



/guide



Your
questions
answered

CLIENT GUIDE TO RESOLVING CHILD ARRANGEMENTS

This guide will explain and help you understand the issues involved when parenting after separation, and the role of the family courts if proceedings become necessary.

It will cover the following sections:

- How can separated parents make arrangements for their children?
- If court proceedings are necessary, what powers does the court have?
- What is the process if an application to court is made?
- What are considered appropriate child arrangements?
- What is the role of CAFCASS in proceedings about children?

- How does the family court deal with:
 - Parental responsibility
 - Request to change of surname
 - Relocation of children abroad
 - Relocation of children in the UK
 - Enforcement of court orders
 - Grandparents rights
- Glossary of commonly used terms.

How can separated parents make arrangements for their children?

When parents separate, it is important to ensure appropriate arrangements have been made for any children of the family.

There are various process options for resolving arrangements concerning children, including:

Direct correspondence/discussions between you and your former partner/spouse

If you reach an agreement with which you are both content, there is no need for court proceedings, but you may choose to enter into a parenting plan or consent order (see below).

Alternatively, you may decide to keep a written record of the agreements reached. This can help avoid confusion or misunderstandings.

Solicitor negotiations

You can use a solicitor to try and reach an agreement, who will negotiate with your ex-partners solicitor to reach an agreement.

If an agreement is reached and you wish to formalise it, you could consider a parenting plan or consent order (explained below).

Alternatively, you can simply record the agreed arrangements in writing within an exchange of solicitors' correspondence.

Parenting Plan

A parenting plan is a private agreement drawn up between parents. It sets out in writing arrangements for children, but does not get court approval or become a legally binding court order. This means it is not enforceable by a court.

It is helpful where parents have an amicable relationship, and there is a level of trust that the agreement will be adhered to, and a court order is not necessary.

If you would like to view an example parenting plan and learn more about them, you can do so by clicking [here](#).

Consent Order

This is a step up from a parenting plan, as it is a legally binding and enforceable court order, but made with the consent of the parents reflecting the agreement they have reached, as opposed to a judge following contested court proceedings.

With the help of your solicitor, you can file a signed consent order at court and ask a judge to approve this.

The judge may list a hearing to consider whether to approve the consent order or approve it.

In addition, CAFCASS may be required to complete safeguarding checks (see below), even if the order is made by consent.

Once approved, failure to comply with the consent order can lead to action to enforce the terms. Consent orders are particularly helpful in circumstances where parents struggle to reach an agreement, or where they are concerned the agreement will be broken, or where they feel a court order is needed for other reasons, such as certainty and stability.

It is important to note that the courts are reluctant to make child arrangement orders by consent, where parents have agreed the arrangements without any proceedings being commenced.

The court has a policy of not making final child arrangements orders unless necessary. Simply agreeing to the arrangements would not be sufficient reason to have a court order made.

Mediation

You and your former partner / spouse can attend mediation for a mediator to work with you both to reach an agreement. The mediator acts as an independent third-party and will work with you together. They will not give either of you advice separately.

A solicitor can support you through mediation and give advice on the discussions taking place. If an agreement is reached, it is not legally binding, and you should be advised to seek independent legal advice, and you can then consider the need to prepare a parenting plan or obtain a consent order.

Before making an application to court for an order for the children, it is necessary to attend a Mediation Information and Assessment Meeting (MIAM), unless an exemption applies, such as domestic violence. If a court application is necessary either because mediation is not suitable or breaks down, the mediator will sign a form to confirm you have attended for a MIAM.

Collaborative Family Law

You and your former partner / spouse each appoint their own collaboratively trained lawyer to work together during a series of meetings to resolve arrangements for the children. You and your team sign an agreement that commits you to trying to resolve the issues without going to court, and prevents them from representing you if you decide to enter into court proceedings.

Arbitration

Arbitration is a similar process to court proceedings, but conducted in a private forum where you pay a fee for the arbitrator's time hearing the case and making a binding decision, which is called an award.

The arbitrator is often an independent lawyer, such as a barrister or solicitor, appointed by both parties as neutral to make a decision concerning their dispute.

There are benefits of both time and specialist knowledge of the chosen arbitrator, which may justify the additional cost of the arbitrator's fees.

