



**45-49 MANSFIELD ROAD,
NOTTINGHAM, NG1 3FH.
TEL: (0115) 9247 024
FAX: (0115) 9509171
e-mail: family@campions.co.uk**

Children – Information Pack

Welfare Principal

I explained to you that when dealing with children anything done in relation to them has to be seen to be in their best interests. When deciding any questions in relation to the upbringing of a child, the child's welfare will be the court's paramount consideration. When considering what orders to make, the Court has to consider a number of factors.

The main Act of Parliament covering matters is the Children Act 1989. These are known as the welfare checklist and are as follows:-

These are listed under Section 1 (3) of the Children Act 1989.

- a) The ascertainable wishes and feelings of the child concerned bearing in mind the child's age and understanding – the older a child is then the better understanding she / he has, the more weight will be attached to their wishes and feelings.
- b) The child's physical, emotional and educational needs.
- c) The likely affect on the child of any change in his/her circumstances.
- d) The child's age, sex, background and any characteristics of which the Court considers relevant.
- e) Any harm which the child has suffered or at risk of suffering.
- f) How capable are each of the child's parents or any other relevant person is, of meeting the child's needs.
- g) The range of powers available to the court.

Before making an Order, the Court must also consider that making an order would be better for the child than making no order at all.

There is also a general principle that any delay in determining a question with respect to the upbringing of a child is likely to not be in that child's best interests and welfare.

Orders Under the Children Act 1989

Under Section 8 of the Children Act 1989 the Court are able to make the following orders:-

Child Arrangement Orders

The terms "contact" and "residence" are no longer used. There is instead to be a single order called a "Child Arrangement Order". These deal with the arrangements as to "with whom a child is to live, spend time, or otherwise have contact" and "where a child is to live, spend time or otherwise have contact with any person".

Prohibited Steps Order

A Prohibited Steps Order is an order that a parent cannot take a particular step that could be taken by a parent in meeting their Parental Responsibility for a child. The action that is prohibited by the Court will be specified in the order. The step must therefore not be taken by that person without the consent of the court.

Specific Issue Order

A Specific Issue Order is an order giving directions determining a specific question which has arisen, or which may arise, in connection with any aspect of Parental Responsibility for a child.

Parental Responsibility

I explained to you about Parental Responsibility. Parental Responsibility means 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. This is set out in Section 3 of the Children Act 1989. This can include for example decisions in relation to change of name, religion, schooling and medical treatment. Mothers always have Parental Responsibility. Fathers have Parental Responsibility if they satisfy one of the following conditions:

1. They were married to the mother (this Parental Responsibility continues even if the parents divorce).
2. They have a Live With Order in relation to the child.
3. The father's name is on the child's birth certificate and the birth was registered on or after 1st December 2003.
4. The mother has granted them Parental Responsibility by agreement. This agreement must be registered at the Principal Registry of the Family Division.
5. Has obtained a Parental Responsibility Order

If a father does not have Parental Responsibility, he can acquire that responsibility either in the form of an agreement or by a Court Order. If it becomes necessary for a person to make an application to Court for a Parental Responsibility Order, the Court will consider the following but the welfare of the child will always be paramount.

- a) The degree of commitment towards the child.
- b) The degree of attachment between him and the child.
- c) The reasons why he is applying for an Order.

Where an unmarried father has not signed the birth register, but wishes to be acknowledged as the father, he may apply to have the birth re-registered jointly with the mother to show him as the father. In this way he will acquire Parental Responsibility.

All people with Parental Responsibility share Parental Responsibility for a child. It is always best to try and reach an agreement as to big decisions that need to be made in relation to the child(ren). If it is impossible to make a decision about the exercise of Parental Responsibility with the other people who share Parental Responsibility, an application may have to be made to the Court for a Judge to make a decision.

If a father does not have Parental Responsibility for his child(ren) then schools, doctors etc are not obliged to give them information about their children.

It may also be possible for people who are not parents to obtain Parental Responsibility eg extended family members. They would acquire Parental Responsibility with the granting of a Residence Order and Special Guardianship Order.

What Happens if there are Court Proceedings?

When an application is made to Court, before any order can be made by the Court safeguarding checks must firstly be carried out. These are undertaken by CAFCASS (Children and Family Court Advisory Support Service). They will check with the police and Social Services records to see if there are any issues that need to be addressed. They will also attempt to speak to all parties before the first hearing. A Duty CAFCASS Officer will usually be at Court at the first hearing to go through any issues with both of the parties.

The first hearing is usually called a First Hearing Dispute Resolution Appointment. If there is any possibility of an agreement being reached, this will hopefully happen at this hearing. However, if an agreement is not possible, the Court will give directions as to the future progress of the case. This could either be in the form of CAFCASS being ordered to file a Report, a Finding of Fact hearing if there are serious allegations of domestic violence by either party against the other, list the matter for a Final Hearing, or any other directions as the court deems appropriate.

It is unlikely that written statements of evidence will be required for the First Hearing Dispute Resolution Appointment. Statements of evidence are usually only required when the matter cannot be agreed, and the matter has to be listed for a contested hearing at which both parties will give evidence.

If the matter is not concluded at the first hearing, the court will list the matter either for an adjourned First Hearing Dispute Resolution Appointment, directions appointment, Dispute Resolution Appointment or a Final Hearing depending on the circumstances of the case.

