

MENNEER SHUTTLEWORTH

Family Law

Factsheet 2

CHILDREN AND SEPARATION

Parents who separate will need to make arrangements for their children. This will usually involve deciding which parent will have the children's day to day care, the education, health, financial support of the child contact with the non resident parent and any other arrangements required specifically for an individual child.

There are a number of ways of resolving disputes concerning children and it is not always necessary to involve the Courts. It is often beneficial to all parties including the children for an agreement to be reached either between the parents direct or through mediation. Indeed, there is a provision in the Children Act 1989 preventing the Court from making any Orders under that Act, unless the Court considers that making the Order would be better for the child than making no Order at all. However, if an agreement is not possible then an application to the court may be necessary.

Since 6th April 2011 it is not possible to make an application to the Court for an Order until mediation has been attempted unless one of the specific exemptions referred to in the Family Proceedings Rules apply.

There are a number of Orders that the Court can make under the Children Act 1989. These are as follows:-

1. Parental responsibility

A parent with parental responsibility is able to participate in making important decisions in their child's life such as religious upbringing, choice of school and medical care. Married parents automatically share parental responsibility for a child. However, whilst an unmarried mother automatically obtains parental responsibility when the child is born, an unmarried father does not. An unmarried father will automatically have parental responsibility if he is named on the birth certificate of a child whose birth was registered after 1st December 2003. If this does not apply then unmarried fathers can obtain parental responsibility by:

- (a) entering into a parental responsibility agreement with the consent of the child's mother
- (b) applying to the court for a Parental Responsibility Order.
- (c) obtaining a Residence Order from the court
- (d) being appointed as guardian of the child by the mother or court. In this instance parental responsibility will be obtained on the mother's death.
- (e) by marrying the mother

Parental responsibility comes to an end when a child becomes an adult upon attaining 18 years of age. Parents will lose parental responsibility on their death or in the event that the child is adopted. An unmarried father who has obtained parental responsibility by a court order, parental responsibility agreement or by registration on the child's birth certificate can lose it if the court makes an order ending it.

2. Residence order

A Residence Order is an order deciding with whom a child should live. The Order can specify that the child should live with only one parent. The Order can also allow for a child to live with both parents and can specify the period that the child is to live with each parent. This is known as a shared Residence Order. A Residence Order can also be made in favour of non parents such as grandparents.

3. Contact Order

A Contact Order is an order requiring the person with whom the child lives to allow that child to visit or stay with the person named in the Order. The Order can set out the duration, time and type of contact the child has (ie contact by letter, telephone, face to face etc) with the person named in the Order. A Contact Order can be made in favour of non-parents including, for example, a grandparent.

4. Prohibited Steps Order

A Prohibited Steps Order is an Order that prevents a certain step being taken in respect of a child. It could, for example, be used to prevent one parent taking a child abroad.. However the court will not make one of these orders if the same result could be achieved by a Residence or Contact Order.

5. Specific Issues Order

A Specific Issue Order is used to determine a specific question which has arisen in respect of a child upon which the child's parents cannot agree. Examples include where a child should be educated or whether a child should receive a particular type of medical treatment.

The Child's Welfare

The court's paramount consideration, when considering whether to make one of the orders listed above, will be the Child's Welfare. This is known as the welfare principle. When applying the welfare principle the court must have regard to the following factors:-

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

The information contained above is intended for general guidance only. It is not intended to be a substitute for specific legal advice which may be obtained from our

Family Law partner Amanda Wilson on 01424 720044 or e-mail:
awilson@menneershuttleworth.co.uk.