



Information on Children's Cases

Children are the most important potential issue of any relationship breakdown. Children and their welfare are the courts paramount consideration.

It is essential that you attempt to resolve matters concerning your children between yourself and the other parent. You may find that putting together a parenting plan is useful as it helps to identify, agree and set out in writing arrangements for the children.

Here is a link to an example of a parenting plan www.cafcass.gov.uk/grown-ups/parenting-plan.aspx

If you are unable to reach an agreement between yourselves then you have the following options to consider:

1. Mediation
2. Solicitor led negotiations
3. Court proceedings

More commonly the matters that need to be resolved include:

Parental responsibility

This is defined as all of the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and their property. Practically, it means that a parent has the right to make the important decisions in respect of the child's life including their education, medical care, religion and surname.

A mother automatically has parental responsibility. A father married to the mother also has parental responsibility.

An unmarried father will only have parental responsibility if the child was born on or after 1 December 2003 and his name is on the birth certificate.

Parental responsibility can be obtained by agreement, by a free standing application for a Parental Responsibility Order or by a Child Arrangements Order. The court will consider the fathers degree of commitment to the child, attachment to the child and his reasons for the Parental Responsibility Order.

In certain circumstances the court has the power to remove the parental responsibility from the parent.

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Child Arrangements Orders

These orders are intended to regulate the arrangements for where a child should live, and how often and how much time is spent with the other family parent or family members. The terms “custody”, “access”, “residence” and “contact” are no longer used in this jurisdiction. A Child Arrangement Order will last until the child reaches the age of 16 years.

The court has power to attach certain conditions to a Child Arrangement Order where it is ordered that a child shall spend time with one of the parents. For example the time spent with the parent could be supervised or unsupervised and include overnight staying contact. Alternatively the court may decide that there should be no direct contact with only letters and cards being sent to the child.

Certain legal provisions apply to the parent with whom the child lives with if it is ordered within a Child Arrangements Order. For example the parent with whom the child lives with is not allowed to change the child’s surname unless they have written consent of every person with parental responsibility, or permission of the court. There is also a restriction upon removing a child from the court’s jurisdiction without the written consent of every person with parental responsibility, or permission of the court. However a person with a Child Arrangement Order, which includes the child living with them, is allowed to remove a child from the jurisdiction for a period of four weeks at a time without obtaining formal permission from anyone with parental responsibility or from the court.

When the court makes or varies a Child Arrangement Order the court can ask a parent to take part in an activity that the courts thinks will help to establish, maintain or improve that parent’s involvement in the child’s life.

For example both parents may be ordered to attend Separated Parents Information Programme (known as a SPIP). This is intended to help the parents learn more about the challenges of post-separation parenting, including the effects on children of ongoing conflict. It also provides advice and support about how best to help the children in this situation. This is of course attended by the parents separately and paid for by CAFCASS.

Another example is that in cases where one party has been abusive to their spouse or partner and the court is concerned about the impact that this can have on their children then that parent can be ordered to attend a Domestic Violence Perpetrator Programme. The aim is to help people to change their behaviour and develop respectful non-abusive relationships.

Prohibited Steps Order

This order stops a parent from meeting their parental responsibility for a child without the consent of the court. It deals with a specific problem that can arise for example if one parent wants to remove a child from the jurisdiction or change the child’s surname. A Prohibited Steps Order should not be made if the result can be achieved via a Child Arrangements Order.

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Specific Issue Order

Where a specific question has arisen in connection with any aspects of parental responsibility for a child, the court can give directions determining that specific question. This can be used to resolve issues of which school a child should attend, whether the child should receive certain medical treatment or immunisation. Again this type of Order should not be made if it can be dealt with via a Child Arrangements Order.

These orders are not restricted to parents. Other people, such as grandparents and step parents can apply for orders. Such people will however need permission from the court to make their application as they do not have the automatic rights to as parents have.

Factors to be considered by the court

The court's paramount consideration is the child's welfare. The court then has regard to a statutory checklist of factors which include:

1. The wishes and feelings of the child in light of their age and understanding
2. The child's physical, emotional and educational needs
3. The likely effect on the child of any change of circumstances
4. Any harm suffered by the child or any risk of suffering harm
5. The capability of each of the child's parents and any other person in meeting the child's needs
6. The range of powers available to the court

The court will need to consider as a starting point that both parents should be involved in their children's lives, unless this is contrary to the child's welfare. However there is no automatic presumption that the child should spend equal time with both parents. Most importantly it is actually the child's right to a relationship with their parents and wider family unit and not the other way round.

Finally the court will not grant an order unless there is a positive need and benefit to the child in doing so. This is known as the 'no order presumption'.

Procedure

Proceedings concerning children vary from court to court. Generally, however, the procedure is as follows:

1. In most cases before court proceedings are started the Applicant will have attended a Family Mediation and Information Meeting (known as MIAM) to find out about how Mediation might be able to help resolve the issues between parents or other family members. However there are a number of exemptions where you don't need to attend a MIAM
2. The Applicant completes an application for the relevant order and files it with the court
3. The court provides copies of the application to serve upon the Respondent, giving at least 14 days' notice of the first hearing.
4. The court will usually list the first hearing (known as the First Hearing Dispute Resolution Appointment FHDRA) to take place in 4 – 6 weeks as CAFCASS (child and family court advisory and support service) have to carry out background and safeguarding checks on both parties. This includes obtaining information from the police and social services. They will speak to both parties via a short

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telephone conversation prior to the first hearing and provide their early recommendations in a preliminary letter which will be sent to both parties and the court.

5. The first hearing is generally dealt with on a conciliation basis. The parties will have the opportunity to meet a CAFCASS officer to discuss their respective positions and to see if an agreement can be reached. If so, then a final order could be drawn up detailing what has been agreed and the proceedings will end. If not, then a timetable of directions will be ordered by the court, with a further directions hearing listed as a Dispute Resolution Hearing

6. Agreements can be reached between the parties at any of the directions hearings and a final order drawn up. If an agreement cannot be reached, then the court will list the matter for a Final Hearing. At some point during the proceedings the court may order the parties to file statements of evidence. The court may also have to ask for expert evidence such as drug and alcohol testing, psychiatric or psychological assessments. However the court will control what expert evidence is obtained and will only require expert where the court considers a report is necessary.

7. At a Final Hearing, both parties have to give verbal evidence to the court and be cross-examined. The CAFCASS officer and experts may also have to give evidence if they have prepared reports. Once the court has heard all of the evidence, the judge will make the final decision as to what the Final Order will be

Enforcement of Child Arrangements

If a Child Arrangement Order makes provision for a child to either live with or spend time with a parent then a warning notice will be attached to the Order stating that if you don't comply with the Order then you may be held in contempt of court and be committed to prison or fined, and/or you may have to undertake unpaid work and/or pay financial compensation to the other parent.

You should also be aware that the court can in some cases decide that the child should live with the other parent as a result of the breach of a Child Arrangement Order. These are typically in cases where one parent is implacably hostile and refuses to cooperate and promote contact between the child and other parent.

Proceedings concerning children matters can be lengthy, emotional and expensive.

Chafes Hague Lambert have an experienced Family team that's can guide you through the resolution of any children matters in an empathetic, proactive and cost conscious way

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