Children: Court Procedure

McALISTER FAMILY LAW

Overview

This factsheet explains the steps involved in obtaining a Family Court order for a child. Please see our factsheet **Children - Range of Private Law Orders the Family Court can make** for the types of orders for which you can apply.

Overview – The Child Arrangements Programme

The Child Arrangements Programme ('CAP') applies where a dispute arises between separated parents and/or families about arrangements concerning children.

The CAP is intended to assist families to reach safe and child-focused agreements for their child and where possible out of the court setting. It is recognised that negotiated agreements between adults generally enhance long-term co-operation, and are better for the child concerned. This may also be quicker and cheaper.

A Parenting Plan is recognised as being a useful tool for separated parents to identify, agree and set out in writing arrangements for their children; such a plan could appropriately be used as the basis for discussion about a dispute which has arisen and may be useful in any event for assisting arrangements between separated parents.

If parents/families are unable to reach agreement, and a court application is made, the CAP encourages a swift resolution of the dispute through the court.

Prior to making an application

Prior to making an application the intended applicant must attend a Mediation Information and Assessment Meeting (MIAM) with a mediator. The prospective Respondent is also expected to attend. There are limited exceptions to this obligation. This is to assess whether or not mediation might prove helpful to resolve the dispute.

It is not expected that persons who are the victims of domestic violence should attempt to mediate or otherwise participate in forms of non-court dispute resolution. It is also recognised that drug and/or alcohol misuse and/or mental illness are likely to prevent couples from making safe use of mediation or similar services; these risk factors are likely to have an impact on arrangements for the child.

A Form must be signed by the mediator to confirm that the MIAM has happened or mediation is not suitable such as any risk factors to enable an application to be made to court. An application for an order risks rejection by the Family Court if a MIAM has not been attempted, unless the application is of an urgent nature such as there being risk of harm to a child.

Issue of application

If it is not possible to reach agreement through mediation or via solicitors, an application form C100 with MIAM certification will usually be filed in the Family Court nearest to where the child lives. If the parties have previously prepared a Parenting Plan, this shall be attached to the Form C100.

The C100 will ask whether there are allegations that a parent has caused or is a risk of causing physical or emotional harm to the child or other parent. If so a Form C1A Supplemental Information Form "Allegations of Harm and Domestic Violence" form must also be sent to court with the C100.

The court rules say who should be the other parties to an application concerning a child and will almost always include the other parent. Some cases will involve other people or organisations. The other parties are referred to as respondents.

Upon receipt by the court the application will be considered by a Legal advisor and/or District Judge as "gatekeepers" who will allocate the proceedings to an appropriate level of judge intended to retain conduct throughout taking into account the circumstances and particular issues or complexity of the case. Decisions may be made to have an early hearing if the circumstances require it.

In any event, the matter will usually be set down for a FHDRA (see below) and The Children and Family Court Advisory and Support Service (Cafcass) will be required to undertake safeguarding checks (within 17 days of receipt of the request and no later than 3 days before the FHDRA) by speaking with the parties and checking local police and social service records to see whether there are any issues of concern that might be relevant to the children's safety and welfare which the court will need to consider in making any decisions about the child.

Once the application has been issued a copy of it must be served on all respondents. This must be accompanied by a notice providing the time, date and place of the first hearing, and an acknowledgment of service form. These documents must be served at least 10 working days before the first hearing. However, this time period for service can be reduced by a court dealing with an urgent issue (called "abridging the time for service").

Each respondent must confirm safe receipt, within fourteen days of receiving the application and supporting paperwork. This is done by completing the acknowledgement of service form and returning it to the court.

First Hearing Dispute Resolution Appointment (FHDRA)

The first court hearing for most applications about children will be a First Hearing Dispute Resolution Appointment – FHDRA. The FHDRA may, where time for service has been abridged (i.e. shortened due to urgency), take place within 4 weeks, but should ordinarily take place in week 5 following the issuing of the application; at the latest it will take place in week 6 following the issuing of the application.

The purpose of the FHDRA is to help the parties resolve some or all of the issues in the dispute, and to manage any unresolved matters through to a resolution.

A CAFCASS officer called a Family Court Advisor will usually be in attendance. He or she, together with the Judge, will help the parties identify solutions to the dispute between them, and if possible to reach agreement. The exact process differs from court to court: some CAFCASS officers will see you prior to going into court, while others will sit with the Judge to discuss the case.

If you are able to reach an agreement on some or all matters, that agreement can be recorded in writing and, if approved by the judge, made into a court order (called a consent order).

