about a child's welfare it may order that a more in-depth report is completed. This is sometimes referred to as a 's37 report' because it is legislated for under the Children Act 1989 s37. This will normally be conducted by a social worker, and it can be very worrying for parents as the social worker is required to consider whether a care order or supervision order is appropriate. Although this is very worrying, most of these cases do not result in care orders being made.

In some cases, a 'Guardian' is appointed to speak for the child. A Guardian is usually a CAFCASS officer, who is appointed by the Court. The Guardian will usually instruct a solicitor to deal with the case on behalf of the child, and the solicitor for the child will communicate with the parents. Many parents worry about such appointments, but they are made where the case is complicated, or the parents have very different views about their child's wishes, feelings and best interests.

Parents should take every reasonable step to ensure that the child spends time with the other parent, or attends school, if the Court orders that they should do so. This is because they will be in 'contempt of Court' if they do not do so. Disobeying a Court order can lead to difficulties for the parent if they do so.

Children can express reluctance to see the other parent for a lot of reasons, most of which are not good enough reasons to stop the contact: the child may feel loyalty to the parent with whom they live; feel saddened by their parents' relationship breakdown; be worried about different arrangements at each home; not want to miss an event, or simply find it difficult to deal with the changes in their life.

Parents should discuss the child's concerns with them and reassure them about any worries they may have.



The first thing to do if problems arise is to try to discuss the problem with the other parent and to resolve the situation amicably. Only if this is not possible should the parent make an application to the Court to enforce the order.

It will be in the child's best interests if the parents are able to discuss the problem between them, not least because the child will see their parents working together and caring about them, even though they are living apart.

The parent can cajole the child, encourage the child and even use

reward, or punishments to persuade the child to attend school or child contact. What they must not do however, is to use physical force to make the child attend, as this would almost always be abusive of the child.

Parents will often view enforcement proceedings as a means of resolving any difficulties they have over child arrangements, but in practise they are difficult, stressful and rarely succeed in achieving what the parent would like them to achieve. This is in part because courts are reluctant to enforce orders unless it is absolutely necessary to do so and it can take several applications, for often serious breaches (breaking the law) of the order, before the Court will enforce an order.

Sometimes a parent will appear to lose interest in the child after Court proceedings. Very little can be done in this circumstance, as the Court will not force the other parent to have contact with the child. Parents should not assume that the other parent is not having contact because they are a bad parent, as it could be due to other difficulties, such as temporary illness, or perhaps that they feel so distressed by having to say goodbye to the child after contact, that they feel unable to cope.

It will be better for the child if the parents can work this out together and help the contact to start again. If this is unsuccessful, it is important to make sure that the child does not feel unloved by the other parent.

If either parent wishes to change the order after it is made, they should discuss their suggested changes with the other parent. If the other parent does not agree, the parent would have to make an application to the Court to request that the Court orders the changes that they wish to make. Parents can agree any changes to the Court order that they wish to make and they would not be in breach of the order if they do so.

Remember that the Court will not want to disturb the status quo without good reason, so it is important to not make an application over something unimportant.

Appealing a decision

The Court's decision is usually final and must always be followed, unless there is very good reason not to do so. Good reason would be a new event which takes place after the final hearing, such as serious domestic abuse; the child or parent becoming seriously ill, or if school is ordered, the school having no vacancies or the child being expelled.

In some circumstances, a parent can appeal the final decision, for example if the Judge made a serious mistake, or if they did not follow the proper legal procedure. There is a time limit of 21 days for

appealing a Court decision and parents must be careful to make any appeal within that time, unless the Judge has given a decision to allow a different time limit.

Permission is usually needed to appeal. The parent can ask the Judge who made the decision, but if they did not ask for permission, or if the judge who made the decision refused to give permission to appeal, then the parent can ask permission from the Court to which the appeal is made. Appeals are always expensive and complicated, so it is wise to obtain legal advice from a solicitor, or barrister before you decide to appeal the decision.

Parents should note that this information does not replace independent legal advice.

Education Otherwise wishes every parent the very best for their child's home education.



The home education charity

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