

Divorce and how to agree arrangements for children

What if you can't agree?



If parents cannot agree about arrangements for their children it is possible to apply to the court for an order under the Children Act 1989.

The court can make the following orders:-

- ✓ A Special Guardianship Order (to appoint a guardian who has parental responsibility to the exclusion of others with parental responsibility)
- ✓ A Child Arrangements Order (previously known as Residence Orders and Contact orders)
- ✓ A Prohibited Steps Order (an order prohibiting someone from taking steps in relation to a child e.g. removing a child from England and Wales)
- ✓ Specific Issue Order (an Order about an issue in dispute e.g. which school a child should attend)
- ✓ Parental Responsibility Order (an Order giving a father who does not already have Parental Responsibility, or step-parent or second female parent, a legally recognised right to have a say in decisions about his child's life).

The principles

The Act sets out four main principles:

- ✓ The welfare of the child is of paramount importance
- ✓ Any unnecessary delays in settling a dispute may be harmful to the child

- ✓ It is nicer for children if there is no need for an order
- ✓ The court must presume the involvement of both parents in the life of the child concerned will further the child's welfare.

The court also has an overriding objective to deal with cases justly. This includes:

- (a) Dealing with cases expeditiously and fairly;
- (b) Being proportionate to the nature, importance and complexity of issues;
- (c) Ensuring the parties are on an equal footing;
- (d) Saving expense;
- (e) Allotting to it an appropriate share of the court's resources.

When making a decision about a child the court must consider the following:-

- ✓ The child's ascertainable wishes and feelings (considered in light of their age and understanding)
- ✓ Their physical, emotional and educational needs
- ✓ The likely effect on them of any change in their circumstances
- ✓ Their age, sex, background and any relevant characteristics
- ✓ Any harm which they have suffered or are at risk of suffering
- ✓ How capable each of their parents and any other relevant person is of meeting their needs

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✓ The range of powers available to the court.

Before issuing proceedings parties must show they have explored the option of mediation unless exempted from doing so for example in the case of an emergency.

The procedure

Before making the Application

Before issuing an application you must attend a mediation, information and assessment meeting (MIAM) unless an exemption applies.

Application

An application is made on prescribed forms and there is a court fee currently payable of £215 (as at **March 2021**). Your application will be referred to a District Judge acting as gatekeeper to consider whether the case should be heard before Magistrates or a Judge. The Court will issue the application and list the case for a First Hearing Dispute Resolution Appointment (FHDR). A referral will also be made to the Child and Family Court Advisory and Support Service (CAFCASS) who will undertake safeguarding checks and enquiries and inform the court of any risk of harm to the child before the FHDR takes place.

First Hearing Dispute Resolution Appointment

Six weeks after making the application there will be a hearing to timetable the case. In court the Judge hears submissions in relation to the dispute and in collaboration with a CAFCASS officer he/she assists in trying to resolve the dispute. This may lead to mediation but otherwise directions will usually be given for statements to be filed and a CAFCASS officer to be appointed and file a report. The parties may also be ordered to attend a Separated Parents Information Programme. A Dispute Resolution Appointment will also be scheduled to take place after all the evidence has been filed. This will usually be in about four months time (or less if a full CAFCASS report is not ordered).

Dispute Resolution Appointment (DRA)

Shortly after the CAFCASS report has been received (if any), and after statements have been filed, there is a further hearing. At this hearing the court will identify issues that need to be determined and the extent to which these can be resolved or narrowed. Quite often with a clear recommendation from CAFCASS a final order can be made by agreement. If this is not possible directions are given relating to the preparations for the final hearing.

The Final Hearing

The Judge will hear from both parties to the proceedings, the CAFCASS officer and any other relevant witnesses and then make an order bearing in mind the principles set out above so that if the Judge departs from the recommendation of the CAFCASS officer he/she needs to give clear and precise reasons.

The CAFCASS Officer

This is a person appointed by the court to meet with the parents and the children and to file a report with recommendations about what orders should be made. A report normally takes four months.

Urgent Cases

In some cases urgent decisions need to be made about children to protect their welfare. In these cases you may be exempt from the requirement to attend mediation before issuing your application and the timescales can be abridged. In some very urgent applications short notice or no notice may be given to the Respondent.

Enforcement

The court has various enforcement orders it can make and will attach a warning notice to an order warning of the consequences of failing to comply with a child arrangements order.

This is a brief outline of the procedure under the Children Act. However every family is unique and the procedure can be adapted to take into account the particular needs of the children involved. If you have any queries about how the Children Act applies to you please contact our team.