

## Child disputes

### Family

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Parents know their children's needs better than a court. That's why we encourage parents to achieve a solution to child disputes without court intervention. However if court is the only solution left, then it's worth understanding a few general principles:

#### **Parental responsibility**

This is the phrase used for the rights and responsibilities that every parent has in respect of his or her child. Mothers automatically have this responsibility. Fathers only have it automatically if they are either married to the mother or they are named as the father on the birth certificate. This applies to all children born after 1 December 2003. It is also possible for a father to obtain parental responsibility, where he wouldn't otherwise be entitled to it, either by agreement with the mother or by obtaining a Court Order.

#### **Court procedure**

Before any applications can be made to the court, you must attend a Mediation Information Assessment Meeting (MIAM). If the mediator does not think that mediation is suitable then you will be given a form which confirms this. The court only becomes involved in a case when an application is made to it. There are likely to be at least three hearings before matters are finally resolved in the event of the parties being unable to reach an agreement about what should happen which is approved by the court. Before the first hearing you will speak to a Children and Family Court Advisory Support Service (CAFCASS) officer, usually by telephone, so that safeguarding checks can be completed. These checks are mandatory and allow the court to know whether there are any welfare issues which need to be considered before any orders are made.

#### **First Appointment and Dispute Resolution Appointment (FHDRA)**

This is the first hearing where you are likely to have to speak to a CAFCASS who will try and help the two of you reach an agreement or to narrow down the issues which cannot be agreed. If an agreement cannot be reached CAFCASS may be ordered to prepare a report with a recommendation on how the dispute should be resolved. That recommendation will be made in the light of what is called the 'Welfare Checklist' which is something that the Judge will bear in mind in making any decision, so you need to be fully aware of this.

#### **Welfare Checklist**

The checklist specifies that the child's best interest is the first and most important consideration, but in resolving what is best for the child the court has to consider:

- the child's wishes and feelings. The court will take account of the wishes of any child subject to their age and understanding
- the needs of the child
- the child's age, sex, background and other relevant factors
- whether or not the child has suffered any harm or is likely to do so
- the ability of the parents to care for any specific needs of the child.

## **Court powers**

The court has power to make Orders which specify:

- where a child should live
- what contact they should have with an absent parent
- which school the child should attend
- whether any medical treatment is appropriate
- whether a parent should have parental responsibility

## **Dispute Resolution Appointment (DRA)**

This is the second hearing where the court will consider whether a final decision can be made. If not, the court will try to resolve or narrow the issues which cannot be agreed. If there are issues which cannot be agreed at this hearing then the court will consider what evidence should be heard in order for the Judge to make a decision. The court may order for evidence, such as statements, to be prepared and will set the date for the final hearing where final decisions will be made.

## **Final hearing**

At a final hearing the Judge will hear evidence from both parents and any other relevant witnesses. He will also consider the CAFCASS officer's report – and sometimes the CAFCASS officer has to attend. If parents are legally represented, their advocate will challenge the evidence not accepted (known as cross-examination). If not, they will need to challenge the evidence themselves. Both parents (or their legal representatives) will then make representations and the Judge will make a decision on what should happen. It is only rarely that you can challenge that decision. You need to remember that there are always risks in going to court because every case depends upon its own circumstances and the manner in which the Judge interprets them in applying the legal principles set out above, so if you can resolve it by agreement so much the better. Mediation plays a helpful role here.

## **Other hearings**

In complicated cases the court may think that a fact finding hearing is necessary. This may be where one parent makes an allegation which, if true, would impact on whether the court would order for a child to spend time with a parent. The purpose of a fact finding hearing is for the court to hear evidence on any allegation and to determine whether it is true or not on the balance of probabilities. In some cases the court may also wish to have further hearings to make sure the case stays on track. These are called directions hearings but the court should not routinely do this.

## **Mediation**

Mediation can play a vital role in settling child disputes without the need for court proceedings. A specialist solicitor/mediator will discuss the case with you in a group setting, trying to encourage the two of you to reach an agreement by constructive discussion and analysis with the aim of a direct resolution. It makes for a less confrontational approach which can help future communication about your child.

## **Privacy**

Accredited media representatives can now be present in court during many types of hearings, including those relating to children. It is up to the Judge to decide whether or not to allow this. Of course the publication of information in the media is forbidden unless the court specifically permits it.

For more information on any of these issues, contact our expert Family team.

[www.roydswithyking.com](http://www.roydswithyking.com)

**Contact:**  
Family  
T: 0800 923 2074