

Success
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Free
Information
Guide

Services

Children Law
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Children's Law



When you decide it's time to divorce, or separate from your partner, disagreements over your children's arrangements may suddenly surface. This free guide provides general information about how the law relating to children may be relevant to your particular case.

Parental Responsibility

Parental Responsibility (PR) is a legal term giving recognition to the rights and responsibilities a parent has towards their child. Mothers, married fathers and fathers named on the birth certificate of a child born after 2002 all automatically have PR.

Parental Responsibility is important as it gives you the legal right to be consulted on all important decisions relating to a child such as medical treatment, education, religion and travelling or living abroad.

If you are an unmarried father and you are not named on your child's birth certificate or you are a civil partner of someone with a child you can acquire parental responsibility via a written agreement or by obtaining Court order. If a child lives with you, a Residence Order, a Special Guardianship Order or a Parental Order would also give you PR.

Residence

If you believe it is best for your child to live with you, but their other parent does not agree, then you can ask the Court to make a Residence Order in your favour.

A Residence Order not only confirms the child's living arrangements, it also means you can travel out of the country for up to 28 days without requiring the other parent's consent.

If no Residence Order is in force you must consult with whoever else has Parental Responsibility for your child before going abroad and obtain their consent otherwise you could be committing the criminal offence of abduction. Similarly if you have a Residence Order and go away from longer than 28 days then the same rule applies.

If a child shares their time between their parents, sometimes joint or shared Residence Orders can be made specifying which times the child is to stay with each parent.

Generally if there is no disagreement about where a child is living and who their primary carer is then the Court will not usually make an order. This is called the 'principle of no order'.

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Contact

The majority of disagreements between parents involve arrangements for contact between the child and the parent they do not live with. There is a general presumption that it is in a child's best interests to see both of their parents and the Courts generally encourage agreement between the parties so that this can happen.

However, sometimes the Court has to be invited to make the decision about contact for example where the differing views of the parents are so great, or where concerns are raised about potential harm to a child if contact were to occur. In these cases the Court will direct independent investigations by specialist Court advisors or by social services to help decide what is best for the child.

If you are a non resident parent and you feel you are being prevented from having the amount of contact you feel would be best with your child then, you can ask the Court to make a contact order in the absence of agreement.

Similarly if you are a resident parent who has concerns about the level of contact being sought or if you feel your child would be at risk, then you may want to seek the Court's guidance as to what level of contact would be in your child's interests.

Prohibited steps

If your child has been taken from you without your consent then the first thing you must do is to call the police. If you hold a genuine fear that your child may be taken from you, from their school or out of the country without your express consent in the future, for example someone has threatened to do this, then you could obtain a Prohibited Steps Order (PSO).

A PSO is a Court order which prevents a person exercising parental responsibility in a certain way and would forbid the person from carrying this threat out. Such orders are very serious and if breached can lead to an application for someone to be committed to prison. These orders can be obtained on an emergency basis and in many cases are applied for without giving notice to the person against whom you wish to make the order.

Specific Issue Orders (SIO)

There are many other areas of disagreement between parties about the exercise of parental responsibility that the Court can help with such as issues around religious upbringing, which school they should attend, or commonly where they should live.

If, for example, your child lives with you and you have decided you would like to live abroad, or return to your country of origin with your child and their other parent does not agree, then you will need to seek the Court's permission.

Similarly if you do not have a Residence Order but would like to go on holiday and the other parent does not agree, then again you would need to ask for leave of the Court.

These are just some of the specific issues you may have to ask a Judge to decide if agreement cannot be reached.

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The Court Process

Before an application is made to Court you will need to show that an attempt has been made to try and reach an agreement. Usually the first step would therefore be a referral to a mediation service. However this may not be suitable if for example you fear violence or intimidation from the other party or if they allege this against you, or you may attempt mediation but without success.

Once an application is made then the Court may list the case for a conciliation appointment which is a first hearing where again an attempt is made to reach agreement. Sometimes if the children are old enough they are required to be brought to Court so that their wishes and feelings can be ascertained.

The next step would then depend on the issues between the parties but usually if no long term agreement is reached then assessments by an independent Court advisor, known as a CAFCASS officer, will be asked to make an assessment over a four month period. Then the parties will return to Court once the CAFCASS officer has given recommendations.

If the parties do not agree with the recommendations then there a contested hearing will be listed at which the Judge will listen to the argument of each side and then make an order.

Enforcement of Orders

Where a party is in breach of an order there are various ways to enforce it, for example applying to the Court for an Enforcement Order.

If granted, the order could impose an Unpaid Work Requirement up to a maximum of 200 hours.

Alternatively an Order for Compensation for Financial Loss; whereby the party who has breached the Contact Order must pay the individual who was due the contact any loss incurred as a result of the non-compliance.

In the case of Residence and Contact disputes, ultimately you can apply to court for an order authorising an officer of the court or a constable to take charge of the child and deliver him to the person concerned.

Contempt Proceedings can be used as the very last resort when the parent with whom the child resides unreasonably breaches of the order. The Court can make an order for committal to prison.

The Welfare Principle

The Court's overriding objective is to consider what is in the child's best interests. This is the paramount consideration. Their wishes and feelings will be taken into account but this is not the sole consideration.

I'm in dispute with my ex-partner about my child's arrangements. What should I do now?

In your own case, the most important thing to consider is what is best for your child and is there any way your disagreement can be resolved without going to Court.

If you have come to the decision that legal action is the only way forward, Fisher Meredith's Children's Law Department can offer pragmatic advice in helping you decide the next steps.