HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Children: child arrangements orders – when agreement cannot be reached on contact and residence (Great Britain)

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Summary

This House of Commons briefing paper considers how contact and residence arrangements for children can be settled, for example following separation. If mediation is unsuccessful, then an application can be made for a child arrangements order although for some people the leave (i.e. permission of the court) is required to do so.

When family proceedings are before a court – usually the Family Court – the welfare of the child is the court's "paramount consideration". Changes to the legislation made in 2014 introduced a presumption of parental involvement (where this would not put the child at risk of suffering harm), although this does mean any particular division of the child's time.

For England, a court may ask a local authority officer or a Cafcass officer – known as a Family Court Adviser – to inquire into the child's feelings and wishes, and also speak to the child's family and other relevant people. The note sets out what action people can take if they are unsatisfied with the actions of a Cafcass officer or their report to the court. It should be noted that it is the judge – not the Cafcass officer – who determines a child's contact and residence arrangements.

If someone fails to compile with a child arrangements order, the courts have a number of enforcement powers available which can include contempt of court proceedings. However, if someone has a "reasonable excuse" for failing to comply, then the court should consider this.

Other safeguards include the imposition of a leave requirement on someone who otherwise would not be required to seek the leave of the court before they can apply, for example to prevent vexatious or multiple applications, and supervised or indirect contact arrangements.

A child arrangements order can be appealed against, or an application made to vary or discharge it.

A list of relevant organisations and helpful links can be found at the end of the briefing paper.

This note applies to England and Wales (except for section 4, which applies to England only, and section 9 which applies to Scotland only).

For information specifically on how grandparents can apply to the court for contact and residence with their grandchildren – a topic which the Library receives a number of requests about – please also see the Library briefing paper, Children: Grandparents and court order for contact with grandchildren (Great Britain).

Further Library briefing papers relating to children can be found on the last page of this briefing paper.

1. A child arrangements order explained

When it is not possible to reach agreement over the contact or residence for a child, then the matter can be taken to court under private law. Using the principles set out in the Children Act 1989 ("the 1989 Act") as amended, case law, and guidance (including the Family Procedure Rules 2010), the court will determine matters of contact and residence.

A "child arrangements order" (also known as a "section 8 order")[1] is defined as follows in the 1989 Act as amended:

> an order regulating arrangements relating to any of the following—
>
> a) with whom a child is to live, spend time or otherwise have contact, and
>
> b) when a child is to live, spend time or otherwise have contact with any person.[2]

Previously, there were "contact orders" and "residence orders"; since April 2014, these have been replaced by the single "child arrangements order" – the then Coalition Government explained that it saw "value in changing the emphasis of court orders to focus on the practical arrangements for caring for the child, and remove the current emphasis on the labels 'contact' and 'residence'".[3]

The Department for Education explained that, notwithstanding the adaptation of the term "child arrangements order", existing contact orders and residence orders "will remain valid, and any allowances or other entitlements which are linked to them are not therefore affected by the change".[4]

1 Section 8 of the Children Act 1989 as amended provides for the following types of private law orders: child arrangements order; specific issues order; prohibited steps order. If the term "section 8 order" is used, it is important to know which of the three orders is being referred to.
2 Section 8(1) of the Children Act 1989
3 Ministry of Justice and Department for Education, The Government Response to the Family Justice Review: A system with children and families at its heart, Cm 8273, February 2012, p69
4 Department for Educaiton, Court orders and pre-proceedings – For local authorities, April 2014, p7, para 6

Box 1: Contact with a child in the care of a local authority pursuant to a care order

It should be noted that child arrangements orders for contact only cannot be made in respect of children in local authority care who are subject to a care order:[5] instead, a contact order under section 34 of the Children Act 1989 as amended must be sought.

Only a child arrangements order which "provides solely for the child's living arrangements" may be made while the child in question is in care.[6] The only exception is where the child in care wishes to have contact with another child who is not in care.

An advice sheet by the charity Family Rights Group provides more information on contact with children in care.[7]

5 A child can be a "looked after child" i.e. looked after by local authority either because a court has made a care order, or because an agreement has been reached with the local authority (e.g. with the child's parents) that the child should be accommodated by the local authority.

6 Hershman and McFarlane, Children Law and Practice, 1 May 2019, para C1311

7 See Family Rights Group, Contact with children in care, 3 November 2014

2. Applying for a child arrangements order

2.1 The child

Age of the child

A child arrangements order concerning contact or residence can only be made if the child concerned is under 16 years of age, unless the court is satisfied that the circumstances of the case are exceptional. However, an existing order can be varied or discharged by a court when a child has turned 16.

An child arrangements order cannot be made that has effect once the child concerned turns 16 years of age, unless, similarly, "the circumstances of the case are exceptional". However, this does not apply if the arrangements regulated by the order relate only to either with whom the child concerned is to live, or when the child is to live with any person (or both).

