

GUIDE TO PRIVATE LAW CHILDREN ACT PROCEEDINGS

1. Terminology

- "Child":** Any person under the age of eighteen.
- "Parental Responsibility":** All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
- "Residence Order":** An Order settling the arrangements to be made as to the person with whom a child is to live.
- "Contact Order":** An Order requiring the person with whom a child lives to allow the child to visit or stay with the person named in the Order, or for that person and the child otherwise to have contact with each other.
- "Prohibited Steps Order":** An Order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the Order, shall be taken by any person without the consent of the Court.
- "Specific Issue Order":** An Order giving directions for the determination of a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
- "Children and Family Reporter (CFR)":** A person who reports to the Court on any question arising in respect of a child (formerly Court Welfare Officer).
- "CAFCASS"** The Children and Family Court Advisory and Support Service responsible for overseeing/assisting with CFR reports and other aspects of child law.
- "Party":** A person who has sufficient interest in the child (normally a parent or step parent) to either make or respond to a Court Application.

2. General Principles

Most matters relating to the upbringing of a child are governed by the Children Act 1989, although some financial matters may also be governed by the Matrimonial Causes Act 1973, the Domestic Proceedings and Magistrates' Court Act 1978 and the Child Support Acts 1991 and 1995 and subsequent legislation.

2.1 "The Welfare Principle"

When a Court determines any question with respect to the upbringing of a child the child's welfare shall be the Court's paramount consideration. This means that the welfare of the child must come before and above any other consideration in deciding whether to make an Order and, if so, what Order should be made.

2.2 "The Welfare Checklist"

The Court is required to have regard to a statutory checklist of factors whenever it is considering a child's welfare:

- a) the ascertainable wishes and feelings of the child concerned (in the light of his age and understanding);
- b) his physical, emotional and educational needs;
- c) the likely effect on him of any change in his circumstances;

- d) his age, sex, background and any characteristics of his which the Court considers relevant;
- e) any harm which he has suffered or is at risk of suffering;
- f) how capable each of his parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting his needs;
- g) the range of powers available to the Court under the Children Act 1989 in the proceedings in question.

2.3 The "No Order" Principle

Where a Court is considering whether or not to make one or more Orders under the Children Act with respect to a child, it shall not make the Order, or any of the Orders, unless it considers that doing so would be better for the child than making no Order at all.

2.4 The Delay Principle

In any proceedings in which any question with respect to the upbringing of the child arises, the Court must have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

3. Parental Responsibility

Please see above for the definition of parental responsibility. The following person (people) has (have) parental responsibility:

- a) married partners automatically have parental responsibility, even after the marriage has been dissolved;
- b) unmarried mothers automatically have parental responsibility;
- c) unmarried fathers can acquire parental responsibility either by agreement with the mother or by Order of the Court or by obtaining a Residence Order or by registering as the father on the birth certificate, where the registration takes place after 1 December 2003.
- d) other people may acquire parental responsibility in certain circumstances.

There is no limit on the number of people who can have parental responsibility for a child and a person does not lose parental responsibility merely because someone else acquires it. However, parental responsibility agreements and Orders will automatically end when the child attains the age of eighteen.

The exercise of parental responsibility will often be qualified in some way by agreement or by practicalities or by Order of the Court. For example, the father of a child may agree that the child should live with the mother, in which case the mother has a greater degree of "day to day parental responsibility" than does the father.

Where a child lives with the mother and the father has parental responsibility, (or vice versa) the father does not have a right to interfere in matters within the day to day management of the child's life. The father has no power to override a decision of the mother, who already has such responsibility. In the event of disagreement between them on a specific issue relating to the child, the Court will have to resolve it. The non-residential parent should always be consulted in relation to important matters, such as education.

4. Contact

In the vast majority of cases the Courts consider that contact between a child and absent parent is in the best interests of the child and arrangements often consist of the child spending weekends and part of the school holidays with the parent with whom he or she does not live.

Where direct contact (physical meetings between the child and absent parent) is not possible, an Order for indirect contact may be made (telephone calls; postal communications; videos or photographs). Where contact has broken down a common starting point for direct contact is for contact to take place at a family contact centre for one or two hours once a week or once a fortnight. If this works well, direct contact might progress towards periods of time outside the contact centre, leading up to unsupervised contact.

