

CHILDREN ACT HANDOUT

It is important that both parents attempt to agree the arrangements for the Children following the breakdown of their relationship. If Parents cannot successfully agree the arrangements for the children between them, they should give consideration to seeking help from other sources, like Mediation.

It is crucial that parents understand how important it is for them to work together and agree arrangements for the children, for the long term benefit, security and wellbeing of their children

Resolution:-

We at Susan Howarth & Company Solicitors Limited are committed to family resolution, our family lawyers are members of RESOLUTION, an organisation who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for improvements to the family justice system.

The Resolution Website can provide you with handy tips and advice on how to manage relationship breakdown. You can access their website at www.resolution.org.uk

Mediation:-

As from the 6th April 2011, Mediation is now compulsory (with some very limited exceptions), parents are therefore expected to receive information and advice, either together or separately from, the other parent. To do this they will need to attend a Mediation Information and Assessment Meeting (MIAM) with a Mediator. The purpose is to learn about mediation and other forms of Alternative Dispute Resolution. The cost of attending a MIAM meeting varies but will be somewhere in the region of £105.00.

Mediation can be a successful way of getting parents to sit down together, with a trained mediator and try to resolve their disagreements. The Mediator will firstly start with an introductory session for both parents, explaining their services and undertaking the MIAM meeting. Once the initial meeting has taken place, parents can decide if they wish to proceed with Mediation. Information will be given by the Mediator as to the length of time Mediation will take and the cost of Mediation to both parents.

In certain situations, parents may be exempt from attending the mediation meeting. However it is important that parents understand that if they refuse to attend the MIAM meeting, then the Court can either, dismiss the parents application or impose cost sanctions against the Applicant Parent.

However, once the MIAM meeting has taken place and/or where Mediation is unsuccessful and where all attempts to resolve the issues between the parents has failed, Parents should give consideration to an Application to the Court.

Types of Orders that the Court can make:-

The Children Act 1989 governs the arrangements in connection with children, under the Children Act 1989 the Court can make various Orders, the main types of Orders which can be sought by Parents or carers are, Child Arrangement Orders (to determine with whom a child should live and when a child should spend time with the absent parent) Parental Responsibility, Prohibited Steps, Specific Issue and Declarations of Paternity.

1. Parental Responsibility.

Parental Responsibility is defined by the Act as all the rights, duties, powers, responsibilities and authority which by law the parent of a child has in relation to the child and its property. It gives the parent the responsibility of taking all the important decisions in the child's life, for example, education, religion and medical care. It also enables the parent to take the day to day decisions. Married parents have joint parental responsibility. If parents are not married, the mother acquires parental responsibility upon the birth of the child. As from the 1st December 2003, the Father of the child will acquire Parental Responsibility, if his name appears on the child's birth certificate as the child's father.

For children whose birth is registered BEFORE the 1st December 2003, where the Father is not married to the Mother, the Father does not have parental responsibility. A Father can acquire parental responsibility in any one of five ways:-

1. By entering into a Parental Responsibility Agreement with the mother. This must be on a prescribed printed form and must be signed at Court.
2. By applying to the Court and the Court granting, a Parental Responsibility Order.
3. By being appointed a guardian either by the mother or the Court although in this case he would assume parental responsibility only on mother's death.
4. By obtaining a Residence Order from the Court.
5. By marrying mother.

Step Parents.

A step parent may acquire parental responsibility for his/her spouse's child by:-

1. By entering into a Parental Responsibility Agreement between the step parents and the parents of the Child.
2. By applying to the Court and the Court granting a Parental Responsibility Order.

Grand Parents.

The current legislation does not give any automatic "parental rights" to grandparents and as such there is no automatic right for a grandparent to see their grandchildren. However this does not mean that a grandparent could not apply to the Court for an Order. Whether or not a Grandparents application is likely to succeed is dependent upon the circumstances and reasons for the application.

“Sarah’s Law” – child sex offender disclosure scheme

There is a scheme in England and Wales whereby anyone can formally ask the police to check whether they believe a person who has access to a child has a record for child sex offences. The police will then disclose any information to the people who are most able to protect the child (parents and guardians) if they believe it is in the best interests of the child to do so.

2. Child Arrangement Order.

Residence and Contact Orders has from the 22nd April 2014 been replaced by Child Arrangements Orders. Further, any Residence / Contact Orders dated before the 22nd April 2014, will automatically be Child Arrangements Orders.

