



# CHILDREN: A BRIEF GUIDE TO OBTAINING ORDERS UNDER THE CHILDREN ACT 1989

If separating couples cannot agree arrangements for their children it may be necessary to seek the assistance of the court.

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Issues in respect of a child's home, choice of school and parental rights are not just dealt with within a divorce setting. Freestanding applications can be made to the court on any question of a child's welfare. A parent or a person with parental responsibility can apply at any time for orders from the court. Other relatives, for example grandparents, can apply to the court for an order if they obtain the court's permission to do so.

Applications to the court are made under the Children Act 1989, the principles of which are set out below.

## THE CHILDREN ACT WELFARE PRINCIPLES

The guiding principle of the Act is that the welfare of the child is of paramount consideration. The court must have regard in particular to s.1(3) factors which are as follows:

- The ascertainable wishes and the feelings of the child concerned (considered in the light of the age and understanding of the child).
- The physical, emotional and educational needs of the child.
- The likely effect on the child of any change in circumstances.
- The age, sex, background and any characteristics of the child which the court considers relevant.
- Any harm the child has suffered or is at risk of suffering.
- How capable are each of the child's parents (and/or any other relevant person), of meeting the child's needs.
- The range of powers available to the court under the Act and the proceedings in question.

The court must consider whether making an order would be better for the child than making no order at all. There is a presumption that no order will be made by the court unless it is better for the child to do so. This is referred to as the 'no order principle'.

There is an emphasis on avoiding unnecessary delay. Delay in determining any question in respect of a child's welfare is deemed likely to prejudice the welfare of a child.

## NON-COURT DISPUTE RESOLUTION

It is a legal requirement to attend a Mediation Information and Assessment Meeting (MIAM) before making a court application. This will be with a trained mediator who will provide information about mediation and other non-court dispute resolution options (NCDR) and assess whether they are appropriate. NCDR means methods of resolving a dispute other than through the court process, including but not limited to mediation, arbitration, evaluation by a neutral third party and collaborative law.

There are some limited exemptions to this requirement such as where there has been domestic violence or where one party lives abroad. The other party or parties to the intended application will also be invited to attend a MIAM although this may be at a separate meeting. If mediation or other form of NCDR is not deemed suitable the mediator will complete the necessary section on the application to be sent to the court. The court is able to adjourn proceedings at each stage to enable alternative forms of dispute resolution to be attempted if the judge feels this would be more suitable. Applications may either be heard by a District Judge or Magistrates.

## TYPES OF ORDER

The main types of court order are as follows:

- A Parental Responsibility order
- A Child Arrangements order
- A Prohibited steps order
- A Specific issue order

### Parental Responsibility Order

Parental responsibility and legal parenthood are legal terms which relate to the rights and responsibilities which parents and other adults have in relation to children. Both are possible at once, but it is also possible to have parental responsibility without being a legal parent. Legal parenthood is outside the scope of this briefing note.

Parental responsibility refers to the rights, duties and responsibilities that a parent has towards a child. Some parents have parental responsibility automatically. In most cases, being named on a child's birth certificate or giving birth to a child means you have parental responsibility. Others need to take steps to acquire parental responsibility to ensure that they have the same parental legal rights, and it may be necessary to apply for a parental responsibility order. This order recognises that parents have equal responsibility for their children, and that they should consult each other on all major decisions relating to the welfare, education and development of the children.

### Child Arrangements Order

This order will set out the arrangements detailing with **whom** a child is to live, spend time or otherwise have contact. It may also set out **when** a child is to live, spend time or otherwise have contact with **any other person**. Where an order is in force that regulates who a child shall live with you are not permitted to: i) change their surname or ii) remove them from the UK without written consent of each person with parental responsibility or the permission of the court. This does not however prevent the removal of a child for less than one month by a person named in a Child Arrangements Order as a person with whom the child shall live. Child arrangement orders have replaced the previous use of 'residency orders', the idea of sole or shared residency no longer applies.

### Prohibited Steps Order

This order is akin to an injunction and prevents a specific step being taken in respect of a child. Examples may be to prevent a child's school being changed, or preventing the child being taken somewhere on holiday. Conditions and directions may be attached to the order.

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### Specific Issue Order

A specific issue order enables a parent and/or others to bring a particular question relating to the exercise of parental responsibility to be determined by the court. Examples of issues include the future of a child's schooling, medical treatment, religious upbringing, change of surname, the removal of a child permanently from the jurisdiction of England and Wales, or relocation of a child within England and Wales. Directions and conditions may also be attached to the order.

### THE ROLE OF CAFCASS

Cafcass stand for Children and Family Court Advisory and Support Services.

After submitting an application to the court for a Child Arrangements Order a Cafcass Officer will usually contact both parents to discuss the application and issues.

Cafcass are there to advise the court on what they consider to be in the best interest of the child/children subject to the application.

They will carry out safeguarding checks with the police and children's services and prepare a short report for the court prior to the first hearing. On the day of the first hearing each party may also have an opportunity to speak to a Cafcass Officer.

Depending upon the issues in the application, the involvement of the Cafcass officer may stop at the first hearing. However, if the court deems it necessary, they may ask the Cafcass officer to work with the parties and child/children to further consider the issues in the case. This may result in the Cafcass officer producing a report for the case recommending an outcome or suggesting further work.

### Planning Together for Children Course

In circumstances where separated parents are in dispute about any issues relating to a child, the court is likely to direct that they attend the Planning Together for Children course. This will probably happen very early on in any court proceedings. The course is designed to assist parents in identifying the areas of conflict between them, in communicating more effectively and in seeing the others viewpoint to minimise conflict and the impact this has on their children.

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### KEY CONTACT

For further information about any of the issues raised in this guide, please contact:

#### **Nicola Harries**

Partner

**T:** +44 (0)1483 401262

**M:** +44 (0)7917 166357

**E:** [nicola.harries@stevens-bolton.com](mailto:nicola.harries@stevens-bolton.com)



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## STEVENS&BOLTON

Wey House, Farnham Road  
Guildford, Surrey, GU1 4YD  
Tel: +44 (0)1483 302264  
Fax: +44 (0)1483 302254  
DX 2423 Guildford 1  
[www.stevens-bolton.com](http://www.stevens-bolton.com)

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