Court

Court is often considered a last resort, but sometimes court proceedings are necessary. They are risky, particularly because magistrates or judges who do not have a background in family law may be tasked to determine the outcome.

At the moment, magistrates deal with more straightforward children's cases, and judges deal with the more complex ones.

Sometimes Legal Advisers hear cases alone without the Bench of Magistrates, so there are various ways cases can be heard. Please see additional detail below regarding Children Act proceedings.

If court proceedings are necessary, what powers does the court have?

If parents are unable to agree arrangements for the children, it sometimes becomes necessary for the court to be involved.

The age of the children is significant, because in the event of a dispute, a court can generally only make orders for children up to the age of 16.

The types of orders that a court can make are as follows:-

Child Arrangements Order

This determines who children should live with and when they should spend time with the non-resident parent. This may provide that children can live with both parents on an equal or unequal basis.

Specific Issue Order

This determines a specific issue, such as which school children should attend, whether they should be allowed to go abroad on holiday with one parent, if the other parent refuses to consent or disputes about medical treatment.

Prohibited Steps Order

This prevents a person from taking a course of action in relation to children, for example not allowing them to contact a named person, removing them from a particular school, or taking them out of the country.

It is important to note that in many cases a court order is not required, and parents can agree arrangements between themselves, with assistance from lawyers or other professionals.

What is the process if an application to court is made?

Below is an outline of how a typical application might proceed. Your case may follow a different path, since the court will consider each case individually depending on the issues involved.

- Attend **MIAM** (unless exemption applies)
- Party makes **application to court** in form C100
- **Safeguarding checks**
CAFCASS completes checks 17 days after the application is received.
- **Gatekeeping appointment**
Court considers what directions are needed and what hearing should be listed
- **FHDRA**
Normally 5/6 weeks after the application is issued. Court and parents will consider whether agreement can be reached. If no agreement is reached, the court will list for further hearings and make directions to progress the application. Sometimes, the court may make an interim contact order.
- **Fact finding hearing**
If domestic abuse is raised within proceedings and is disputed, there may be a separate hearing, with evidence, to determine whether alleged incident(s) took place.
- **Dispute Resolution Appointment (DRA)**
The court will identify and narrow the issues and try to encourage parties to resolve the matter. Where appropriate, a final order could be made.
- **Review hearing**
The court may list a review hearing after some evidence has been obtained, or to review how interim contact arrangements are going
- **Final hearing**
If the matter cannot be resolved, the case will be listed for a final hearing, where parties usually have to give evidence, and the court will make the final decision on the issues that remain disputed.

What are considered to be appropriate child arrangements?

The guiding principle in the Children Act 1989 is that 'Children are best looked after within the family, with both parents playing a full part'. However, the child's welfare is the most important consideration of the court.

Wherever possible, parents are encouraged to agree arrangements for a child without involving the court.

The court has what is known as a "no order" principle in relation to children. This means that if parents can agree on the arrangements for their child/children, there will be no need for a court order.

If there is a dispute regarding the arrangements for the children, or any other issues concerning their care (e.g. medical treatment or choice of school), and the court is invited to make a decision about these issues, the court will consider "The Welfare Checklist".

This requires the court to consider the following factors:

- (a) the wishes and feelings of the child concerned (considered in the light of his/ her age and understanding);
- (b) his/her physical, emotional and educational needs;
- (c) the likely effect on him/her of any change in circumstances;
- (d) his/her age, sex, background and any relevant characteristics;
- (e) any harm which he/she has suffered or is at risk of suffering;
- (f) how capable each of his/her parents and any other relevant adult is of meeting his/her needs;
- (g) the range of powers available to the court under the Children Act 1989 in the proceedings in question.

Courts tend to take the view that a child's best interests are served by maintaining a good relationship with both parents following separation and that children have a right to spend time with each of their parents.

There are no prescribed rules stating what the arrangements for children spending time with each parent should be, and therefore the outcome of any court application is uncertain.

Weekends are often seen as quality time with children without the pressures of school/nursery and work, so arrangements often provide for the children to share weekends with their parents. This can be anything from one overnight stay to Friday from school through to Monday at school.

Midweek contact can be a tea-time visit for just a few hours leading up to a few overnight stays.