Where domestic violence has been proved, it is one highly material factor among many which might offset the assumption in favour of contact. The security of the child and parent with care must be ensured and the parent seeking contact will have to address his violent behaviour.

5. Removal of Child From the United Kingdom [England, Wales, Scotland & Northern Ireland]

It is a criminal offence for a parent to take or send a child out of the United Kingdom without the consent of the mother; the father (if he has parental responsibility); and certain other specified people without the permission of the Court.

If a parent has a Residence Order in their favour in respect of the child and taking the child out of the United Kingdom for less than one month will not constitute an offence, unless it is done in breach of an existing Court Order.

Court Orders frequently make provisions prohibiting removal from the United Kingdom, or England and Wales, so these should always be checked before any trip abroad.

If you are concerned that your child may be abducted from England and Wales then an urgent application may be made to the Court for an Order to prohibit the child's removal from England and Wales.

It may be possible to use on the port alert procedure. The police must be satisfied that there is a real and imminent (within 24 to 48 hours) danger of the child being removed - the child's name is entered on a stop list for 4 weeks. All ports will be notified direct and police/immigration officers will attempt to identify the child and prevent removal from the country.

6. The Resolution of Disputes

It may be possible to settle any dispute or potential dispute about the arrangements for a child (such as contact, residence or parental responsibility) through mediation or negotiation between solicitor. If this is not possible, or fails to achieve a satisfactory result, Court Proceedings can be issued.

- (a) Negotiation - It is quite often possible to settle disputes by negotiation through solicitors' correspondence, especially if both parties have consulted solicitors with expertise in family law. A negotiated settlement is likely to be less expensive and less upsetting than taking the matter to Court.
- (b) Mediation - Mediation is a process under which both parents (or any other interested person) attempt to find their own solutions to problems with the help of a qualified family mediator. The mediation process can take anything between one and ten sessions and may last for as long as three months.
- (c) Court Proceedings - The parent or party seeking an Order makes an application to the Court.

The first step is often a Directions/Conciliation appointment at which the Judge will endeavour to help the parties reach an agreement and, if they do so, record the agreement reached in a Court Order by consent. If agreement cannot be reached, the Court will give Directions for the preparations for the final hearing and fix a date for the final hearing. Directions normally require the parties to file statements and a CFR to file a report.

In cases about contact and Residence, it normally takes about nine months from the date of issue of the Court proceedings up until the final hearing.

The CFR's report is confidential and **must not** be discussed with the children or anyone else other than the parties' legal team.

In an emergency, it is possible to apply to the Court without giving notice to the other parent or party to the proceedings. This might be necessary for instance where there is a threat of abduction. Under these circumstances, the Court procedures are remarkably quick. If the Court is satisfied that the child needs urgent protection, it may well make an Order on the day of the application. It will then arrange a day when the parties may return to Court so that Directions can be given, if necessary, for a fully contested hearing.

7. Financial Provision

The general rule is that both parents are responsible for a child's maintenance up until the time when the child attains seventeen years of age or completes full-time education, including degree courses at university. This period may be extended if the child suffers from any disability.

In the vast majority of cases, the level of income provision is calculated by the Child Support Agency. The Courts have power to make Orders under the Children Act 1989 for income payments in limited cases or by agreement and for lump sum, property adjustment and the payment of school fees.

8. Costs

The Court has a discretion in respect of costs in all cases. Generally, there is a reluctance to make Orders that one parent should pay the other's legal costs in child related matters where an application has been made for any of the following Orders: Parental Responsibility, Residence, Contact, Specific Issues or Prohibited Steps. However, even in such applications, where one party has behaved unreasonably a costs Order against them may be justified. The fact that a parent's case is hopeless does not necessarily justify a costs Order, although there could become a point at which the pursuit of a hopeless application could be regarded as unreasonable in which case a costs Order might be made.

The purpose of this guide is to give an overview of the applications that may be made to the court relating to children and is not intended to replace expert advice on your own position. You should not rely on what is said in this fact sheet alone. If you would like advice as to your individual position we would be happy to accept instructions to advise you.

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