

**Child Proceedings Factsheet - private law**

This factsheet provides some basic information about the law and procedure concerning orders that private individuals can apply for in relation to children. It does not cover care, supervision or adoption orders.

**First Steps (Mediation)**

In most cases mediation is a necessary first port of call to resolve a child-related dispute. This has been actively encouraged by the Government and the courts. Since April 2014 anyone wanting to apply for an order will have to **provide evidence that they have tried mediation first**, or meet set criteria (such as recent domestic violence) to be **exempt**. There are several good reasons for this:

1. It is cheaper than instructing a solicitor, and if you are on low income or income-related benefits, legal aid is still available for family mediation.
2. It will help all the adults concerned resolve matters in a neutral, non-confrontational way, without having a decision imposed on them by the court.
3. It helps prevent the court system being overrun with cases which could easily be dealt with at mediation.

However it is still not compulsory for the other party to attend, so if they refuse to go, or mediation is deemed unsuitable then a court application may be unavoidable. The mediator will in such cases endorse the relevant court application form (usually a C100 for orders under Section 8 Children Act 1989).

**Who can apply**

Any parent or guardian can apply for an order relating to their child, or a step parent or anyone who has lived with the child for at least 3 years. Other categories of people can apply such as grandparents, but may have to apply for ‘leave’ or ‘permission’ from the court and would need to show that there is sufficient merit in the application.

**The orders available**

**Child Arrangement Order (CAO).** This replaces the previous residence(custody) and contact (access) orders. This is to remove the perception of one parent having sole care of a child, and is a way of encouraging the parties to engage more in shared parenting. So for the old style residence the order now states that a child ‘lives with’ a particular parent; and contact is now stressed as ‘spending time with’ the other parent.

A ‘spend time with’ CAO sets out how much time the absent parent can have with their child. This can take various forms, from staying with the absent parent for alternate weekends and up to half school holidays, to very limited supervised visits, or even just indirect contact in the form of telephone calls, letters, emails, Skype, etc. What type of order is granted very much depends on the circumstances of the case.

If such an order is breached the absent parent can pursue enforcement proceedings at the court where the order was made. If satisfied that a breach has occurred, the court can impose punitive measures such as ordering the offending party to do unpaid work, making them pay a financial compensation order, and in extreme cases, imprisonment.

A ‘living with’ (old style residence) CAO legally confirms the person with whom a child is to live with as their primary carer. Such an order will automatically give that person parental responsibility if they do not already have it. This order can be produced to the police if the child is taken away without the residence holder’s consent. It also prevents anyone changing the child’s surname or removing the child from the UK without the consent of the order-holder. However the person who has ‘residence’ can take the child abroad for up to one month without getting the agreement of the other parent first. This order can also be granted to more than one person, under a shared care arrangement for instance.

**Prohibited Steps or Specific Issue orders.** These orders are designed to either stop a parent taking a particular step concerning a child or to make a decision about a particular issue. For example, prohibited steps could be to avoid taking a child out of the country or from coming into contact with a particular person. A specific issue order can address important matters such as which school a child should go to, or what name they should have.

**Parental Responsibility (PR)**.Thisis a legal title conferring all the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to a child and his property. It is important for a person with care of a child to have this so that they can make important decisions regarding their upbringing particularly when it comes to health and education.

The birth mother will always have PR and this can only be extinguished if the child is adopted. Where the child's parents are married at the time of birth, they will both have PR. For unmarried couples, the father will have PR if he is named on the birth certificate and the child was born on or after 1 December 2003.

Other ways in which a father can obtain PR are by (a) drawing up an agreement with the mother (b) marrying the mother; or (c) obtaining a PR or residence order from the court. Step-fathers can also apply for PR for their wife’s child(ren) by agreement or order as can some same sex couples.

**A bit about the law**

This area of law is set out in the Children Act 1989 and is very much focussed on the child's welfare which has to be the court’s ***paramount consideration***. Before making any orders the court will consider ***the welfare checklist***, which includes:

a) the wishes and feelings of the child concerned, considered in light of his/her age and understanding; *so the older the child – the more their views are taken into account.*

b) the child’s physical, emotional and/or educational needs;

c) the likely effect on him/her of any change;

d) the child’s age, sex, background and any other relevant characteristics;

e) any harm which he/she has suffered or is at risk of suffering;

f) how capable each of his parents and any other person in relation to whom the court considers the question to be relevant, is of meeting the child’s needs;

g) the range of powers available to the court under the Children Act 1989

**Court process – a brief overview**

This is started by filling in the relevant application form(s) which unless a specific exemption applies will also need to be signed off by a mediator; and sending to the family court most local to the child in question. A fee is also payable (currently £215) unless the applicant is entitled to fee exemption in which case an EX160 form should also be completed and supported with evidence of income – see the court’s EX160A leaflet. Once issued, the court will provide a notice of hearing (usually in 4-8 weeks time) and a separate set of papers to be served on the other party. The person applying (or their solicitor) must ensure these papers are sent to, or served upon, the other party and provide evidence by completing a C9 form.

It is important that the parties’ full names, DOB and recent addresses are included on the application. This is because CAFCASS will be sent a copy of the application and need to contact police and social services prior to the first hearing to conduct ‘safeguarding checks’¹. They will also contact both parents and compile a brief report for the judge at the first hearing.

**First hearing**. Save in cases of emergency, the court will list this as a ‘First Hearing Dispute Resolution Appointment’ with a view to encouraging the parties to try and agree or narrow the issues between them. An officer from Cafcass is usually present to assist with this process and provide a copy of the safeguarding report. Quite often this report will set out some recommendations to help guide the parties and the judge. In many cases agreement can be reached at the first hearing and the court will make the appropriate order.

If not, it will consider what ‘directions’ should be made to timetable the case in the future. This could include when each party should file a statement, if Cafcass or social services should do a more detailed report which usually takes 2-3 months, whether any interim orders should be made, e.g. ongoing contact; and when the next hearing will be. It is also common for the court to order both parents to attend a ‘Parenting Information Programme’[[1]](#footnote-1). After each hearing, the court will produce a typed/sealed order which is sent out by post.

For more information see: **CB1** a leaflet issued by the Ministry of Justice downloadable from <http://www.justice.gov.uk/forms> .

1. *See:* [*www.****cafcass****.gov.uk/*](http://www.cafcass.gov.uk/) for leaflets: ‘Putting your children first’ and Separated Parents Information Programme [↑](#footnote-ref-1)