

Family and Divorce Children and Relationship Breakdown

When parents split up the effects and repercussions on the children are particularly far reaching. Whether the parents are married or not there are key issues that need to be dealt with regarding the future arrangements for children.

It is vital that parents co-operate and try to agree upon future childcare arrangements. Whatever the reasons for the breakdown of the relationship or however difficult dealing with the repercussions are for the adults it is important that the children see their parents working together and agreeing on what should happen regarding the children.

What about Mediation?

As part of the process of reaching agreement parents can be referred to mediation. This is when an independent third party will try to help parents reach agreement on what is in the best interests of their children and a framework for the future care of the children.

What if we get divorced?

Where there is a divorce the Court has the responsibility to ensure that the arrangements for the children are considered and suitable. Again the emphasis is on what should happen in the best interests of the children. In starting a divorce one of the documents needed to be completed is a "Statement of Arrangements". This sets out the present situation and arrangements that the person starting the divorce suggests should continue for a child following a divorce. Parents are encouraged to reach agreement on these proposals before the divorce is actually started.

What if we can't agree?

If parents cannot reach agreement about the future arrangements for their children then the Court can get involved. This can be as part of Divorce Proceedings if the parents are married or as separate proceedings.

What orders can the Court make?

There are a range of Orders which the Court can make including:

- Parental responsibility
- Residence
- Contact
- Prohibited steps
- Specific issue

The overriding principle is that no Order will be made by the Court unless it is necessary and in the best interests of a child to do so. Court Orders are not necessary if agreement is reached and if there is a divorce then in many cases a Court Order for children is completely unnecessary because the parents have reached agreement.

What is parental responsibility?

Parental responsibility is the set of rights, duties and obligations which a person has regarding a child. It includes such things as the right to give consent to medical treatment.

Who has parental responsibility?

Married parents have a joint parental responsibility: if parents are not married, only the mother has parental responsibility. However, an unmarried father can acquire parental responsibility in any one of five ways:

- 1 By entering into a "Parental Responsibility Agreement" with the mother (this must be on a prescribed printed form)
- 2 By applying to the Court for a Parental Responsibility Order
- 3 By being appointed a guardian either by the mother or the Court, although in these cases he will assume parental responsibility only on the mother's death
- 4 By obtaining a Residence Order from the Court
- 5 By marrying the mother
- 6 For children born after December 1st 2003, if the father is named on the birth certificate.

Various other people may also require parental responsibility towards the child. A Local Authority will acquire parental responsibility if a Care Order is made in relation to the child, or anyone who is granted a Residence Order in relation to the child, or even the Court if the child is made a Ward of Court.

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What do the other orders cover?

Residence Order

A Residence Order is an Order settling the arrangements to be made as to the person with whom the child is to live. A person with a Residence Order in their favour automatically acquires parental responsibility as well.

When a Residence Order has been made, two aspects of parental responsibility are automatically affected:

- **Change of Surname**

Where a Residence Order is in force, no person can cause the child to be known by a new surname without either the written consent of every person who has parental responsibility or the leave of the Court. The Court is very reluctant to authorise a change of surname unless it is in the interests of the child to do so.

- **Leaving the UK**

Where a Residence Order is in force, no person may remove the child from the UK without either the written consent of every person who has parental responsibility or the leave of the Court.

However, the person in whose favour the Residence Order is made is able to take the child out of the UK for periods of less than one month without such consent. The parent without the Residence Order needs to seek consent every time he or she wants to take the child abroad for whatever purpose.

Contact Order

A Contact Order is an order requiring the person with whom the child lives or is to live to allow the child to visit or stay with the person named in the Order, or for that person and the child otherwise to have contact with each other.

A Contact Order can authorise physical contact or indirect communications such as by letter or telephone calls.

Prohibited Steps Order

Prohibited Steps Orders are like injunctions in that they prevent a person responsible for a child from doing something which would be contrary to its welfare, such as taking the child out of the country without consent.

Specific Issue Order

A Specific Issue Order determines a specific question which has arisen or which may arise in connection with any aspect of the child's welfare.

For example, a Specific Issue Order can be made if there is a dispute about which surname a child should be known by. Other examples include the Order being used to decide which school a child should attend, whether a child should have a particular operation or course of treatment or the religion a child should adopt.

What Factors does the Court take into account?

The factors that a Court will take into account in considering whether to make any Orders relating to the children are as follows:

The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding):

- His/her physical, emotional and education needs.
- The likely effect on him/her of any change in his circumstances.
- His/her age, sex, background and any characteristics which the Court considers relevant.
- Any harm which he/she has suffered or is at risk of suffering.
- How capable each of his/her parents and any other person in relation to whom the Court considers the question to be relevant, is of meeting his/her needs.
- The range of powers available to the Court under the Children Act 1989 in the Court Proceedings in question.

One of the factors that the court is required to take into account is the wishes and feelings of the children themselves. How far this is relevant to each depends upon the age and understanding of a particular child as well as the individual circumstances of the case

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What is a CAFCASS Officer

If a Court Application has to be started to seek one of the above Orders then a CAFCASS (Court Welfare and Social Services) Officer may be appointed. The CAFCASS Officer could be asked to prepare a written Report to the Court upon the Application and to make recommendations as to the future arrangements for a child. The CAFCASS Officer will also try to help the parents reach agreement as part of the process of preparing the Report.

If a Court Application is started then the first hearing is a preliminary one when the parents of a child may be encouraged to speak to the CAFCASS Officer at Court to try to reach agreement.

The role of the CAFCASS Officer is vital. He or she is an independent person specially qualified in dealing with children matters and their recommendations are usually accepted by a Judge.

What about Care Proceedings?

If there is a major concern as to the care given to a child then Social Services may become involved. A Court Application could be made by the Local Authority for a Care Order, which would give them Parental Responsibility shared with the parents of the child. The decision about whether a Care Order should be made is for the Court that deals with the case to make and the Court also has other powers that it can use at the same time.

Who to contact for assistance?

If you require any further information then please do not hesitate to contact us to talk through any aspect of your circumstances.