

Your guide to the orders the court can make for children and the court process

Overview

This guide will provide you with an overview of the orders the court can make and explain the stages of the court process.

Orders

The court can make the following orders:

- Parental responsibility order.
- Child arrangements order means an order regulating arrangements relating to any of the following:
 - a. With whom a child is to live, spend time or otherwise have contact, and
 - b. When a child is to live, spend time or otherwise have contact with any person.
- A prohibited steps order means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court.
- A specific issue order means 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 for a child.

A detailed overview of each of these orders is set out below.

Parental Responsibility

Parental responsibility (PR) is defined as “all the rights, duties, powers, responsibilities and authority which, by law, a parent of a child has in relation to the child and his property”.

A mother will always automatically have PR. If you are a father, you will only have PR if:

- You were married to the child’s mother at the time of the child’s birth;
- You are an unmarried father and your child’s birth was registered after 1 December 2003 and your name appears on the birth certificate.

If you find yourself in a position whereby you do not have PR this will affect your ability to make everyday decisions in relation to your child’s welfare and upbringing. This could include important decisions relating to:

- Medical treatment;
- Education;
- Culture & religion;
- Changing your child’s name.

There are a number of ways you can obtain PR. You can enter into a parental responsibility agreement with your child’s mother or you can apply to the court for a parental responsibility order.

As a parent, if you wish to make an application to the court in respect of your child then you will need to have PR. If you do not have PR, you will need the court’s permission to make the application.

Child Arrangements Order

Child arrangements orders regulate where a child lives and/or how much time they spend with each parent. If parents cannot agree where a child is going to live or how much time they will spend with each parent, they

can make an application to the court for a child arrangements order.

There can be differing types of orders and these can include the following:

- An order naming one parent with whom the child is to live.
- An order specifying that the child will live with parents who do not live in the same home. The order will stipulate how much time the child spends in each household. This is known as a shared care arrangement. The division of time between each household does not have to be equal for it to form such arrangement.
- An order setting out that the child is to live with two people who live together. For example, a child's parent and step-parent.
- It is not only parents who can apply. Orders can also be made providing for a child to live with or spend time with step-parents, grandparents and wider members of a family.

Prohibited Steps Orders

Prohibited steps orders are orders seeking to prevent one parent from making a decision or taking a specific action in respect of a child. These are relevant in cases where one parent wants to stop another parent from doing something with the child that they disagree with.

These can cover actions such as:

- Changing the child's school.
- Removing the child from the jurisdiction.
- Changing the child's name.
- Making a welfare decision in respect of the child's health.
- Decisions about religion.

You can apply for a Prohibited steps order if:

- You are the child's parent, guardian or special guardian;
- A step-parent who has parental responsibility of the child; or
- A person who is named as the person with whom a child is to live in a child arrangements order.

If you do not fall in any of the above categories, then you will require permission to make an application.

Specific Issue Orders

These are orders made for the purpose of determining a specific issue which has arisen in connection with the exercise of parental responsibility for a child. They can cover issues such as:

- Religion – for example, where one parent may want a child to associate with a religious faith and the other parent does not agree.
- Education – where a dispute may arise over which school a child should attend.
- Relocation – where one parent may wish to relocate with the child to another part of the country or to another country .
- Medical treatment – where a dispute arises over the type of treatment a child should receive.

How does the court decide what orders to make?

Section 1 of the Children Act 1989 contains the statutory criteria for determining any question with respect to the upbringing of a child. Section 1(1) confirms that the child's welfare shall be the court's paramount consideration.

Section 1(3) contains a checklist of factors the court should have regard to. This is known as the 'welfare checklist'.

The Welfare Checklist

Section 1(3) of the Children Act 1989 contains the welfare checklist. No one factor is more important.

The ascertainable wishes and feelings of the child

An assessment of the child's wishes and feelings will be undertaken by Cafcass or social services and they will prepare a report for the court. The court will take into account the age of the child and the level of understanding and maturity that they have in expressing their own views. There is no specific definition of how old a child should be to be able to express their own view, however, the court may tend to place more weight on a child's wishes from the age of 10 onwards.

It is also important for the court to consider whether the child's wishes are their own or whether they have been influenced in any way. The court may also determine that the child's wishes are not in their best interests.

The child's physical, emotional and educational needs

The court will need to consider how best the child's physical and emotional needs will be met.

The likely effect of any change in circumstances

Change is inevitable following parental separation, and this will have an impact on any child. The court is required to consider the impact of any change in circumstances, such as a change of home or school. The court will try to ensure that there is as little disruption to the child as possible.

The child's age, sex, background and any characteristics which the court considers relevant

The court will take into account the child's age, religious and cultural background and any other determining factors that may be specific to the child's family.

Any harm which the child has suffered or is at risk of suffering

The court will look at any harm that the child has suffered and any potential risk of harm the child is likely to face in the future. 'Harm' will include any emotional, mental and physical harm.

The court will also consider what harm may be caused to a child should they not see both parents.

