

The Welfare Checklist

The main concern of the family court is "what is in the best interests of the child/children?" The court and Cafcass must, by law, consider the Welfare Checklist when they make recommendations or take decisions. You should also think about the checklist when you explain your views to the court at a hearing or in a statement. There are seven criteria, as follows:

1. The wishes and feelings of the child concerned (considered in the light of his/her age and understanding)

The court are required to take the wishes and feelings of the child into consideration. It is not defined in law at which age the court will begin to listen to the child, but the court will tend to place more weight on a child's wishes and feelings from the age of 11 or 12 onwards. However, it does depend on the individual circumstances of the child in question; the court will assess their maturity and understanding of the situation.

Ordinarily it will be the role of CAFCASS (Cafcass stands for Children and Family Court Advisory and Support Service) to speak to the child and find out their wishes and feelings. In exceptional circumstances the Judge may speak to the child themselves. It is important for the court to be satisfied that these are the true wishes and feelings of the child and they are not mirroring the views of a parent. It is important to be aware that the wishes and feelings of the child are viewed with other factors.

2. His/her physical, emotional and educational needs

The court are required to consider the child's short term and long term physical, emotional and educational needs. They will consider which parent is best placed to provide these to the child and this will usually be based on evidence that has been submitted to the court. Physical needs tend to be straightforward whereas emotional needs may require more investigation. A child's needs will change as they become older and therefore the court must be satisfied that the parents can manage these changes and provide stability for the child at the same time.

3. Likely effect on him/her of any change in his circumstances

The court are required to consider the potential impact of any change in circumstances on the child. The court will often take a decision that will cause the least disruption to a child's life. An example of this may be where the non-resident parent applies for residence of the child. The court will need to consider the potential impact that the change in residence would cause, i.e. change of school, change of social environment.

4. His/her age, sex, background and any characteristics of his which the court considers relevant

The court are required to consider the child's age, cultural and religious background and other characteristics which are specific to the child and the wider family.

5. Any harm which he/she has suffered or is at risk of suffering

The court will examine harm that the child has suffered and harm that the child is at risk of suffering in the future. Harm is defined as “ill treatment or the impairment of health or development”. The court will weigh up the potential risk to the child and issue an order which is reflective of this. The order could contain protective measures which are aimed at safeguarding the child. This particular issue will require the court to examine allegations of domestic abuse.

6. How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs

The court will want to ensure that both parents are putting the child first and are able to meet all the child’s needs. This will therefore require the court to consider the respective accommodation that both parents are able to provide and the extent to which both parents can meet the child’s needs. This will be case specific and therefore it will depend on the specific needs of the child and the abilities of the parent. There is no assumption that a mother is better placed to meet a child’s needs compared to the father.

7. The range of powers available to the court under this Act in the proceedings in question

The court will consider every option and can make a wide range of orders, even if they have not been applied for. For example, there may be a case determining contact, but it emerges that the resident parent intends to go abroad on a permanent basis with the child without seeking the consent of the other parent with Parental Responsibility. The court may therefore think it is appropriate to grant a prohibited steps order preventing the moving parent from leaving the jurisdiction.

Please contact us if you would like this guide in another language.

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