

HIGGINS MILLER SOLICITORS

ARRANGEMENTS RELATING TO CHILDREN **CHILDREN ACT 1989 – PRIVATE LAW**

PARENTAL RESPONSIBILITY

Parental Responsibility recognises the rights and duties of the parent in respect of a child. It includes issues such as health (for example medical treatment), religion (for example whether a child should follow a particular faith) and education (for example choice of schools).

All persons with Parental Responsibility should be consulted on these and other important issues affecting the child. Anyone with Parental Responsibility has a right to information in respect of the child for example school reports and medical information. Without Parental Responsibility this information can be refused and there is no obligation on the parent with Parental Responsibility to consult with the parent without it. A child's surname can be changed by a parent with Parental Responsibility without consulting with the other parent if the other parent does not have Parental Responsibility albeit that this is frowned on by the Court.

A child's mother automatically has Parental Responsibility upon the birth of that child. Married fathers automatically have Parental Responsibility as do fathers who are named on the child's birth certificate after the 1st December 2003. All other fathers can only obtain Parental Responsibility either by both parents signing a simple Parental Responsibility Agreement and that being registered or by obtaining a Court Order. If an application to Court is necessary it is usually straight forward with the Court considering the Applicant's commitment shown towards the child, the strength of the attachment between the Applicant and the child and the reasons why the Applicant is applying for Parental Responsibility.

Step parents can obtain Parental Responsibility if they are married to the child's natural parent and either all persons with Parental Responsibility consent to it or the Court Order it.

Third parties including relatives cannot obtain Parental Responsibility unless the Court makes a Residence Order confirming that the child should live with them in which case they would hold Parental Responsibility for the duration of the Residence Order.

NO ORDER PRINCIPLE

When a couple separate (married or not) the Courts only become involved in relation to issues concerning their children if one party makes an application to the Court asking the Court to determine an issue. The Courts hope that parents can resolve issues relating to their children between themselves and the Court should be seen as a last resort. The Court will not make an Order in relation to a child unless it considers that doing so will be better for the child than making no Order at all.

WELFARE CHECKLIST

In all applications before a Court relating to a child the child's welfare is of paramount importance. In determining any issue relating to a child the Court has to have regards to the welfare checklist. This is a series of points which a Court has to consider and is as follows:-

- (a) The ascertainable wishes and feelings of the child concerned (considered in light of the child's age and understanding);
- (b) The child's physical, emotional and educational needs;
- (c) The likely affect on the child of any change in his or her circumstances;
- (d) The child's age, sex, background and any other characteristics which the Court considers relevant;
- (e) Any harm which the child has suffered or is at risk of suffering.
- (f) How capable are each of the parents and any other person in relation to whom the Court considers the question to be relevant, is of meeting the child's needs;
- (g) The range of powers available to the Court under the Children Act in the proceedings in question;

The weight that is given to the child's wishes and feelings will depend upon that child's age and understanding. There is no automatic age of which a child's wishes and feelings become paramount. However the older the child the more weight they will be given to their wishes and feelings.

TYPES OF ORDERS AVAILABLE

(A) Child Arrangements Order

This order determines the arrangements for a child. This usually means arrangements for the time that a child should spend with each parent. It can set out with whom a child shall live this can include a Shared Order determining that a child should spend some time with one parent and other time with the other parent (not necessarily equal). The Order can be made in favour of someone who is not a parent if the Court determines that neither parent is able to care of the child.

The Order can also determine who a child should visit and can include when the child should go, how long for, if the visits are to be overnight, if they are to include holidays and if necessary arrangements for collection and return.

If the visits in a Child Arrangements Order is not complied with the Court can make an Enforcement Order and can include the following:-

- (a) For the non-complying parent to engage in unpaid work.
- (b) For the non-complying parent to pay compensation (financial).
- (c) For the non-complying parent to engage in a specified activity.
- (d) For the non-complying parent to be committed to prison in contempt of Court.
- (e) For the Court to change the arrangements for the Residence of the child.

(B) Specific Issue Order

This is an Order that resolves a particular issue between parents relating to a child for example, choice of school, medical treatment etc.

(C) Prohibited Steps Order

This is an Order that prevents someone (usually a parent) from doing something in respect of the child for example taking that child abroad.

WHO CAN APPLY TO THE COURT

Any parent or any person with Parental Responsibility can apply to the Court for any of the above Orders.

Other persons (for example grandparents) must seek the Court's (leave its permission) before being allowed to make such an application.

In determining an application for leave the Court will have regard to the following:-

- (a) the nature of the proposed application
- (b) the applicant's connection with the child.
- (c) Any risk that there might be of the proposed application disrupting the child's life such that he may be harmed by it.

CAFCASS

CAFCASS is the Child and Family Court Advisory and Support Service. CAFCASS is entirely independent of the Court, Social Services or any of the parties in the case. A representative of CAFCASS (the CAFCASS Officer) may be involved in any application to the Court in a number of ways.

At the First Hearing they may be present to interview the parties and provide information to the Court. Sometimes CAFCASS is asked to prepare a report for the Court on a specific issue (for example the child's wishes and feelings) and for some applications the Court may ask CAFCASS to prepare a full report based on interviews with the parties with child(ren) child's school etc. That report will set out the CAFCASS Officer's recommendations about what is in the child's best interests. The Court will give significant weight to the recommendations of the CAFCASS Officer in reaching decisions about the children and it is absolutely essential therefore that all parties co-operate with the CAFCASS Officer. In exceptional circumstances the Court may make the child(ren) separate party to the proceedings appointing a CAFCASS Officer to act as that child's guardian.

Where Social Services have been involved with the children prior to an application coming before the Court the Court may ask for Social Services to prepare a report instead of CAFCASS.

APPLICATIONS TO THE COURT

The Court becomes involved by the Applicant to complete a form setting out details about the parties, the children and the nature of the application.

When the application is received by the Court they will allocate an initial hearing (about 6 weeks later) called a First Directions Appointment. A representative of CAFCASS will usually be at the

first hearing and will be able to confirm to the Court details of the parties previous convictions and details of any background check including previous incidents where the Police have had to attend and any Social Services involvement.

The Duty CAFCASS Officer will explore with the parties at that first hearing whether there is any scope for agreement and if necessary the Court will give procedural directions to progress the application to include perhaps for the parties to file Statements and for CAFCASS to prepare a further report.

Ultimately the Court may after the filing of all evidence have to determine the application and decide what is in the child's best interests at a final hearing.

DOMESTIC ABUSE

Domestic abuse is recognised by the Law and the Court's as potentially damaging to children and may cause them significant harm.

The Court take domestic abuse seriously and must take it into account when making decisions in respect of children. It is important that you inform your solicitor and the Court at the earliest possible opportunity of any incidents of domestic abuse which you would want the Court to consider. The Court require the completion of a form setting out this information. The Court will need to consider the impact of this information and determine whether there needs to be a hearing to determine factual basis of the domestic abuse.

Domestic Abuse in itself will not prevent the Court from making an Order in favour of the perpetrator but it will be an important factor in deciding the type of Order and any conditions that ought to be attached to the Order.

EMERGENCY AND INTERIM ORDERS

In certain cases the Courts can make an Emergency Order including in exceptional cases immediate Orders without having heard from the other parent. Such Orders are particularly appropriate where there is a risk of a child being abducted or harmed. It is important that any concerns of this nature are raised immediately with your solicitor so that consideration can be given to any steps that may be taken including an application to Court. In the event that something untoward happens for example a child is abducted or is at risk of harm you should contact your solicitor immediately stressing the urgency with a view to discussing considering what emergency steps including applications to the Court can be taken.