

GUIDE TO CHILDREN & SEPARATION

It is always in the child's best interest for both parents to work together and agree on issues such as:

- Where the child(ren) will live
- Where they will be schooled
- Whether the caring parent should be allowed to relocate
- The level of contact with a parent's new partner
- Whether a certain medical procedure should be permitted

WHAT IF WE CANNOT AGREE?

If parents cannot reach an agreement, whether on their own, through mediation, or following the advice of their solicitors, an application may be made to court to determine the issues.

The parent who applies to court will need to be sure that they have Parental Responsibility. Generally, a mother will always have parental responsibility for her child.

However, the child's father will only have parental responsibility if:-

- He is married to the child's mother when the child is born (or later marries the child's mother);
- The child was born after 1 December 2003 and he is named on the Birth Certificate when the child's birth is registered.
- He has a Residence Order from the Court.

It is also possible for parents to enter into a formal agreement for parental responsibility. In the event that the applying parent does not have Parental Responsibility s/he will have to appeal for special permission from the court.

In accordance with the Children Act 1989, the court's most important consideration is the welfare of the child(ren). The court has a checklist of things which must be taken into account when considering a child's welfare which includes:

- The wishes and feelings of the child taking into account their age;
- The child's physical, emotional and educational needs;
- The likely effect of a change in circumstances;
- The child's age, sex, background and any relevant characteristics;
- Any harm or risk of harm to the child;
- The capability of the parents of meeting the child's needs i.e. physical, emotional, educational needs.

WHAT ORDERS ARE AVAILABLE?

The court can order the following in the course of Children Act proceedings:

- **Child arrangement orders** specify whom the child will live with and how often, and on what terms a child is to have contact with a person who doesn't live with that child;

- **prohibited steps orders** prevent certain steps being taken in relation to the child, such as taking a child abroad, or changing school, without first getting the court's permission;
- **specific issue orders** set out precisely how a particular issue concerning the child, such as medical treatment, should be handled.

Child maintenance issues are currently dealt with by the Child Maintenance Service.

WHAT IS THE COURT PROCESS?

From the moment an application arrives at court, the court is under a duty to minimise delay. The first hearing usually takes place within 6 weeks of the application being lodged.

At the first hearing there is a focus on trying to resolve the differences between the parties and securing the child's safety.

If the first hearing does not result in an agreement, the court will go on to identify the relevant issues, and give instructions about what the parties or their solicitors should do before the next court hearing. For example, the court may say that a social worker is to prepare a written report after having met with both parents and the child(ren) separately.

At the end of the first hearing, the court will set a date for a full hearing. Both parents will be required to attend court for the full-hearing as will the social worker to give evidence and be cross-examined, but the child(ren) will not be required to attend.