

Factors Court Takes into Account.

It is important to consider the general principles of the Children Act 1989 ("the Act") which governs any application that we may have to make to the court to resolve any matters relating to children.

The Act regulates arrangements that can be made in relation to children following the breakdown of the parent's relationship. The court generally follows a "no order" principle whereby the court does not make orders in relation to children unless that is absolutely necessary to regulate the situation.

If orders are made they generally relate to which parent the children will reside with (a residence order) and which parent they have contact with. There are two types of contact orders the first being an order for reasonable contact and the second a defined contact order which sets out the time, duration and frequency of contact.

I trust that residence and contact are self-explanatory but perhaps the concept of parental responsibility needs a little further explanation.

It encompasses all the rights and duties which a parent has regarding a child, including for example the right to decide where the child should go to school, what form of religious upbringing the child should have and what medical treatment the child should receive. In practise, it can often mean that schools, doctors, hospitals, social services and other similar organisations may not deal directly with any party who does not have parental responsibility for the child in question.

The parental responsibility is shared jointly between all married parents and as such continues to be the case even after the divorce so long as the child is under the age of 18. Consequently divorce does not end either parent's parental responsibility and your position is not affected in this regard.

Parental responsibility can be used jointly and severally. The resident parent is entitled to make decisions about things such as bedtime, diet and discipline without having to consult the absent parent about these issues. There should be consultation between those with parental responsibility on the more important issues and if agreement cannot be reached the matter may need to be referred to the court for further determination.

The Court also has the power to make two other types of Orders in children matters, namely "Prohibited Steps" and "Specific Issue" Orders.

A Prohibited Steps Order limits when certain parental rights and duties can be exercised whereas a Specific Issue Order contains directions to resolve a particular issue that is in dispute in connection with a child.

A Prohibited Steps or a Specific Issue Order could be obtained for example where there is a dispute as to a child's education; in determining whether a child should be taken abroad; in preventing a parent from seeing the child etc.

In deciding whether to make any Order under the Children's Act the Court must have regard to the following factors: -

- a) The ascertainable wishes and feelings of the child concerned, such being considered in the light of the child's age and understanding,
- b) The child's physical, emotional and educational needs.
- c) The likely affect on the child of any change in his/her circumstances.
- d) The child's age, sex, background and any other characteristic that the Court considers relevant.
- e) Any harm which the child has suffered or is at risk of suffering
- f) How capable each of the child's 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's Act in the proceedings in question.

Under the Children's Act there is a presumption that the Court should not make any Order whatsoever unless there is a dispute between the parents and the Court considers the making of an Order is in the best interests of the child. Consequently if the parents are not in dispute or if for any other reason the making of an Order would not be in the best interests of the child, the Court will not make any such Order. When making any such decision, the Court's paramount consideration is the welfare of the child and not of the parent.

The Act also provides that "delay" is generally believed to be harmful to the child's welfare and should thus be avoided wherever possible.

I hope that you find the above explanation useful and if it is that you feel it appropriate to apply for any of the Orders mentioned above, please do not hesitate to contact us to discuss matters further.