



Ministry  
of Justice

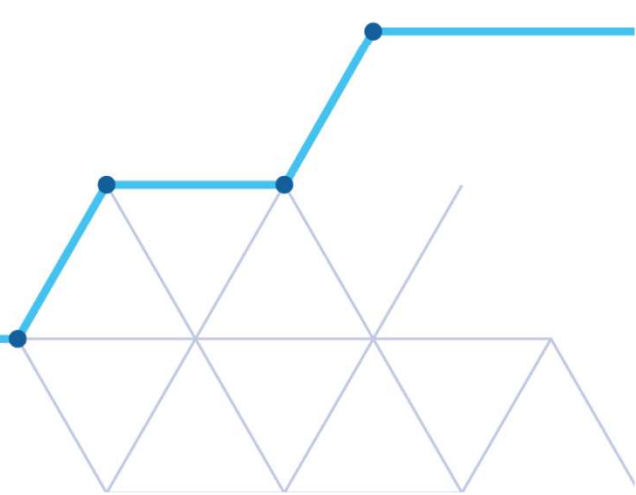
# Settlement Conferences pilot and evaluation

Information and guidance for professional parties:

- The Legal Aid Agency
- HMCTS
- Legal representatives
- Cafcass
- Local authorities

This information and guidance is issued by the Ministry of Justice with the approval and support of the President of the Family Division

July 2017



# Settlement Conferences

Some Designated Family Judge areas are piloting 'settlement conferences'. In a settlement conference, a family judge adopts an inquisitorial approach in order to encourage cooperation between parties with a view to helping them identify solutions and reaching an agreement that is in their children's best interests.

Settlement conferences take place with the consent of all the parties. The judge hearing a settlement conference will be different to that of the judge that may hear the final hearing. They will be specially trained in facilitating settlement conferences.

The judge will not impose any duress or pressure on any parties. Settlement implies that all parties will be in agreement to fully resolve some or all issues.

## Process

Data is being collected on the operation of settlement conferences during this pilot to support an evaluation led by social researchers at the Ministry of Justice (MoJ).

Settlement conferences will ordinarily take place after an Issues Resolution Hearing (IRH), Directions Hearing (DH) or Final Hearing Dispute Resolution Appointment (FHDRA) and are listed as an adjourned IRH (public law) or adjourned case management hearings (private law). At the IRH, DH or FHDRA, parties will be asked if they consent to taking part in a settlement conference.

**Court staff will need to list the case, at the IRH, DH or FHDRA, for both a final hearing as well as a settlement conference.** This is to avoid delays if the case does not settle. The settlement conference generally needs to be listed quickly and given listing priority to avoid delay.

During the settlement conference, the judge will work with the parties to promote a settlement of the issues and concerns raised in the case. There is no obligation or pressure for parties to agree to anything at a settlement conference and the conference can be stopped at any stage of the process. The approach is flexible, and there may be a need to include other family members, potential special guardians and potentially also children under the President of the Family Division guidelines.

If there is an agreement on all matters at the end of the settlement conference, the case will end and an order will be drafted to reflect the decisions made. **The parties will not have to attend a final hearing and court staff are asked to vacate the final hearing.** If all or some of the issues remain outstanding the parties will be required to come back to court for the final hearing or adjourned settlement conference as appropriate. If some of the issues have been resolved, the estimated time required for a final hearing may need to be reduced.

## Legal issues

The judge will speak to each of the parties but anything said by the judge or the parties is privileged and confidential. Anything that is discussed during the settlement conference will not be admissible in evidence (except at the trial of a person for an offence committed at the conference or in the exceptional circumstances indicated in *Re D (Minors) (Conciliation: Disclosure of Information)* [1993] Fam 231). The judge hearing the settlement conference must have no further involvement with the case, other than to make a final order by agreement or a further directions order.

However, if it is discovered during the process of the settlement conference that a child is at risk of significant harm, the judge will immediately end the settlement conference and take the appropriate steps to protect the child.

## How long will the pilot last?

The pilot was formally started in June 2016. It is ongoing until MoJ Analytical Services has collected sufficient information on the approach to inform a decision on the future of the pilot.

## What data will we be collecting?

The pilot is supported by an ongoing process evaluation led by MoJ social researchers. The aim of this research is to understand how settlement conferences are working in practice and to explore the experiences of the family justice professionals involved. This will involve both quantitative and qualitative data collection.

**As part of this, the judiciary are asked to complete a short form for any case that is scheduled for a settlement conference (please see Annex 1).** These forms will provide high-level quantitative data on the number and type of cases that were referred to a settlement conference, the reasons for and suitability of referral, the outcome of the conference and an estimation of the judicial time spent preparing and running the conference in comparison to an estimated time for a FH. No personal details about the parties will be recorded. A nominated HMCTS contact at each court are kindly asked to collate and return these forms to researchers at MoJ (details are outlined below).