McAlister's acknowledged expert on Children Law - Chris Fairhurst

If agreement on all matters cannot be reached at the FHDRA, the Judge will consider what must be done to get your case ready so a court can decide the issue/s. These steps (sometimes called directions) might include:

- the parties to file written evidence
- third parties to give written evidence (e.g. new partners, school teachers etc)
- preparation of expert reports (e.g. from a doctor or other medical professional)
- preparation of a CAFCASS Section 7 report (Welfare Report)
- need of other evidence (e.g. drug/alcohol tests)
- whether a Finding of Fact or other interim hearing is required.

Finding of Fact/Interim Hearing

If there are any allegations of domestic abuse or other welfare issues which one parent says should impact upon whether the other parent spends time or the amount of time, including overnight stays, the court may direct that a Finding of Fact hearing takes place before any report is prepared by CAFCASS.

This is because there may be disputed facts, particular if the allegations are denied and the court needs to determine the matter as soon as possible in order to provide a factual basis so that CAFCASS may undertake an accurate assessment of any risk and consider any welfare-based order at the Final Hearing.

Any Findings of Fact by the court will be based upon a "balance of probability" i.e. whether an allegation is more likely than not

to have happened, in which case it is determined to be a fact. This is less onerous than the burden of proof in criminal cases which is “beyond all reasonable doubt”.

CAFCASS (Section 7) Report

The court can direct a report from CAFCASS on any question relating to a child, whether that relates to establishing the wishes and feelings of a child or undertaking a more complex investigation where welfare concerns are raised by one party or both.

The Family Court Advisor will see all the evidence and documents filed with the court. He or she will also see both parties, usually in their homes, with or without the children present and might also ask to see other important people (for example, new partners, grandparents, etc).

S/he may also meet the children and discuss, taking account of their age and understanding, their wishes and feelings, and may also contact schools, social services and any other organisations they consider necessary to complete their report.

All parties will receive a copy of the CAFCASS report which will set out the issues, the parties views, those of the children if appropriate, an assessment of other information as well as a recommendation to the court about the order it should make before any final hearing to enable to the parties to consider whether agreement is possible without further involvement of the court.

If not, The Family Court Advisor will not automatically attend the final hearing. If, however, a party wishes to ask questions about the report, they can ask the court to direct the CAFCASS Officer to be present.

Dispute Resolution Appointment

After the CAFCASS report is produced, the CAP provides for a Dispute Resolution Appointment. This is so the court can make sure the case is ready for a final hearing but most importantly provides a court based opportunity to try and narrow the issues and come to an with the input of the Judge. If agreement cannot be reached then any outstanding enquiries can be identified and receive attention in the time remaining before final hearing.

Final Hearing

All parties must attend the Final Hearing unless the court says otherwise. Most hearings will be held in private, which means that only the parties and their legal representatives may be in court, save for any witnesses who will be in court for the duration of their evidence.

Often, the the Family Court Advisor if required will give evidence first. He or she may then be asked questions by the parties’ lawyers and/or by the Judge. Then, unless the court determines otherwise, the Applicant’s case will be put first by giving of evidence by the applicant and any supporting witnesses, followed by the Respondent and their witnesses.

Each witness may be asked questions by the other parties’ lawyers (called cross-examination) and/or by the Judge following their ‘evidence in chief’.

After hearing all the evidence and any arguments about the law, the Judge will make a decision as soon as practicable. In many cases, this will be immediately after hearing the evidence and legal arguments. In some situations, the Judge might take a little time to consider the case before announcing the decision (called reserving Judgment).

When the Judgment is given setting out the decision, the court must also explain why it made its decision. The Judge also needs to determine any disputed facts and set out the legal principles that apply.

After the decision, the court will prepare (or sometimes ask the parties’ lawyers to prepare) an order that gives effect to the Judgment, which will be served on the parties as soon as possible.

Appeal

The court’s decision needs to be capable of being understood. If the reasons for the decision are not set out clearly or the court does not properly explain how it has applied the law then it risks a party to the proceedings appealing the decision.

An appeal is a request made to a higher court to review a decision made by a lower court. It is not a rehearing of the case you presented; you may not submit any new evidence. An appeal must usually be lodged within 21 days of the original decision with the permission of the original court.

It is not enough that you do not like the first decision as judges in the Family Court have a wide discretion when coming to a decision. You will need to show that the judge was plainly wrong in coming to the decision it did. It is a high threshold to meet.

To find out more, please contact our team now on

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