CAFCASS

If there are welfare concerns that need investigating by the Court, and the file is not presently open with Social Services, it is likely that CAFCASS will become involved. CAFCASS are the

Children and Family Court Advisory Support Service and they are independent of the Court and all parties in the case.

CAFCASS will carry out the initial safe guarding checks and it is important that if CAFCASS ever contact you, you cooperate with them fully. Alternatively, there is usually a duty CAFCASS Officer present at the First Hearing Dispute Resolution Appointment and they are there to assist in appropriate cases.

If the Court order CAFCASS to prepare a full report, this is known as a Section 7 Multi Issue Report and is presently taking between 8 and 12 weeks dependant on the work load of CAFCASS. CAFCASS are under a duty to investigate all the circumstances and it is highly likely they will want to see all parties to the case and possibly the children. If significant welfare concerns come to light during CAFCASS preparing their report they may wish the Court to list it for an urgent hearing to consider the current arrangements for the child. It is vital that CAFCASS are cooperated with.

Following investigations, CAFCASS are likely to make a recommendation to the Court about what they believe is in the child's best interests. In most (but not all) cases the Court gives significant weight to the recommendations of the CAFCASS Officer.

In rare circumstances (and this will be discussed with you if relevant) a child may be separately represented in proceedings and appointed a Guardian from CAFCASS.

In the event that there is a file open with Social Services, the Social Worker will have a similar role to that of a CAFCASS Officer in terms of preparing a report.

What Happens if there has been Domestic Violence in the Relationship?

If one party discloses that there has been domestic violence in the relationship, depending on the extent of domestic violence and admissions made by the accused party, it is sometimes the case that the Court will need to have a separate hearing called a Finding of Fact Hearing. This will be to determine the factual basis of the domestic violence and the history of the relationship.

It is important that the Court and CAFCASS are advised as early as possible of any domestic violence that the Court will be asked to consider.

Domestic violence will not in itself be a bar to an Order being made in favour of the perpetrator. However, it will be an important factor for the Court to consider when deciding the type of Order to be made and any conditions that need to be attached to that Order.

Domestic violence is taken very seriously by the Court and the Courts will never do anything that will put a child at risk.

Abduction

If threats are or have ever been made to remove your child(ren) from your care and control and/or the jurisdiction of the Court, it is vital that we are advised of this immediately.

We may advise you to suspend contact all together or to implement supervised contact (for example at a Contact Centre). Furthermore, an urgent Prohibited Steps and / or Child Arrangement Order may be needed to protect the children.

When it comes to child abduction, prevention is always better than cure. It is much better to take steps to prevent it from happening than to try and rectify it once it has occurred.

Taking a Child Abroad

Any removal of a child abroad requires either the consent of every person with Parental Responsibility or the permission of the Court. If a child is removed without permission a criminal offence will have been committed.

If a Child Arrangement Order is made that confirms that the child is to live with a person, the holder of that Child Arrangement Order is able to remove the child from the country for up to a month. To remove the child for a longer period, they would need the written consent of every person with Parental Responsibility or permission of the Court.

If a Special Guardianship Order is made, the Special Guardian is able to remove the child from the country for up to three months. To remove the child for a longer period, they would need the written consent of every person with Parental Responsibility or permission of the Court.

Changing a Child's Name

Before a child's name can be changed, written permission is required from every person who holds Parental Responsibility for the child. If only the mother has Parental Responsibility for the child, she can lawfully change the child's name without the father's consent. If there is a dispute as to the child's name, an application can be made to the Court for either a Prohibited Steps Order or Specific Issue Order.

Permission (formally known as Leave)

If you are not a parent of the child, before you can apply for an Order, you will first require the court's permission (formally known as leave).

The factors that the court will take into account when deciding whether or not to grant permission are the following:

- a) The nature of the proposed application for the Section 8 Order.
- b) The Applicant's connection with the child.
- c) Any risks there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it.
- d) Where the child has been looked after by the Local Authority:
 - a. The authority's plans for the child's future.
 - b. The wishes and feelings of the child's parents.

Special Guardianship Orders

A Special Guardianship is intended to provide another option for children who cannot grow up with their parents. A Special Guardianship Order gives the special guardian legal parental responsibility for the child which is expected to last until the child is 18. But, unlike Adoption Orders, these orders do not remove parental responsibility from the child's birth parents, although their ability to exercise it is extremely limited. A Special Guardianship Order is only available to non-parents for example uncles, aunts and grandparents.

The Special Guardian's parental responsibility will mean that they can make decisions about a child without having to obtain the parents agreement.

Breach of a Child Arrangement Order

Where a Child Arrangement Order is in force if you do not comply with a provision of it –

- a) You may be held in contempt of Court and be committed to prison or fined and/or
- b) The Court may make an Order requiring you to undertake unpaid work (“an Enforcement Order”) and/or an Order that you pay financial compensation.

Should you have serious concerns that promoting contact in accordance with the Child Arrangement Order would place a child at risk of serious harm it is important that you seek urgent legal advice.

If you breach a Child Arrangement Order without reasonable excuse, see paragraph a) and b) above. In certain cases where the Court finds that there has been a number of breaches without a reasonable excuse, the Court could be asked to consider a transfer of the living arrangements. This is very serious step and is only considered by the Court as a last resort.