

PRIVATE CHILDREN ACT PROCEEDINGS

Any dispute that leads to Court Proceedings in relation to children is generally governed by The Children Act 1989. The child's welfare is always of the paramount consideration. The Court will also try to settle any dispute in relation to a child as quickly as possible recognising that any delay in determining an issue is likely to prejudice the welfare of the child. The Court must have regard to the following factors, known as the welfare checklist:-

- a) The ascertainable wishes and feelings of the child concerned (considered in light of his age and understanding).
- b) His physical emotional and educational needs.
- c) The likely effect of him of any change in his circumstances.
- d) His age, sex, background and any characteristics of his which the Court considers relevant.
- e) Any harm which he has suffered or it at risk of suffering.
- f) How capable each of his parents and any other person in relation to whom the Court considers the question to be relevant, is of meeting his needs.
- g) The range of powers available to the Court under The Children Act 1989 in the proceedings in question.

The Court has very wide powers under the Children Act 1989 which include the making of the following Court Orders:-

1. A Contact Order - which means an Order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with another person or for that person and the child to otherwise have contact with each other.
2. A Prohibited Steps Order - which prevents a particular step being taken in relation to a child without the consent of the Court.
3. A Residence Order - which means an Order settling the arrangements to be made as to the person with whom the child is to live.
4. A Specific Issue Order - which means an Order giving directions for the purpose of determining a specific question which has arisen in relation to the child.

These are known as the Section 8 Orders. Any person with Parental Responsibility can apply for a Section 8 Order under The Children Act. Other parties may be entitled to make an application to the Court, but they may need to obtain the permission of the Court to do so before making the application.

A Section 8 Order will not extend beyond the age of 16, unless the circumstances are exceptional.

If Court Proceedings are issued and there are any concerns about the welfare, health or safety of the child then it may be necessary to appoint an officer from the Children and Family Court Advisory Support Service (CAFCASS) to investigate, prepare a report and make a recommendation. Full details of CAFCASS and their role within Court Proceedings can be found on their website at www.cafcass.gov.uk

The Court has a non-intervention principal which means that the Court will only make an Order in the circumstances when an Order is necessary as there may not be any need for a Court Order at all.

At a First Court Appointment, the Court will consider whether the parties should file statements, whether there will need to be a CAFCASS Report or any other expert evidence. If there are any allegations of domestic abuse, these may need to be dealt with separately by a Finding of Fact Hearing. A timetable will be fixed and there will be provision for a review once all the experts' reports and evidence has been filed. If no agreement can be reached then the matter will be listed for a Final Hearing. The procedure can vary from one Court to the next as many Courts have their own local practices when dealing with Children Act Proceedings.

Parental Responsibility means all the rights, duties, powers, responsibilities and authority which by law, a parent of the child has in relation to the child and his property. This would include being able to give consent for medical treatment, making decision about the child's education and welfare, religious upbringing and discipline.

A mother will always automatically have Parental Responsibility upon the birth of the child. A father who is married to the mother at the time of the birth or who marries afterwards will also, automatically acquire Parental Responsibility. An unmarried father will automatically acquire Parental Responsibility provided that his name is registered upon the birth certificate and the birth was registered after the 1 December 2003. A person will automatically acquire Parental Responsibility if they have a Residence Order in their favour.

If a father does not have Parental Responsibility then he may acquire this by applying to the Court for an Order or by entering into a Parental Responsibility Agreement with the mother.

It is also possible for step-parents to acquire Parental Responsibility with the agreement of all parents with Parental Responsibility or by an Order of the Court.

It may be necessary in some circumstances for an individual, who is not a parent of the child, to apply for a Special Guardianship Order. This confers Parental Responsibility on a Special Guardian and entitles the Special Guardian to exercise Parental Responsibility to the exclusion of every other person with Parental Responsibility. For example, if a child is left in the care of a grandparent then they may need to apply for a Special Guardianship Order in their favour. A local authority will also need to be involved and must investigate and prepare a report for the purposes of any application for a Special Guardianship Order.