

# LEGAL FACT SHEET

## CHILDREN - CONTACT AND RESIDENCE ORDERS

Most parents are bound to be worried about the effect of separation or divorce on their children and they want to do whatever they can to give them security for the future. The Court's approval to these issues has been changed by the Children Act 1989.

### WHEN WILL THE COURT MAKE ORDERS IN RELATION TO CHILDREN

Only in circumstances where the making of an order is in the **best interest of the child** in question. Most orders in relation to children are now made under **The Children Act 1989**.

### WHERE THE PARTIES AGREE

It used to be the case that whenever parents got divorced the Court would automatically make custody and access orders in relation to any child of the family but this is no longer the case. If there is no dispute between the parties as to what the arrangements for the children should be when their parents divorce, the Court will not normally want to interfere with the arrangements that the parties have made e.g. as to whether the children are to live or how much contact there should be between the children and each parent.

In divorce proceedings the Petitioner has to provide **A STATEMENT OF ARRANGEMENTS FORM** at the time of filing the Petition. This will be considered by the Judge who will normally not make any order at all if he is satisfied that the arrangements are agreed and workable.

### DISPUTES ABOUT WHERE CHILDREN ARE TO LIVE (RESIDENCE) OR CONTACT

All disputes whether or not in divorce proceedings will be dealt with under the Children Act, even if the parties have never been married or lived together.

If there are divorce proceedings children cases will be heard in the Court where the divorce is being dealt with. Otherwise proceedings can be started in either the Magistrates Court or the County Court (normally the Court which is closest to where the

children live). In whichever Court, the procedure is more or less the same.

### WHAT IS THE PROCEDURE?

The person wishing to make the application, (the Applicant), will complete a standard form giving information about the children, the type of order he/she is seeking and brief reasons as to why that order is required. This form is lodged with the Court, which will send a copy to the other party (the Respondent), with a form offering the opportunity to respond to the application and giving details of the date fixed for a first hearing **DISPUTE RESOLUTION HEARING**.

This Hearing is called a First Hearing Dispute Resolution Appointment (FHRA). The purpose of this Hearing is to provide the Court with information about both parties. CAFCASS - the Child and Family Court and Advisory Support Service) will carry out safeguarding checks on all parties. These are checks with the police and Social Services to see what involvement they have had with a family. There will be a CAFCASS Officer present at Court and you should have the opportunity to speak to them.

The Court will then decide what further information it needs and the way forward and timetable the case on that basis. It may be that the court wish for CAFCASS to undertake a report dealing with any welfare issues raised and also the children's wishes and feelings, depending on the age of the child.

The Court may also Order both parties to file statements of evidence setting out their positions. These may be filed simultaneously or one party first with the other party responding.

If a CAFCASS report is ordered then CAFCASS will allocate an officer to your case. It is most likely that the CAFCASS Officer will want to speak with you, your former partner and also the child/children. The allocated officer will then prepare a report to the court which will obtain recommendations as to the best way forward. A copy of that report will be sent to the court and to both parties or their legal representatives.

There will then be a REVIEW hearing for the court to decide what needs to happen next. If both parties agree with the recommendations of the report, this is what will usually happen and avoids lengthy court proceedings. If agreement is not reached at that stage then the court is likely to list the matter for a contested hearing where it will want to hear evidence from both parties as to the matters that are at issue and also hear evidence from the CAFCASS Officer. Following the contested hearing the court will make a decision as to the way forward. It is extremely rare for the court to make an order which is contrary to the recommendations of the CAFCASS officer.

#### **PRINCIPLE OF BEST INTEREST OF CHILD**

The Court and the CAFCASS Officer will make decisions based on what is in the best interests of the child. This will be the paramount consideration and will take precedence over the wishes of the parents.

#### **WHAT ORDERS CAN THE COURT MAKE**

The Court can determine where the children are to live, i.e. make **RESIDENCE ORDERS**. The Court can determine whether a party should have any **contact** with a child and can make an order for **reasonable contact** which effectively means that the parties have to make their own arrangements as to the frequency and timing of contact visits.

Alternatively the Court can make a **DEFINED CONTACT** order i.e. spell out when and where contact should take place and the times for contact.

In making a decision the paramount consideration is what is in the best interests of the child concerned. The wishes of the child may be taken into account depending on the age and level of the child's understanding of the issues.

#### **HOW LONG DOES THE APPLICATION TAKE?**

The Courts try to deal with children matters as quickly and efficiently as possible. If a CAFCASS report is ordered this usually takes 16 weeks but this is considered a necessary delay by the Court.

#### **WHAT IF THE OTHER PARTY STILL REFUSES CONTACT?**

If the party with whom the child is living refuses to comply with a Court Order the matter can be brought back to Court. The ultimate penalty for non-compliance with an order is a fine or imprisonment (although in practice a Court will be

very unwilling to send to prison a parent who has to care for a child).

If an order for reasonable contact has not been complied with as the parents have not been able to reach an agreement the Court can be asked to make a defined order.

#### **IS LEGAL AID AVAILABLE?**

On 1<sup>st</sup> April 2013 the Government made a number of changes to the availability of Legal Aid. As of 1 April 2013, many areas of Family Law have been taken out of scope for Legal Aid. There are, however, exceptions to this and we strongly advise you to contact our office to discuss these exceptions so that we can talk them through with you.

Subject to financial eligibility legal aid is available for these proceedings.

If the proceedings are brought in the course of divorce proceedings where there are also financial proceedings ongoing it should be remembered that the cost of the children proceedings will be added on when determining the amount of the **STATUTORY CHARGE** (please refer to the Legal Aid section).

#### **IF I "WIN" THE CASE WILL THE OTHER PARTY PAY MY COSTS?**

This is unlikely as it is rare for such an order to be made in proceedings relating to children except where a party has behaved very badly during the proceedings.

**KHF Solicitors Ltd. provide this fact sheet  
free of charge**

**For further information contact**

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**KHF Solicitors Ltd.  
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