



Family Department

Private Law Children Proceedings

This Guide is not intended to be comprehensive. It highlights and explains some common legal and related issues which may arise in Children Proceedings. It should also help you understand some of the steps we take on your behalf and the terms that we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat advice or information provided in this Guide when writing unless we need your specific instructions on some aspect of it.

What sort of Orders can be made?

There are a number of applications that can be made to the court in relation to children matters these include:

- **Child Arrangements Order** is made to regulate arrangements relating to whom the child is to live with, spend time with or otherwise have contact with. An application can be made by a mother, father or anyone else with Parental Responsibility. Other people like grandparents can apply for these orders with permission from the court.
- **Parental Responsibility Order.** A person who has parental responsibility has the right to make major decisions about the upbringing of the child. A father usually has parental responsibility if he was married to the child's mother or is named on the child's birth certificate after December 2003. However there are occasions where a father does not have parental responsibility and an application will need to be made to the court.
- **Prohibited Steps Order** is where the court prevents a certain action. This can include preventing a child being removed from their current school or from jurisdiction of England and Wales.
- **Specific Issue Order** may be made to determine a specific question that has arisen or that may arise in connection with any aspects of parental responsibility of a child such as which school they should go to, religion and what name they should go by

Do I have to obtain a Court Order?

There are several ways to reach an agreement in relation to children matters and ultimately secure a formal Order, if necessary. These include the following:

Collaborative Law

This is a process in which the parties each have a lawyer, and all have a shared commitment to avoid court proceedings. Both parties' solicitors have to be trained as a Collaborative Lawyer. The process primarily entails informal discussions and joint meetings for the purposes of settling all issues. Each party and his/her lawyer sign an Agreement and the mutual aim will be to seek a fair and equitable settlement. We are able to offer this service and you should ask us for more details if you are interested.

Negotiations through Solicitors

Negotiations and discussions can take place between solicitors with a view to reaching a fair agreement and a consent order can be drafted to reflect that agreement for approval by the court.

Mediation

This is the first step parties must take before issuing court proceedings. The Applicant must attend a Mediation Information and Assessment Meeting (MIAM) in an attempt to resolve matters through alternative dispute resolution, rather than through court proceedings

What happens if Court proceedings are necessary?

In the event mediation is unsuccessful then an application can be made to the court along with evidence from the Mediation to show that all attempts have been made to reach an amicable agreement. A court fee is applicable unless you are eligible for fee remission. An application for fee remission can be obtained from the court. To ascertain if you are eligible please read the fee remission notes carefully. If you believe that you are eligible then you will need to complete the fee remission application yourself and provide evidence in support including three month's bank statements and three month's wage slips.

Once the court has received your application the court will allocate a individual reference number which means that the application has been issued. The parties will then be served with a sealed copy of the Application with notice of the first hearing.

Throughout the Court proceedings the court's paramount consideration will be the child/children's welfare. This is something that you will have to bear in mind throughout the proceedings. If an agreement cannot be reached then the court has powers to make an Order which can include where the children shall live and who they are to have contact with etc.

The application made to the court will be allocated to the Magistrates, a District Judge or a Circuit Judge depending upon the issues within the case and its complexity. The court will list the matter for a first hearing.

Prior to the first hearing a copy of the application will be sent to Children and Family Court Advisory and Support Service (Cafcass) who will complete background and safeguarding checks on you, the other party and the child/children. This includes undertaking checks with the police and social services. Cafcass will send you information before the hearing. You should also receive a call from a member of Cafcass to discuss the application and to ascertain your position. A member of Cafcass will also attend the first hearing and will assist the court in terms of how to progress with the case.

Will there be a Court hearing?

At the first hearing the court will try to work out what you can agree, what you cannot agree and if the child/children is at risk in any way. If possible the court will encourage you to reach an agreement if it is in the child's best interest. If you can reach an agreement and there are no welfare concerns about the child/children then the Judge/Magistrates can end the court proceedings.

If an agreement cannot be reached or there are welfare concerns, the court will set a timetable for what happens next. This will include consideration of what evidence it needs before it can list the matter for a final hearing. The Court may order the following:

- Statements by the parents
- Reports from third party agencies such as GP, Pathways, the child's school reports etc.
- Reports by Social Services or Cafcass

However that the court could order that you make another attempt to reach an agreement via mediation or that you attend a course such as the Separated Parents Information Programme.

Once all of the evidence is before the court, a further hearing known as an Issues Resolutions Hearing will be listed. At the Issues Resolutions Hearing, the court will see if any agreement can be reached by everyone involved. This hearing will identify what issues there are including whether or not any issues can be agreed. If an agreement can be reached then it may well be that the Proceedings can be concluded. However if an agreement cannot be reached then the matter will need to be listed for a Final Hearing. The Court will need to consider whether any further evidence is required.

At a Final Hearing, final decisions will be made by the Court in relation to your child/children and the appropriate orders made.

What will the Judges and Magistrates consider at any hearing?

The Court will always put the child's/children's welfare first. They will also consider:

- The child's wishes and feelings
- The child's physical, emotional and educational needs
- Effect of any changes on the child
- Child's age, gender, characteristics and background
- Possible risk of harm to the child
- Ability of the parents to meet the child's needs
- Orders the court has the power to make

The length of a Final Hearing can vary in length from one day to a number of weeks dependent upon the number of witnesses who will need to be called, the complexity and issues in dispute.

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