The ability of each parent (or person making the application) of meeting the child's needs

The court will examine the facts and circumstances of the case and how each parent can meet the child's needs. This may include consideration of accommodation or other relevant factors such as conduct of the parties, whether there are any criminal convictions, social service involvement or any other matters affecting the parent's ability to meet the needs of their children.

The range of powers available to the court

The court must consider all the factors contained within the welfare checklist. The court will only make an order if it believes doing so would be better for the child than making no order at all.

The court process

Stage 1: Issue and notice of issue

Unless an exemption applies you will need to attend a mediation information assessment meeting (MIAM) before you can issue your application. The aim of this meeting is to see if mediation can be used to resolve the issues. If your case is not suitable for mediation the mediator will sign a certificate in your application form (C100) confirming you have attended a MIAM. Once the mediation certificate has been completed your application can be filed with the court. Your application will need to be filed with the court closest to where your child lives. If any other proceedings have been issued (for example financial remedy proceedings) your application will need to be issued in the same court. At the time of issuing your application there will be a court fee payable. The court will not process any application without payment of the fee.

Once the application has been issued, the court will send a notice of issue confirming the date, time and place for the first hearing and they will also provide an acknowledgment of service form for the respondent to sign and return to the court within 14 days of the hearing date.

Stage 2: First Hearing Dispute Resolution Appointment

The first court hearing in children cases is known as a first hearing dispute resolution appointment (“FHRA”). The purpose of this hearing is to try and narrow the issues in the case and, if possible, reach an agreement outside of court.

Before the first hearing you will be contacted by Cafcass, the Children and Family Court Advisory and Support Service. A Cafcass officer will undertake background checks on you and your family in order to ascertain whether you are known to the police and the local authority. This is followed by separate telephone interviews with you and the other parent.

A safeguarding letter will be produced reporting the findings of the Cafcass officer and this will be sent to the court before the first hearing. In the event that telephone interviews have not taken place, a Cafcass officer present at court will try to speak to you before the hearing and provide an update to the court.

The Cafcass officer is usually present at the FHRA and will act as a point of contact throughout the hearing to assist the parties in trying to resolve matters. They will assist the judge and also make appropriate suggestions as to what needs to happen next.

If agreement cannot be reached the judge will look at what steps are needed to progress your case. These directions might include orders for:

- The parties to file written evidence by way of witness statements;
- Third parties to provide statements;
- Expert reports to be prepared, for example, from a doctor, educational psychologist or child psychiatrist;
- Preparation of a Cafcass report (known as a Section 7 report);
- A fact-finding hearing to be timetabled.

Cafcass (Section 7) Report

The judge may direct Cafcass to report on a particular issue. This type of report can often take Cafcass between 10 to 16 weeks to complete. The Cafcass officer will visit both parents and meet with the children. The Cafcass officer is trained to speak to children about their wishes and feelings. They may also want to speak to third parties such as teachers, doctors, grandparents or any other professionals involved in the child’s life. Schools, social services and other organisations may also be contacted. The Cafcass officer will also make recommendations in their report to guide the court on what orders to make.

The court does not always order the Cafcass officer to attend court following the filing of their report, so it is important that if they need to be asked questions, their attendance is requested at the earliest opportunity.

Fact-Finding Hearing

In certain cases, there will be factual allegations and disputes that need to be determined by the court.

If the court believes that the allegations, if found to be true, will impact on the welfare of the child, then the court will direct a separate hearing, known as a fact-finding hearing. At this hearing the court will make findings in respect of the allegations.

A fact-finding hearing may be necessary if allegations have been made in respect of the following:

- Physical or sexual abuse;
- Alcohol or drug abuse;
- Verbal or emotional abuse.

If a fact-finding hearing is necessary directions are usually made for the party making the allegations to prepare a document called a “Scott Schedule”. This is a schedule setting out the allegation(s) to be decided by the court. The other party will add their response and comments to the same schedule, and it will be provided to the court ahead of the hearing.

Stage 3: Dispute Resolution Appointment

This is usually the second hearing that takes place, unless additional review or fact-finding hearings have been ordered. It is known as a dispute resolution appointment (“DRA”).

The purpose of this hearing is to ensure that all directions have been complied with and to consider if any further evidence is required. The judge will encourage parties to try and reach an agreement and to spare the stress and expense of proceeding to a final hearing. In some cases, the judge may provide an indication of the terms of an order to try and help the parties reach an agreement. If, however, no agreement can be reached the judge will list the case for a final hearing.

Stage 4: Final Hearing

All parties will need to attend the hearing together with Cafcass and any other witnesses that may have been ordered to give evidence.

The usual order is for Cafcass to give evidence (where required) and then both parties will take it in turn to provide their evidence and be asked questions by the other party (this is called cross examination) and by the judge.

After all evidence has been given, the judge will make their decision. The decision may be given straight away at the hearing or the judge may want to take some time to consider the case before given their judgment. If this happens the judge will usually list a short hearing to give their judgment. Following judgment, the parties’ lawyers will draft an order to reflect the judge’s decision.

If any party does not agree with the judgment and has substantial evidence to show that it is not in the best interests of the child then they can speak to their lawyer about a possible appeal.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.