

Children Issues

Welfare Checklist

The Children Act 1989 is the main piece of legislation dealing with family disputes about children. The child's welfare is the most important consideration when children are involved and a list known as the "Welfare Checklist" is considered. This looks at:

- 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 child's age, sex, background and any characteristics which the Court considers relevant
- the likely effect of any change in the child's circumstances
- any harm which the child has suffered or is at risk of suffering
- how capable each parent is of meeting the child's needs.

Children Orders

Where there is a dispute in respect of children, the Court's starting point is that they will not make an order unless it is necessary. Parents are encouraged to try mediation to resolve matters. Should mediation prove to be unsuccessful, or inappropriate in the circumstances, an application to the Court will need to be made.

If parents are unable to agree who the children should live with, then it may become necessary for one or both of them to make an application to the Court for a Child Arrangements Order to deal with who the children will live with and who the children are to spend time with and when.

Applications can also be made to the Court to resolve specific issues, for example, changing a child's surname, medical treatment, education or permission for the child to be taken out of the country indefinitely.

Emergency applications to protect children can be made at short notice where necessary. This will involve attending Court, without the other party's knowledge, to secure an Order which is served upon them as soon as possible. The matter is normally then relisted for a hearing with the other party present, within a matter of days.

Grandparents

Sometimes on the breakdown of a relationship between parents, this can have a wider effect and can lead to grandparents losing contact with their grandchildren. Grandparents can apply for their own Order with leave of the Court. In certain circumstances, where the parents are not capable of looking after the children themselves, grandparents can apply for an Order that the children reside with them.

Options

There are various options available when resolving disputes about children. It is important that you are aware of all of them so you can choose the best way forward for you.

- 1 **Direct agreement between you.** This is where you come to an agreement yourselves by talking to each other directly. It is important that you instruct a solicitor to advise on the proposed agreement. The solicitor can then take steps to make the agreement legally binding for you if it is appropriate.

Children Issues

Continued

Options Continued

- 2 **Mediation** Prior to any Court proceedings, there is an emphasis on parties trying to resolve matters through mediation. Mediation involves you seeking the assistance of a third person to help you communicate and reach an agreement. The mediator is unable to give legal advice but can help you communicate and reach a fair agreement.
- 3 **Instruct a solicitor** to pursue an Out of Court agreement or to deal with proceedings at Court (providing you have attended, at the very least, a Mediation Information meeting).
- 4 **Dealing with matters collaboratively**, with solicitors trained in collaborative law. This involves a series of open discussions with everyone present and a commitment not to use the Court process.

Court Procedure

- 1 Where the application is not urgent, it will be sent to the Court for the papers to be processed.
- 2 The application will then be served on the other party by post.
- 3 The Court will send a copy of the application to a Court appointed officer, who is experienced in dealing with children cases (known as a CAFCASS officer). They will carry out safeguarding checks on the parties and any other named person who has care of the child to ensure that no immediate action is required to keep the child safe. They will also try to speak with both parties before the first Court appointment to confirm what issues exist between the parties.
- 4 A First Appointment for the Court to give Directions will be held.
- 5 The Court will then list the matter for a Final Directions, at this Directions hearing, the Court will discuss with the parties whether or not a Final Hearing can be avoided.
- 7 A Final Hearing, if required will be listed.

Enforcement of Contact Orders

Since December 2008, the Courts have had extra powers to deal with parents who do not comply with a court Order dealing with contact. The Court can, for example, order those parents to undertake unpaid work in the community, or order financial compensation to be paid to the other parent.

The Courts also have more power over the parent wanting to have contact with their children. They can order that parent to do a “contact activity” to assist with contact, for example, attending parenting classes or a programme to deal with violent behaviour. Their attendance at these “contact activities” can then be monitored by an Office of the Court.

For more advice contact Erica Cottrell or Tina Coward on 01722 410664 or email erica.cottrell@sampsoncoward.co.uk or tina.coward@sampsoncoward.co.uk