

## CHILDREN INFORMATION SHEET

Issues relating to children are decided under the Children Act 1989. This Act covers both the private (actions between parents) and public law (actions brought by the Local Authority) relating to the care and upbringing of children and the provision of services to them and their families.

### **WELFARE CHECKLIST**

In children matters the welfare of the child is the most important consideration and it is felt that delay in deciding any question relating to a child is not normally in the child's best interests. In contested cases the Courts apply what is known as a welfare checklist and consider:

1. The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding).
2. Their physical, emotional and educational needs.
3. The likely effect on them of any change in their circumstances.
4. Their age, sex, background and any characteristics which the Court considers relevant.
5. Any harm which they may have suffered or are at risk of suffering.
6. How capable each of the parents or another person if relevant is/are in meeting these needs.
7. The powers available to the Court.

### **PARENTAL RESPONSIBILITY**

Parental Responsibility is a key concept within the Children Act. Parental Responsibility is defined as "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". So for example parental responsibility incorporates parents' securing a child's health and education. If parents are married then automatically both the mother and father share parental responsibility, as will parents where the father is named on the birth certificate (from 1<sup>st</sup> December 2003).

Parental Responsibility may be exercised by one parent but it should be exercised jointly. If there is a dispute as to the exercise of parental responsibility then an application can be made under Section 8 of the Children Act for what is known as a Specific Issue Order.

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If a father does not automatically have parental responsibility then the father may acquire parental responsibility either by way of an agreement between the parents or by way of a Court Order under Section 4 of the Children Act 1989. If the parents enter into an agreement certain formalities have to be complied with and the agreement has to be lodged with the Principal Registry in London to be effective. The Court when considering an application under Section 4 has to consider whether the father has demonstrated sufficient motivation, commitment and attachment for an order to be made. It is however unlikely for the father not to be granted parental responsibility if he applies to the Court. If a father has parental responsibility it can only be lost if the father dies or the child is adopted. The Court will only terminate a parental responsibility in very exceptional circumstances. Parental Responsibility may also be acquired by a father arranging with the mother for the child's birth to be re-registered to show his details as the father of the child.

If a person has parental responsibility they are automatically party to any Court proceedings relating to that child. Grandparents and other family members usually have to apply to the Court for permission (known as leave) before they can apply to the Court in connection with a child. For this permission the welfare of the child is not the most important consideration but is one of the considerations.

The Lord Chancellor's Department have published Parenting Plans to help couples parent their children and copies are available at their website [www.orderprocessor.co.uk](http://www.orderprocessor.co.uk).

### **SECTION 8 PROCEEDINGS – KNOWN FROM APRIL 2014 AS CHILD ARRANGEMENTS ORDERS**

If there is a dispute as to where a child should live or the contact that a parent should have with a child, then an application may be made under Section 8 of the Children Act 1989 (as amended). The most common applications were for a Residence or a Contact Order. As a result of the Family Law Act 2014, Contact and Residence Orders have been abolished and are replaced by Child Arrangements Orders, which govern with whom the child lives and with whom the child has contact and when.

Applications for a Child Arrangements Order will be subject to the Child Arrangements Programme (CAP). Parents and carers will be encouraged from the outset to devise a parenting plan in order to work out the best arrangements for the child(ren).

A gate-keeping exercise will be carried out by the Court, who will issue directions on issue for the applicant to attend a Mediation Information and Assessment Meeting (MIAM) before the first hearing dispute resolution appointment (FHDRA) and the Court will not consider the case further until satisfied that the applicant has attended a MIAM.

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The Court will remain under a continuing obligation to consider whether alternative dispute resolution is appropriate, eg mediation. At the FHDRA the CAFCSS officer (CAFCASS – Children and Family Court Advisory and Support Service) with the assistance of any Mediator and working with the Court, will seek to explore the possible resolution of any of the issues between the parties.

After the FHDRA, if an agreement cannot be reached, the Court may list:-

1. A dispute resolution appointment (DRA) upon the completion of a CAFCASS/Social Worker/expert report or upon the completion of a Separated Parenting Information Programme (SPIP);
2. A fact-finding hearing; and/or
3. A final hearing.

Review hearings will no longer be listed unless considered necessary. There is no time limit for the resolution of private law cases.

If you fear that your child is to be abducted, an application can be made under Section 8 of the Children Act for both a Residence Order (now a Child Arrangements Order) and a Prohibited Steps Order.

### **CARE PROCEEDINGS**

If a child is suffering or is likely to suffer significant harm and this is due to:-

1. The care given to the child or likely to be given to the child which is not considered to be reasonable for a parent to give; or
2. The child being beyond parental control

then the Local Authority/Council will apply under Section 31 of the Children Act 1989 for a Care or Supervision Order. The Local Authority/Council will work together with the parents to try and rehabilitate the child to the parents wherever possible. The Local Authority will seek a Care Order (on an interim basis) when it is felt that parental responsibility has to be shared between the parents and the Local Authority/Council. A care order will last until a child is 18 years old and frequently means that a child is placed for adoption. A supervision order places a child under the supervision of a designated Local Authority and the duty of the supervisor is:

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- (a) To advise, assist and befriend the supervised child
- (b) To take such steps as are reasonably necessary to give effect to the Order; and
- (c) Where appropriate to consider whether or not to apply for the discharge or variation of the Order.

