



CHILD/CHILDREN ACT PROCEEDINGS

The period following the breakdown of a relationship can be a very difficult time for both parties and can also be a very difficult time for the child/children of the relationship. Children experience a great deal of emotional stress following the separation of their parents. It is important that if at all possible arrangements in respect of the child/children can be finalised on an amicable basis without the necessity of Court proceedings. The court will not interfere in the arrangements made by parties if they adequately protect the interests of the child/children involved. This is known as a 'non intervention policy'.

There are however occasions when disputes arise in respect of the arrangements for the child/children and these cannot be resolved. It is then necessary to issue proceedings at court. The proceedings are governed by the Children Act 1989 and proceedings are issued at the local Magistrates Court, local County Court or in exceptional circumstances the High Court.

The court can impose a range of Orders which generally relate to contact with the child/children by an absent parent and also where the child/children are to live (residence). The Court can also make Orders known as 'Specific Issue Orders' which can determine a specific question which has arisen or a Prohibited Steps Order which prevents a course of action being taken in respect of the child/children.

In all Children Act Proceedings the welfare of the child/children is the paramount consideration.

PARENTAL RESPONSIBILITY

If the parents to a child/children are married then the father automatically has Parental Responsibility. Where the parents are unmarried Parental Responsibility can be acquired by agreement between the parties on a formal document or by court Order. An unmarried father will also, in respect of any child/children born on or after 1st December 2003, acquire Parental Responsibility to his child/children if he is present when registration of the birth takes place. A child's mother always has Parental Responsibility.

Parental Responsibility means having all the rights, duties, powers and responsibilities which a parent has in relation to a child. In essence this relates to the general upbringing of a child in respect of their general welfare, education and medical treatment.

When parties in a relationship separate, then the person who has the day to day care and control of the child will exercise more Parental Responsibility than the absent parent. Parental Responsibility does not end as a result of a Divorce or separation of the parents.

MEDIATION

Mediation is a way to try to resolve the difficulties which have arisen in respect of the arrangements for the child/children. It is an attempt to avoid Court proceedings. Mediation can only work if both parties are willing to attend the appointment and discuss the issues relating to the child/children. Further there can be no aggravating features to prevent both parties being present together whilst attending for mediation. It is usual for parties to attend one or more mediation meetings before any court proceedings are issued and this is now a compulsory requirement where there is a dispute over the arrangements for the child/children.

COURT PROCEDURE

An application is issued at the appropriate Court outlining details of the parties and also the child/children involved. It also provides details of what Order is required and the reasons why it is required.

Upon receipt of the application, the court will fix a Directions hearing and will return the papers to the Applicant for service upon the opponent. The opponent then has fourteen days to return the Acknowledgment to the court confirming whether he/she opposes the application and whether any further Orders will be required.

DIRECTIONS APPOINTMENT

The first hearing is usually for Directions only and generally no final Orders are made at this first hearing. The District Judge in the County Court and High Court or the Magistrates Clerk in the Magistrates Court will hear from both parties and decide what Directions are required. The Court can refer the matter to mediation to investigate the issues raised. The Directions made relate to each individual case and vary accordingly. The case is also timetabled to avoid delay. Where Children Act Proceedings are concerned the principle of there being no delay prevails.

The First Directions Appointment also gives the parties an opportunity to try and negotiate and reach an agreement. The Application can be adjourned for a review to see how the new arrangements progresses if any interim agreement can be reached.

CAFCASS REPORT

The Court can order a Cafcass Report. That reporter is a member of the Child and Family Court Advisory and Support Service. Occasionally, a social worker can be directed to file a report if there has been Social Services intervention in relation to the child/children. The Child and Family Reporter or social worker will visit the parents and, if the child/children are of sufficient age and understanding, will visit the child/children to obtain their views. The reporter can also contact the school if there are any difficulties in respect of the child/children's schooling. Such a report usually takes about twelve weeks to prepare.