If parents are unable to agree the child care arrangements following their separation then a parent can apply for a Child Arrangements Order. This regulates the arrangements for the child to include with whom a child is to live, when the child is to spend time or see the absent parent.

Whilst a Child Arrangements Order is in force, no other person with PR can interfere with the day to day management of the child’s life.

If a Child Arrangements Order is made that provides for the child to live with a non-married father, who does not have Parental Responsibility, then the Court must at the same time as making the Child Arrangement Order, make a Parental Responsibility Order in the father’s favour.

If the Child Arrangement Order provides for the child to spend time with the unmarried father with who has does not have Parental Responsibility, then the Court must decide whether it is appropriate to make a Parental Responsibility Order in the father’s favour.

Once a Child Arrangements Order is in place that Orders with whom a child is to live, no person can change the child’s surname or remove the child from the Courts jurisdiction for a period of over one month without consent from the other parent or a further Court Order.

The reason for the recent change in the law may be to emphasis to both parents that they are equal in the eyes of the law and have equal duties and responsibilities as parents towards their children.

A Child Arrangements Order can be sought, not only by parents but also by Step Parents, Grandparents or other family relatives.

3. Prohibited Steps Order.

This is an Order which Prohibits (prevents or limits) a parent exercising their normal parental responsibility, from taking a particular step, i.e. taking the child without the other parent’s consent. It can only relate to matters which are included within parental responsibility.

4. Specific Issue.

A Specific Issue Order gives directions to resolve a particular issue and dispute in connection with the child, ie where there is a dispute as to the

child's education, or religion, or deciding whether the child can be taken abroad.

5. Declaration of Paternity.

A Court can make a declaration that the parent named in the application is or was the parent of the child. Usually this will be established by a DNA test. If paternity is established, the Court must make the declaration, (unless to do so would manifestly be contrary to public policy). If made, the declaration binds the world and not just the parties.

When a declaration of parentage is made, the court notifies the Registrar General of the declaration who has the discretion to authorise the re-registration of the birth on the basis of the Court's declaration.

Further, an alternative procedure is available which provides for the re-registration of the birth of an illegitimate child in the Register of Births by entering the name of the father either at the joint request of the parents or at the request of the mother on the production of Statutory Declarations, Court Order, parental responsibility agreement or parental responsibility order.

Application Procedure:-

1. Proceedings will commence by filling in the relevant application form and paying the Court Application fee with the Court Office. The Court Office will issue the Application and allocate a hearing date. The Application will then be served upon the Respondent parent.
2. The matter will be listed for a First Hearing called Dispute Resolution Appointment, this Hearing will usually be within 6 weeks of the Application being issued by the Court.
3. In advance of the First Hearing, the Children and Family Court Advisory and Support Service (CAFCASS) will make safeguarding checks, these will include traditional Police and Local Authority Checks. CAFCASS will also make telephone calls to the parties to ask them about any domestic violence or other safeguarding issues and where such calls indicate the need for further clarification of allegations of violence or allied safety issues, CAFCASS may arrange a meeting with either/both parties to take place in advance of the first hearing.
4. Each parent must attend this hearing. At this hearing, the Court will consider whether the use of the Children and Family Court Advisory and Support Service (CAFCASS) can assist in resolving the case by mediation and agreement. The parents may be invited to meet with the CAFCASS Officer at Court to discuss the issues. If the case cannot be agreed and finalised at this hearing, then the Court will give directions on how the case is to proceed, deciding on what evidence the Court will need to make a final decision on the application (usually written statements by both parties).
5. The Court may order a CAFCASS Report, the usual time for CAFCASS to prepare and file a report is 16 weeks. However there is often considerable delays in the preparation of CAFCASS report, (delaying the case by 5 to 6 months).
6. All documents prepared and filed with the Court in connection with Children Act proceedings (included the CAFCASS report) **are confidential and must not be shown to anyone apart from the parties and their legal advisors.**

7. There may be a number of Court hearings where interim issues are considered, i.e. issues of Interim Contact / Residence, directions hearings etc. If the case is not settled by consent during this process, the case will proceed to a final contested hearing.
8. The Court may Order parents to attend on a separating parents information programme (SPIP) (usually organised and arranged via CAFCASS or the Court).
9. If the matter goes to a final contested hearing, the parties are often represented by a Barrister who they meet before the hearing.
10. The Court proceedings themselves will be heard in private. The proceedings are not open to members of the public or indeed anyone who is not a party to the proceedings, save that the press are able to be present at the hearing and allowed to report the case, however the parties names will not be disclosed (if this will identify the child to the public).
11. You are not therefore able to bring friends or colleagues into the Court room with you but they may accompany you to Court and wait in the waiting area of the building.
12. If the parties cannot reach agreement, the Court will impose an Order on both parents, which both parents must comply with.

