

## **Child arrangements on relationship breakdown**

Separation or divorce can be an upsetting and distressing time for all concerned; especially for the children of the relationship who often feel confused and unsettled by the parental break up.

Relationship breakdown often leads to the division of one home into two and the relocation of either, or both parents, to a new home environment. As such, it is important for separating or divorcing couples to ensure that the arrangements for their children are agreed so that each child has 1) a stable home environment and 2) is aware of the amount of time that they are to spend with each parent once the family is no longer living together.

Some couples find it easy to agree the arrangements for their children and are able to put their differences aside to effectively co-parent their children. Other couples, however, are not so fortunate and disputes can sometimes arise as to what each parent feels is in the “best interests” of their child. For example, both parents may want the children to live with them, but to see the other parent, and they disagree about how this can work in the future.

In cases where a dispute arises, in the absence of a negotiated or mediated agreement between the parties, either parent has a right to apply to the court under The Children Act 1989 and to apply for a Child Arrangements Order. A Child Arrangements Order can be made to set out all of the arrangements in relation to a child including a) with whom and where the children are to live and b) how much time they are to spend with the other parent.

Upon receipt of an application, the court must decide what it believes is in the “best interests” of the child in question and what the arrangements should be moving forward. The court has a duty to deal with applications promptly and will only make a Child Arrangements Order if it believes it is necessary to do so.

When determining a child’s “best interest” the court must apply the following factors as set out in The Children Act 1989. These factors are commonly known as the “Welfare Checklist”:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) the child's physical, emotional and educational needs;
- (c) the likely effect on the child of any change in his circumstances;
- (d) the child's age, sex, background and any characteristics which 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 this Act in the proceedings in question.

These factors are applied to each child in question, taking into account all of the circumstances of the case, and each parent has the opportunity to explain to the court what they feel the arrangements should be, before the court makes a final decision.

When a Child Arrangements Order is made, it creates a legally binding and enforceable Order between the parties and hopefully provides clarity for all parties, especially the children, as to what the future arrangements are to be.

**Article by Lorna Barry, Family Law Solicitor at Horwood & James LLP,**

**Tel: 01296 487361, Email: [enquiries@horwoodjames.co.uk](mailto:enquiries@horwoodjames.co.uk)**