

Children Issues

The Statement of Arrangements for Children Form

This is the first stage of the Divorce or Dissolution process when there are dependant children. The form sets out basic information about the children including details of their health, education and living arrangements. If possible, both parents should try to agree the contents of the form.

The Court's duty to consider the children before granting a divorce

When the court considers the petitioner's application for Decree Nisi, the court has a duty to consider whether it should exercise any of its powers under the Children Act 1989, for example making Residence or Contact orders or ordering further investigation into the children's circumstances by the local authority. This is more likely if there is evidence of disagreement in the Statement of Arrangements for Children Form or unusual circumstances in the form. If this is the case, the Court may delay granting the Decree Nisi/Conditional Order until satisfied with the arrangements for the children.

Parental Responsibility

Parental responsibility means 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.

When an important decision has to be taken about a child, all those with parental responsibility for the child are allowed to have a say in that decision. The decision will have to be about the upbringing of the child. Day to day decisions should be taken by the person with whom the child lives without interference from other parental responsibility holders.

In practical terms parental responsibility means the power to make important decisions in relation to a child - for example, decisions about where a child is to live, whether a child should receive medical treatment, what religion the child should follow and which school they should attend. If the people with Parental Responsibility cannot agree about an important decision about the child's upbringing then an application to Court may be required so the Court can make the decision after deciding what is in the Child's best interests.

Who has Parental Responsibility?

The birth mother of a child will always have parental responsibility unless it is extinguished by the making of an adoption order to another person or an order freeing the child for adoption.

Where the child's father and mother are married to each other at the time of the birth, they both have parental responsibility for the child.

Where the child's mother and father are not married to each other at the time of the birth the general rule is that the mother has sole parental responsibility for the child. However, if a child's birth is registered or re-registered from 1 December 2003 and the unmarried father is named on the Register, this also gives him parental responsibility.

How can Parental Responsibility be obtained?

- drawing up an agreement with the mother (a Parental Responsibility agreement), which is a specific form that has to be signed by both parents and lodged with the court;
- marrying the mother; or
- the court making a parental responsibility order if the parents cannot agree on the father having parental responsibility; or
- the court making a residence order; or
- for a child registered after 1st December 2003, the child can be re-registered with the father's name added if the birth mother consents

What factors will the Court take into account when deciding whether to grant Parental Responsibility?

Case law suggests that a father has to show that he is committed and attached to the child and has a genuine reason for applying for Parental Responsibility. This can be shown by a regular contact arrangement or being involved in the child's upbringing.

Residence and Contact Orders

When parents divorce, it is not usually necessary for the court to make orders in relation to the living arrangements for the children of the family. Generally, most parents will reach an agreement as to where the children will live, and what contact arrangements will be made. If an agreement cannot be reached, then either parent can make a separate application to court for a Residence or Contact order under the Children Act 1989.

Section 8 of the Children Act 1989 sets out the Court's powers in relation to disputes about the living arrangements for children following separation.

What powers do the Courts have?

Residence Orders – setting out where a child lives

Contact Orders – setting out the contact arrangements for the child

Specific Issue Orders – the court can make orders allowing someone to do something about distinct aspects of a child's life, for example allowing the child's name to be changed, consenting to medical treatment or giving permission for a child to emigrate abroad.

Prohibited Steps Orders – the court can make orders preventing someone from acting in a particular way in relation to a child. These are the opposite of Specific Issues orders. For example an order may say that one parent is not allowed to remove the child from the other parent's care.

What factors does the court take into account when exercising its powers?

The first thing the Court must consider is that the child's welfare is the Court's paramount consideration.

Section 1 of the Children Act sets out the Welfare Checklist, which is the following list of factors the Court has to take into account when deciding whether to exercise its powers:

- The ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding);
- His/her physical, emotional and/or educational needs;
- The likely effect on him/her of any change in his circumstances;
- His/her age, sex, background and any characteristics of his/her, which the court considers relevant;
- Any harm which he/she has suffered or is at risk of suffering.
- How capable each of his/her parents and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- The range of powers available to the court (under the Children Act of 1989) in the proceedings in question.
- The Court also has to decide whether any order is necessary. This is called the No Order Principle. The Courts recognise that sometimes it would be better for a child if no orders were made. The Court also tries to ensure that the case is dealt with as swiftly as possible to avoid delay.

What happens if proceedings are issued?

The Applicant (person making the application) will send an application to Court. The Court will list the case for a first directions appointment usually within 3 to 4 weeks. A copy of the application and notice of the date and time of the court appointment will be sent to the other parent of the child (the Respondent).

Prior to the First Appointment – Before the initial Court Hearing both parties will be contacted by telephone by a Child and Family Court Advisory and Support Service officer (CAFCASS). The purpose of this is to enable the CAFCASS officer to ascertain from both parties what the issues are in relation to the child, and hopefully to discuss with the parties options to resolve the dispute amicably.

The First Court Appointment - at the first Court appointment both parents will have a meeting, either together or separately with the duty CAFCASS officer. The purpose of this is to meet with both parties (either separately or jointly) to again see if matters can be resolved amicably. If matters cannot be resolved then the proceedings will continue and may involve CAFCASS being ordered to prepare a report for the Court as to the issues arising in the case and to make recommendations to the Court as to how the case should conclude. The Court will list the case for a further directions appointment 1 to 2 weeks after the CAFCASS report has been prepared to review the case. If it is not appropriate for CAFCASS to prepare a report, then the Court may list the case for a final hearing or monitor the progress of contact with further review hearings at court.

The CAFCASS report (or sometimes Social Services Report) – it is extremely important that you co-operate fully with the CAFCASS officer/Social Worker as they compile their report. This is because the CAFCASS / Social Work report is very influential to the Judge when making final decisions in the case. The CAFCASS officer appointed is

independent and has a duty to investigate the case and interview all the parties and will usually see the children. The older the child is, the more weight will be attached to their wishes and feelings. The Court has a duty to take into account the child's wishes and feelings and this is part of the Welfare Checklist.

The directions hearing following the CAFCASS/Social Services Report - at the court appointment following the CAFCASS/Social Services report the Court will want to know if an agreement has been reached between the Applicant and Respondent. If an agreement has not been reached the Court will make an order for both parties to prepare a written statement setting out their response to the report and will list the case for a final hearing.

The Final Hearing – if the issues are still unresolved then the Judge will hear oral evidence from both parties who will also be cross examined by the legal representative for the other party. The Judge will make a final decision taking into account the Welfare Checklist.

The impact of Domestic Abuse and Violence

One of the factors in the Welfare Checklist is “any harm which the child has suffered or is at risk of suffering”. The definition of “harm” includes the exposure of a child to domestic violence or abuse within the family home. It is recognised that children are likely to suffer emotional harm if they live or have lived with domestic abuse.

Domestic abuse is defined as physical, sexual, psychological or financial abuse that takes place within an intimate or family-type relationship and that forms a pattern of coercive and controlling behaviour

The Courts take domestic abuse seriously, and in some cases the Court will list the case for a Finding of Fact hearing to make findings as to whether violence or abuse took place before reaching decisions about what arrangements are in the best interests of the children.

If you have suffered from domestic abuse or violence or you believe you are at risk of suffering from it, please let us know.

What do I do now?

Oxley & Coward can offer confidential assistance and advice if you, or someone you know have any concerns and if necessary to take steps to obtain the relevant Orders to protect you. Call us now on 01709 510999 or email family@oxcow.co.uk