



Children

Issues Concerning Children

From time to time problems arise in the care of children, often when parenting relationships breakdown. Watson Esam is committed to negotiated solutions wherever possible. We support the principles of mediation as an effective means of resolving difficulties. A number of independent mediation services are available locally and we will make information on these available to you on request. Where mediation cannot resolve matters we negotiate within the family or through solicitors and if necessary apply to the courts.

The Children Act 1989 provides the legal framework for disputes concerning children.

Principles

1. Children come first - the child's welfare is paramount.
2. Children have the right to know and have a relationship with both their parents & their extended family whenever possible.
3. Children's wishes and feelings will be considered.
4. Families matter - the starting point is that children are best cared for by their own families. Both children and their families each have the right to private and family life. Where there are competing rights, the court will try to balance those rights and may prioritise the child's rights.
5. No Court orders should be made unless necessary.
6. Delay - wherever possible delay should be avoided.
7. Flexibility - the Courts have a wide discretion. Each case must be looked at on its own facts as families are not all the same.



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What Court Orders Can Be Made?

- a. **Residence orders** - these direct with whom a child should live. Joint residence orders can also be obtained.
- b. **Contact orders** - these make arrangements for the child to be made available by the resident parent for visits, telephone calls, holidays, and overnight stays, either at set times or more generally with a named person, usually the non resident parent or family member.
- c. **Prohibited steps orders** - these stop someone doing something, for example removing a child.
- d. **Specific issue orders** - these orders settle disputes over an aspect of child's upbringing e.g. Schooling or medical treatment.

Parental Responsibility (PR)

PR describes the collection of duties and responsibilities of a parent or primary carer. A person with PR should be consulted on important matters concerning the child, e.g. education, emigration, religion & medical treatment. This does not extend to the day to day care and decision making or to emergencies.

A mother automatically has parental responsibility following a child's birth, as does a married father. A natural father who is named on the birth certificate after 1st December 2003 will also share PR for that child.

An unmarried father will **not** otherwise automatically have PR in respect of his child. This can be acquired by the completion of a parental responsibility agreement with the child's mother or by court order.

PR can be obtained by others, for example guardians, step-parents or those in whose favour a residence order is made.

Applications To The Court

If agreement cannot be reached concerning the arrangements for the children either between the parents or with the help of mediation then application can be made to court.

Once proceedings are issued a first appointment will be set at Court. This will provide an opportunity for the parties to speak with an independent Children and Family Reporter, known as a 'CAFCASS' Officer, to see if agreement can be reached. If so this can be noted or recorded as an Order.

If no agreement is possible on all issues, the court will set a timetable for future action. Often the CAFCASS Officer will be required to prepare a full written report with recommendations. This can take about **12 - 16 weeks** during which time they will speak with the interested adults and with the child/ren themselves. If significant issues of domestic violence are raised, these may have to be determined by the court first and if there are worries that the child is at risk of significant harm referral will be made to social services.



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Applications To The Court (Cont'd)

Often after the CAFCASS report, issues become clearer and matters can be agreed. If there is no agreement a hearing date is fixed, usually within the following 8 weeks, and each person prepares a written statement of their case. Reports from experts and doctors can be obtained if required. Contested Court hearings are unusual. The Court is concerned with the best interest of the child/ren now and in the future. There are no winners or losers.

The Court recognises that effective solutions are generally best reached between the parents and family themselves. Wherever possible, the Court will therefore encourage a conciliatory approach throughout the Court process, and will not allow delay. Delay is generally contrary to a child's interests. Cases are usually concluded within **6 – 9 months** and an interim order can be made where necessary.

Enforcement

The Court expects parents and families to work co-operatively in the child's best interests, and to abide by the court's decisions to the letter and **in their spirit**. Courts can impose sanctions where a party deliberately flouts Court orders, and can order further steps to be taken; to attend court or therapy, and in extreme cases to fine, imprison or transfer residence away from the un-cooperative party. Such orders are rare.

The Future

Circumstances change, and so there are no truly final orders or agreements. Children grow and their needs alter; family circumstances e.g. health change and arrangements in relation to children need to be reviewed. Court orders generally make provision for additional arrangements to be made by agreement between the parties, and so there is no requirement generally to return to court where agreed variation takes place. Once again, if agreement cannot be reached, either between the parties or through mediation, the court will assist where necessary. There is however an expectation that families wherever possible resolve matters between themselves and do not repeatedly return to court. The Court can direct in unusual circumstances that no further orders should be made for a particular period of time so that the child/ren can settle and remain secure.

Legal Aid

Legal aid (free or with a contribution) is available to pay your legal costs subject to the merits of the case and your financial circumstances.

Watson Esam can also help you with

- Business law
- Employment law
- Family law
- Personal injury
- Claims and disputes
- Debt recovery
- Professional negligence
- Contested probate
- Bankruptcy
- Insolvency
- Property matters
- Charities and voluntary organisations
- Wills and trusts
- Probate
- Inheritance tax planning
- Powers of attorney



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