Qualitative discussion groups with lawyers, Cafcass, local authority social workers and court staff, as well as separate interviews with the judiciary and the families involved in the pilot will also be undertaken. These will seek a wide range of views and experiences in relation to what worked well, what did not work well and what could be improved during the pilot. As professionals involved in this pilot, you may be asked to take part.

Findings from the process evaluation will be used to identify lessons learnt and areas of good practice in order to continually improve the experience of the pilot.

## What further information is available on settlement conferences?

The judges taking part in this pilot have received training and guidance materials. These materials have been uploaded on the Courts and Tribunals Judiciary website <https://www.judiciary.gov.uk/publications/settlement-conferences-pilot/>

An information leaflet for parties has been produced (see Annex 2). This should be provided to parents or carers before they attend a settlement conference.

## What is requested as part of my role as part of the pilot?

### Legal Aid Agency:

- During the pilot, it has been agreed that the LAA will pay advocates the equivalent to an adjourned IRH rate. In private law cases settlement conferences are classed as adjourned case management hearings. A final hearing day rate will be paid for any successful settlement conference i.e. where a matter is finalised, an order is made and the FH listing is cancelled.
- For any unsuccessful settlement conference that progresses to a FH, a unit rate will be paid similar to that of an adjourned IRH.

### HMCTS employees:

#### 1. Listings

- HMCTS employees will need to list the case, at the IRH, DH or FHDRA, for both a final hearing as well as a settlement conference. They are required to help list the hearing dates and dispose of the case in the usual way. The additional requirement for a settlement conference is listing the extra hearing time it requires.
- HMCTS employees are required to enter this extra hearing onto CMS as an adjourned IRH. It should also be entered as a normal hearing event on FamilyMan but the directions for the settlement conference will be contained in the normal order that comes from the substantive IRH (public law) or the previous case management hearing (private law).

#### 2. Data collection and evaluation

- The judiciary have been asked to complete a data collection template for each case that is scheduled for a settlement conference during the pilot period.

- Each court taking part in the pilot are requested to nominate a HMCTS contact who will be the liaison between the court and MoJ researchers. This contact will be responsible for:
  - Ensuring that settlement conference judges have access to the data collection forms (Annex 1).
  - Collating these forms after each settlement conference and returning them to Irina Pehkonen (email address below) on a fortnightly basis.
  - Supporting MoJ researchers to identify professional participants to take part in the qualitative element of the study when requested.
  - Ensuring professional or lay parties (including Cafcass, legal representatives or litigants in person, as appropriate) are provided with the information leaflet to share with parties of the case.

#### **Local Authorities:**

- Social workers that are sent to settlement conferences should either be able to make decisions in settlement conferences themselves or contact their supervisors for clearance. A change in the position of the Local Authority may be an appropriate response to reach an agreement in the settlement conference, and the social workers representing Local Authority should have the authority to do this.

#### **All professional parties:**

- All professional parties – including Cafcass guardians and officers, local authorities and legal representatives – are asked to ensure they are familiar with this information, as well as their clients, as appropriate.

#### **Questions and contacts**

If you have any questions please contact Maya Sooben ([maya.sooben@justice.gov.uk](mailto:maya.sooben@justice.gov.uk)) in relation to the pilot or Irina Pehkonen ([irina.pehkonen@justice.gov.uk](mailto:irina.pehkonen@justice.gov.uk)) in relation to the data collection and evaluation.



# ANNEX 1: Judicial data collection form

## Settlement Conferences in Family Law: Collection of Data

The Ministry of Justice is conducting a pilot study in several DFJ areas in England and Wales to support settlement conferences as part of family law proceedings. Data is being collected as part of this pilot to allow for a process evaluation to take place. This has been authorised by both HMCTS and the Judicial Office. Members of the family judiciary are being asked to complete this form for **any family law cases that are scheduled for a settlement conference during the pilot study.**

Please complete this form for all relevant hearings and give to your nominated contact at HMCTS, who will forward to the Ministry of Justice. The nominated contact at this court is: [insert here]. They will return all completed forms to Ministry of Justice analysts, and have received separate guidance on how to do this.

Court Name	
Case Number	
Type of Case	
Level of Judge	
Date of Settlement Conference	

- 1) Please provide a brief outline of the case, and the issues for resolution. Please do not include names of any parties involved.

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- 2) Was this case suitably referred for a settlement conference? Please explain your answer.

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- 3) Was the settlement conference vacated or adjourned for any reason?

Yes	
No	

If yes, please explain why:

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4) If no, what was the outcome of the settlement conference?

a) An order was made and the case is now resolved.	
i) Which order was made?	
b) An order was made but the case is not fully resolved.	
i) Which order was made?	
ii) Has a Final Hearing been scheduled?	
c) An order has not been made but issues have been narrowed. A Final Hearing has been scheduled.	
d) An order has not been made and issues have not been narrowed. A Final Hearing has been scheduled.	
Other (please describe)	

5) How long was the Final Hearing in this case initially listed for? If the FH was not listed, please provide an estimate of how long it would have been listed for.

