

Custody arrangements for children during and after divorce

Divorce is an emotional time for all parties involved, as well as being a complicated logistical and legal undertaking. For parents with children, there can be fear that divorce will limit their ability to see their children. Whilst the body of law concerning child custody is complex, it is designed to ensure that the child's welfare is always the paramount consideration. Here we guide parents through the key components of the Children Act 1989 which governs child custody arrangements.

Mediation information and assessment meeting: What is it?

As the focus is on the best interests of the child/children involved, parents are encouraged to try and resolve matters between themselves, whenever possible. If the breakdown of the relationship makes it impossible to resolve the matter without the involvement of a third party, the ex-partners are first encouraged to try a non-court-based resolution by attending a Mediation Information and Assessment Meeting (MIAM).

- MIAM is undertaken with an accredited mediator.
- The aim is to identify whether there is any compromise that could be reached which placates all the parties concerned and benefits the child/children.
- MIAM is preferable to court proceedings because it is:
 - less costly;
 - takes less time;
 - more likely to achieve mutual benefit rather than unsatisfactory compromise; and
 - potentially less emotionally gruelling, particularly for children.
- MIAM is not mandatory in cases of domestic violence, child protection concerns, or urgency.

Mediation information and assessment meeting: The process

- The mediation service will arrange separate initial meetings for both parties.
- After this meeting, the mediation service will determine whether the issues are suitable to mediate and, if so, arrange a mediation meeting.
- The mediation meeting can either be a joint meeting with both parties and the mediator, or a shuttled series of meetings in which both parties are in separate rooms.

With the latter, it is the mediator who will be going from one room to the other.

- If an agreement can be reached, the mediator will then write a memorandum of understanding which both parties will be asked to agree and sign.
- If parents cannot reach an agreement, they can apply to the family court for a Child Arrangements Order.

Child Arrangements Order: The basics

A Child Arrangements Order is a legal order issued by a family court that is generally a last resort when all other options and avenues have been exhausted. When considering an application, the court will first consider whether an order is necessary, as there is a presumption that no order should be made unless essential, as per Section 1(5) of the Children Act 1989.

When a court decides that an order is necessary, it can issue any order as listed in Section 8 of the Children Act 1989. These include:

- Live with orders, to determine with whom the child/children will live.
- Spend Time With orders, to determine the proportion of time they will spend with the other parent, and how this time will be regulated.
- Prohibited Steps order, to limit the actions of a parent.
- Specific Issue order, to stipulate how specific matters - such as schooling - will be handled.

Child Arrangements Orders can be used to define other matters such as:

- whether the contact must be supervised;
- whether the child/children is to have indirect contact with the non-resident parent, for example, by way of phone calls, FaceTime, letters, etc.;
- arrangements for how the school holidays will be divided between the two parents and provision for any change to term time contact; and
- arrangements for travelling with the child/children either in the UK or abroad. For example, the arrangement can lay down a notice period to inform the other parent.

During the court proceedings, the court may issue legally binding interim orders to temporarily determine the child's arrangements until a final decision is reached (for instance, to prevent the child/children from being taken out of the country or removed from school), or emergency orders, which can be issued without the presence of either parent. Once the court has considered all the evidence and made a decision, a final Child Arrangements Order is

issued - either with or without conditions. Alternatively, the court may choose to issue no order at all.

What considerations do the courts take when issuing an order?

If the court considers the order essential, it will be bound to take into account factors that are outlined in Section 1 of the Children Act 1989, known as the welfare checklist. The key factors included in the welfare checklist are:

- that the child's wishes and feelings are considered in light of their age, maturity or understanding;
- the relationship with each parent and their respective capacities to meet the child's physical, educational and emotional needs;
- the likely effect on the child of any changes in their circumstances, which includes changes to living arrangements and routines or moving schools;
- consideration of the child's age, sex, background, and any relevant characteristics which can influence the welfare of the child;
- any harm or potential risks of harm. In this case, the court will consider any evidence of physical, emotional, or sexual abuse, neglect, or exposure to domestic violence; and
- the range of powers available to the court while ensuring that the order is proportionate to the circumstances and serves the child's best interests.

The welfare checklist serves as a guide for the court, helping judges to make informed decisions based on the individual circumstances of each case, and emphasising the child's perspective, their needs, and their protection from harm. The court aims to encourage the involvement of both parents in the child's life when it is safe and appropriate to do so.

Child Arrangements Order: The process

Preliminary stages

- To help the court reach the most appropriate conclusion, the application is usually forwarded to the Children and Family Court Advisory and Support Service (CAFCASS). CAFCASS will research the situation and make inquiries with the police and social services to see whether there are any safeguarding concerns, as well as speaking with both parents.
- The CAFCASS officer will then prepare a written report with recommendations for the court prior to the First Hearing and Dispute Resolution Appointment (FHDRA). They will also send a Schedule 2 Letter to both parties - unless doing so would place the child or either party at risk. The letter will include background checks on all parties concerned, who the natural parents are, and with whom the child/children currently

live.

- The FHDRA - which usually takes place 5 or 6 weeks after the application is made - is designed to assist the court in identifying issues arising between the parties and seek potential agreements. Both parents will typically be required to attend the court hearings where they can present their cases and provide evidence to support their proposed arrangements. The CAFCASS officer is usually also present to discuss matters with the parties.

Moving on

- If the parties can reach agreement at the FHDRA, a final order may be made setting out the details of the agreement, if the court deems it to be in the child's/children's best interests.
- If the parties cannot reach agreement, then the court will seek to determine the areas of disagreement, and order for appropriate assessments, such as social services reports or expert evaluations to assist in making an informed decision (Section 7).
- When the case concerns the residence of the child with serious allegations, the judge will order a report to then decide whether to permit short-term contact and in what manner, while the wider matter is investigated (bearing in mind a CAFCASS report often takes at least 12 weeks to be completed).
- In the meantime, parents are advised to attend a Separated Parent Information Programme.

Last resort

- Following the preparation of the reports, the court can list the case to return to court for a Dispute Resolution Appointment (DRA). Once again, parents are encouraged to come to an agreement. If no agreement can be reached, then the case will progress to a final hearing.
- If serious allegations have been made, there will be a fact-finding hearing before the final hearing. At the fact-finding stage, the court will decide - based on available evidence - whether the alleged incidents likely did or did not occur.
- At the final hearing, the court will consider all the evidence already put before it, and parents will be allowed to present their oral evidence and be cross-examined by the other parent's legal representative. The judge will then make a legally binding final decision.

We can help...



During this emotional and complicated time, you need the reassurance of reliable, accurate and sensitive legal assistance which we can provide. Please get in contact to discuss how we can help you to reach the best outcome for you and your child/children.

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