Disputes about Children & Child Arrangements applications

Making the right arrangements for your children after a separation/ divorce is vital. You, as parents, need to make decisions about where the children will live and how much time they will spend with each parent.

Whereas this was once referred to as "access" or "contact" or "residence" and "custody" we now refer to these as child arrangements. The Children Act 1989 governs the law about child arrangements and how these are dealt with. Here we try to explain what that means and how the arrangements are made, whether that is in or out of Court.

As members of Resolution, we prefer our clients to use constructive methods to resolve disputes around children's issues. For this reason, we strongly recommend that you read the guide:

https://resolution.org.uk/wp-content/uploads/2021/05/Parenting-through-separation-guide.pdf

Child arrangements – what does this mean?

If you are separating or divorcing and you have children, then you need to come to an agreement on how best to look after the children.

Everything you decide should be in the best interests of the children. There is no fixed rule on arrangements.

In some instances, the children primarily live with the parent who has played the greater role historically in looking after the children. That "resident parent" will sometimes remain living in the family home and the "non resident parent" will spend regular time with the children and contribute financially towards the care of the children, by paying child maintenance.

In other instances, separating parents agree to share the care of the children so that they "live with" both parents. This arrangement does not have to be an equal split of time between parents for you to consider it to be a shared care arrangement.

When considering arrangements for the children, if the children are old enough to have a say, you should consider their wishes and feelings. You should also consider:

- Their age, gender, and circumstances;
- What the children need physically, emotionally, and educationally;
- How a change to arrangements would affect them;
- Has one parent been the primary carer previously and should this continue; and
- Is there any risk of harm to the children – such as, for example, domestic violence?

In law a child has the right to have contact with both their parents (and not the other way around). There is a presumption in favour of children having a relationship with both their parents, unless exercising that right puts a child at risk.

Children often find it hard when their parents' relationship ends, and it is likely to be much less stressful and difficult for them if you can agree arrangements for the children amicably. An application to a Court for child arrangements orders should always be a last resort. There are other options open to you before considering a court application where a third party makes decisions about what is best for your children.

What happens if you can agree child arrangements?

Very often parents can agree arrangements amicably. In those cases, you may want to consider a parenting plan. This is a written document that sets out what you have agreed. This can help avoid any conflict in the future. The plan can be as detailed as you would like. We can assist you in drawing up a plan which can include:

- Who your children will live with;
- When they will spend time with their other parent and extended family (for example grandparents);
- If shared care is possible and how that would work;
- How you propose to deal with education and welfare issues including medical appointments;
- How you will communicate as parents in the future and what decisions can be made without consulting the other parent;
- How to introduce new partners.

A parenting plan can also include agreements over access to things like social media, mobile phones and ensure that parenting is consistent over two households.

However parenting plans are not legally binding. That means that if you want to have an agreement that is binding you should obtain legal advice and consider whether you want a Court Order. It is possible that this can be made by consent through the Court although you would have to explain to a Judge why you want a Court Order as a Judge will only make an order if it is thought to be in a child's best interests.

It is important to understand that most separating parents manage to agree arrangements without the need of a Court Order and we at DPM Legal can help you with those plans and assist in the drawing up of a parenting plan if you need it.

What happens when parents cannot agree?

1. Mediation

   If you cannot reach an agreement between the two of you on the care of the children, you must attend mediation (unless you are exempt) if you wish to ask the Court to decide how to share care. However, we would usually recommend mediation as a route to resolving matters if you cannot agree, and not just if you want to make an application to the Court.

   Mediation is often a quicker and cheaper way of resolving disputes and can facilitate a better arrangement, than one imposed on you both, as you remain in control of the outcome. A mediator is a completely neutral evaluator who is there to help facilitate an agreement between you both. We can refer you to a mediator suitable for your matter. When children are old enough, it may also be possible to consider child inclusive mediation where the children will, with your permission, speak to the mediator about their wishes and feelings.

   It is important to realise that mediation is not a binding process and will not provide you with a Court Order. However, you can apply to the Court for an agreed Court Order, and we can advise you throughout the mediation process.

   If mediation fails in sorting out matters, your mediator can then provide you with a form confirming that you have attended mediation but that this was not successful so that you can then make an application to the Court, if you wish to.

2. Arbitration

   This can be considered in place of a Court application. Parents can appoint an arbitrator to decide about child arrangements. Very often an arbitrator is a former Judge or experienced and trained Barrister/ Solicitor who specalises in these disputes. The decision of an arbitrator is binding and can be incorporated into a Court Order. Many parents consider arbitration as a useful out of court option. It has the benefit of being much quicker than a Court application and parents can choose who should help them.

