

CHILDREN

There are many issues that can arise in connection with children when a relationship breaks down. In all situations, parents, step-parents, grandparents and other family members are free to agree arrangements regarding the children between themselves. As long as there is an agreement then it is not necessary for Court intervention and, in fact, the Court **cannot** make any Orders. This is referred as the “no order principle”. If however there is a disagreement then application to the Court can be made for the Court to make decisions.

Q. What is Custody and Access?

Custody and Access orders do not exist anymore. Under the Children Act 1989, Custody Orders were replaced by Residence Orders and an Access Orders were replaced by Contact Orders. Residence and Contact Orders are orders of the Court in respect of a particular child or children.

Q. What is a Residence Order?

A Residence Order determines where a child should live.

Q. What is a Contact Order?

A Contact Order determines when and where someone, with whom a child does not live, sees that child.

Q. Is it my right to see my children?

The first consideration always has to be given to the welfare of the child and this is known as the “welfare principle”. With this in mind, the Courts will always look at the situation from the child’s point of view and it is therefore the right of the child to see you, rather than it being your right to see your child.

Q. What other orders can be obtained from the Court?

The Court has a wide range of powers. Additional Orders that can be obtained are Parental Responsibility, Specific Issue and Prohibited Steps Orders.

Q. What is a Parental Responsibility Order?

This is only applicable to unmarried fathers where the child was born before 1 December 2003 or, if born after 1 December 2003, whose name is not on the birth certificate. Parental Responsibility is defined as all the rights, duties, powers, responsibilities and authority which a parent of a child has in relation to the child. Mothers automatically have Parental Responsibility

for their children and so do married fathers. If you are an unmarried father whose child was born before 1 December 2003 then you will not have Parental Responsibility for your child. This can be acquired by entering into a formal Parental Responsibility Agreement with the Mother or, if she will not agree, by an application to the Court.

Q. What is a Specific Issue Order?

The Court can make an Order dealing with a specific issue. This can include a variety of issues, for example, which school a child attends or whether certain medical treatment should be obtained.

Q. What is a Prohibited Steps Order?

The Court can make an Order prohibiting certain steps concerning a child from being taken. This can also include a variety of issues, for example, to prevent a change of name or to prevent a child from being taken somewhere.

Q. I cannot agree arrangements concerning my children so what do I do?

It will be necessary to discuss matters with you in more detail. In most cases, it is appropriate for us to write to the other person concerned in an attempt to resolve matters and avoid an application to the Court. It will also be appropriate to consider whether Mediation can assist.

If an agreement can still not be reached then an application to the Court can be made. We will complete the court application forms with you.

However, in certain emergency situations, an immediate application to the Court can be made.

Q. What happens after the Court application forms have been sent?

This will depend upon which type of Court the application has been issued in as the procedure does vary - but only slightly. At a very early stage, a "Cafcass" Officer will be appointed. Cafcass stands for "Children and Family Court Advisory and Support Service". This is an independent person nominated on behalf of the Court. He/She will meet with you and the other party to find out the issues and the precise details of the disagreement. They will try and help you reach an agreement. If the Cafcass Officer decides that a more detailed enquiry is needed they will request additional time to prepare a full report. This will take a minimum of 12 weeks. When preparing their report, which will also conclude with a recommendation to the Court, they will have to consider the Welfare Checklist. This is as follows:

1. The Child's wishes and feelings (having regard to their age and understanding)
2. The Child's physical, emotional and educational needs
3. The likely effect of any change in their circumstances
4. Any harm which the child has suffered or is at risk of suffering

5. The child's age, sex, background and any relevant characteristics
6. The capability of the child's parents to meet the child's needs
7. The powers available to the Court

Q. When do I have to attend Court?

You will have to attend every Court hearing.

Q. Do my children have to attend Court?

Children do not attend Court. The Cafcass Officer will report their views (if considered old enough) to the Court via their Report.

Q. What happens after the Cafcass Report has been prepared?

If you accept the recommendation contained in the Report and an agreement can be reached this will bring an end to the proceedings. If either of you do not accept the recommendations then the matter will proceed to a fully contested hearing when the Court will hear evidence from both you and the other party and the Cafcass Officer.

Q. How long will the proceedings take?

If an agreement is not reached along the way, the proceedings will generally take between 6-9 months but an agreement can be reached at any point during the proceedings and that will bring matters to an end.

Q. Can my children's surname be changed?

If the father has Parental Responsibility for the children then the children's surname cannot be changed without the father's written consent.

Even if the Father does not have Parental Responsibility, there are very few situations in which the children's surname can be changed. It will be necessary for us to discuss this with you further in some detail.

If an agreement cannot be reached then an Application to the Court may be made in certain circumstances.

Q. How much will it cost?

This will largely depend upon the nature of your Application and it will be necessary to discuss this with you in further detail. You may be eligible for Public Funding (previously called Legal Aid). This is the government scheme offering assistance with legal costs. The government set the eligibility levels and also the rate of pay made to Solicitors' firms. To be eligible you must

have a monthly disposable income of £649.00 or less. Deductions can only be made for a partner, children, mortgage/rent and limited travel. Debts, household bills and general living expenses are not classed as allowable deductions. You may also have to pay a monthly or lump sum financial contribution. We will calculate your eligibility for you at the first appointment.

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