



CHILDREN

The majority of family law relating to children is embodied in the Children Act 1989. In particular, we are concerned with “private law” children cases – i.e. cases between family members, often Mum and Dad for example. Public law children cases are those where Social Services are involved, for example where care proceedings are being contemplated as the children might be at risk of harm. These latter proceedings require very specialist legal advice, we would recommend you visit the Law Society website (details on our website) – where you can locate a specialist solicitor for public law proceedings.

In private law cases, disputes can arise when the relationship between parents is breaking down, but also later, when the family’s circumstances can change, for example one parent needs to move away due to work or remarriage; or the child/children ask for changes as they get older.

Such things as where the children are going to live, and who with, and how often they will see their other parent can be extremely difficult to agree upon. A lot of parents work very hard at working out shared parenting arrangements, so that the children spend roughly equal time with each parent – it doesn’t have to be absolutely equal time and things such as still sharing the dropping off and picking up from school and other activities like swimming lessons is all part of it too. If there is some distance between one parent and the children, then things like telephone calls, emails, webcams, and good old-fashioned letter writing need to be worked out as well.

The best solutions are those found by agreement – communication between each other is a huge factor. If divorce or separation is inevitable, children do come through it best if their parents continue to communicate with each other and are very child focused – try and think about things from your child’s point of view and how they might feel about different situations; and of course the older your child, the more they will want their views taken account of.

Problems can also arise of course between other family members – for example a natural parent, and a step-parent. Also, grandparents or other family members may become involved as well and seek to assert their own rights.

It can be very hard to have these discussions between you. At JLS Solicitors we would always urge you to try and keep the lines of communication open in some way – consider going to mediation or using the collaborative law process and have independent help to talk through the options and try and find the solutions for the family.

If, for whatever reason, it has not proved possible to find those solutions between you, then as a last resort, the Court can make an order. Before a Judge can take a decision, certain enquiries and evidence need to be pursued – for example it can be necessary to have a CAFCASS report filed within a children’s case. CAFCASS is the Child and Family Court Advisory and Support Service – a CAFCASS Officer can be appointed to make enquiries, for example meeting with both parents, the children and others such as the children’s schools, Police and Social Services. The Officer would then file a report with the Court, and often make a recommendation about the type of Order the Court could make in the particular case.

The Judge will also follow the Welfare Checklist – found within the Children Act 1989, it is a list of factors the Court will take account of, to help the Judge answer the overriding question - what is in the best interests of the child?

The Welfare Checklist set out at S.1 of The Children Act 1989 has seven key points:

- The ascertainable wishes and feelings of the child concerned (considered in light of his or her age and understanding);
- His or her physical, emotional and/or educational needs;
- The likely effect on him or her of any change to their circumstances;
- His or her age, sex, background and any characteristics which the Court considers relevant;
- Any harm which he or she has suffered or is at risk of suffering;



- How capable each parent, and any other person in relation to whom the Court considers the question to be relevant, is of meeting his or her needs;
- The range of powers available to the Court in the proceedings in question (i.e. the types of Order the Judge could make)

The most frequent Orders a Court is asked to make relate to parental responsibility, residence and contact.

Parental Responsibility or “PR” is said to be a bundle of rights, responsibilities and duties that a parent has in relation to their child, and includes such things as the right to decide on medical treatment, where the child is to go to school and so on. Each person with PR must consult with any others who have PR for that child over these rights and responsibilities. Simply because the child lives with one person who has PR, does not give them any greater form of parental responsibility than another person who also has PR but with whom the child does not have their main home. They share it equally.

PR is held by the parents of a child, where they are married or who later marry each other. Where the parents are not married, the mother has PR and (from 2003) the father has it if he is present at the time of the child’s birth registration and is named upon the birth certificate.

If a father does not have PR, the mother can sign a Parental Responsibility Agreement with him, or the Court can make an Order granting it. Also, if the father (or another person) secures a residence order for the child, then that residence order will grant PR all the time the residence order is in place.

Residence is an Order simply providing for who the child is to live with. It does not grant any additional rights over the child, for example and the person with residence must still consult any other parent, or person, who has PR for the child about the important decisions to be made for the child.

Contact Orders set out provisions for how often a child is to have either direct or indirect contact with their non-resident parent, or another person. Direct contact is time spent with each other, e.g. visiting contact – so many hours in a day; or staying contact – overnight & holidays. Indirect contact includes telephone calls, emails, letters and the like – often as important for ensuring the child knows their parent is still a large part of their lives, particularly where there is some distance between them.