Hours/Days
Estimated/Actual (please circle)

6) Following the settlement conference, how long is the Final Hearing now listed for? If the FH is not yet listed, please provide an estimate of how long it will be listed for.

Hours/Days
Estimated/Actual (please circle)

7) How long did you spend preparing for the settlement conference?

Hours/Days
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8) How long did you spend facilitating the settlement conference?

Hours/Days
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9) Please provide any further comments you may have in the box below.

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Ministry of Justice Analytical Services would like to follow-up with some members of the judiciary who have been involved in facilitating settlement conferences as part of the pilot. This will involve a short telephone interview with a social researcher to explore your views and experiences of what worked well, what did not work well, and what could be improved. If you are willing to be contacted in relation to this follow-up research, please provide your name and contact details below.

Name	
Telephone	
Email address	

Many thanks for your support and co-operation in this exercise. It will ensure that we can collect robust data on how this pilot is working in practice and inform decisions around any future arrangements.



## **ANNEX 2: Information leaflet for parties**

### **Settlement conferences**

This leaflet provides information about **settlement conferences**.

#### **What is a settlement conference?**

A settlement conference is held at court by a family judge to help parents or carers reach agreement on the care arrangements for their children. It encourages cooperation between parents or carers to help them identify solutions that are in the best interests of the children in the case.

#### **When will it be agreed that my case is suitable for a settlement conference?**

At the Issues Resolution Hearing (IRH) or Directions Hearing (the hearing at which the court decides which issues need to be worked out in a case) the judge will raise the possibility for a settlement conference and give information to the parents or carers about them. If you agree to a settlement conference, your case will be listed for a settlement conference and a final hearing. This is to make sure that there are no delays in your case if all the issues are not resolved at the settlement conference and your case needs to go on to a final hearing.

#### **Will I have the same judge for the final hearing?**

No, the judge at the settlement conference will be different from the judge who will hear the final hearing. The judges will never discuss your case between themselves.

#### **Where will the settlement conference be held?**

The settlement conference will take place at the family court.

## **Who can I attend the settlement conference with?**

You will need to attend the settlement conference with your solicitor if you have one. You do not need to worry if you do not have a solicitor, a settlement conference can still go ahead as long as you agree.

## **Who else will be present at the settlement conference?**

The people present may be different for each settlement conference. In a care case a Cafcass guardian is likely to be there. A local authority social worker and their solicitor may also be present. In private cases, the other parents or carers will be present as well as a Cafcass guardian or Cafcass officer if possible.

## **How do settlement conferences work?**

The judge will explain to you why your case has been referred to a settlement conference and will check with all parents or carers that they have agreed to take part (given consent). They will work with you and other parents or carers to see if you can reach agreement on the issues and concerns in your case. This may include the judge asking you questions during the settlement conference. You are encouraged to speak directly with the judge if you want to.

What is said during a settlement conference is confidential and cannot be shared with the judge who hears the final hearing. However, if it is discovered during the settlement conference that a child is at risk of significant harm, the judge will immediately end the settlement conference and take the appropriate steps to protect the child.

## **Will I be able to speak to my solicitor during the settlement conference?**

Yes, you are free to speak to your solicitor at any time. You will never be separated from your solicitor and you will be given the opportunity to seek advice from them at all stages during the settlement conference.

## **What if I don't agree with the judge?**

There is no pressure for you to reach an agreement at the settlement conference. If you or the other parents or carers cannot reach an agreement, your case will proceed to the final hearing.

## **What happens if I and the other parents or carers reach an agreement?**

If you and the other parents or carers reach an agreement on all matters at the settlement conference, the case will end and a family court order will be drafted reflecting this decision. You and the other parents or carers will not have to attend a final hearing.

## **What happens if I and the other parents or carers cannot reach an agreement?**

The judge cannot make any orders without the agreement of the parents or carers.

If you cannot agree all the issues, or some things still need to be decided by a judge, you and the other parents or carers will need to come back to court for a final hearing or an adjourned settlement conference.

## **What happens if I've changed my mind about attending a settlement conference?**

You or any of the other parents or carers can change your mind about attending a settlement conference, or stop it at any time. If you change your mind, or decide to stop the settlement conference, your case will go on to a final hearing.

## **How can a settlement conference help me?**

- Settlement conferences provide you and other parents or carers the opportunity to discuss your case and better understand what each of your concerns are.

- You are able to speak directly to the judge and take part in making decisions that are in the best interests of the children in the case.
- The judge at the settlement conference will be different from the judge who hears the final hearing.
- There is no pressure at all for you to agree to anything during the settlement conference.
- You are free to speak to your solicitor at any time.
- All parents or carers must agree to the decisions made in a settlement conference. If there is not agreement your case will go to a final hearing.
- If all the parents or carers agree, you can ask the judge conducting the settlement conference what type of an order they might make and why. This is called 'giving an indication'. If there is a need for a final hearing after the settlement conference, the judge who hears the case at the final hearing will not know what the settlement judgment judge said about the case. The judge who hears the final hearing may come to a different conclusion to the judge who heard the settlement conference.