

CROSSMANS MTA

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Children and the Law



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This guide gives full details of our charges and includes a guide to the procedures with regard to a Court application in relation to a child or children.

Court is not the only option of course. Many disagreements and disputes can be resolved by way of negotiation and/or mediation.

This guide is not meant to be exhaustive; there are many factors involved when there is a disagreement or dispute. We have tried to set out the stages but do advise that each case and Court can be very different.

We will be happy to provide further information upon request.

EXPLANATION OF WORDS

Applicant

The person who makes the application.

CAFCASS

Children and Family Court Advisory and Support Scheme (formerly Court Welfare). Please see the section later in this Guide which explains this in full.

Costs

Either an Applicant or a Respondent can make an application that the opposing party pays their costs. These orders are however rare. We will advise further if necessary.

Court Order

As the name suggests. It is an important document telling you to do or carry out some act.

Parental Responsibility

Rights and responsibilities each parent has in relation to a child and his/her property. Please see the section later in this Guide which explains this in full.

Respondent

The person who receives the application from the Applicant and the Court.

Section 8 Order

These are the main orders applied for (or responded to) when a dispute relating to a child occurs. They are as follows:-

- Residence Order
- Prohibited Steps Order
- Contact Order
- Specific Issue Order

A full explanation of each is given later in this Guide.

PARENTAL RESPONSIBILITY

What is it?

Legislation defines this as “all the rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child and his property”.

It gives a parent the responsibility of taking important decisions in a child’s life for e.g. education, religion and medical care.

In a day to day situation it allows a parent to take decisions such as nutrition and outings.

Who has it?

Both mother and father if married have joint Parental Responsibility. If parents are not married only mother has Parental Responsibility.

Prior to the 1st December 2003 unmarried fathers could only acquire Parental Responsibility* in one of the following ways:-

- By making a Parental Responsibility Agreement with the mother of the child (this involves completing a straightforward form, a copy of which is at Appendix one) or
- By applying to the Court for an Order or
- By applying to the Court and being granted a Residence Order or
- By being appointed guardian by the child’s mother/another guardian or
- By being appointed the child’s guardian by the Court

From the 1st December 2003 there are 3 options for the unmarried father to acquire Parental Responsibility. These are :-

- By the placing of their name on the child’s birth certificate or
- By making a Parental Responsibility Agreement with the mother or
- By Court Order.

This new provision is not retrospective for e.g. if the unmarried father’s name is on the child’s birth certificate and has been since before the 1st December 2003 this does not now automatically provide Parental Responsibility. This provision only applies to births registered from the 1st December 2003.

Various other people may also acquire Parental Responsibility for e.g. a local authority, anyone granted a Residence Order, step-parent by adoption or Residence Order, a grandparent by adoption or Residence Order. For further information please contact us.

If you do require Parental Responsibility please contact our Family department.

Once obtained, can it be lost?

Only in limited circumstances. Parents will lose Parental Responsibility if a parent dies or the child is adopted.

If an unmarried father has obtained Parental Responsibility by way of an order or agreement (see above) the Court can make an order ending Parental Responsibility. There would have to be serious circumstances and further details are available upon request.

If Parental Responsibility has been obtained by way of Residence Order, Parental Responsibility will end when the Residence Order ends (this does not apply to unmarried fathers who will retain Parental Responsibility).

SECTION 8 (Children Act 1989) Orders

The Court can make the following orders in relation to a child or children in the event of a dispute.

Residence Order

This was previously known as a 'Custody Order' and determines where and with who a child is to live.

The order can be made in favour of parents (married and unmarried) and also non-parents (e.g. grandparents). In the latter case a non-parent will also acquire Parental Responsibility with the Residence Order.

A Residence Order can also be 'split' or 'shared' which means it can be made in favour of two or more person and determines the periods of time which the child is to live in the different households. For e.g. a child could live Monday to Thursday with one parent and the remainder of the week with the other parent.

If a Residence Order is in force the order will state that the child's surname cannot be changed without either the permission of the Court or the written consent of every person who has Parental Responsibility. In addition, where a Residence Order is in force, no person may remove the child from the UK for more than a period of 4 weeks without the permission of the Court or the written consent of every person who has Parental Responsibility.

Contact Order

This was previously known as an 'Access Order'. It is an order that requires a person with whom a child lives to allow the child to visit or stay with a person named in the Contact order (this can be a parent, grandparent or even distant relatives or friends of the child).

A Contact Order can be for direct contact or indirect contact for e.g. letters, emails and telephone calls.

A Contact Order will also usually contain conditions as to how long the contact is to take place. It can also stipulate where contact is to take place for e.g. a Child Contact Centre. These centres are usually used where arranging contact might be difficult. More details are available upon request.

