

**CAMERON JONES
HUSSELL & HOWE LTD
SOLICITORS**

CHILDREN PRIVATE LAW

INTRODUCTION

Cameron Jones Hussell & Howe Ltd is a local Firm providing a comprehensive range of legal services to the general public. We aim to provide an effective and efficient service in a friendly and approachable manner, and to combine modern ideas and technology with the traditional values of a family practice. This leaflet explains how we deal with children matters.

YOUR MATTER EXPLAINED

Problems in relation to children can cause significant stress and this leaflet explains how we deal with private law matters.

THE LAW

All cases concerning children are governed by the Children Act 1989 and the Adoption and Children Act 2002.

The procedure in children matters is set out in the Child Arrangements programme which came into force on the 22nd April 2014.

Section 1 of the Children Act states that the interests of the child will be paramount when a court makes a decision about that child and a series of factors are considered in deciding what is in the child's best interests. These factors are known as the Welfare Checklist and they are as follows:-

1. The ascertainable wishes and feelings of the child concerned (considering his age and understanding)
2. The child's physical, emotional and educational needs
3. The likely effect on the child of any change in circumstances
4. The child's age, sex, background and any characteristics of the child which the court considers relevant.
5. Any harm that the child has suffered or is at risk of suffering
6. How capable each of the child's parents and any other person in relation to whom the Court considers the question relevant is of meeting the child's needs.
7. The range of powers available to the court under this act and the proceedings in question

The Family Court presumes that the involvement of a parent in the child's life will further the child's welfare so long as the parent can be involved in a way that does not put the child or other parent at risk of suffering harm.

Procedure

Firstly in most cases you will need to see a Mediator so that your case can be assessed for suitability for mediation. The Mediator will need to complete part of your application form to the court to confirm that this step has been taken, except in very urgent or unusual circumstances. An application form is completed containing information regarding the parties to the case and the children and indicating what you are asking the Court to do and why. The family Court allocate the case to the appropriate part of the court. (Judge or lay Magistrates) and tell CAFCASS Cymru about the application so that they can make safeguarding enquiries which involve discussions with the Police, Social Services and with the parents. The case will then usually proceed to a First Hearing Dispute Resolution Appointment attended by the parties and CAFCASS Cymru when conciliation will usually be attempted to see whether agreement can be reached or issues between the parents narrowed at that appointment. The Court can make an order, refer the parents to mediation so

that issues can be discussed further or make directions as to how the case should proceed. This can involve asking for statements to be filed and in some cases a welfare (Section 7) report to be prepared by CAFCASS Cymru. If the court is informed that there is an issue as to whether there has been domestic violence then it may be that the court will wish a fact finding hearing to take place to determine whether any allegations made are true or not. This will not always be needed and we will advise as to how we think these issues should be approached where they arise in your case. Lastly the court will hear evidence in any contested case and make their decision. Courts really prefer not to have to make orders regarding children as they feel that parents should make decisions wherever possible and they will only make orders where they feel that it is in the best interests of the child to do so.

Child Arrangement Orders.

These orders replace the concepts of Residence and Contact and will set out arrangements relating to (a) the person with whom a child is to live, spend time, or otherwise have contact with and (b) where the child will live, spend time or otherwise have contact with any other person.

Specific Issue Orders

A specific Issue Order is one giving Directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

A Specific Issue Order cannot be made to achieve a result which could be achieved by making a Child Arrangement Order. Examples are:-

- to determine where a child should be educated;
- to determine issues of religion;

- to determine issues of medical treatment.

Prohibited Steps Order

A Prohibited Steps Order is one which provides that no step which could be taken by a parent in meeting his parental responsibility for a child and which is of a kind specified in the Order, shall be taken by any person without the leave of the Court.

Examples of possible Prohibited Steps Orders are :-

- an order preventing the removal of the child from the UK (when there is no Residence Order and consequently no automatic ban on removal)
- an order preventing the child undergoing certain surgery, or receiving a blood transfusion;
- an order preventing a change in the child's schooling;
- an order that the child's name should not be changed.
- an order preventing the parent from exercising his right to see the child's school record under the Education (School Records) Regulations 1989.
- an order prohibiting any person from allowing the child to have contact with a named individual.

Parental Responsibility

All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child or his property is now called "Parental Responsibility".

This embraces many rights and responsibilities in relation to a child, and it is not possible to provide an exhaustive list. Examples might be chastisement, consent to medical treatment, decisions about education and adoption, consent to marriage, appointment of a

Guardian for the child, matters concerning the child's assets, rights to apply for a passport or refuse a passport application. Whether or not a parent has responsibility for a child does not affect obligations towards the child such as duties to maintain that child nor does it affect succession rights.

Parental Responsibility does not necessarily attach to one person only and is more commonly held by both parents. It can also be held by those with whom a child lives. If a Child Arrangements Order indicates that a child should live with someone who does not have Parental Responsibility then that will automatically confer Parental Responsibility.

Local Authorities can acquire Parental Responsibility for instance if they obtain Care Orders in relation to children.

Parental Responsibility can be exercised by one person independently, but it is clearly best for parents to work together wherever that is possible.

A child's mother will automatically have Parental Responsibility for a child, as will the father of a child who is born within a marriage. Parental Responsibility can also be acquired in the following ways:-

- By marriage of the father to the mother subsequent to the birth.
- By the parents entering into a Parental Responsibility Agreement which would then need to be lodged at the Principal Registry of the Family Division in London.
- By the Court ordering Father to have Parental Responsibility.
- By becoming a Testamentary Guardian for the child on the death of the Mother (the appointment by Will, will not take effect unless or until there is no natural parent with Parental Responsibility)
- By any person obtaining an order that the child should live with him or her.

