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FAMILY LAW DEPARTMENT

CHILDREN FACT SHEET

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1. Introduction

The object of this document is to help you understand the general overall position with regard to issues concerning children upon separation or divorce. It is not intended to be specific advice and as your matter progresses we will deal with the points relevant to your case as and when they arise.

Separation and divorce can be difficult for everyone, especially for children. Once a relationship ends, decisions have to be made about who will care for any children of the relationship. It is important to bear in mind that although you may no longer be together, you will both always be the children's parents.

2. What Is In The Best Interest Of The Children?

From our experience as Family Solicitors we have assessed that damage to the children may be limited by following some or all of the following:-

- (i) Inform your children jointly of the decision to separate wherever possible
- (ii) Avoid blame – emphasise that it is not their fault and that both parents love them equally
- (iii) Inform them that their life will be different but do not give them choices – it is the parent's job to decide
- (iv) Make sure that they realise that they are free to love each parent as before – separate your feelings from the children's feelings – do not confuse your child by belittling or criticising the absent parent
- (v) Expect your child to play one parent off against the other or even to take sides – do not hold what they say against them
- (vi) Childcare arrangements – make them clear to the children and make them regular – children like routine.

3. How Do I Resolve Childcare Arrangements?

Direct Agreement – You do not need a Court Order. In most cases parents are able to make arrangements amicably between themselves about where the children will live and about visiting the other parent

Mediation - Another option is Family Mediation which can assist divorcing/separating couples to try and resolve their disputes by agreement. It is designed to encourage cooperation between the parties and to prevent disputes from intensifying. Mediation provides a forum for couples to meet with a trained mediator to try to resolve issues in dispute between them. Mediators are trained to offer information to the parties, they are not advisors, they are there in a neutral capacity to ensure each party's view point is heard and dealt with fairly.

Court Proceedings – There are occasions when parties cannot reach agreement on their own or with the assistance of mediation and there is no alternative but to make an application to the Court. Parents should see a Court application only as a last resort when other options have failed.

4. The Law – The Children Act 1989

The Children Act 1989 is based upon the belief that children are best looked after within the family with both parents playing a full part and without resort to legal proceedings.

Fundamental Principles under the Children Act

- The welfare of the children is the paramount consideration
- The Presumption of No Order – If the parents can agree the arrangements for a child with each other then the Court will not become involved and no Court Order will be made. An Order will only be made if the Court believes that an Order would be better for the child than making no order at all.

The Welfare Checklist

Under the Children Act 1989, when making a decision regarding children the Court will take into account the following factors, commonly referred to as the 'Welfare Checklist':-

- The wishes and feelings of the child in light of their understanding
- The physical, emotional and educational needs of the child
- The likely effect of any change in the child's circumstances
- The child's age, sex, background and any other characteristics that the Court considers relevant
- Any harm the child is suffering, or is at risk of suffering
- How capable each parent is of meeting the needs of the child

What Orders can the Court make?

The following are the most common Orders that may be relevant to most people:-

- **A Child Arrangements Order (CAO)** – governs with whom the child is to live, spend time or otherwise have contact and when the child is to live, spend time or otherwise have contact with any person.

Contact may take place as:-

- Direct contact between the child and the person named in the Order
- Overnight staying contact
- Supervised contact; and
- Indirect contact through letters or cards

In rare circumstances where the best interests of the child dictate, the Court can order that there is no contact.

An Order that provides for a child to spend time with both parents does not necessarily mean the child's time will be equally spent between their parents. The CAO will usually detail how the child's time is to be divided.

- **A Prohibited Steps Order** – preventing a parent from doing something e.g. removing a child from the UK or to prevent a child from having a change of name.

- **A Specific Issue Order** – deciding an issue about the child’s upbringing e.g. if the parents are in dispute as to what school the child should attend or where there is a dispute between parents about whether a child should undergo medical treatment.
- **A Parental Responsibility Order** – The term parental responsibility covers all rights, duties, powers and responsibilities which a parent has for a child. This includes providing a home, feeding and clothing, providing protection and security, and ensuring that the child receives a satisfactory education or allow you to make fundamental decisions for a child such as health treatment, schooling etc. If you were married at the time of the child’s birth or if you married each other after the birth, both mother and father of the child will automatically have parental responsibility.

If the father and mother were not married at the time of the birth of the child, the father does not have parental responsibility unless:

- he registered the birth jointly with the mother after December 2003, or
- he and the mother made a formal parental responsibility agreement, or
- a Court granted the father legal parental responsibility, or
- he is appointed as guardian

What is the Procedure?

- There is a requirement to attend a meeting with a Mediator to see whether Mediation might be suitable, rather than using the Court unless certain exemptions apply
- An application has to be made to the Court on a standard form giving brief details about the background. A Court fee is payable.
- The Court will then fix a brief hearing to give directions on how the case should progress forward. The Judge will try very hard to try and get the parties to reach an agreement.
- At Court, there will also be an opportunity for both parents to discuss their differences with a Children and Family Court Advisory Support Service (CAFCASS Officer).
- The judge will make orders about how the case is to proceed, perhaps asking a Court Welfare Officer to prepare a report and deciding what evidence is needed for the final hearing.
- If no agreement can be reached the Court usually orders that a CAFCASS Officer prepare a report. The CAFCASS Officer’s task is to establish the wishes of the child and to make recommendations as to what Orders the Court should make having regard to what is in the best interest of the child.
- Each party is also required to prepare a statement setting out their views.
- If a Court Welfare Officer is asked to prepare a report, then he or she will arrange to meet you and the other parent separately and sometimes with the child, before preparing the Report.
- The judge can also make interim orders about the children, to regulate arrangements until the final hearing.
- Both parents must attend Court. You should not bring your child with you to Court.

Any aspect of the Court proceedings, including any reports, statements, or negotiations between legal advisors, should not be discussed with the child.