Prohibited Steps Order

This is an order that no step which could be taken by a parent in meeting his or her Parental Responsibility for a child (see above for a definition of Parental

Responsibility) can be taken without the consent of the Court. Prohibited Steps Orders are used for specific problems such as preventing a parent removing a child from the UK or prohibiting a parent changing a child's surname (if no Residence Order is in force).

Specific Issue Order

This is an Order giving directions for the purpose of determining a specific question in relation to a child. For e.g. if a dispute has arisen in relation to which school a child should attend an application for a Specific Issue can be made. The Court will then determine the question.

For further advice or information please contact our Family department.

PROCEDURE

We will need to assess if an application can be made without the Court's permission.

The following people can apply without permission: -

- a parent; or
- a guardian; or
- a person with a Residence Order.

The following can apply for a Residence Order and/or a Contact Order with the Court's permission:-

- a step parent who has treated a child as one of the family; or
- any person with whom the child has lived for 3 out of the last 5 years; or
- any person who has the consent of any other whose legal position would be affected for e.g. anyone with Parental Responsibility or who has a Residence Order.

Any other person not referred to above can apply with the Court's permission.

The next step is to decide which Court to use. This will depend on individual circumstances but will usually be the County Court in the town where the child resides.

The next step is to file the application at Court. It is a straightforward form requiring a small amount of information. This is filed at Court with the required fee of £175.00. A copy of the application once filed at Court is sent to the other party at least 14 days before the first Court hearing.

Once the court have the application they will give a date for the first Court appointment. This appointment should be treated as a conciliation appointment and both parties will be expected to

speak to the CAFCASS officer to see if any issues can be resolved. The Court will also investigate the issues, inquire into the possibility of settling the matter and give direction as to how the case is to proceed.

At this stage, in the event an agreement is reached a Court order can be made consolidating the agreement and that will usually be the end of the proceedings.

If matters cannot be agreed/settled at the first hearing the Court can order the CAFCASS officer to prepare a welfare report. The CAFCASS officer will interview both the applicant and respondent, child concerned and anyone else that is relevant for e.g. grandparents, school teachers etc. The report will often include a recommendation as to what order should be made.

The Court can also order there to be an exchange of witness statements from both parties. The witness statements will set out each parties respective case and arguments.

There will then be another Court hearing once the CAFCASS report has been filed at Court. Any party to the application will have the opportunity of reading the CAFCASS report. At this next hearing there can be a further attempt at settlement. If an agreement cannot be reached a date for a final hearing will be set.

The final hearing will last at least one day but possibly more. The Judge will hear evidence from all parties, CAFCASS and any other evidence. The Judge will then decide whether or not to make the Order applied for or any other section 8 order (whether or not an application is made).

This is just a general guide and can change on a case by case basis.

Duration of section 8 orders

Normally until a child reaches 16 years old but can last until 18 years.

The factors the Court takes into account when deciding a Children Act 1989 application

1. The ascertainable wishes and feelings of the child concerned (considered in light of 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 Children Act 1989 in the proceedings

This is the minimum that will be considered in every case. The list is non-exhaustive and the Court can take any other relevant factors into account. The child's welfare will be the Court's paramount consideration.

CAFCASS

(Children and Family Court Advisory and Support Scheme)

As explained in the 'Procedure' section a CAFCASS (formerly known as Court Welfare Officers) officer is likely to be appointed in Court Proceedings relating to children.

The CAFCASS officer's role is to prepare a report as ordered by the Court but can also give advice to the Court. The CAFCASS report may also contain a recommendation as to whether or not an application should be granted.

MEDIATION

Attached at Appendix 1 is information relating to a Cambridge Family Mediation Service. This is a process whereby you and your opponent can try to reach an agreement in relation to the child(ren) with the help of an independent mediator who will assist. You can take legal advice during the process.

THE MATRIMONIAL / FAMILY DEPARTMENT

Rachel Dunne who is a partner here at Crossmans MTA supervises the department.

Sara Simons who is a Solicitor and also a member to the Law Society's Family Law Panel will look after your case. Sara has vast experience in family law and will endeavour to make the process as straightforward as possible and will ensure you are informed as to the status of your case at every opportunity.

OUR SERVICES

At Crossmans Solicitors we offer a full advice service in relation to matrimonial/family law. Our lawyers are experienced and sympathetic to all our client's problems and needs whilst progressing each case in a professional and understanding manner. We will offer independent advice on how to achieve the best outcome and guide you as to other services that may be available. We specifically offer advice in the following areas: -

Divorce and Separation

Crossmans Solicitors can provide full assistance during this difficult time. We will advise you as to the options available and explain each step that needs to be taken and we will endeavour to make this process as pain free as possible. Please see our Guide "Crossmans guide to Divorce".