CAFCASS:-

The Children & Family Reporter is independent of all the parties in the case and the Court. He or she will talk with all parties either separately or together and sometimes, according to the age and maturity of the child, with the child or children themselves. Parties are often able to resolve a dispute at this early stage with the assistance of a Children & Family Reporter at a conciliation appointment. The Children & Family Reporter is someone who is trained and experienced in dealing with children.

If the CAFCASS officer is Ordered to file a report, the CAFCASS Officer will normally make a recommendation within his report as to what he considers would be the appropriate Order to be made in the best interests of the children.

In deciding whether an Order should be made the child's welfare shall be the Court's paramount consideration and shall thereafter have regard to:

1. The ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding).
2. The child's physical emotional and educational needs;
3. The likely effect on the child of any change in his/her circumstances;
4. The child's age, sex background and any other characteristics which the Court considers relevant.
5. Any harm which the child has suffered or is at risk at suffering.
6. How capable each of the child's parents and any other person in relation to where the Court considers the question to be relevant, is of meeting the child's needs.
7. The range of powers available to the Court under the Children Act in the proceedings in question.

Although ultimately the Court makes the decision he will take into account the CAFCASS Officers recommendation.

Separating Parents Information Programme ("SPIP"):-

SPIP is a Court ordered contact activity designed to alert parents who are going through the divorce and the separation process, as to how their actions impact upon their children. It is also designed to help reduce the conflict that the children may see or hear as between their parents.

The overall feedback from parents who have attended the course has been extremely positive, assisting parents in reducing conflict within the relationship, for the benefit of their children.

All participants who have been ordered by the Courts to attend the course will be funded centrally, parents can attend on the course without Court Order on a voluntary basis, but will have to fund the course themselves.

Failure to comply with a Child Arrangements Order:-

If a parent refuses to comply with a child Arrangement's Order, or deliberately attempts to frustrate it, then the Court does have power to enforce the Order, the types of enforcement available to the Court are:-

1. The making of a Contact Activity Direction. This requires a parent (who is a party to the proceedings) to take part in an activity that promotes contact.
2. Monitoring Order. CAFCASS can be ordered to monitor the contact and report back to the Court on non-compliance.
3. Unpaid Work Requirements. Requiring the Parent who refuses to comply with the Order, to undertake non paid work for failure to comply.
4. Orders for the payment of Compensation Money. The Court may make an Order requiring the parent who refuses to comply with the Order to pay compensation in respect of the other parent's financial loss.
5. In extreme circumstances, the Court can order a committal to prison for breach of an order or in cases where the parent who has the child living with them is implacably hostile and obstructive towards letting the child spend time with the other parent, then the Court can order that the child lives with the other parent.

Attendance at Court.

We cannot guarantee who from Susan Howarth & Co Ltd will represent you at Court, we have a family team of experience lawyers, and it may be that a different member of our family law team will represent you at Court.

Legal Aid / Public Funding.

From April 2013, Public funding will only be available for children proceedings in very exception circumstances (namely where there is evidence of domestic violence or evidence of child abuse). If you feel that you may be eligible for Public Funding, then please speak to us so that we can discuss this with you further.

Children Act Costs:-

It is extremely difficult to estimate the likely costs being incurred. Much depends upon the co-operation of the parties and the complexity of the issues to be addressed and whether the matter settled is protracted.

If the issues are settled relatively early in correspondence, then the costs incurred could be in the region of £1,000 plus VAT.

If proceedings are issued but the matter settles in the early stages then the costs would be in the region of £3,000 - £4,000 plus VAT.

If the matter went on beyond that, then we are looking at costs of between £5,000 to £7,000 plus VAT.

If the matter became protracted, involving a number of Hearings, then the costs could increase from £7,000 to £10,000 upwards (plus VAT).

The Court Administration fee for issuing an application under the Children Act 1989 is currently £215.

We confirm that the above are merely guidelines and do not include the cost of enforcement proceedings. Further, we reserve the right to increase the costs estimate in your case as it progresses.

Susan Howarth & Co Solicitors
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