The Children Act 1989 as amended defines a child as someone who is aged under 18;[8] therefore, a child arrangements order which remained in place after a child turned 16 will be extinguished in all cases should it still be in force when the child turns 18.[9]

Circumstances of the child

There are a number of circumstances when a court is unable to make a child arrangements order:

- if the child is in the care of a local authority pursuant to a care order (unless the child arrangements order concerns either with whom the child concerned is to live, or when the child is to live with any person, or both, see Box 1);
- if the order is in favour of a local authority (and no local authority can apply for such an order);
- anyone who is or was (within the last six months) a local authority foster parent caring for a child unless they have the consent of the authority, or, they are a relative of the child, or the child concerned has lived with him for at least one year preceding the application.[10]

2.2 Who can apply for a child arrangements order

Before an application can be made to the Family Court for a child arrangements order, the parties must have attended at least one mediation session (unless an exemption applies). For more information, see Box 2 overleaf.

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8 Children Act 1989, section 105

9 Department for Educaiton, Court orders and pre-proceedings – For local authorities, April 2014, p7, para 7

10 Children Act 1989, section 9

Anyone can seek to apply for a child arrangements order – however, in order to prevent spurious or vexatious applications some people first have to obtain permission from the court (the "leave of the court") before they can apply.

Legislation sets out that some people can apply as of right without first needing the leave of the court, but even for this group it is possible for a court to impose a leave condition if it deems it necessary.

A form to apply for a child arrangements order is available on the gov.uk website.

Box 2: Requirement to undertake mediation

Before an application is made to the court in, or to initiate, in respect of a child arrangements order, the parties must attend a family mediation information and assessment meeting ("MIAM").

However, this requirement does not apply if the proceedings are for a consent order; for an order relating to a child or children in respect of whom there are ongoing emergency proceedings, care proceedings or supervision proceedings; or for an order relating to a child or children who are the subject of an emergency protection order, a care order or a supervision order.[11]

In addition, there is no requirement to attend a MIAM in cases including where:

- there is evidence of domestic violence;
- there are child protection concerns;
- the application must be heard urgently because delays would, for example, risk the safety of the child or the applicants, cause miscarriages of justice or hardship to the applicant;
- there has been previous MIAM attendance or a MIAM exemption; or
- circumstances mean that MAIM attendance may not be a reasonable or appropriate requirement.

A full list of exemptions is set out in rule 3.8 of Part 3 of the Family Procedure Rules 2010 published by the Ministry of Justice.[12]

For more information on mediation, including a list of mediators and information on the costs involved and possible legal aid support, see the Family Mediation Council's (FMC) website.

Leave not required

The following people are "entitled to apply" for a child arrangements order without first requiring the leave of the court (unless an order imposing a leave requirement has been made, see box 3 and section 7 below):

- any parent,[13] guardian or special guardian of the child;
- any step-parent who has parental responsibility for the child through a parental responsibility agreement or order;[14]
- any person who is named, in a child arrangements order that is in force with respect to the child, as a person with whom the child is to live;
- any party to a marriage (whether or not subsisting), including step-parents, in relation to whom the child is a child of the family;

11 Ministry of Justice, Family Procedure Rules 2010 – Practice Direction 3A, 11 April 2017, para 12

12 Ministry of Justice, Family Procedure Rules 2010 – Part 3: Non-Court Dispute Resolution, 30 January 2017, rule 3.8

13 This does not include a parent where whose child has been freed for adoption (i.e. a former parent).

14 Made under section 4A of the Children Act 1989 as amended

- any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child is a child of the family;
- any person with whom the child has lived for a period of at least three years;[15]
- any person who:
  - in any case where a child arrangements order in force with respect to the child regulates arrangements relating to with whom the child is to live or when the child is to live with any person, has the consent of each of the persons named in the order as a person with whom the child is to live;
  - in any case where the child is in the care of a local authority (i.e. pursuant to a care order only), has the consent of that authority;
  - in any other case, has the consent of each of those (if any) who have parental responsibility for the child.
- any person who has parental responsibility for the child by virtue of a court giving them parental responsibility where they are not the parent or guardian of the child named in the order but they are named as a person with whom the child is to spend time or otherwise have contact (but not to live with). In such cases, parental responsibility is provided for the person so long as the above conditions continue to be met.[16]

For a child arrangements order which relates to with whom the child concerned is to live, or, when the child is to live with any person, or both, then the following are entitled to apply:

- a local authority foster parent if the child has lived with him for a period of at least one year immediately preceding the application.
- a relative of a child if the child has lived with the relative for a period of at least one year immediately preceding the application.[17]

Box 3: A court's power to impose a leave requirement

Even if someone, such as a parent, would normally be able to apply for the making, variation or discharge of a child arrangements order without the leave of the court, the court can impose a leave requirement. This is intended to act as a safeguard in cases where the entitlement to apply is not being used appropriately, for example there are multiple or spurious applications made to the court. For more information, see section 7.1.

Leave required

Any person who is not automatically entitled to apply for a child arrangements order may nevertheless make such an application – but first they require the leave of the court before they can apply.

15 Section 10(10) of the Children Act 1989 as amended adds that the period of three years "need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application".
16 Section 12(2A) of the Children Act 1989 as amended.
17 Where the term "relative" includes the following: "a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent" as stated in section 105(1) of the Children Act 1989 as amended.