Cohabitation

We are able to provide information as to cohabitation breakdown and negotiate on your behalf in the event a dispute arises. We can also provide valuable advice as to the relevant property issues that may need to be addressed and any issues in relation to children of unmarried couples. We can

also prepare Cohabitation Agreements, which will outline your intentions in the event of a separation.

Children

Should a situation arise where there is a dispute in relation to your children our lawyers are fully competent with experience in dealing with any such necessary court application. However, our aim would be to show a sensitive and constructive approach to settling differences, as this is usually beneficial to all concerned.

Financial and property issues

We are able to provide you with the information you will require in relation to any dispute as to the assets of the relationship. Our lawyers have experience in this area and are able to advise how to proceed and negotiate on your behalf and if necessary take your case through the courts. Please see our Guide "Crossmans guide to Divorce".

Matrimonial conveyancing and wills

Should you require any related work carrying out following separation or divorce our property lawyers will be fully informed of your case and it will be dealt with in the same constructive manner with full liaison with your matrimonial/family lawyer. Please see our Guide "Crossmans guide to buying or selling your home" and our leaflet "Why you should make a will".

Domestic violence and injunctions

During this very difficult time our lawyers will be able to offer you immediate advice on the remedies available.

Legal Aid

Crossmans Solicitors offer public funding.

OUR CHARGES

Our hourly rate at present is £160.00 per hour plus VAT. Letters/emails and telephone calls are £16.00 each plus VAT.

We also offer a fixed fee appointment service. The current charge is £75.00 plus VAT for 30 minutes and £150.00 plus VAT for 60 mins. At all other times the charge is per hour (i.e. when the appointment exceeds the fixed fee time).

APPENDIX 1 Cambridge Family Mediation Service

Supporting Families Facing Break-up

Cambridge Family Mediation Service works with couples facing separation or divorce and with other members of their families, offering:

- Information about separation and divorce
- Mediation, helping couples make decisions on practical arrangements
- Counselling for adults and children
- Information on how best to help children through parental separation

Mediation addresses:

- Decisions about the care of the children – contact and residence
- Children's adjustment to their parents' separation
- Financial settlement including the division of assets and payment of debts
- Housing
- Maintenance

Mediators explore possible solutions and practical arrangements with couples. They don't take sides or impose decisions. Their presence provides a calmer way of reaching agreement, avoiding arguments and costly court fees.

Any proposals accepted by both parties can be made binding by their solicitors.

Sessions usually last about 1½ hours. For a simple problem, one visit may be enough, but several could be needed for more complex cases. Children can be consulted. Grandparents and step-parents can also use the service.

There is a charge for the mediation service, which varies according to your income and will be waived if you are eligible for public funding.

Counselling

We offer free counselling to children and young people aged 4 to 19 who are affected by family breakdown. Contributions to the cost of this service are always welcome.

Adult counselling is also available.

The Service is:

Confidential – nothing you say is passed on to anyone without your consent. However, should there be concerns regarding harm to others, particularly children, this will have to be reported.

Privileged – what you say during mediation cannot be quoted in any future proceedings.

Without Prejudice – decisions reached during mediation are not binding unless and until laid down in a Court Order or set out in a legal agreement between you. You are recommended to have a short advice-only session with a family solicitor at an appropriate stage of mediation.

More Information

You can ask for more information about the services we offer. Contact:

Cambridge Family Mediation Service
3rd Floor, Essex House
71 Regent Street
CAMBRIDGE
CB2 1AB

Telephone: 01223 576308
Fax: 01223 576309
E-mail: families@cambridgefms.co.uk
Website: www.cambridgefms.co.uk
Open: 9.30am -5.00pm Monday to Thursday
9.30am -4.00pm Friday

Appointments at other times by arrangement.

The Service is a registered charity dependent for its funds on grants and donations. It operates on a not-for-profit basis.

Affiliated to National Family Mediation Community Legal Service Franchise
Registered Charity Number 1041476. Company Limited by Guarantee: 2975404

Supported by:

Cambridgeshire County Council
South Cambridgeshire District Council
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St John's College
Trinity College
Cambridge & West Suffolk Solicitors Family Law Association
The Mrs Smith and Mount Trust
Dr & Mrs S Bragg
Cambridge Student Rag Appeal
Other friends and supporters

If you require a map to the Cambridge Family Mediation Service, then please contact us on 01223 362414 and we will be happy to place a map in the post for you. Unfortunately, we are unable to produce the map in this form.

MTA Services

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