The application is therefore adjourned for that period of time to enable these important enquiries to be made. When the report is finalised, the Court receives a copy and the parties to the proceedings also receive copies. It is very important to note that the report is **confidential** and the contents of the report must not be discussed or disclosed to any person who is not a party in the Court proceedings. Further this report is very persuasive when either a Judge or Magistrate hear the application. It is also important that full co-operation is given by the parties to the proceedings in the attendance of appointments or responding to any enquiries.

FURTHER DIRECTIONS HEARING

Once the Cafcass Report is received, there will usually then be a further short hearing to consider the report and whether the matter can be resolved by agreement. If this can be achieved the Court may either record the agreement or in some cases an Order will be made. Alternatively where no agreement is reached the Court will make directions to enable the matter to proceed to a final hearing. The timetable will usually involve:-

- Statements being exchanged setting out the issues and proposals of each parent
- When any other evidence is to be exchanged such as medical or school reports
- A date for the final hearing

STATEMENTS OF EVIDENCE

The Court can order that both parties file statements of evidence. This can be ordered at any time in the proceedings and generally is ordered after the Cafcass Report has been finalised. The statement of evidence is the basis of your evidence should the matter proceed to a Final Hearing. The statement of evidence is filed at the Court and also served on the Child and Family Reporter and Opponent. It is important that the statement of evidence is very accurate as it can be subject to cross examination at a later date. When all these steps have been attended to, if an agreement is still not reached, the matter will proceed to the Final Hearing.

FINAL HEARING

A Final Hearing is where both parties and the Child and Family Reporter are present and, if the proceedings are still contested, oral evidence is called and cross examination takes place. There is time prior to the Final Hearing to have one last attempt at negotiating a settlement to avoid the acrimony of a Contested Hearing. The Judge conducting the Final Hearing will have had the opportunity of perusing all the relevant evidence and hearing all oral testimony. Before making the final decision, the Court will take into account what is known as the Welfare Checklist which is provided for in the Children Act 1989. That Welfare Checklist takes into account the following issues:-

- The ascertainable wishes and feelings of the child concerned (considered in light of the child's age and understanding)
- The child's physical, emotional and educational needs.
- The likely effect upon the child of any change in his/her circumstances
- The child's age, sex, background and any characteristics which the Court considers to be relevant
- Any harm which the child 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 the child's needs.
- The range of powers available to the Court under the Act in the proceedings in question

The factors are also considered by the Cafcass officer when preparing a report and it is important that you consider each point carefully throughout the matter.

The court will only make an order in respect of a child if it is satisfied that the making of an order is in the child's interests otherwise no order will be made.

EMERGENCY STEPS

On occasions the above procedure is displaced as a result of an emergency decision being required in respect of the child/children. Emergency Orders can only be obtained in the most exceptional circumstances e.g. a risk of abduction of the child, when the child has suffered harm or if there is a serious risk of harm being caused. On occasions the Court will make a temporary Order while the case progresses if the Court is satisfied that the making of such an Order is in the child's best interests.

Orders made under the Children Act 1989 remain in force until the child reaches sixteen years of age, unless the Court is satisfied that the circumstances of the case are exceptional. The Children Act Order can also be varied or discharged by the Court at any time.

Where a residence Order is in force in respect of a child no person may:-

- cause the child/children to be known by a new surname
- Remove the child/children from the United Kingdom without either the written consent of any person who has Parental Responsibility for the child or the leave of the Court. However, a child can be removed from the United Kingdom for a period of less than one month, by the person in whose favour the residence order is made. This provision has been made to enable parents to take their child/children on holiday abroad

If a person fails to abide by the provisions of the Court, there are of course enforcement procedures and if enforcement procedures are required then we will advise separately in this regard.

FINALLY

We are here to assist and support you during what are often difficult and stressful times. Please therefore ensure that, if you have any concerns or questions whatsoever during the process, you speak with your solicitor as often the matter can be resolved very quickly and without the need for you to worry about it.