

3. Cases you should and should not do

The family justice system operates on the basis of concurrent jurisdiction between all levels of judiciary with each case being assigned to the level requisite for that case. Within the county court, statutory control is maintained by the 'ticketing' system under the Children (Allocation of Proceedings) Order 1991 (as amended). Every judge should know in which Schedule his or her name appears and the consequent restraints on their jurisdiction.

However, the fact that you have jurisdiction to deal with a case does not necessarily mean that you should do so. Set out below are some of the issues you may wish to take into account in deciding whether to exercise your jurisdiction.

3.1 Transfers to the High Court

Article 12 of the 1991 Order provides for transfer to the High Court where the proceedings are appropriate to the High Court and transfer is in the interests of the child. This gives a wide, general discretion over transfer.

There are a number of cases which as a matter of practice *must* be transferred to the High Court:

1. any case which may involve the Hague Convention or Brussels II;
2. any case which may involve enquiry into the domestic law of a non-Convention country;
3. any applications to test a child for AIDS or any similar grave condition;
4. any question relating to the refusal of a young person to consent to medical treatment;
5. any application by a child for leave to make an application pursuant to section 10(8) of the Children Act 1989;
6. any case in which there have been previous High Court proceedings;
7. any case in which foreign law issues arise under the Adoption Act 1976;
8. any case in which an offence may have been committed under the Adoption Act 1976;
9. any case involving an appeal under the Child Support Acts;
10. any application under section 30 of the Human Fertilisation and Embryology Act 1990;
11. wardship proceedings.
12. any application for a Mareva (freezing order) or Anton Pillar (search and seize order).

Generally, all such cases should be listed in the first instance before a judge of the Family Division (not just the PRFD). That judge will then decide the trial level.

When you transfer a case, you should place on the top of the file a note explaining the reason for the transfer.

3.2 Allocation or transfers within the county court

There are no binding guidelines but you should be aware of any local guidance or practice in this regard.

Whether you are a full-time or part-time judge, you should ensure that you are aware of the extent of your jurisdiction under the Family Proceedings (Allocation to Judiciary) Directions 1999. Recorders and district judges should not hear applications or hearings under the Adoption Act 1976 unless specifically designated to do so. Recorders may wish not to start the following types of case :

1. applications to remove children permanently from the jurisdiction;
2. cases involving contested expert evidence;
3. cases listed to last for more than two days;
4. cases in which judicial continuity may be necessary, for example troublesome contact cases that may require enforcement.

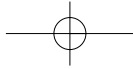
If you are a district judge you may wish to consider transferring those types of case to a circuit judge.

In essence, each judge must make their own decision, but, even if you have jurisdiction to hear a case:

1. it is not a sign of weakness to transfer a case which you are not confident you can handle;
2. neither is it a sign of weakness to seek the advice of the Designated Family Judge (or other experienced judge) in relation to these matters; and
3. in particular if you think a case should be in the High Court, you should never be reluctant to contact your Family Liaison judge by telephone; but
4. if you are confident in your ability to take the case, do so.

3.3 Transfers to the Family Proceedings Court

Unless all parties consent to such a transfer, you should be aware of any local practice in relation to this, if necessary seeking advice to that end from a permanent local judge.



3.4 Particular pitfalls

Some cases (especially contact cases) get out of control because they drift from judge to judge. If you think you have such a case, then either reserve it to yourself or transfer it to a permanent judge who can do so.

Always be wary of the residence/prohibited steps application by someone who has come from abroad. The case may well have Hague Convention implications. You are encouraged to telephone the Official Solicitor for advice, whose number can be found in the Red Book and at the end of this Bench Book.

3.5 Further help

Throughout the Bench Book, reference is made to the Family Division liaison judge and the designated family judge. Below is a brief description of the help that both of these will be able to offer.

3.5.1 The Family Division liaison judge.

Each Circuit has one judge of the Family Division allocated to it as its Family Division liaison judge. The South Eastern Circuit is divided so as to provide for a separate liaison judge for central London.

You should make yourself aware of the identity and RCJ telephone number of your Circuit liaison judge and his or her clerk. They invite requests for advice at any reasonable hour and you are encouraged to take up that invitation if you think you need to. They may particularly be able to advise where:

1. you are not sure whether you should start a case; or
2. you encounter a problem to which you have been unable to find an answer.

3.5.2 The designated family judge.

Each care centre will have a circuit judge as the designated family judge. You should make yourself aware both of the identity of the local care centre (if you are not sitting at one) and also of the designated judge.

They too hold themselves available to assist and advise as necessary. They will usually be authorised to sit as deputy High Court judges (or know someone who can) and may be able to assist in urgent High Court matters.