In addition to this usual contact, arrangements are often made for:

Holidays, to enable each parent to take the children on holiday. Often school holidays are divided equally between parents.

Special days such as birthdays, Christmas, Mother's and Father's Day to enable the children to spend these special days with each of their parents.

Arrangements for children can vary significantly from one family to another.

If a Child Arrangements Order is in place, this is legally binding. This means that if a parent disobeys the terms of an order, they can

be held in contempt of court, which can have serious consequences, including fines, community service, and even committal to prison (although this is rare).

What is the role of CAFCASS in court proceedings?

Once an application has been made for a child arrangements order, the court will often list the matter for a First Hearing Dispute Resolution Appointment (known as a "FHDRA") or a Gatekeeping hearing.

Prior to the first hearing, the Children and Family Court Advisory and Support Service (known as "Cafcass") will do safeguarding checks.

The safeguarding checks involve a Cafcass officer speaking with each parent on the telephone and making enquiries with the police and Local Authority to see whether there has been any involvement.

A safeguarding letter is prepared, setting out the findings and reflecting the contents of the discussions, which could impact their recommendations to the court. This letter is produced to the court.

If the Cafcass officer has serious concerns about the child's welfare, the court may make a direction for a welfare report, also known as a Section 7 report.

This is a detailed report looking at all circumstances of the case, considering the Welfare Checklist, and making a recommendation on how issues concerning the child or children should be resolved.

What other children's issues can the court deal with?

Parental responsibility

Parental Responsibility (PR) is a status given to a person in relation to a child and relates to all the legal rights, duties, powers, responsibilities and authority a parent (or a person acting in the capacity of a parent) has for a child.

When one or more people have PR for a child, each of them may act alone in meeting that responsibility. However, the law states that when parents are separated, it is the parent with whom the child lives that can make day-to-day decisions, even if they share PR with the other parent.

Major decisions require the agreement of both parents with PR. This includes, for example, decisions relating to education, medical treatment and religion. If a dispute arises between parents with PR, then the court can resolve the issue if an application is made to the court by one of the parents.

PR can be acquired automatically, or by order or agreement. A solicitor can advise you about your particular circumstances and how to obtain PR if you do not already have it and wish to acquire it.

If you are a parent without PR, you can still issue an application to the court about your child.

Change of surname

Where a child arrangements order regulating with whom the child lives is in force, it will provide that no one can cause the child to be known by a new surname without either (1) the written consent of everyone with PR; or (2) permission from the court.

When considering changing a child's surname, the court will consider the Welfare Checklist. However, the court is often reluctant to authorise a change of surname unless it is in the interests of the child.

The court will consider the following:

- Embarrassment to the parent and child of having different surnames;
- The child's wishes; and
- The extent to which the child's original surname is important to maintain links with the parent and other relations with whom he/she does not live.

Leaving the UK

Where a child arrangements order regulating with whom the child shall live is in force, no one may remove the child from the UK without either:

- The written consent of everyone with PR; or
- permission from the court.

The exception is that the person named the person with whom the child lives is allowed to take the child out of the UK for periods of less than one month (i.e. 28 days) without consent.

It is good practice, where possible, to obtain consent. The non-resident parent needs to seek consent every time he/she wants to take the child abroad for whatever period.

If no child arrangements order is in force, any parent wishing to travel with the child will need to obtain consent from the non-travelling parent in advance of the trip.

If no consent is obtained and the child is taken out of England and Wales, the parent will have committed a criminal offence under the Child Abduction Act 1984.

If a parent needs to apply to the court to seek permission to take a child abroad, the decision will again be based on the principles within the Welfare Checklist.

If the parent wishes to simply take a holiday abroad, the court usually finds that a holiday abroad is in the child's best interest, unless, for example, it is a cover for abduction.

Where there are legitimate concerns that the child might not be returned from a temporary trip abroad, the court will consider the following elements:

- The magnitude of the risk of breach of the order if permission is given;
- The magnitude of the consequences of breach if it occurs; and
- The level of security that can be achieved by building all the available safeguards into the arrangements.

If a parent wishes to permanently relocate abroad with the child, they will either require the consent of the other parent, or an order of the court.

Relocation within the UK

Relocation within the UK does not require the consent of the court. However, if the non-resident parent opposes a resident parent's plans to relocate, an application may be made to the court to decide.

