The Children Act 1989: Statutory Welfare Checklist

Under Section 1(3) of the Children Act 1989 the court must have regard in particular to :-

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)
2. his physical, emotional and educational needs
3. the likely effect of any change in his circumstances
4. his age, sex, background and any characteristics of his which the court considers relevant
5. any harm which he has suffered or is at risk of suffering
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
7. the range of powers available to the court under this Act in the proceedings in question.

Let’s look at an example of each point for a clearer understanding.

A required question must be asked of the child; “what do you want to do?” Given the option it is only sensible that the court ask for the child’s opinions where possible. The delicate situation for the court is whether or not the child is old enough to understand the very serious nature of the court’s questions.

Perhaps a child has special physical needs such as wheelchair access or particular physiotherapy for example; the court must take these into consideration when rendering a decision. Questions like “Is the child presently in the better school environment?” need to be asked when the court is considering moving the child to a different location.

While change of any environment will have an effect on a child, the court must determine what the impact will be and if it is positive or detrimental to the current situation.

This rather broad point raises a key issue; the current state of a child’s development. An extreme example is this; a child is removed from a negative situation involving gambling. Given the background of the family and child’s history, any possible changes to the child’s environment should be void of any gambling aspect. While the new environment may be positive overall, the child’s background could in fact create a worse situation.

Basically if the child has suffered, will the court’s decision help relive some of that trauma?

Can the person with the PR (Parental Responsibility) meet the challenge for the care of the child?

What does the court have the power to do at the time of the proceedings?

The welfare checklist is a vital component for the court when deciding on issuing an order affecting a child’s welfare. The checklist criteria are somewhat vague; however this probably makes for a broader interpretation for the court when coming to a decision.