

JOHN BOYLE SOLICITORS LIMITED

GUIDE TO
CHILD ARRANGEMENT ORDERS

Introduction

It is always hoped that the arrangements in respect of children can be agreed without the need for Court intervention i.e. by agreement between the parties or through alternative dispute resolution such as Mediation. This is because parties caring for children have a commitment to one another during the child's entire minority to put that child's interests first. If Court proceedings are commenced unnecessarily, it can often damage the ongoing relationship of the parties caring for that child, which will ultimately have a negative impact on the child.

Mediation

Nowadays, in a hope of assisting parties with reaching arrangements in respect of children, without the need to commence Court proceedings, there is a requirement for parties to have attended a Mediation Information and Assessment Meeting (MIAM), carried out by an authorised family mediator.

You will attend the MIAM on your own to find out what options exist and whether the case will be suitable for Mediation. The meeting will also explain what Mediation is and the potential benefits of using Mediation rather than the Courts. You will also discuss funding options for attending Mediation; Legal Aid still being available to assist if certain criteria are met.

The other party will also be invited to attend their own MIAM.

Provided the Mediator assesses the case as suitable for Mediation and both parties agree to attend, a meeting will be arranged for you both to attend.

In certain circumstances there are exemptions to having to attend Mediation, i.e. if there has been a history of Domestic Violence. We can give you more information about this should you not consider Mediation to be appropriate in your case.

What Orders you can seek through the Family Court

If you have tried Mediation (or are exempt) and still no agreement has been reached between you as to the arrangements for any child, you will have no alternative but to commence Court proceedings.

The law relating to children is governed by the Children Act 1989, which was amended in 2014 following The Children and Families Act being passed.

"A Child Arrangements Order" (CAO) is now defined as an Order regulating the arrangements relating to any of the following: -

- (a) With whom a child is to live, spend time or otherwise have contact, and
- (b) When a child is to live, spend time or otherwise have contact with any person.

The above replaces the terms "residence" and "contact" which had been in place since 1989 despite many still referring to "custody" and "access" both of which predated the 1989 Act itself.

"A Specific Issue Order" (SIO) is an Order concerning an issue that has arisen in connection with the exercise of Parental Responsibility (which is described below)

and can be either a free-standing application or made with a CAO application. The courts can become involved where those with Parental Responsibility (PR) simply cannot agree on a major aspect of a child's upbringing i.e. where the child is to attend school.

"A Prohibited Steps Order" (PSO) allows a Court to prevent a person taking a step that could be taken in meeting PR for a child i.e. collecting a child from school where there have been issues of Domestic Abuse reported. If a Prohibited Steps Order is made, then a party may only do something they have previously been able to do as a person with PR for that child, if they have the permission of the Court. Again, this can either be a free-standing application or made with a CAO application.

Parental Responsibility

The Children Act 1989 defines who has PR for a child and what this means.

A Mother of a child will automatically have PR for the child irrespective of her marital status. A father will automatically have PR if he was married to the mother at the time of the child's birth or subsequently marries the mother of his child. An unmarried father can acquire PR by (a) being named as the father on the child's birth certificate, by marrying the Mother, by Agreement or by Court Order.

In exceptional cases non-natural parents can acquire PR on making an application to the Court i.e. Guardians, Adopters, Step-Parents, Local Authorities.

In order to make an application to the Court for a CAO, SIO or PSO you will need to have PR as described above or seek to obtain it through an Order of the Court within your application.

Welfare Principle

When a Court determines any question with respect to children, the child's welfare shall be the court's paramount consideration. Usually this means that the Court's will presume that the involvement of both parents in the life of a child will further the child's welfare, direct or indirect. The welfare checklist used by the Court when considering any application in respect of a child is as follows: -

- The ascertainable wishes and feelings of the child concerned (considered in the light of age and understanding);
- Physical, emotional and educational needs;
- The likely effect on the child of any change in their circumstances;
- Age, sex, background and any other characteristics of the child which the court considers relevant;
- Any harm which the child has suffered or is at risk of suffering; and
- The capability of each of the child's parents, and any other person in relation to whom the Court considers the question to be relevant, of meeting the child's needs

The checklist is not in any order of importance and the full circumstances of the case must be considered.

Court Proceedings

In order to obtain a CAO, SIO or PSO, you need to file an application with the Court. If you are alleging that you or the child is experiencing or is at risk of experiencing significant harm then you will need to file a supplementary application also. Your application (with supplementary form if applicable) will then be served on any other person who has PR for the child by the Court with an Acknowledgement form which they are to complete and return and notification of the First Hearing.

