

**CHILDREN'S APPLICATIONS INVOLVING  
SAME SEX PARTNERS**

We hope that the information provided in this fact sheet about Children Act applications will assist you in understanding the procedures.

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**Children's  
Applications  
Involving  
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The Children Act sets out three very important principles:

- The welfare of the child is of paramount importance.
- Any unnecessary delay in settling a dispute may be harmful to the child.
- The court will only make an order where it would be better to have an order than to have no order at all.

The philosophy behind the Children Act and the court is to encourage the settlement of problems concerning children by agreement. However, this is not always possible and where necessary applications to the court can be made by either parent.

There are four main types of court order, which can be applied for:

1. Residence order - settles where a child is to live and with whom.
2. Contact order - sets out how often a child is able to see the parent with whom they do not live. It can also set out the terms of that contact, the regularity and frequency of it and any specific conditions relating to the contact that are in dispute.
3. Prohibited steps order - prohibits an action by one party in relation to the child.
4. Specific issue order - can be positive in its terms as well as negative and can resolve a dispute between parents over any other part of a child's upbringing or arrangements.

#### Who May Apply for an Order?

- Any parent with parental responsibility and most birth parents are able to apply for any type of Order listed above.
- Any civil partner of a birth parent, whether or not the partnership has been dissolved, can apply for a residence or contact order in relation to a child who has been treated by the parties as a child of the family.
- A non-biological parent who has not entered into a civil partnership with a birth parent can apply for a residence or contact order if they have lived with the child for three of out the last five years.
- A residence or contact order can be obtained where the person applying has the consent of everybody who has parental responsibility for the child.

If the person wishing to apply to the court does not fall within one of these categories they must first obtain permission of the court to make the application for a contact or residence order.

#### Timetable

The Children Act gives special attention to the fact that matters involving children should be heard without delay. However, due to busy court lists and sometimes the involvement of other professionals, cases may take anything from three months to one year and in very unusual cases, longer still.

#### Emergencies

If you feel that your children are at risk or in danger of removal from the jurisdiction, you should immediately inform us so that we can advise you and help you take any appropriate action. The court can list the hearings within a matter of days or even hours and sometimes, in extreme cases, without notice to the other party.

#### The Application

The proceedings begin with your completed application form being submitted to the court. The court will then fix a preliminary hearing date. We will notify the other party of the hearing, at which point they will have a chance to indicate their position regarding your application.

#### Conciliation and Cafcass

In many cases the court will offer you a meeting with the other party and an independent court welfare (Cafcass) officer to discuss the issues and seek to reach agreement. If the judge has asked a Cafcass officer to prepare a report, the officer will arrange to meet both parents, initially separately and later on possibly together with or without the children. Their job is to write an independent report having listened to both parents, observed the children (and if old enough, listened to their comments). The report will be very significant in the proceedings. Cafcass officers can also arrange further family meetings if they feel this may help to conciliate parents' differences.

#### Directions Hearing

The court will encourage conciliation but if unsuccessful, the court will give directions as to what should happen next.

The judge may direct that the parents file statements of evidence and will decide whether or not a Cafcass officer should compile a report.

#### Final Directions Hearing

The purpose of the directions hearing is for the parties' legal advisors to explore the possibility of agreement having had the benefit of reading the Cafcass report. If agreement can be reached at this hearing an order is usually made "by consent" and the full hearing is vacated. If agreement cannot be reached a final hearing will be necessary.

#### The Final Hearing

This will involve your personal attendance at court with either your solicitor or barrister or both and any witnesses you have. The hearing will take place in a private court with no members of the press or the public allowed to enter. Each parent will have an opportunity to put their evidence to the judge and then question or "cross examine" the other parent and witnesses. After hearing all the evidence the judge will make a decision. In children cases, points of great importance will be:

- The wishes and feelings of the children concerned (considered in light of their age and understanding).
- Their physical, emotional and educational needs, and in particular:
  - Their current residence and any other accommodation available for them
  - Arrangements for childcare during working hours and holidays (if their parent works)
- The likely effect on the children of any change in their circumstances.
- The children's age, sex, background and any of their characteristics, which the court considers relevant.
- Any harm which the children have suffered or are at risk of suffering.
- How capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is at meeting their needs.

Remember that the welfare of your children comes first. If at any time you are worried about the effect of the proceedings on the children, you should tell us immediately and we will advise you fully about the steps to take next.