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Children Act Procedure Guide

1. Introduction

This guide describes the procedure in court cases where there is a dispute about a child.

Where there are disputes involving a child, or children, an application may be made for that dispute to be resolved by the court. There are various types of order that a court can make with regard to children. These are set out in a separate guide which is available from Fairbrother & Darlow.

It can take a number of months for proceedings relating to a child to proceed to a contested final hearing before a court.

2. Making the Application

To commence proceedings, the Applicant needs to complete and file an application at the court. This is then issued by the court and sent to the other party (known as “the Respondent”), together with notification of the date for the initial court hearing.

A copy of the application will usually be sent by the court to the Children and Family Court Advisory and Support Service (CAFCASS) where the application will be screened and appropriate enquiries undertaken to safeguard and promote the welfare of the children who are the subject of the application. This can include police checks for criminal convictions and domestic violence incidents.

3. Initial Court Hearing

The initial hearing is usually a relatively short hearing. At the initial court hearing the court considers the areas of dispute between the parties. Often there will be a Child and Family Court Adviser (CAFCASS Officer) or trained mediator available and in many cases the court will ask the parties to meet with them to see if matters can be resolved by agreement. A CAFCASS Officer is an independent person who is specially trained to advise the court in children cases.

If an agreement is not possible, the court considers what directions need to be given to enable the case to proceed to a final hearing at a later date. This will enable the court to ensure that it has sufficient information upon which to base a decision.

At the initial hearing a CAFCASS Officer may be directed to prepare a report (see below) in order to advise the court as to what orders would be in a child’s best

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interests and, depending upon the age of the child, his or her wishes and feelings about the application.

A CAFCASS report can take over three months to prepare and a case will often be listed for a further directions hearing once this has been filed.

Another common direction is for the court to order both parties to file and exchange witness statements. Additional directions can also be given depending upon the circumstances of the case.

Both the Applicant and the Respondent will need to attend all the court hearings, unless the court directs otherwise. The attendance of children at court is generally strongly discouraged. A child's views are normally most appropriately expressed in the CAFCASS Officer's report or in the witness statements.

All court hearings in relation to children are held in private and members of the public are not allowed to attend.

4. The Child and Family Court Advisory Service (“CAFCASS”)

CAFCASS is an independent organisation that looks after the interests of children in court cases. A court may appoint a CAFCASS Officer to prepare a report in court proceedings in order to advise the court as to what orders, if any, would be in a child's best interests.

In order to prepare a report the CAFCASS Officer will normally wish to speak to the applicant, respondent, a child and any other persons who may be relevant, for example, school teachers or social workers.

It is unusual for a court to make a decision that differs widely from any recommendations that are made in a CAFCASS report. Therefore, a report is extremely important. You can usually expect a CAFCASS Report to take at least three months to be prepared.

5. The Final Hearing

If matters cannot be resolved by agreement it may be necessary for a case to proceed to a final hearing. If so, the applicant, respondent and their witnesses will need to attend the hearing. The presence of children will generally be strongly discouraged.

If the case is proceeding in the Family Proceedings Court, the final hearing will take place before three Magistrates who are advised on the law by a Clerk. In the County

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Court, the hearing will normally take place before a District Judge or Circuit Judge who sits on his or her own.

At the hearing, the applicant, respondent and their witnesses will each be asked questions and be cross-examined. The CAFCASS Officer may also have to attend the hearing and be asked questions by both parties. After having heard all of the evidence, the court will go on to make its decision.

Depending upon how much evidence that needs to be presented to the court, the length of the final hearing can vary between a couple of hours and a number of days.

6. Factors to be taken into account by the Court

In reaching a decision at a final hearing the court will need to consider all of the circumstances of the case. The Children Act 1989 lists various matters that a court must always take into account when deciding what orders it should make. A child's welfare is always the court's paramount consideration.

In addition, the court has to pay particular regard to the following factors:-

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his or her age and understanding);
- (b) the child's physical, emotional and educational needs;
- (c) the likely effect upon the child of any change in circumstances;
- (d) the child's age, sex, background and any characteristics which the court considers relevant;
- (e) any harm which the child has suffered or is at risk of suffering;
- (f) how capable each parent, and any other person in relation to whom the court considers the question to be relevant, is in meeting the child's needs;
- (g) the range of powers available to the court in the proceedings;

These factors are often referred to as the "welfare checklist".

The court is also required to be mindful that no orders should be made in respect of a child, unless doing so would be better for a child than making no order at all.

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7. Costs

In cases concerning children, the courts are discouraged from ordering one party to pay the other party's legal costs. Therefore, it is usual for each party to bear their own legal costs, whatever the outcome of the case. Exceptionally, an order may be made if, for example, one party's conduct during the proceedings has been particularly unreasonable.

8. Confidentiality of Documents

All court documentation in relation to children proceedings is confidential, other than court orders. This covers documents such as any CAFCASS report and the parties' statements. Documents may usually only be disclosed to the parties, their lawyers, the CAFCASS Officer and the court. Any breach of this principle can constitute a contempt of court and could be punished by a fine and/or imprisonment.

9. Negotiations and Mediation

Court proceedings can be extremely stressful for all concerned, including children. They can also be costly. Both before and after an application to the court is made, it is sensible to consider negotiating an agreement with the other party, if at all possible, in order to avoid the need for proceedings.

An alternative remedy to court proceedings is mediation. In mediation, trained mediators aim to help separating or divorcing couples resolve disputes in relation to children or financial matters by agreement between them. Mediation will usually take place over more than one meeting. Fairbrother and Darlow can assist in referring parties for mediation.

If you would like any further information about the matter raised in this guide please contact Fairbrother & Darlow (Tel: (01344) 420808 Email: info@fairbrotherdarlow.co.uk).