What happens when parents cannot agree?

2. Mediation

An arbitrator can spend more time on a case than a Judge will in a Court application. It is no secret that the family courts are overwhelmed with cases, which leads to delay and significant costs for parties and ultimately the children can be affected by the delays. At DPM Legal we can consider arbitration with you as an option if it is suitable. Arbitration is voluntary and you and the other parent will have to agree to this.

If you cannot reach an agreement in mediation and do not wish to consider arbitration, you can apply to the Court for a child arrangements order. That will usually decide:

- Where your children will live; and
- How often they will spend time with you or the other parent.

You can also apply to the court for specific issues such as:

- If you dispute what school the children should go to;
- If you cannot decide on specific medical treatment;
- Whether or not you can take the children abroad on holidays, or, if you want to leave the UK permanently to live abroad.

How to make a Court application and what the process involves

Before we explain the process, please note that not all steps will apply to all cases, as some may resolve quicker than others, and there may be additional hearings, depending on if there are other complex issues or safeguarding concerns. This is intended as a brief overview, and we can provide more detailed advice to your individual circumstances.

Step 1: Prepare application and send to Court

We will help you complete your application and send this to the Court. This process takes place online. The Court then issues the application and sends a copy of it to CAFCASS (Children and Family Court Advisory and Support Service). The Court will also send a copy to the other parent and give you a hearing date.

Step 2: Acknowledging receipt

The other parent has 14 days to acknowledge receipt of the papers and fill in a form to confirm that they have the paperwork etc.

Step 3: CAFCASS conduct safeguarding checks

Once CAFCASS receive the application they will conduct checks on both you and the other parent with the police and children social services, to see if there are any concerns that the court need to be aware of. CAFCASS will also speak to you and the other parent about the application and will, hopefully before the first hearing, send a safeguarding report to you and the Court about what they recommend and what involvement (if any) they will have in any application.

Step 4: First Hearing Dispute Resolution Appointment (FHDRA)

This is the preliminary hearing of your application. That hearing may be dealt with remotely (by video link) or at the Court. A CAFCASS Officer will also be in attendance to give some further guidance and help to you and the Court. If you cannot reach an agreement at that hearing, or if there are safeguarding concerns, then the Court may direct what further evidence it needs to make a decision. That could include a report from CAFCASS, witness statements, medical evidence. No one case is the same and how long your case will take depends on what the Court directs and how complex the issues are.

Step 5: Dispute Resolution Appointment (DRA)

After the Court has all the evidence it needs, or reports have been completed then the Court will ask for a further hearing to try and resolve matters. If you can reach an agreement at that stage then an Order can be made but, if not, the Court will list the case for a final hearing.

How to make a Court application and what the process involves continued

Step 6: Final Hearing

This is only used if you and the other parent are still unable to agree arrangements. At that hearing you and the other parent and any other witnesses (such as CAFCASS) will give evidence to the Court and be cross examined, and the Judge will decide on what arrangements should be made for your children.

Please note that if your matter is complicated and involves safeguarding or allegations of domestic abuse, then there may be other hearings and other evidence that will need to be set by the Court to ensure that they deal with matters correctly.

How to make a Court application and what the process involves

1. How long does a child arrangements application take?

   This will depend on each individual case and whether there are safeguarding issues. There is no standard time frame, but court applications could usually take between 6-12 months to resolve themselves.

   You can expect to get a FHDRA approx. 6-8 weeks after you have made your application. If CAFCASS are directed to complete a report that could take 16 weeks or more.

   The Court can deal with urgent cases, but you should still expect Court proceedings to take months rather than weeks to resolve.

2. How does the Court decide what is best for the child?

   When deciding the Court will use the welfare checklist set out in the Children Act 1989 which considers the following:

   - The ascertainable wishes and feelings of the children concerned (considering their age and understanding);
   - The physical, emotional, and educational needs of the children;
   - The likely effect on the children of any change in circumstances;
   - The age/sex/background or any characteristics of the children that the court considers relevant;
   - Any harm which the children have suffered or are at risk of suffering;
   - How capable each of the parents are of meeting the needs of the children; and
   - The range of powers available to the court under this Act.

   The court's priority will always be the welfare of the child.

3. Who pays the costs of a Court application?

   It is usually the case that each parent, if they have legal representation, will pay their own costs of any application. It is rare that any costs orders will be made against a parent in children proceedings.

   To discuss your various options about child arrangements and other matters related to children please contact us to make an appointment.

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