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SOLICITORS LLP

FAMILY



CHILDREN MATTERS

FOREWORD

Where adults involved in the life of a child are unable to reach agreement as to where that child should live or the extent of contact that child has with an absent parent or other family members, ultimately these issues can be determined by making an application to the Court for a Judge to decide the issue. The Court is also able to determine other issues such as where a child is educated and whether the father, who is not married to the child's mother, should have parental responsibility for that child.

Ideally, the Court does not wish to make Orders concerning children as its view is that Court Orders are restrictive and, in reality, the best people to make decisions for children are not Judges but the child's own parents. This principle is known as the "no Order principle" and it means that the Court may decide not to make a Court Order even where one is applied for in circumstances where the parties have managed to agree arrangements for a child.

It is obviously important for any child to have the knowledge that the adults closest to him can make decisions which are in the child's best interests and therefore you will be encouraged to try to agree matters. We will initially write to try to negotiate an agreement in relation to your matter, but if agreement cannot be reached then we will consider with you whether to refer you to an external mediation service, and ultimately whether an application to the Court will be necessary.



Court Orders

In respect of children the Court has various powers to make different Orders. The most common Orders are as follows:

1. A Residence Order – this is an Order which states with whom a child resides.
2. A Contact Order – this Order states the times and days when a specified person has contact with a child.
3. Parental Responsibility Order – Parental Responsibility is the usual rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to that child and his/her name, his/her religious upbringing and major health concerns etc. Every child's mother automatically has Parental Responsibility for their child. The child's natural father will have Parental Responsibility if he is married to the child's mother or where the father is named on the child's birth certificate in respect of all birth registrations (and re-registrations) after 1st December 2003, otherwise he can acquire Parental Responsibility either by entering into a formal agreement with the child's mother or by an Order of the Court. A step parent can obtain Parental Responsibility by entering into a formal agreement with all parents who have Parental Responsibility. Other persons can only obtain Parental Responsibility if a Residence Order is made in their favour.
4. A Specific Issue Order – this can be in relation to any given issue concerning a child. Common examples are decisions as to where a child is to be educated, or Orders requiring a parent to return a child to the person with Residence of a child, or an order allowing a person to take a child out of the country on a permanent basis or an order changing the child's surname.
5. A Prohibited Steps Order – this Order prevents a party from undertaking a given action in relation to a child. Often this Order will prevent a given person from removing a child from the care of the person with whom the child resides other than for agreed contact, or from removing the child from the country.

Court Application

In order to obtain an Order from the Court it is necessary to complete an application form and submit the application to the Court for processing.

If usually the first appointment at court is likely to be a Conciliation and Directions Appointment. Conciliation is a process whereby the persons concerned in the proceedings will sit around a table with a Family Courts Officer and try to negotiate an agreement as regards arrangements for the child. Where a Conciliation Appointment has taken place it is the case that the appointment will be immediately followed by a Directions Appointment before a Judge or magistrates so that the Judge can note any agreement reached in Conciliation and in the event that no agreement has been reached can determine how the matter is to be progressed.

Applications By Persons Other Than Natural Parents

Sometimes other family members may wish to make an application to the court, for example for a contact order. Those people do not necessarily have an automatic right to commence court proceedings. If they do not have an automatic right they firstly have to obtain permission from the court to bring their application. This is known as an application for leave.

When the court considers whether to grant leave (permission) for an application for an Order to proceed it must have particular regard to the following matters:

1. The nature of the proposed application
2. The connection to the child of the person making the application
3. Any risk there might be of the proposed application disrupting the child's life to such an extent that he would be harmed by it

Contested Proceedings

If it is not possible to conclude the matter at the first Hearing by reaching an agreement, then the matter is likely to proceed by way of the filing of Statements by all persons, and the filing of any other evidence required by the Court. The Court can ask for CAFCASS (Children and Family Court Advisory and Support Service) to report

on the issues that are before the Court. In such circumstances a CAFCASS Reporter (Court Welfare Officer) will arrange to meet with you to discuss this matter. They will also discuss the matter with any other adult involved in the court proceedings and, if appropriate discuss with the child their wishes and feelings in relation to the Court application.

Emergency Applications

Ordinarily, when submitting an application to the Court, the Court will list the matter for a Hearing and notification will be given as to the date of that Hearing. The other parties are entitled to at least 14 days notice of the Hearing and therefore there will be a delay before the matter is brought before the Court.

