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CHILD ARRANGEMENTS PROGRAMME

The Child Arrangements Programme applies where a dispute arises between separated partners and/or families about arrangements concerning children. The programme is designed to try and facilitate and encourage the resolution of disputes outside of the Court system and if this is not possible to resolve issues through the Court system as quickly as possible.

Where possible all parties are now expected to try and resolve disputes in relation to children outside of the Court. Therefore, it is compulsory for all applicants to engage in a Mediation Information and Assessment Meeting (known as a MIAM meeting). This means that the person who wishes to make the application must first refer the matter to mediation to see whether this would be an appropriate way of settling any disputes.

There are some exceptions to attending a MIAM and these are as follows:-

- Domestic violence.
- Child protection concerns.
- Related proceedings being issued in the previous four months.
- Urgency;
- Disability leading to an inability to facilitate a MIAM;
- Lack of contact details for the Respondent;
- Imprisonment/bail conditions preventing engagement;
- Non-residency in England and Wales of one of the prospective parties;
- Unavailability of MIAM facilities.

If mediation is not appropriate or does not work, then it is open to the parties to make an application to Court.



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Order available at the Court

The Court can make the following orders in relation to children: -

1. Child Arrangements Order. This is an Order that regulates arrangements relating to with whom a child is going to live, spend time or otherwise have contact and when a child is to live, spend time with or otherwise have contact with any person.
2. Specific Issue Order. This is an Order about a specific issue, such as if there is a dispute about schooling or if a child needs to be returned to the care of the other parent.
3. Prohibited Steps Order. This is an Order that prohibits a parent from taking a particular step, such as removing the child from the jurisdiction.

`No Order principle`

When considering an application for a Child Arrangements Order, the Court must first consider whether an Order is necessary as there is a presumption that no Order should be made unless it is necessary. If the Court does consider an Order to be necessary then the paramount consideration will be the welfare of the child.

Presumption of contact

The Children and Families Act 2014 also introduced a presumption, unless the contrary is shown, that the involvement of both parents in the life of the child concerned will further the child`s welfare. Involvement means involvement of some kind, either direct or indirect, but not any particular division of a child`s time.



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The factors the Court will consider-The welfare checklist

The Court will adopt the general principle that any delay in determining children's proceedings will affect the child adversely and therefore the avoidance of delay is a high priority with the Court. The Court must take into account the following factors, known as the Welfare Checklist, which is set out in the Children Act 1989 and this is as follows:

- a) The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);
- b) Their physical, emotional and educational needs;
- c) The likely effect on them of any change in circumstances;
- d) Their age, sex, background and any characteristics which the court considers relevant;
- e) Any harm which they have suffered or are at risk of suffering;
- f) How capable each of their parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting the child's needs.

The Welfare Checklist is considered in each case with no item being more or less important than the other.

CAFCASS

Once an application is received by the Court, the application will be sent to CAFCASS (Children and Family Court Advisory Support Service) to carry out a safeguarding check. This means that they will make enquiries with the police and social services to see whether there are any safeguarding concerns. They will also try and speak with the parties to see if they raise any safeguarding concerns. The CAFCASS officer will then prepare a letter known as a Schedule 2 letter which sets out the results of their



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investigations and may give the Court an indication of what to do next. At the same time, the application will be allocated within the Family Court and if the person applying for the Order has not attended a MIAM and has not provided a valid exemption, the Judge can direct the attendance of the parties to a MIAM before the first hearing takes place.

When making an application to court you will need to also include a MIAM form, which either confirms you attended a MIAM meeting or that it is not necessary.

First Hearing FHDRA

The first hearing is known as a First Hearing Dispute Resolution Appointment (FHDRA). At this hearing, a CAFCASS officer will sometimes be in attendance at Court to discuss matters with the parties and will arrange to speak to any party they did not have an opportunity to speak to during their safeguarding enquiries. The purpose of the hearing is to enable the parties to understand the issues in dispute and try and reach agreement. If the parties reach agreement, a final Order can be made provided the safeguarding checks are complete.

If no agreement can be reached, then the Court will give directions as to how the rest of the case should proceed. This might include the filling of statements, expert evidence and/or CAFCASS providing a report if there are welfare issues or other specific considerations which should be addressed in a report.

A report is often ordered when there is a dispute over where a child should live or when they should spend time with the other parent and can be limited, if appropriate, to the wishes and feelings of the child. If the Court directs a report from CAFCASS this will not necessarily be the same CAFCASS officer who attended the first hearing. The CAFCASS officer will usually visit all of the parties in their respective homes and may also ask the parties to attend an appointment at their office. A CAFCASS officer will



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usually speak to the children or, if they are too young to discuss the case, then they may observe the child in each parties care. The CAFCASS officer may also speak with any relevant teachers or school staff. In cases where there has been social services involvement, the Court will often ask the allocated social worker to write the report in the place of CAFCASS. If a CAFCASS officer is asked to file a report, at present Family Courts are taking approximately 14 weeks to be completed but might be more or less dependent upon the region or workload.

In most cases, some interim arrangements for contact will be agreed at this hearing until the matter can be concluded unless there are safeguarding concerns.

Contact and Domestic Abuse

If there are issues of domestic or child abuse and the Court determines it is necessary to determine the truth of these allegations before it can make a decision about the child, then the Court may give directions leading towards a Fact-Finding Hearing. A Fact-Finding Hearing is a hearing specifically for the Judge to determine whether allegations of domestic or child abuse occurred or not before it goes on to consider what child arrangements are appropriate.

If domestic abuse is an issue, it will be necessary to consider practice Direction 12J.

Dispute Resolution Appointment

If CAFCASS or another expert has been ordered to file a report, the Court will list the matter for a Dispute Resolution Appointment (DRA) after the report has been filed with all the parties to be present at this hearing. The parties are encouraged to come to an agreement, usually in line with the recommendations of the CAFCASS officer.



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It may also be necessary to have further direction hearings if there are outstanding issues.

Final Hearing

If no agreement can be reached, then the Court will list the matter for a final hearing. At a final hearing, the Court will consider any evidence already put before the court and the parties will usually be asked to give oral evidence and be cross examined by the other party's representative. If any witnesses have filed statements or if a CAFCASS officer has provided a report, they must also attend Court and give evidence. Upon the basis of the evidence heard, the Judge will then make a final Order.

Although a final Order may be made it is always open to any party to make a further application to court in respect of children matters at a later date. As children get older their needs change, and therefore the arrangements may need to change. Again, parents will be expected to try and reach agreement.

If you require any further information in respect of Child Arrangements, please get in touch with us at tracey@moloneyfamilylaw.com



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