An application would need to be made for a Specific Issue Order.

Enforcement of court orders

If a Child Arrangements Order (whether by consent or not) has been made, this is legally binding.

This means that if a parent disobeys the terms of an order, without a reasonable excuse, they can be held in contempt of court, which can have serious consequences.

At the top of all child arrangements orders, there is a warning notice that sets out the consequences for both parties if they do not comply with the order.

Generally, the parent who alleges the other parent has disobeyed the order will try to deal with the breach without involving the court. For example, their solicitor may write to the parent reminding them of their obligations under the order, or the parents may try mediation.

However, if the breach of the order is serious and continues, there may be an application to the court to enforce the order.

There are several powers available to the court when considering an application to enforce, and these are as follows:

- Referral of both parents to a separated parents information programme or mediation;
- Unpaid work requirement of between 40 and 200 hours where the court is satisfied beyond a reasonable doubt that one party has failed to comply with a provision of the order;
- Committal to prison (in rare/serious cases);
- Changing which party the child or children live with (in extreme/serious cases)/variation of the child arrangements order to include a more defined order;
- A fine;
- An order for compensation for financial loss;
- A contact enforcement order or suspended enforcement order.

Rights of grandparents

Many grandparents play a key role in the lives of their grandchildren, which can be disrupted after the breakdown of a relationship. Alternatively, circumstances can arise, which can lead to a child living with their grandparents.

There are different orders available, depending on whether you are seeking to determine the contact arrangements for your grandchildren or secure their living arrangements with you.

Grandparents do not have an automatic right to make an application in the same way parents do. A solicitor can give specialist advice on what applications are appropriate and whether it is necessary to first obtain the courts permission to make the application, depending upon the circumstances of your case.

Commonly used terms

CAFCASS: This stands for Children and Family Court Advisory Support Service. CAFCASS officers are called Family Court Advisers. They work with children and young people in family court cases.

Child arrangements order: A type of court order that regulates with whom a child is to live, spend time or otherwise have contact.

Children's guardian: A guardian is a social worker appointed by the court to represent the rights and interests of children in certain court proceedings where there is significant difficulty.

Consent order: A court order agreed by the parents and approved by the court. It is legally binding and may be enforced by the court.

DRA: Dispute Resolution Appointment at which the court will try to narrow the issues between the parties and consider what further evidence is needed if the parents are unable to resolve the matters between them.

Fact finding hearing: If there are allegations of domestic abuse, financial abuse, and/or welfare issues relating to the children, the court will hold this type of hearing to determine the truth or otherwise of those allegations.

FHDRA: First Hearing Dispute Resolution Appointment (unless an urgent hearing has already taken place). It is the first hearing after an application relating to a child or children has been made. Its purpose is to identify the issues between parents and see if it is possible to resolve those issues.

Final hearing: The hearing at which a judge or magistrate will consider the evidence of the parties, any other relevant evidence, and their legal arguments, and make a final decision about the issues in dispute, which will be written up into a court order.

Gatekeeping Appointment: Once a court application has been issued, the court may hold a gatekeeping appointment to decide how to progress the application, for example whether to list it for a FHDR, order the parties to file evidence, etc. The hearing is held without the parties or their advisers being present.

MIAM: Mediation information and assessment meeting. This is the first meeting with a mediator to learn more about mediation and decide if it is suitable. It is usually obligatory to have a MIAM before making a court application. Clients generally attend this first meeting alone.

Parenting plan: A written plan worked out between parents to clarify the arrangements for their children. It does not need to be approved by a court, and is a private agreement between parents.

Prohibited Steps order: A type of court order which forbids a party (usually a parent) from taking certain action(s) relating to or involving a child.

Section 37 report: A report carried out by the Local Authority where there is significant difficulty.

Specific issue order: A type of court order that determines how a particular dispute should be resolved over an aspect of a child's upbringing or welfare.

Welfare checklist: A list of factors that the court considers when deciding what arrangements are appropriate for a child.

Welfare or section 7 report: A report ordered by the court to provide information on a child's welfare which is usually prepared by an officer of CAFCASS.

Need more information?

Call our Client Care Team on **0330 838 7456** to speak with one of our specialist family lawyers or visit www.stowefamilylaw.co.uk