

## Arrangements for Children

# THE COURT PROCESS

This is a guide to the general court process when applying for a Child Arrangement Order. However, family law is subjective and turns on the facts of each case, therefore variations may arise. At any stage of the court proceedings, negotiations can be ongoing or mediation undertaken in an effort to resolve proceedings. Your family law specialist will ensure you remain informed at all stages as your case progresses.

### PRE-COURT PROCEDURE

1. If negotiation has failed and court is the only alternative, a prospective Applicant must attend a MIAM (Mediation Information & Assessment Meeting), unless an exemption applies.

2. Submit C100 to court (court fee of £232) With a C1A where appropriate.

3. Once the application has been issued, the Court will set a date for allocation where they decide whether it is suitable for the matter to heard by Magistrates or referred to a Judge. CAFCASS will contact both parties by phone. CAFCASS is the Children and Family Court Advisory Service and CAFCASS officers are social workers. CAFCASS are responsible for safeguarding the interests of children involved in court proceedings.

#### First Hearing Dispute Resolution Appointment (FHDRA)

The FHDRA is used to identify the issues in dispute and try to resolve them as quickly as possible. All parties must attend the FHDRA and usually a CAFCASS officer will also attend. During the hearing problems are discussed openly and solutions are suggested. If an agreement is reached, the court will make an order recording the agreement. If no agreement can be reached, the court will consider what evidence is required to make an informed decision and will make a directions order for the filing of evidence by the next hearing date.

\*\*\* In the appropriate circumstances, a CAFCASS officer will talk to or meet with the parties before the FHDRA and make recommendations to the court \*\*\*

\*\*\* The court may feel that CAFCASS need to produce a report on the welfare of the children before they can make a decision on the issues in question. This is known as a s7 report. CAFCASS will speak to both parties and, if appropriate, the children within the proceedings, in order to produce their report. They may also speak to other family members, teachers and health workers. The court may also feel that a Fact Finding hearing is required where one party has made allegations of domestic violence or child abuse and it is unclear whether or not the allegations are true \*\*\*

#### Dispute Resolution Appointment (DRA)

A DRA is a hearing which takes place before the final hearing. By this point the court will have all the reports, statements and any other information required to make a decision. The purpose of the DRA is to resolve as many issues as possible. The court will identify the key issues to be determined and the extent to which those issues can be resolved or narrowed. If an agreement is reached, the court can make an order reflecting those agreements and the proceedings may conclude. If no agreements are made the court will direct the parties to file any further evidence and schedule a final contested hearing.

#### Final Hearing

A final hearing considers all of the evidence and a Judge will make a final decision. The court will hear evidence from the parties and other witnesses. If there is a CAFCASS officer, they will attend court to give evidence if the court, or parties consider is necessary. Anyone who does give evidence will be asked questions about their evidence by their own legal representative, the other party's legal representative and sometimes the judge. An agreement can be made between the parties, but if this is not achievable, after hearing all the evidence the Judge will make a final determination which will be recorded in a final order.

If you have any queries please contact us by email on: [family@goodlawsolicitors.co.uk](mailto:family@goodlawsolicitors.co.uk) or by calling us on: 01273956270

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### The Shared Parenting Principle

Since 22 April 2014, the shared parenting principle has been introduced to promote a child having a meaningful relationship with both parents. A meaningful relationship is not about equal division of time but the “quality of parenting received by the child”. A presumption has therefore been introduced into the welfare checklist in Section 1 of the Children Act 1989, that when a Court determines any question in respect to the upbringing of a child or as to the administration of child’s property, the child’s welfare shall be the Court’s paramount consideration and that a Court is entitled to presume, unless the contrary is shown, that involvement of that parent in the life of the child concern will further the child’s welfare.

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### The Welfare Checklist

In making any decision about where a child should live and with whom, there is a checklist of factors which the Court must consider when applying this “welfare principle”. The aim of the checklist is to promote a consistent approach by providing framework to use when the Court is making decisions. It provides a minimum that must be considered in every case and there is no indication of relative importance of the factors so it is left to the Court to assess the importance of each factor in the circumstances of the case. The factors that must be considered are as follows:

- ✓ The ascertainable wishes and feelings of the child concerned in light of their age and understanding;
- ✓ The child’s physical, emotional and educational needs;
- ✓ The likely affect on the child of any change in circumstances;
- ✓ The child’s age, sex, background and any characteristics the Court deems relevant;
- ✓ Any harm that the child has suffered or is at risk of suffering;
- ✓ How capable each of the children’s parents is of meeting the children’s needs;
- ✓ The range of powers available to the Court under the Children Act 1989 and the proceedings in general.

The checklist is not exhaustive and the Court can take any other relevant facts into account, including the views of professionals and/or Social Services.

### Prohibited Steps Orders

Prohibited Steps Orders are orders stop one parent from taking a particular course of action, usually in relation to removing the child from the care of the other parent or from the jurisdiction of England and Wales. The orders are often made on an urgent basis or as a short term solution until the long term arrangements for the child can be confirmed in a Child Arrangements Order. Aside from the first hearing (which is generally a hearing on short notice) the court process will follow that of the Child Arrangements Programme.

### Specific Issue Orders

Specific Issues Orders are orders which are utilized in specific circumstances where agreement cannot be reached between the parties with parental responsibility. The parties therefore ask the court to adjudicate on that one specific issue. Examples of when a SIO may be necessary include disputes regarding education, religion, medical treatment or relocation.

### Urgent Applications

If there is a need for an urgent application to made, you can ask the court to make a PSO or SIO without notice. This means the other party will not be made aware of the application. These orders are only made by the court in exceptional circumstances. There will also be a return hearing where the person who has received the order has an opportunity to apply to have the order set aside.