

Children Act Matters

This guide is designed to assist those people who are involved in disputes relating to children and need to know more about the procedure which may affect them.

1. Am I required to go to Court to make arrangements for my children?

There is no need to go to Court unless there is a dispute. Indeed, there is a presumption that the Court should not intervene unless it is in the best interest of a child and the Court will only make an order if there is a dispute – otherwise no order will be made. You are encouraged to discuss and negotiate with the other parent all arrangements relating to your children. If you are unable to discuss matters with the other parent then we will be able to negotiate on your behalf. A referral must be made to a mediation service to enable the issues to be discussed, and hopefully resolved, with an independent third party.

There are certain exemptions to this requirement for mediation, but they are quite specific.

Sometimes however parental disagreements and family situations develop to the point where issues do need to be resolved by the Court. The **Children Act 1989, recently amended by the Children and Families Act 2014**, was introduced to make it easier to go to Court to ask for some specific action or for the Court to intervene in order to preserve the best interest of the child. It attempts to make it less stressful when parties are involved in disputes, and there are various ways in which it may help a child.

2. What type of orders are available?

The law currently provides three main orders, known as section 8 orders, to assist in family disputes. These are as follows:

(i) Child Arrangement Order

Previously referred to as Custody, Access, Residence or Contact, the arrangements regulate:

- a. With whom and when a child is to spend or otherwise have contact with a person (old Contact Orders);
- b. With whom and when a child is to live with a person (old Residence Order).

There is a presumption that unless the contrary is shown, that involvement of each parent in the life of a child will be in the best interests of that child.

(ii) Prohibited Steps Order – should somebody be prevented from doing something in relation to the child?

If a person objects to a proposed arrangement for a child he or she can apply to the Court for one of these orders. If granted, this will prevent the other person from taking the intended action in relation to the child unless they obtain the Court's permission to do so in the future. An example of this would be preventing a parent from changing a child's school.

(iii) Specific Issue Order – should the child do a certain thing?

This order can be used to settle disputes between parents relating to certain issues, such as the child's schooling or medical treatment. The Court can order that certain action affecting the child takes place following a consideration of both parties' viewpoint.

3. What further help is available for our family?

In addition the Court can decide that a Family Assistance Order is required. This allows for a Welfare Officer to advise and assist members of a family who have been named in one of the above orders for up to six months and can be renewed. It is only possible to have a family assistance order if the Court is happy that the circumstances of the case are exceptional and that the people named in the order, i.e. the family but not including the child, consent to such an order.

4. What will the Court consider when making a decision?

When making any decision the Court's paramount consideration is the welfare of the child. In deciding whether an order should be made the Court will have regard to:

- (a) The wishes and feelings of the child concerned (considered in the light of the child's age and understanding).
- (b) The child's physical, emotional and educational needs.
- (c) The likely effect 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 each of the child's parents and any other relevant person is of meeting the child's needs. (The court will decide who is a relevant person).
- (g) The range of powers available to the Court under the Children Act in the proceedings in question.

Timetables in Contested Cases

Mediation

Prior to any application being made to the Court for an order, it is a requirement that the Applicant (the party bringing the proceedings) attends a Mediation Information meeting, to assess whether mediation could be of assistance. The necessary referral will be made by us to a local mediation service. If your ex partner refuses to attend a Mediation Information meeting then the Court can adjourn proceedings at any stage to enable them to do so. The Court has an ongoing duty to consider whether mediation is appropriate throughout the duration of the proceedings.

Application

An application is made to the Family Court on Form C100. This outlines the reason for your application and the names of all the relevant parties involved.

FHDRA

When the court receives the application, it will set a time and place for you and the other person or people involved to have a first court appointment (called a first hearing dispute resolution appointment (FHDRA)).

Prior to the FHDRA, the application will be passed to a Children and Family Court Officer (CAFCASS) who will contact both parties, and carry out safeguarding checks. The CAFCASS officer should complete these initial enquiries within 6 weeks and will prepare a short report prior to the first hearing.

The FHDRA is when the court investigates the issues and enquires into the possibility of settlement. If agreement cannot be reached the court will identify the outstanding issues and will direct how the case should proceed. The court might order that a CAFCASS officer prepares a report to help the judge at the final hearing, or it might order that the child be legally represented in the proceedings. An order may be made for the parties involved to prepare written statements of the evidence that they want the court to hear. Sometimes the court will adjourn the case for mediation to take place.

CAFCASS

The CAFCASS officer is an independent person who may meet with all the people involved in the dispute and investigate the case. This will include the child if the child is old enough and of a certain level of understanding. The Children and Family Court Officer will normally make a recommendation to the Court as to what they think should happen and therefore they are an important part of any proceedings.

Final Hearing

At this hearing, all parties must attend and a Judge will consider the evidence he or she has before him and make an Order accordingly. It is likely that both parties will be required to give evidence at the final hearing.