



PROCEEDINGS UNDER THE CHILDREN ACT 1989

Children Act 1989

Following the breakdown of a relationship, one or other of the parties may find it necessary to make an application to the Court for a decision affecting any child of the relationship. Such applications are made under the Children Act 1989. This Act came into force in October 1991, and changed the previous arrangements relating to custody, care, control and access.

The aim of the Act is to encourage co-operation between parents in respect of the children's needs and welfare, and the basic principle is that the children should have a continuing relationship with both parents, regardless of whether they live together.

Parental Responsibility

In order to fulfil these aims, the Act introduced the concept of "Parental Responsibility". Parental Responsibility encompasses all the rights and duties a parent has with regard to a child, including where a child should go to school, what form of religious upbringing the child should have and what medical treatment the child should receive. Where the parents are married, parental responsibility is shared jointly between the parents and continues until the child is 18 regardless of whether the parents separate or divorce.

Unmarried mothers automatically have parental responsibility for their child. However, unmarried fathers do not automatically have parental responsibility unless they are registered, with the mother's consent, as the child's father on the birth certificate after

01.12.03. If not, an unmarried father may enter into a Parental Responsibility Agreement with the child's mother which is a formal document signed by both parents in front of specific witnesses and which is lodged with the Principal Registry of the Family Division of the High Court of London. Such an agreement would confer the rights and duties set out above on the unmarried father. If the child's mother would not agree to a formal Parental Responsibility Agreement, then an unmarried father may apply to the Court for a Parental Responsibility Order.

Residence/Contact/Prohibited Steps/Specific Issues

The Children Act gives the Court the power to make Orders in respect of any child or children as to residence (with whom the child should live) or contact (whether the child should have contact with the other parent or any other party and if so, when). Orders for contact may be defined as to frequency of contact and may, if necessary, specify arrangements for collection and return of the child/children. Applications for residence or contact can be made by other people besides the mother and father of the child, e.g. grandparents. The Court also has the power to make other orders, namely prohibited steps orders and specific issue orders. A prohibited steps order will limit how and when certain parental rights and duties can be exercised. A specific issue order will contain directions to resolve a particular issue in respect of a child, which is in dispute.

Presumption of "No Order"

Under the Children Act 1989, the Court will only make a formal Order if there is a dispute over an issue regarding the child. If there is no dispute, no Order will be made. The Children Act also introduced a basic presumption that the Court should not intervene unless it is in the best interests of the child for the Court to do so. It is therefore essential that before embarking on proceedings, any parent or interested party should consider whether making an Order would be better for the child than the Court making no Order at all. When making any decision, the Court's paramount consideration is the welfare of the child. Proceedings under the Children Act are usually resolved fairly rapidly as the Court recognises that delay in resolving the issues is likely to be harmful to the child's welfare.

Parents should appreciate that any prolonged dispute over issues regarding the children will be likely to have a detrimental effect upon the children. Therefore, it is important that the parents attempt to co-operate as far as possible in making decisions regarding the child's welfare. It is particularly important that the parent with whom the child is living makes every attempt to co-operate in order to preserve a parental role in the child's life for the absent parent. In many areas, family conciliation and/or mediation services are available to assist parents in reaching an amicable solution to any dispute, without resorting to Court proceedings. We will consider whether this option is appropriate, in the particular circumstances of your case and if so, will advise you in greater detail at the appropriate time.

If agreement cannot be reached between the parents, then an application must be made to the Court. Applications may be made to the Family Proceedings Court (Magistrates' Court), the County Court or the High Court, depending on the nature of the case, any previous proceedings in connection with the relationship or the children of the family or the status of the individual parties involved.

Relevant Factors

In deciding whether to make any Orders under the Children Act, the Court will have regard to the following matters:-

- (a) the ascertainable wishes and feelings of the child concerned (considered, in the light of the child's age and understanding);
- (b) the child's physical, emotional and educational needs;
- (c) the likely effect on the child of change in his or her circumstances;
- (d) the child's age, sex, background and any other characteristics that the Court considers relevant;

- (e) any harm which the child has suffered or is at risk of suffering;
- (f) the ability of each of the child's parents (and any other relevant person) to meet the child's needs;
- (g) the range of powers available to the Court under the Children Act in the proceedings in question.

Commencing Proceedings

Proceedings are commenced by filling in the relevant application form, filing these with the Court and serving copies on the other parent/party. The Court will then list the matter for an initial Hearing at the earliest available date and it is possible that a Cafcass Officer (Children And Family Court Advisory And Support Service) will speak to both parties at that initial Hearing. If no agreement can be reached with the assistance of the Cafcass Officer, then the Court will proceed to give Directions as to how the case should be progressed.

Cafcass Officer

In the majority of the cases, this will involve the preparation of statements setting out the facts of the case and the Cafcass Officer is usually ordered to prepare a report. The Cafcass Officer is an independent person who investigates all the circumstances of the case and will usually interview all the parties concerned, including the children, in some cases, close relatives and sometimes teaching staff who are involved in the day-to-day upbringing of the child/children. The Cafcass Officer will normally make recommendations as to what Order should be made by the Court. In making that recommendation, the Cafcass Officer will have regard to the same matters as (a) to (g) as outlined above. In addition, the Cafcass Officer will consider what is in the best interests of the child/children. The Court will usually follow a recommendation of the Cafcass Officer, but is not bound to do so.

Further directions may be given throughout the conduct of the case prior to the final Hearing. Once a Cafcass Officer's report has been received, the parties may decide to come to an agreement in accordance with the Cafcass Officer's recommendation. If not, a further Direction will be given to finalise the hearing date. You must understand that a Cafcass Officer's report is a confidential document and must not be shown to anyone other than the parties in the case, their legal representatives and the Court, unless permission of the Court is first obtained.

Interim Order

In exceptional circumstances, it is possible to apply for an Interim Order, that is a temporary Order to remain in force until the application is finally resolved. This application may be made at the outset of the case when the application for an Interim Order would probably be considered at the first Hearing and further directions made thereafter. If these circumstances change during the conduct of the case, an interim Order can be applied for at a later stage.

Conclusion

You will be advised in detail about these matters throughout the conduct of your case, but if you have any queries, please do not hesitate to contact us.

Once the matter has been finally resolved, if any future difficulties arise with arrangements concerning the children, or the Order(s) made, you should contact us for further advice.

*Naim Qureshi
Partner-Family Department
Child & Child
14 Grosvenor Crescent, London SW1X 7EE
Tel 020 7201 5599*

The information in this article is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.