

GUIDE TO CHILDRENS CASES*

Of all the work we do here, matters concerning children are the ones that require the most sensitivity and delicate handling. We understand the emotive nature of disagreements around what each parent regards as best for their child.

Fortunately recent changes in the way childrens case are dealt with in the courts have made parents focus on their children and try to put their personal issues to one side.

We will always try to resolve matters through letters explaining clearly your position and setting out what you think might be a sensible solution. We often make a referral to mediation at the outset so that the two of you can discuss matters with an independent person and try to reach an accommodation which suits you both.

If mediation does not work for whatever reason (one person might not attend for example) or mediation is unsuitable (there may have been some domestic abuse in the past) then we can advise you regarding making an application to the court.

All childrens cases are now issued out of the Family Court. This is a combined court which you may have known as The Family Proceedings Court where magistrates would hear the case or the County or High Court where a Judge would hear the case. Now as soon as an application is sent in to the court the court will consider what level of Judge should hear the case and allocate the matter accordingly.

One copy of the application is sent to Cafcass (The Children and Family Court Advice and Support Service). The Cafcass Officer will within 2 weeks make contact with both parents and ask if there are any issues regarding the safety of the child(ren). The Cafcass officer will also contact the Police and Social Services to see if the child(ren) or parents are known to either agency. The Cafcass Officer will prepare a (safeguarding) report for court and which we will receive at court. If the report does not raise any major issues then generally the Cafcass officer will have sufficient time to discuss the matter with both parents to try and reach some agreement. This engagement with the Cafcass Officer is expected by the Court to be taken seriously and for both parents to compromise and show understanding of each others positions such that an agreement might be reached or at least the issues narrowed significantly.

If an agreement is reached the Court will expect the Applicant (or the legal representative) to write out the Order setting out clearly who attended court, what was agreed and whether the matter can be finished there and then.

If there is no agreement, in some cases the court will ask both sides to draw up statements and send them to the court and the other side at a later date. The court may need an independent opinion and ask either Cafcass or Social Services to provide a welfare report. This can take anything up to 14 weeks. Quite often the court will give a date for the final hearing as well.

Perhaps the most important thing to remember is that the court will always start its decision making process with what is in the child's best interests. That is the very first paragraph of The Children Act 1989. The court has a checklist it goes through to help it reach a conclusion about what is best. This first section of the Children Act underpins every decision made by the Family Court. A copy of the section is attached.

Below are the most frequent questions we are asked in relation to matters concerning children.

WHO CAN APPLY TO THE COURT FOR AN ORDER?

Any person who has parental responsibility (PR).

Or any person who has been given permission to apply for an order (a grandparent for example).

WHO HAS PR?

A child's mother always has parental responsibility.

The father if named on the child's birth certificate (if dated after 01.12.03).

Any person who is given PR by a court order or who has entered into a parental responsibility agreement.

Any person who has a residence or special guardianship order for a child.

WHAT SORT OF ORDERS CAN THE COURT MAKE?

The Court can make an order setting out the 'arrangements' for the child. Those arrangements are usually *with whom* the child should live and *when* the child should spend time with the other parent.

The Court can also make orders about where a child should go to school for example or when a holiday is taken. In some cases a parent may want to move abroad and the other parent does not agree. The court can make orders about that as well.

ONCE AN ORDER IS MADE, WHAT IF IT IS BROKEN IN SOME WAY?

All Orders have a warning notice printed on them about the consequences of not complying with the order. A separate application is usually made to enforce an order. Orders for enforcement can include a financial penalty, doing unpaid work or even imprisonment. It should be said however that courts in practice rarely make such orders.

HOW LONG DOES THIS ALL TAKE?

There are usually 4-5 weeks between sending the application to the court and the first hearing. If matters are agreed then the case ends there with a final order. If matters cannot be agreed and a welfare report is needed then the matter is usually adjourned for 12-14 weeks for the preparation of that report and a hearing where both parents will attend to give their evidence. The court will usually give a date for the hearing a few weeks after the Cafcass report is due to be sent to the parties.

WILL THE CHILD HAVE TO BE SEEN AND CAN HE OR SHE GIVE THEIR OPINION?

It depends upon the age of the child as to what weight is given to his or her view. A child under 7 will have a view but it must be treated with caution as it may well simply reflect the view of the parent, a teenager who is mature will always have his or her view heard.

*This is not intended to be definitive guide but a short summary of the most common issues that arise, we will give advice of how the above applies to your particular circumstances when we discuss the matter with you.

THE CHILDREN ACT 1989 (AS AMENDED BY THE CHILDREN AND FAMILIES ACT 2014)

1. Welfare of the child.

- (1) When a court determines any question with respect to—
- (a) the upbringing of a child; or
 - (b) the administration of a child's property or the application of any income arising from it,
the child's welfare shall be the court's paramount consideration.
- (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
- (3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—
- (a) the ascertainable wishes and feelings of the child concerned (considered 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 this Act in the proceedings in question.
- (4) The circumstances are that—
- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
 - (b) the court is considering whether to make, vary or discharge a special guardianship order or an order under Part IV.
- (5) Where a court is considering whether or not to make one or more orders under this 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.