In exceptional circumstances an application may be made to the Court for an emergency Order without having to serve the application on the Respondent first or without the requirement to have attended a MIAM but in order to do so you must be able to justify your reasons to the Court. For example, if the Respondent was given notice of your application before any Order/s had been made, this would enable the Respondent to take steps to defeat the purpose of your application.

All parties must attend all hearings. If a Respondent fails to attend then the Court may only proceed in their absence if it is proved that they were served the papers and were given reasonable time to respond.

FHDRA

The First Hearing, known as a FHDRA (First Hearing Dispute Resolution Appointment) will usually take place 4-6 weeks after the application has been issued and served. A CAFCASS officer will be invited to attend such hearing. CAFCASS stands for Children and Family Court Advisory and Support Service Officer. They are independent of the Court. Their role is to:

- Safeguard and promote the welfare of children;
- Give advice to the family courts;
- Make provision for children to be represented;
- Provide information, advice, and support to children and their families.

A CAFCASS officer will have received a copy of the application and is to prepare a safeguarding letter which is to be filed at Court no later than 3 days before the FHDRA. Such a letter comprises of CAFCASS' enquiries to local authorities, carrying out police checks on all parties and where possible will include a telephone interview with each party to ascertain if any risks of harm can be identified at this early stage.

At the FHDRA and following receipt of the safeguarding letter from CAFCASS, the Judge will seek to assist the parties in conciliation and in resolution of all or any of the issues between the parties. Any remaining issues will be identified and the CAFCASS officer will advise the court of any recommended means of resolving such issues, and directions will be given for the future resolution of such issues i.e. to file expert evidence, position statements, attend a Separated Parents Information Programme or to hold a Finding of Fact Hearing if there has been an allegation of Domestic Violence.

Depending on the issues which remain outstanding, the CAFCASS officer (or Social Services if they are currently working with the children) may be asked to prepare a Welfare Report, known as a section 7 report.

Section 7 report

If this is ordered, a CAFCASS officer will have access to all of the court files and documents and will be aware of the issues between the parties. The CAFCASS officer will visit both parents (and all other parties to the proceedings) in their homes, if possible. The CAFCASS officer will also expect to see the parties with the child(ren) and observe how they interact. If the children are old enough and have sufficient maturity, known as “Gillick” competence, the CAFCASS officer may meet the children separately to ascertain their “wishes and feelings”. The CAFCASS officer may also make other enquiries that are necessary for their report, including of the children’s teacher, GP or Social Worker. The CAFCASS officer will use all of this information to compile her report and the report may make recommendations concerning the application before the Court.

The gathering of such information will take some time and the wait for such a report can be between 12 and 16 weeks. If one is considered necessary it should therefore be applied for at the earliest opportunity, usually the FHDRA.

The Court greatly values the CAFCASS report as the CAFCASS officer has seen the parties, children and others at first hand, unlike the Court, and as a result the report carries great weight.

If the recommendations provided by CAFCASS in their report are accepted by both parties then the matter can be concluded at the next hearing, known as a DRA (Dispute Resolution Hearing). If the recommendations are contested then either party can ask the Court at the DRA to list the matter for a Final Hearing, where the CAFCASS officer can be cross examined by either party if there are flaws in the reporting of evidence or if the recommendations are considered unsound given the evidence of the case.

If there is no evidence to obtain and it is simply a case of hearing from both parties as to what they consider best for the child(ren) and why, the Court may decide that the matter can be listed for a Final Hearing without the need for the parties to attend a DRA first.

DRA

A DRA will take place on receipt of all reports, statements etc that were directed at the FHDRA. At the DRA, the Court has a duty to consider whether such Hearing can be used as a Final Hearing, bringing the application to a conclusion.

If the Court considers that the DRA cannot be used as a Final Hearing, then the Court will identify the key issues which are still to be determined and the extent to which those issues can be resolved or narrowed moving forward. In addition, the Court will also identify what evidence is to be heard and give final case management directions in anticipation of the Final Hearing which is likely to be a minimum of 3 hours long.

Final Hearing

The Final Hearing then follows the normal course of a trial with evidence introduced and witnesses cross-examined (usually the parties and/or the author of Section 7 report) before the final determination is made by the Court as to what the Child Arrangements are to be for each child to the application.

Having read the above, if you have any further queries please do not hesitate to get in contact with the family team here at John Boyle Solicitors Limited.