

## CHILDREN – CONTACT AND RESIDENCE ORDERS

Most parents are bound to be worried about the effect of separation or divorce on their children and they want to do whatever they can to give them security for the future. The Court's approval to these issues has been changed by the Children Act 1989.

### WHEN WILL THE COURT MAKE ORDERS IN RELATION TO CHILDREN?

Only in circumstances where the making of an order is in the **BEST INTERESTS OF THE CHILD** in question. Most orders in relation to children are now made under **THE CHILDREN ACT 1989**.

### WHERE THE PARTIES AGREE...

It used to be the case that whenever parents got divorced the court would automatically make custody (now known as Residence) and access (now known as Contact) orders in relation to any child of the family but this is no longer the case. If there is no dispute between the parties as to what the arrangements for the children should be when their parents divorce, the court will not normally want to interfere with the arrangements that the parties have made eg. as to where the children are to live or how much contact there should be between the children and each parent.

In divorce proceedings the Petitioner has to provide a **STATEMENT OF ARRANGEMENTS FORM** at the time of filing the Petition. This will be considered by the judge who will normally not make any order at all if he is satisfied that the arrangements are agreed and workable.

### DISPUTES ABOUT WHERE CHILDREN ARE TO LIVE (RESIDENCE) OR CONTACT

All disputes whether or not in divorce proceedings, will be dealt with under the Children Act, even if the parties have never been married or lived together.

If there are divorce proceedings children cases will be heard in the court where the divorce is being dealt with. Otherwise proceedings can be started in either the Magistrates Court or the County Court (normally the court which is closest to where the children live). In whichever court, the procedure is more or less the same.

### WHAT IS THE PROCEDURE?

The person wishing to make the application, (the Applicant), will complete a standard form giving information about the children, the type of order he/she is seeking and brief reasons as to why that order is required. This form is lodged with the court, which will send a copy to the other party, (the Respondent), with a form offering the opportunity to respond to the application and giving details of the date fixed for a **DIRECTIONS HEARING**.

The directions hearing is a preliminary hearing which both parties and their legal representatives have to attend. The court will decide whether there is any possibility that the parties may be able to reach an agreement there and then. If there may be such a possibility the court will adjourn the Directions hearing and refer the matter to a **CONCILIATION OFFICER** i.e a person experienced in matters relating to children who will sit down with the parties for one or, if necessary, several meetings to see if an amicable settlement can be reached.

The matter will then be brought back before the court. If conciliation was successful then the court

will make any agreed orders in relation to the children (if it is necessary to make any orders at all) and that will be the end of the matter.

If conciliation has not worked (or at the first hearing it was not thought appropriate to go to conciliation) the court will give directions as to what steps need to be taken before the final hearing and within what timescales.

The court will normally make an order that each party files a **STATEMENT OF EVIDENCE** with the court and send a copy to the other party.

The court will also order the preparation of a Children and Family Court Reporter's report. The author of the Report will be a member of the Children and Family Court Advisory and Support Service (CAFCASS) and will be experienced in dealing with disputes relating to children. Often the CAFCASS Officer will then interview both parties.

Depending on the children's ages, he may speak to those too, normally without either of the parties present. The CAFCASS officer will read the statements of the parties. He may see those involved on more than one occasion and may also speak to other people involved with the children eg teachers.

The CAFCASS officer will then compile a report summarising the investigations that have been made and in most cases providing a recommendation to the court. A copy of the report is sent to the court and will be made available to both parties. The matter will then come back before the court for a final hearing.

If the parties are willing to accept the recommendations of the CAFCASS officer the matter can normally be resolved without a lengthy hearing. If the parties do not agree the court will hear evidence from the parties, and sometimes from other people involved with the children and will also hear evidence from the CAFCASS officer. The court will then make a decision, although it is rare for a court to make an order which is contrary to the recommendations of the CAFCASS officer.

## **FUNDING**

There is a Court fee at the County Court of £200.00.

## **WHAT ORDERS CAN THE COURT MAKE?**

The court can determine where the children are to live i.e make **RESIDENCE ORDERS**. The court can determine whether a party should have any **CONTACT** with a child and can make an order for **REASONABLE CONTACT** which effectively means that the parties have to make their own arrangements as to the frequency and timing of contact visits. Alternatively the court can make a

**DEFINED CONTACT** order i.e spell out when and where contact should take place.

When the Court determines any question with respect to the child's upbringing, the child's welfare is the Court's paramount consideration. The Court has to have regard to the general principle that any delay in determining the question is likely to prejudice the child's welfare. The Court has to consider a number of matters. This is known as the "Welfare Check List".

Briefly the Check List consists of the child's wishes and feelings, (considered in the light of his / her age and understanding), the child's physical, emotional and educational needs, the likely effect on the child of any change in his / her circumstances, the child's age, sex, background and relevant characteristics, any harm or risk of harm which the child is suffering or is likely to suffer, the capability of each of the parents to meet the child's needs.

## **WHAT IF THE OTHER PARTY STILL REFUSES CONTACT?**

If the party with whom the child is living refuses to comply with a court order the matter can be brought back to court. The court can impose various sanctions against the non – complying parent to include a fine, a community service order and ultimately imprisonment (although in practice the court are often unwilling to send to prison a parent who has to care for a child.

## **IF I WIN THE CASE WILL THE OTHER PARTY PAY MY COSTS?**

This is unlikely as it is rare for such an order to be made in proceedings relating to children except where a party has behaved very badly during the proceedings.

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