A Supervision Order lasts for a minimum of one year and a maximum of three years.

Care/supervision (Section 31) proceedings have a very strict timetable and have to be concluded within twenty-six weeks, unless there are exceptional circumstances why not.

After Section 31 proceedings are issued the case is allocated and the case listed for a case management hearing. Among the directions given at this hearing will be, for example, determining applications for the appointment of experts and directions for the filing of evidence. There will then be listed an issues resolution hearing and this has to be listed by week twenty from the issue of proceedings. The purpose of the issue resolution hearing is to identify key issues to be determined and to give final directions in the case.

Where there is an agreement the issues resolution hearing can be used as a final hearing. Otherwise, if required, the case will be listed for a final hearing, but this has to be done by week twenty-six from issue of the care proceedings.

A parent may make an application for contact to a child in care under Section 34 of the Children Act 1989 once a Care Order has been made. Before a Care Order is made the Local Authority/Council are under a duty to promote contact between the parents and the child.

Contact between a child who is subject to a Care Order and their parents tends to be limited. It is unusual for a contact to be greater than once every six months and is usually indirect, eg by letter.

In Section 31 proceedings a Guardian will be appointed by the Court. This person is normally a very experienced Social Worker and they will represent the child and tell the Court the child's views (if old enough) and what they feel is in the child's best interests. In certain cases an official known as the Official Solicitor may be invited to represent the child or a parent (though he cannot be appointed in the Family Proceedings Court).

A child may bring his own application under the Children Act 1989 and generally needs permission or leave of the Court to do so. The child has to demonstrate that he has sufficient understanding to be involved which means in particular that the child should

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understand the nature of the proceedings, the reasons for the proceedings, and what his parents and the other professionals think is best for him and why they think so.

In Children Act proceedings all parties have to file statements and there is a principle that everyone should disclose all relevant information to the Court. This means that if a party has a report prepared for his case then it has to be disclosed to all the other parties even if the report is damaging to that party's case.

Children Act proceedings are also confidential, which means that leave has to be obtained from the Court for the Court papers to be disclosed to persons not party to proceedings, for example experts. Any Court papers which they receive should not be generally disclosed or communicated by parties to proceedings to persons not involved in the proceedings, save in limited cases. These limited cases are to obtain advice and/or support or counselling. Family or friends will not be allowed to attend any Court hearings relating to children, unless the Court and everyone involved agrees.

### **CHILD MAINTENANCE**

Schedule 1 of the Children Act provides for an application for maintenance for a child either by way of lump sum or periodical payments. This however is a complex area of the law because of in particular the inter action of the Child Support Act 1989 with a discretion based Court system. Under Schedule 1 of the Children Act 1989 an application may also be made for a property not to be sold until the youngest child reaches 18 to ensure security. You will however be advised individually on this point.

The Child Support Act 1991 established the Child Support Agency (CSA). The CSA calculates and collects maintenance for parents with care of children where there is no agreement for maintenance payments from other parent. For the CSA to have jurisdiction both the parents and the child have to live in England and Wales and the child has to be the biological child of both parents. A child is defined so the maximum upper age is 20 years old. The CSA operates outside of the Family Court system and there is a very limited right of appeal to a tribunal and/or a commissioner. The calculation of support is according to a strict formula which (putting it simplistically) is when the gross weekly income of the non-resident parent is £200-£800 per week. In these cases the percentage payment is:-

- 12% if there is one qualifying child;
- 16% if there are two qualifying children;
- 19% if there are three or more qualifying children

For gross incomes in excess of £800 per week the percentage is:-

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- 9% if there is one qualifying child;
- 12% if there are two qualifying children;
- 15% if there are three or more qualifying children

Gross income above £3,000 per week is disregarded. Liability for child support will be reduced if the care of a qualifying child is shared and the reduction in Child Support is calculated by reference to the number of nights in a prescribed twelve month period that the child or children in question stay with a non-resident parent. The rate of reduction is as follows:-

	<b>Fraction to subtract</b>
>52	Nil
52-103	1/7 (14.29%)
104-155	2/7 (28.57%)
156-174	3/7 (42.86%)
175+	½ (50%) and deduct further £7 per week per child

The above is a very basic guide only and your solicitor will give you more tailored advice according to your particular circumstances, as the calculation also changes, for example, if the non-resident parent has other children living with him/her in his/her household. There is now strong emphasis on encouraging parents to make consensual arrangements.

The Child Maintenance Option Service has been established to provide free, impartial information and support to help people make informed decisions about the type of maintenance arrangements that best suits their circumstances. This service is delivered by phone via a website ([www.cmoptions.org](http://www.cmoptions.org)), and for those in most need of more personalised help through a face-to-face service. The helpline telephone number is 0800 988 0988.

The above is a general information sheet regarding the law relating to children. You will be advised more specifically on the points that relate to you.