

CHILDREN ACT APPLICATION

CHILDREN ACT 1989 – Some definitions and principles.

CONTACT ORDERS - this is a new name for access – a contact order can regulate how often, when and where a child sees a parent or some other person.

RESIDENCE ORDERS - replace old “custody” orders – a residence order states with whom a child lives.

SPECIFIC ISSUE ORDERS - these are orders that give directions as to a particular point, for example which school the child should go to.

PROHIBITED STEPS ORDERS - orders to stop somebody from doing a particular thing in relation to a child. For example to prevent a child from being snatched or to prevent a child coming into contact with a particular person who may be considered to be a risk to a child.

PARENTAL RESPONSIBILITY - defined in the Children Act 1989 as “all the rights duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child or his property”.

WHO HAS PARENTAL RESPONSIBILITY? - If a child's parents have never been married and the child was born before 1 December 2003, only the mother has parental responsibility for the child. If a child is born to unmarried parents after 1 December 2003, a father has parental responsibility for the child if he is registered as the child's father.

HOW DOES PARENTAL RESPONSIBILITY END? - It only ends if an adoption order is made. So even if a child's parents divorce, both still have parental responsibility even if one has a residence order.

HOW ELSE CAN YOU GET PARENTAL RESPONSIBILITY?

A father can obtain parental responsibility by:

- Agreement with the mother; or

- Applying to the court for an order for parental responsibility; or
- Applying to court for a residence order – any person with the benefit of a residence order automatically acquires parental responsibility which lasts until the residence order comes to an end.

When a residence order is granted, parental responsibility is automatically granted if the person with the residence order did not previously have it;

Local authorities get parental responsibility if a care order is made;

HOW DOES THE COURT DECIDE WHAT ORDERS TO MAKE IN RELATION TO THE CHILD?

When the courts are considering an application for any of the above orders, they have to consider several things.

- the child's welfare is the court's paramount consideration;
- the No Order Principle – the court will only make an order if it is considered better for the child to do so than not. In other words, an order will only be made when it is necessary.
- the courts will not intervene in every case but prefer to let the parents work together for the best interests of the child. Only if at the end of the case parents cannot agree or only an order will ensure that they continue to agree, will the court make an order.

THE WELFARE CHECKLIST

The Children Act sets out a list of factors the court has to consider. These are:-

- i) the ascertainable wishes and feelings of the child (considered in the light of his age and understanding);
- ii) his physical emotional and educational needs;
- iii) the likely effect on him of any change in his circumstances;

- iv) his age, sex, background and any characteristics of the child which the court considers relevant;
- v) any harm which he has suffered or is at risk of suffering;
- vi) how capable each of his parents is, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- vii) the range of powers available to the court.

The philosophy of the Children Act is to encourage parents to work together in the best interests of their children. For this reason, there is a strong focus on helping parents sort their problems out calmly rather than involving the court at every stage.

The **Children and Family Court Advisory and Support Service** (CAFCASS) are often involved in **conciliation**, where parents meet a CAFCASS officer to discuss the future care of their children and to consider ways of settling their differences concerning the children by agreement rather than by court order.

Applicant is the person who makes the application.

Respondent is the other party to the proceedings.

CAFCASS - CHILDREN AND FAMILY COURT ADVISORY AND SUPPORT SERVICE

CAFCASS is a specialised branch of the Probation Service. CAFCASS officers provide independent information to assist courts which deal with arrangements for the children – where they live, with whom they have contact etc. They are involved when separating parents cannot agree, or when the court needs more information to help decide about the children and their welfare.

CAFCASS REPORT

CAFCASS reports are confidential reports giving independent information about the children's situation and matters about them which are in dispute. The reports help the

court decide about the children's future when parents cannot agree between themselves what is best for the children or when there are child protection issues.

In the course of preparing a report the CAFCASS officer will interview parents, those who look after the children and will usually meet the children themselves. The CAFCASS officer may wish to visit the parents' homes and interview other people like grandparents, school teachers, doctors, health visitors, social workers etc. An interpreter can be arranged if necessary.

The report is written for the court but a copy will be sent to us which we will give you an opportunity to read.

The report should not be shown to anybody else without permission from the court. We can ask the court to arrange for the CAFCASS officer to attend the hearing to answer any questions about the report.

After hearing the evidence and reading the report the judge makes a decision which all parties must then comply with.

THE COURT PROCEDURE

If an issue arises in relation to your child/children that has to be decided by the court as yourself and the other parent cannot agree on this, the first step is to make an application to the court for a hearing date.

The application forms are sent to the court setting out the details of the dispute and what type of orders the court is being asked to make. The court writes back to us with a time and date for the first hearing. We will write to you and to the other party telling you where and when to go.

THE FIRST HEARING

The first time you go to court it is unlikely that a final decision is made. The practice of the local courts is to list the case for a 15 minutes 'directions' hearing to enable the court to give directions as to how an application is to proceed.

When you go to court you will be given the option of speaking to the other parent with the assistance of a CAFCASS Officer (see above) to see whether the problem is capable of resolution without the involvement of the court. This is called 'conciliation'. The discussion can be direct with the other parent with the CAFCASS Officer present, or with the CAFCASS Officer acting as intermediary. If you cannot sort the problem out there and then, you will go into court and the court will adjourn the case usually either for CAFCASS to do more conciliation or to prepare a full CAFCASS Report. The case will usually be listed for another hearing after a number of weeks when the court will give further 'directions'.

At directions appointments the court sets down a timetable as to how the application will progress through the court system. Typical directions can involve ordering both parties to file evidence or statements setting out their views, ordering CAFCASS and/or other experts to prepare reports giving recommendations to the Court as to what is in the best interests of the children, and setting the time and date for any future court hearings.

See above for further information about CAFCASS and the purpose of the report.

STATEMENTS

These have to contain all the things the parties want the court to know about their views on the case. Unless it is in the statement of evidence then evidence cannot be given at any final hearing. Usually if the case has been going on for a long time then an up-to-date statement will be filed just before a final hearing.

THE FINAL HEARING

The majority of cases are settled by negotiation. If the parties still cannot agree there will be a final hearing when the court will decide what will happen to a child.

At the final hearing the solicitor or barrister of the person making the application will introduce the case, setting out their position. They then call any witnesses or experts to support their case. Then it is the turn of the other party to reply by giving their evidence and calling their witnesses. The CAFCASS officer will also be asked to attend court to

give his/her evidence. Anyone who gives evidence to the court can be cross examined by the legal representative of the other party.

After all evidence has been given the legal representatives make final submissions to the court summarising their positions. The court then makes its decision. This can be immediate or the judge or magistrates may go into a separate room to consider the decision. The decision is usually given on the same day.

All family hearings are held “in chambers”. This means that the court hearing is not open to the public and only the people directly involved are allowed into the court room.

APPEALS

Appeals can only be made if the decision of the court is wrong in some way. Appeals cannot be made just because one party does not like the decision that has been made.

ATTENDANCE OF THE CHILDREN AT COURT

It is rare for children to go to court and they should only do so if they are specifically asked to by the court.

SOME POINTS TO REMEMBER

- When parents separate they both remain responsible for playing a full active part in the upbringing of their children.
- Courts intervene in the upbringing of children only as a last resort.
- Children have a right to speak and be listened to but they are not asked to decide.
- You don't stop being a parent when you separate or divorce.
- Throughout the process parents are encouraged to reach agreements about their children.