

Alison Fielden & Co.

Solicitors & Notary Public

FACTSHEET

Disputes Concerning Children

When parents separate or divorce disputes frequently arise between parents being unable to agree which of them the children should live with or how often the children should see the parent with whom they are not living. These are the most common types of dispute.

Arguments may arise less frequently over issues such as which school a child should attend, whether a child's surname should change upon the parents' separation, whether one parent should be prevented from allowing the child to come into contact with a certain person or removing the child from the jurisdiction, whether a child should or should not (perhaps for religious reasons) have medical treatment administered to them.

If a dispute does arise then the Courts are there to assist. Application can be made to a Divorce County Court or to a Family Proceedings Court (Magistrates' Court).

The most common types of applications are for the following Orders:

1. Parental Responsibility
2. Residence
3. Contact
4. Specific Issue
5. Prohibited Steps

The Children Act 1989 governs the making of these applications. The overriding principle of the Act is that the Court will not make an Order unless it is in the children's best interests to do so. If parents agree about the arrangements for the children then there is often no need to take any further steps. If proceedings have been issued and an agreement is then reached the Court will often not make a formal order but simply record the agreement on the Court file. If the matter is fully disputed then the Court will have to impose an Order on the parents.

Each of the above Orders will now be examined in a little more detail.

1. Parental Responsibility Orders

Where parents are not married to each other, it may be the case that only the mother will have parental responsibility for a child. This means that she is the only person able in law to make decisions about the major issues affecting a child such as which school a child should attend, what medical treatment a child should have, whether a child should be given permission to marry if still a minor, what surname the child should have.

When the parents separate the father may be advised to obtain parental responsibility for the child. This can be done in two main ways:

- by agreement with the mother. This is a relatively straightforward process in that both parents sign a standard form in the presence of a Justice of the Peace, Justices Clerk or an appointed Court Officer. This is then sent to the Principal Registry of the Family Division in London where the agreement is recorded. Once it has been recorded the agreement is effective and can only come to an end by an order of the Court or when the child reaches the age of 18.
- by application to the Court under Section 4 of the Children Act. In most cases a father will be granted a Parental Responsibility Order, particularly where he has had an involvement with the child's upbringing in the past.

2. Residence Order

This is an order from the Court stating with whom a child should live. Residence Orders can be made in favour of a parent or relative or some other person. In deciding with whom a child should live the Court will usually be assisted by a Court Welfare Officer. There are various matters which a Court will take into account, for example, the ages of the children, the length of time they have lived with a particular parent, the suitability of that parent's accommodation, the ability of the parent to care for the child and so forth. Depending on the age of the child their wishes and feelings may also be taken into account.

3. Contact Order

This is an order from the Court stating how frequently a parent who does not have the child living with him or her should see the child. The Court can make a defined order which sets out the days of the week or blocks of time the child can see the absent parent as well as the hours of contact. Alternatively, it can provide that a parent has reasonable contact with a child so that it is left up to the parents to agree dates and times between them. Once again, the welfare of the child is paramount and the court will make such Orders as are in the best interests of the child.

4. Specific Issue Order

This is an order from the Court setting out what steps should or should not be taken in relation to a child when parents are unable to agree. By way of example, the Court may be asked to decide which school a child should attend or whether a child should receive medical treatment. These types of dispute do not arise very often.

5. Prohibited Steps Order

These types of Orders are a little more common than Specific Issue Orders. A Prohibited Steps Order is an Order from the Court preventing a parent taking certain steps in relation to a child. Examples of these Orders would be an Order preventing a parent allowing the child to come into contact with a certain person (perhaps because the person would be harmful to the child physically or

emotionally), or preventing a parent from removing a child from the jurisdiction of the Court (i.e. outside England & Wales) without the other parent's or the Court's consent.

Orders can frequently be obtained from the Court on an interim basis when an emergency arises. Provided it is in the best interests of the child, the Court can make temporary Orders until it has been able to investigate matters further.

Depending on a person's financial circumstances, funding might be available from the Legal Services Commission to bring or defend proceedings.

If Court proceedings are issued for any reason parties will be encouraged, if they cannot quickly reach an agreement, to attend mediation. Throughout the country there are specially trained mediators/counsellors who will interview both parents (usually together) to try to help them reach an agreement about the future of the child. Information can be obtained from your Citizen's Advice Bureau, Court or local Solicitors as to where the mediators are in your area.

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