

Arrangements for the children following relationship breakdown



Going through any relationship breakdown is a very emotional time and agreeing how and when parents may each spend time with their children will be at the forefront of parents' minds. Fortunately, most parents are able to agree the arrangements for their children without too much difficulty by talking and finding a solution together. This may be with assistance from a third party such as a mediator or within the collaborative practice (see our leaflet "Alternatives to Court"). But what happens if they can't?

On 22nd April 2014, the Child Arrangements Programme came into force. The Child Arrangements Programme applies where a dispute arises between separated parents and/or families about arrangements concerning children.

The programme is designed to try and facilitate and encourage the resolution of disputes outside of the court system and if this is not possible to resolve issues through the court system as quickly as possible.

With that in mind, it is compulsory for all prospective applicants to attend a Mediation Information and Assessment Meeting (known as a MIAM meeting). This means that the person who wishes to make the application must first refer the matter to mediation to see whether this would be an appropriate way of settling any disputes.

If mediation and all other forms of resolving dispute fail you may have to consider making an application to the court for an order. However, do not expect this to give you a quick and easy solution.

What orders can the court make?

- Child Arrangements Orders – these replaced Residence and Contact Orders on 22nd April 2014. The new order sets out who a child should live, spend time or otherwise have contact with.
- Specific Issue Order – dealing with a specific disputed issue such schooling or changing a child's name.
- Prohibited Steps Order - prohibiting a parent from taking a particular step, such as removing the child from the jurisdiction.
- Parental Responsibility Order - giving a person legal status as a parent. (See our leaflet about Parental Responsibility).
- Adoption Order – in relation to a child placed with you by social services or your partner's child for example.
- Special Guardianship Order. This order permanently places a child with someone other than a parent and gives them legal status.
- Financial orders for the child's benefit (in specific circumstances) – in relation to maintenance or property for example.

What do the court consider when deciding whether to make an order?



When considering any application in relation to a child or children, the court must first consider whether an order is necessary as there is a presumption that no order should be made unless it is essential. If the

court does consider an order to be necessary then the paramount consideration will be the welfare of the child. The Children and Families Act 2014 introduced a presumption, unless the contrary is shown, that the involvement of both parents in the life of the child concerned will further the child's welfare.

The Court must take into account the following factors, known as the Welfare Checklist, which is set out in the Children Act 1989 as follows:-

- The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- His physical, emotional and educational needs;
- The likely effect on him of any change in his circumstances;
- His age, sex, background and any characteristics of his which the Court considers relevant;
- Any harm which he has suffered or is at risk of suffering;
- How capable each of his parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting his needs;
- The range of powers available to the Court under this Act in the proceedings in question.

No one factor is considered less important than the others.

Who or what is CAFCASS?

The **Children and Family Court Advisory and Support Service** is a non-departmental public body accountable to the Ministry of Justice. The aim of CAFCASS is to be the voice of children in the family courts, and to help ensure that children's welfare is put first during proceedings.

What happens at court?

Once an application is received by the court, the application will be forwarded to CAFCASS. CAFCASS will make enquiries with the police and social services to see whether there are any safeguarding concerns. They will usually speak with each party to hear their concerns. The CAFCASS officer will then prepare a letter known as a Schedule 2 letter which sets out the results of their initial investigations and may give the court an indication of what to do next. At the same time, the application will be allocated within the Family Court and if the person applying for the order has not attended a MIAM and has not provided a valid exemption, the Judge can direct the attendance of the parties to a MIAM before the first hearing takes place.

The first hearing is known as a First Hearing Dispute Resolution Appointment (FHDRA). At this hearing, a CAFCASS officer is usually also in attendance at court to discuss matters with the parties. The hearing usually takes place 5 or 6 weeks after the application is issued.



The purpose of the hearing is to enable the parties to understand the issues in dispute and try to either reach agreement or narrow the issues. If the parties reach agreement, a final order can usually be made. In most cases, some interim arrangements will be agreed at this hearing until the matter can be concluded.

If no agreement is reached, then the court will give directions as to how the rest of the case should proceed. This might include the filing of statements, expert evidence and/or CAFCASS providing a report. A report is often ordered when there is a dispute over where a child should live or when they should spend time with the other parent and can be limited, if appropriate, to the wishes and feelings of the child depending on the age of the child. The order will specify what the report writer should be focusing on in the report.

The CAFCASS officer will usually ask the parties to the proceedings to attend an appointment at their office, rarely will they visit the family homes. They will also usually speak to the children or, if they are too young to discuss the case, then they may observe the child in each party's care. The CAFCASS officer may also speak with any relevant teachers or school staff. If a CAFCASS officer is asked to file a report it often takes at least 12 weeks to be completed. If CAFCASS or another expert has been ordered to file a report, the court will list the matter for a Dispute Resolution Appointment (DRA) after the report has been received and read by all the parties.

At this hearing, the parties are once again encouraged to come to an agreement, taking into account any recommendations made by the CAFCASS officer. If no agreement can be reached then the court will list the matter for a final hearing.

At the final hearing, the court will consider all the evidence already put before the court and the parties will be asked to give oral evidence and be cross examined by the other party's legal representative. If any witnesses have filed statements or if a CAFCASS officer has provided a report, they must also attend court and give evidence. Upon the basis of the evidence heard, the Judge will then make a final order.

Can I make another application in the future if necessary?

Although a final order may be made it is always open to any party to make a further application to the court in respect of children matters at a later date. As children get older their needs change and therefore the arrangements may need to change. Again, parents will be expected to try and reach agreement, and it is only if agreement cannot be reached that a further application to court should be made.

Do I have to pay child maintenance?

Child maintenance is about providing help with a child's everyday living costs. This includes things like food and clothes, and helping to provide a home for your child.

Child maintenance is usually money that the parent without the main day-to-day care of a child pays to the other parent. But, sharing the care of your children and buying things directly for them can also be included in family-based child maintenance arrangements, if both parents agree to this.



Child maintenance is payable when the child is:-

- Under the age of 16, or
- Between 16 and their 20th birthday and undertaking full-time, non-advanced education, or
- Between 16 and their 20th birthday, registered with certain types of government-approved training courses, and child benefit is in payment.

Many parents choose to make a family-based arrangement, which is where they agree with the other parent about the amount and type of child maintenance that one will pay to the other.

If you can't agree, or if an arrangement between parents isn't working, there are other ways to arrange child maintenance. You can apply to the Statutory Child Maintenance Service, which can set up an arrangement for you.

There are a number of different formulas that apply when calculating how much child maintenance should be paid which are dependent upon your specific circumstances.

The Child Maintenance Options website provides further information on child support:
www.cmoptions.org/en/maintenance/index.asp

You can also find a helpful calculator on Alan Larkin's Divorce Finance Toolkit site:
www.divorcefinancetoolkit.co.uk/child-maintenance-calculator

Contact details

If you would like to discuss issues arising in this factsheet or if there is some other legal issue we can help you with then please contact a member of the team on 01273 646900 or by email: info@familylawpartners.co.uk