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Family Law

Children Agreements & Orders v1

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Children Agreements & Orders

When a relationship breaks down children are often caught in the middle. When there is a high level of conflict between parties it is very easy for that to spill over into issues concerning the children. The law tries to avoid that happening and keeps issues regarding children separate from those of divorce and finances.

It is best for all concerned if agreements can be reached between the parties directly over the arrangements for the children. The Courts recognise this and if satisfactory arrangements can be agreed on where the children will live, how often they will see the parent they do not live with, then the Court will not intervene and make any orders. It exercises what is called the “**no order principle**”.

If you cannot reach an agreement then we will try to assist you in reaching one.

It may be appropriate for you to address the issues relating to the children through the **Collaborative Family Law Process** whereby the parties and their respective Collaborative lawyers agree not to go to court but instead meet round the table and work through the issues face to face until an agreement is reached. The children benefit from knowing that their parents are not in conflict and are working together to find solutions without threatening to go to Court. The parties benefit from each having their own lawyer present to negotiate and give legal advice at the meetings. Legal aid is not available for this process.

If that is not possible we would advise that you try and resolve the issues through **Mediation**. Mediation is a meeting between you and your ex-partner and an independent third party who is trained in both the legal procedures of a breakdown in a relationship and in negotiation. They will try to work through the issues and conflicts between you and reach an agreement.

The benefit of using mediation rather than going to Court is that it does give an opportunity to the parties to speak to each other and air their concerns. In Court Solicitors do most of the talking and this can in fact make the issue of talking to one another harder to overcome.

Furthermore if arrangements are agreed it is more likely that the other party will abide by them rather than an arrangement they feel has been forced upon them by the Court and Solicitors. If you are receiving funding from the Legal Services Commission (formerly



the legal Aid Board) in most cases they will require that you try mediation before they will fund an application to the Court.

If the matter has to proceed to Court there are various orders the Court can make which include:

A Parental Responsibility Order

It means all the rights, duties, powers and authority which by law a parent of a child has in relation to the child and his property. This includes the right to decide where the child should go to school, what form of religious upbringing the child should have and what medical treatment the child should receive.

Mothers alone automatically acquire parental responsibility at birth.

Fathers automatically have parental responsibility if they are married to the child's mother or divorced from her.

Unmarried fathers can acquire parental responsibility by registering their name on the child's birth certificate for a child born on/after 1 December 2003 or by entering in to a formal Parental Responsibility Agreement or by an Order of the Court.

A Residence Order

An order settling the arrangements to be made as to the person with whom a child is to live.

A Contact Order

An order requiring the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order.

A Specific Issue Order

An Order giving directions for the purpose of determining a specific question which has arisen or which may arise in connection with any aspect of parental responsibility e.g. to determine which school a child shall attend or to change a child's surname or to remove a child from the jurisdiction.



Prohibited Steps Order

An order that no step can be taken by a parent in meeting his/her parental responsibility for a child and which is of a kind specified in the order, shall be taken **by any person** without the court's approval e.g. to prevent the child being removed from the Court's jurisdiction.

In deciding whether an order should be made, the Court's **paramount consideration is the welfare of the child** the Court will have regard to the following known as the **Welfare Checklist**:

1. The ascertainable wishes and feeling of the child concerned (considered in the light of the child's age and understanding);
2. The child's physical, emotional and educational needs;
3. The likely effect on the child of any change in his/her circumstances;
4. The child' age, sex, background and any other characteristic which the Court considers relevant;
5. Any harm which the child has suffered or is at risk of suffering;
6. how capable each of the child's parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting the child's needs;
7. The range of powers available to the Court.

Generally applications to the Court proceed as follows:

1. The application is lodged at Court with the appropriate court filing fee.
2. The court returns the application with a hearing date which must be served on the other party.
3. Both parties and their Solicitors (if appointed) must attend Court.



4. Also in attendance at Court at the first hearing there should be a CAFCASS (Children and Family Court Advice and Support Service) Officer appointed by the Court.
5. The Judge will invite both parties to have a discussion with the CAFCASS officer and stand the case down, usually for approx 30 minutes, for a joint/individual meeting to take place between the parties and CAFCASS officer to help identify the issues that can be agreed and the issues which remain in dispute.
6. The CAFCASS officer updates the Solicitors who can then advise the parties on how best to proceed.
7. The parties, CAFCASS officers and Solicitors return in to Court and make representations before the Judge makes directions/orders in the case.
8. If terms are agreed the Court can finalise the case there and then by making Orders or no orders depending upon the terms agreed.
9. If issues remain in dispute the Court can direct a report from CAFCASS or Social Services if they already have involvement with the family. This usually takes approx 14-16 weeks. The Court will ask the person drafting the report to give a recommendation of what they think is in the **best interests of the child** (not the adults). The Court lists the case for a review hearing approximately 1-2 weeks after the report is due.
10. If a report is ordered the person making the report will speak with both the parties involved and anybody else they think relevant i.e. new partners, schools, etc. The Court is bound to follow the recommendations of that report unless there are very good reasons not to do so.



11. At the review hearing most cases settle. The court can make an order or no order to reflect the terms agreed. If an agreement cannot be reached the court will direct the parties to file and exchange statements and put the case in the list for a Final Hearing.
12. At the Final hearing the CAFCASS officer is usually present. Both parties and the CAFCASS officer will give evidence and be cross-examined. The Judge will make an Order which will be binding on all parties.

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