- If the child was born on or after 1st December 2003 an unmarried father who is registered on the birth certificate at the time of initial registration automatically has Parental Responsibility.
- By re-registration of the Birth Certificate to include the Father if there is no father already mentioned and if this takes effect with the Mothers consent.

Some of the terms you may need explained:

Cafcass	Cafcass stands for the 'Children and Family Court Advisory and Support Service'. Cafcass is independent of the courts, social services, education and health authorities and all similar agencies. Cafcass workers (sometimes called 'Family Court Advisors' or 'Officers') are specialist social workers who help the court by making safeguarding checks, helping parties at the FHDRA to consider solutions, and if necessary writing reports for the court and or monitoring arrangements after court.
CAFCASS Cymru	This is Cafcass in Wales. CAFCASS Cymru is part of the Department of Health and Social Services in the Welsh Government.
Contact Centre	A place for a parent to see their child in a neutral and 'safe' environment. 'Supervised' contact centres provide a safe and neutral place for contact. 'Supported' contact centres, which are often run by volunteers, offer a neutral place for contact in cases where no safety concerns exist.

Domestic Violence	<p>This phrase is used to describe a wide range of behaviours including any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse: psychological, physical, sexual, financial, or emotional.</p> <p>Controlling behaviour is: a range of acts designed to make a person subordinate and / or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.</p> <p>Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim.</p>
Investigation under section 37.	Where it appears to a judge that a child is or may be at risk of significant harm and it may be appropriate for local authority children's services to apply for a court order giving them responsibilities towards a family, the judge can direct the local authority to investigate the child's circumstances.
McKenzie Friend	A friend or other person who can help you prepare your case and go

	to court with you to give you support and take notes.
Section 7 report	A welfare report, prepared under section 7 of the Children Act 1989; the report will be on such matters relating to the welfare of that child as are required to be dealt with in the report; the report may be in writing or oral.

MEDIATION

Mediation is not marriage guidance counselling and is not aimed at helping you reconcile (although if we feel that need assistance in this regard we can refer you to appropriate bodies such as Relate who can help.)

Mediation is a process whereby you and your former partner can be assisted to make your own decisions in relation to issues that you both wish to resolve. It is a voluntary process and you cannot be forced to participate.

The mediator is an independent and impartial person who will not act as a judge or arbitrator but who will try to facilitate constructive discussions between the two of you. Mediation is confidential in terms of offers that you make to agree matters. Information shared, particularly in financial matters can however be used in any subsequent proceedings. In addition if the mediator feels that any information is shared which suggests that harm may come to any person particularly a child then such information can be passed on to relevant authorities.

The mediator does not provide legal advice and in the event that you decide to mediate, it is important that you bear in mind that you can obtain your own independent legal advice whenever you wish to do so. You will be encouraged to do so.

The mediator is under a duty to act fairly towards both persons involved. The mediator cannot embark on secret discussions with either of the persons involved in mediation. The content of any discussions with either of you would need to be shared with the other.

COSTS

If your matter is being legally aided then we will have set out the full position in an accompanying letter.

If you are paying our costs privately then you will have received a letter setting out our charging rates and providing you with an estimate of costs, and a request for payment on account of costs.

Please note that we cannot accept payments in excess of £500.00 in cash, but would need such payments to be made by cheque, standing order, bankers draft or bank transfer.

If you do have any concerns about the costs you may have a right to object to the by applying to the court for an assessment of the bill under Part III of the Solicitors Act 1974. Details are available upon request.

IDENTIFICATION

It is our standard practice these days to request all clients to provide satisfactory evidence of identity. Please would you be good enough to call at the Office at an early stage bringing with you suitable identification for photocopying. Occasionally, we may be asked by third parties to produce evidence of your I.D. and we will assume unless you advise us to the contrary that you have no objection to us passing on details of your I.D. in such case.

COMPLAINTS

We do of course very much hope that you will not have cause to complain about the services which you receive from us. If you do however have any concerns about the way in which your matter is being handled, the costs presented to you or about our services generally, we should be grateful if you would please in the first instance contact the Fee Earner having the overall conduct of this matter in order to discuss your complaint. Should we be unable to resolve any complaint raised by you by this method, then we will ask you to put the complaint in writing to our Complaints Manager, John Hussell. He will then deal with the complaint from that point, providing you with full details of our complaints procedures. If your complaint is regarding a matter that he has conducted, then Mrs Sally Kingsbury will deal with the complaint.

If you are still not satisfied you can contact the Legal Ombudsman (www.legalombudsman.org.uk). Tel: 0300 555 0333. Or you can email them at enquiries@legalombudsman.org.uk. Any complaint to the Legal Ombudsman must usually be made within six months of receiving a final written response from us. The Legal Ombudsman may not consider a complaint about the bill if a client has applied to the court for assessment of the bill.

CONFIDENTIALITY

We will not discuss your business or disclose the contents of your file to any third party without your written consent except that:-

- Unless you instruct us otherwise, your file may be used for auditing or monitoring purposes and
- We are legally obliged under the Proceeds of Crime Act 2002 and other similar legislation

to report any knowledge or suspicion of money laundering to the National Criminal Intelligence Service

CONCLUSION

We hope that the above notes and observations are helpful to you and will assist you in understanding how this matter is being dealt with. Please retain it for reference and if you have any comments or observations about our services then please do not hesitate to let us know.

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This leaflet is intended as a guide for existing clients of Cameron Jones Hussell & How Ltd. It is not intended to be a detailed statement of the law nor does it obviate the need to take detailed legal advice