In certain circumstances such as where a child has been snatched from the party with whom the child resides, it is possible to submit to the Court an emergency application requesting that an Order be made that day without the other party having notice of the application. This is known as an “ex parte” Order. Where such an Order is made the Order must be personally served on the other party, that is to say that a Process Server will hand a copy of the Order to them so that they have notice of the same. When such Orders are made it is appropriate for the other party to be given the opportunity to oppose the Order, and therefore it is likely that if such an application is necessary then a further Hearing will be listed in a very short time, usually within 7 days.

Welfare Checklist

When a Court decides whether to make a Court Order in respect of the child, the child’s welfare shall be the Court’s paramount consideration and the Court must bear in mind various factors when determining the child’s welfare, which are:

1. There should be a minimum of delay
2. The ascertainable wishes and feelings of the child concerned (considered in light of the child’s age and understanding).
3. The child’s physical, emotional and educational needs.
4. The likely effect on the child of any change in the child’s circumstances
5. The child’s age, sex, background and any characteristics of the child which the Court considers relevant.
6. Any harm which the child has suffered or is at risk of suffering.
7. How capable each of the child’s parents and any other person in relation to whom the Court considers the question to be relevant, is of meeting a child’s needs.

The overriding principle which the Court bears in mind when deciding whether to make an Order in respect of the child is to have consideration for what is in the child’s best interest.

Enforcement Of Orders

Ultimately, the court can make an order in relation to the child. If a court order is made and the party against whom the order is directed does not comply with the terms of the order, the other party can enforce the terms of the order. The usual application for enforcement is firstly for a “Penal Notice” to be attached to the order. This is a notice added to the original court order stating that if the terms of the court order are not complied with then the person against whom the order was made can be found to be in contempt of court. If that party continues to disobey the order an application can be made to the court for their committal to prison for contempt of court.

Financial Issues Concerning Children

For those couples who have children, on separation it is important to consider how to re-arrange the family finances in order to provide support for the child or children or the family. Where a couple are married this will usually be dealt with within Divorce Proceedings and we would refer you to our Leaflet entitled “Financial Matters”. Where parties are not married the following information will be of assistance.

Court Orders Which Are Available

Under the Children Act 1989 the Court can make the following Orders to ensure that children are provided for:

1. A Periodical Payments Order – this Order can be made to be payable to the Applicant for the benefit of the child or to the child themselves. The reality is, however, that the issue of periodical payments is now dealt with by the Child Support Agency (and any subsequent agency) and all claims of child maintenance should be pursued through that avenue.
2. Secured Periodical Payments Order – this is an Order protecting the payment of a Periodical Payments order by way of securing a specific asset to ensure payment of the Order.
3. A Lump Sum Payment for the benefit of the child to be paid either to the Applicant or to the child themselves – usually the Court will only make such Orders for a specific purpose, e.g. a lump sum to purchase a home or to pay for school fees for a child.
4. An Order requiring settlement of property to be made for the benefit of the child.
5. A Property Adjustment Order transferring property to the Applicant for the benefit of the child or to the child themselves in order to provide accommodation for the child. In such circumstances if the property is transferred to one parent for the benefit of the child when the property had previously been held in the joint names of the parties, it is usual for the transfer to take place for a period not exceeding the child's 18th birthday. On that date the property would then revert to its previous ownership, for example jointly owned between the parties. The purpose is to provide accommodation for a child during their minority.

When deciding whether to make such Orders the Court must consider the following factors:

- (a) The income, earning capacity, property and other financial resources which either parent or the child has or is likely to have in the foreseeable future.
- (b) The financial needs, obligations and responsibilities which each parent has or is likely to have in the foreseeable future.
- (c) The financial needs of the child.
- (d) The income, earning capacity (if any), property and other financial resources of the child.
- (e) Any physical or mental disability of the child
- (f) The manner in which the child was being, or was expected to be, educated or trained.



FAMILY

Below is a list of all of our family services, if you would like a copy of any of these documents please contact us on 01702 339222

>> Children Matters

>> Divorce Information

>> Domestic Violence

>> Financial Matters

>> Children In Care

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25-27 Weston Road, Southend On Sea
Essex SS1 1BB

Tel: 01702 339222

Chelmsford
61 New London Road Chelmsford
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