

AWDRY BAILEY & DOUGLAS - CHILDREN ACT FACTSHEET

General Principles

We set out an indication of the law which applies when parents separate or divorce or there is dissolution of a civil partnership. We have a very experienced Family Law Team and best results are achieved through listening, understanding and conciliatory negotiation. For more detailed advice please contact us for a free initial interview at any of our offices shown at the end of this Factsheet and we will be able to assist further.

The main body of law concerning children is set out in the Children Act 1989.

Legal Principles

Whatever is decided with regard to a child's future upbringing, the law says that the interests of the child is paramount. The onus on making satisfactory arrangements for a child lies with the parents and, where satisfactory arrangements are made, the Court will not usually interfere. However, if parents are not able to resolve issues in respect of their own child then they are effectively abrogating the responsibility to someone else and the Court will have to step in so that a decision can be made. Whenever a Court decides anything with regard to a child's future then the child's "welfare" will be the main factor. Therefore, the Court will make an Order in respect of a child when it is considered that making the Order would be better for the child than what would happen if the Order was not made.

Within the Children Act there is a "welfare checklist" which is a list of matters the Court needs to consider when deciding what is best for a child. The main items in this checklist are:-

- The wishes and feelings of the child concerned where this can be expressed should be taken into account. This will depend very much on the age of the child and depend entirely on the level of understanding and maturity. Therefore, the older the child the more likely his/her wishes and feelings will be taken into account. Unless a child is under a disability then no Court Order will be made for any child who has reached the age of 16.
- The child's physical, emotional and educational needs.
- The likely effect on the child of any change in his or her circumstances.
- The likelihood of harm or risk to the child.
- How capable are the child's parents of meeting the child's needs and dealing with his/her care.

- The particular characteristics of the child and the child's age, sex and background.

There is a duty upon the Court to avoid any undue delay in matters relating to children as delay is often contrary to a child's best interest.

Possible Court Orders

Under the Children Act there are generally four different types of Order which are usually made. These are:-

1. Residence Order

This states where a child is to live in the future and with whom.

As a matter of law however, this can be made in favour of more than one person and it is possible for there to be a "shared" or "joint" Resident Order where the circumstances allow and it is deemed to be in the child's best interest. This is usually done to emphasise the importance to a child of both of his/her parents and it will then normally detail the periods of time that the child will spend with each of its parents.

Once made, a Residence Order exists unless either the child reaches the age of 16 or there is another Court Order. If at any time a child's parents reconcile and live together for a continuous period of at least six months then a Residence Order will also cease.

Where more than one child is involved a Court would normally make an Order to keep all children together. It is unusual, but not impossible, for siblings to be split up.

2. Contact Order

This requires the parent with whom the child is living on a day to day basis to make the child available to visit or stay with the person having the benefit of the Contact Order which will usually be the other parent. If it turns out that parents cannot agree the level of contact a child should have with the non-Resident parent, then the Court can decide on the contact arrangements.

What is an appropriate level of contact for a child with a parent will depend entirely on the circumstances of each individual case. However, a Court will almost always assume that it is within the child's best interests to have regular contact and a loving relationship with both of its parents.

The advantage of a Contact Order is that it brings certainty into the case where previously there may have been either uncertainty or, even worse, parental argument. It is possible for the Order to set out precisely when a child is to have contact with the other parent but the disadvantage of this is that it can be very inflexible as there will always be occasions in a child's life where there are unavoidable commitments that go against the specific defined terms set out in an Order. One thing must be borne in mind and that is any Order in respect of a child is not "set in stone" indefinitely. Parents should always keep Contact Orders under review and practice flexibility as the needs of the child will differ as the child gets older.

The Court will also settle particular disputes over contact, e.g. at Christmas, school holidays or on birthdays etc.

Although the Court will always make a presumption that it is in the best interests of a child to have contact with both parents, this can always be set aside by particular circumstances, e.g. extreme domestic violence or child abuse, or where the child is at risk of suffering emotional or physical harm by exposure to contact with a parent. In cases of that nature, contact will clearly be undesirable, and it may be necessary for restrictions and/or conditions to be put in place governing contact.

It is not only parents who can apply for Contact Orders under The Children Act. Grandparents, for example, can also apply although they would require the permission of the Court initially before being allowed to proceed with a Contact Order application.

3. Prohibitive Steps Orders

This arises if one parent is proposing a course of action for the child to which the other parent objects. This type of Order actually prevents one party from doing something with a child if the Court agrees that it should not happen. A simple example of this would be where one parent wishes to change the surname of a child and the other parent objects.

In the event that the parents are unable to achieve their own amicable settlement of the problem then a Judge can intervene and decide whether or not the proposed course of action is in the child's best interests. If the Court believes it is then it will be allowed but not otherwise.

4. Specific Issue Order

Everything here is in the name. This type of Order is applied for when the Court is asked to decide a specific question about the upbringing of a child where the parents are unable to

agree. A classic example of this is a difference of opinion between parents as to how and where a child should go to school or, sometimes, what religion a child should be brought up practising.

Again, if there is disagreement between the parents, a Judge can make a Specific Issue Order to resolve the dispute one way or the other.

Procedure

The party seeking the Order is known as an Applicant and will make the Application to the Court. The party responding to the Applicant is known as the Respondent. Often the parties can seek Mediation with a view to resolving the issues in the presence of an independent third party thereby avoiding a Court process. If Mediation proves either inappropriate or it breaks down then a Court Application will be needed.

The Court will initially fix a First Appointment to decide how the Application should proceed. This is normally fixed by the Court on a date when a children and family representative (called a "CAFCASS Officer") will be in attendance and the parents have an opportunity to speak to that person. The CAFCASS Officer will try to determine whether the matter can be resolved without a fully contested Court Hearing. If it can be then there is a possibility that matters could be finalised there and then.

If not, then the Judge will have to give Directions as to the further progress of the case and what evidence (if any) will be required by the Court in order to resolve the issues involved. Sometimes the Court will Order that a CAFCASS Office prepare a full and detailed Report upon the issues and this will be done often after the CAFCASS Officer has deemed it appropriate to see and interview all relevant parties (in most cases including the children). The CAFCASS Officer may also make background checks for police and/or social services involvement with the family and can also contact the child's school for further background information.

The Court can make Interim Orders while the matter is proceeding to a Full Hearing and then make a Final Order once the case has come to that Full Hearing and the CAFCASS Officer has reported. It is unusual for a Court to depart from any opinion and recommendation made by the CAFCASS Officer in a Report. The parties would need to have good grounds to go against the recommendation of a CAFCASS Officer.

Both parties are normally required to attend all Court Hearings involving children although it is not normally the case for the child to be present as well.

In the event that a Court Order is obtained but not complied with by one party, then there are a number of enforcement options available which can be pursued through the Court.

In the event you require further assistance in relation to any matter regarding children then please telephone one of our offices set out below for a free initial consultation.

Calne - 01249 815110

Devizes - 01380 722311

Marlborough - 01672 518620

Wootton Bassett - 01793 853200