As Children Law and Practice notes, "it is important to note that the grant of leave does not raise any presumption that the application will succeed".[18]

In contrast to when the court is considering the make, vary or discharge an application for a child arrangements order (see section 3), when a court considers an application for leave to apply for a child arrangements order, the welfare of the child is *not* its paramount consideration.

Rather, the legislation states that:

> the court shall, in deciding whether or not to grant leave, have particular regard to—
>
> a) the nature of the proposed application for the section 8 order;
>
> b) the applicant's connection with the child;
>
> c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
>
> d) where the child is being looked after by a local authority—
>
> (i) the authority's plans for the child's future; and
>
> (ii) the wishes and feelings of the child's parents.[19]

A child's close relatives, including their grandparents and uncles and aunties, require the leave of the court – unless they fall into one of the categories listed above for those who do not require leave.

However, as noted above, there is a specific provision for situations where a child has lived with a close relative – if this arrangement has been in place for more than a year, then the relative is not required to first gain the leave of the court to apply for a child arrangements order.

More information on the specific issue of grandparents requiring leave to apply can be found in the Library briefing paper, Children: Grandparents and court orders for contact with grandchildren.

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18 Hershman and McFarlane, Children Law and Pratice, 1 May 2019, para B600, citing the case Re A (A Minor) (Grandparent: Contact) [1996] 1 FCR 467, [1995] 2 FLR 153.

19 Section 10(9) of the Children Act 1989 as amended

3. The factors a court considers when child arrangements order application is made

Children Law and Practice notes that when a court which is considering making, varying or discharging a child arrangements order, including making any directions or conditions which may be attached to such an order, it:

> must have regard to the following principles:
>
> - the paramountcy of the child's welfare;
> - that delay in determining the question is likely to prejudice the welfare of the child;
> - the presumption in favour of parental involvement;
> - the welfare check-list;
> - the presumption against making an order unless to do so would be better for the child than making no order at all.[20]

3.1 The paramountcy principle and the "welfare check-list"

Taking the first and fourth bullet points from the list above, section 1(1) of the Children Act 1989 as amended states that "when a court determines any question with respect to the upbringing of a child … the child's welfare shall be the court's paramount consideration".

There is no judicial or statutory definition of the term "welfare" used in section 1(1): "it is a concept which is difficult to describe in the abstract, but easy to recognise in practice", Children Law and Practice notes.[21] To assist with this, when a court is considering whether to make, vary or discharge a child arrangements order, and the making, variation or discharge of the order is opposed by any party to the proceedings, the legislation states that a court:

> shall have regard in particular to:
>
> - the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
> - his physical, emotional and educational needs;
> - the likely effect on him of any change in his circumstances;
> - his age, sex, background and any characteristics of his which the court considers relevant;
> - any harm which he has suffered or is at risk of suffering;

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20 Hershman and McFarlane, Children Law and Practice, 1 May 2019, para B266
21 Hershman and McFarlane, Children Law and Practice, 1 May 2019, para B198

- how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- the range of powers available to the court under this Act in the proceedings in question.[22]

Children Law and Practice notes that "the matters on the check-list are each potentially relevant to the future welfare of a child in a particular case", although "no single item on the list is automatically more important than another. At the end of each case, the question which must be answered is: which course will best serve the child's welfare?". It adds, citing case law, that:

> The list is not intended to be comprehensive, and is more of an aide-memoire for courts to ensure that the basic elements of a child's welfare are considered.
>
> A judge does not need expressly to highlight each matter in the check-list when giving reasons, but the check-list can ensure that all relevant matters in a case are considered and balanced.
>
> Magistrates should always refer to the check-list and build their findings of fact and reasons around it.[23]

3.2 The avoidance of delays

The legislation states that:

> In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.[24]

Children Law and Practice observes, citing case law, that:

> It should be noted that the avoidance of delay is not an overriding principle, but only a 'general' one in relation to upbringing. It is based on the likelihood of prejudice to welfare. There will be some exceptions where the child's welfare will be best served by delaying the determination of the question before the court.[25]

3.3 The presumption of parental involvement

Under changes made in 2014,[26] the legislation now also requires a court, when considering whether to make, vary or discharge a child

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22 Section 1(3) of the Children Act 1989 as amended. The legislation was drafted at a time when it was perhaps more common to use a non-gender neutral identifier which may seem out-dated now. Notwithstanding this, the legislation applies equally to all children.

23 Hershman and McFarlane, Children Law and Practice, 1 May 2019, paras B197 and B201

24 Section 1(2) of the Children Act 1989 as amended.

25 Hershman and McFarlane, Children Law and Practice, 1 May 2019, para B180, citing C v Solihull Metropolitan Borough Council [1993] 1 FLR 290; Hounslow London Borough Council v A [1993] 1 WLR 291, [1993] 1 FLR 702; and Re B (A Minor) (Contact: Interim Order) [1994] 1 FCR 905, [1994] 2 FLR 269.

26 The provision was inserted into the Children Act 1989 by section 11 of the Children and Families Act 2014 and came into force in October 2014. Further details of how the provision developed are set out in Library papers written during the passage of the Bill: RP13/11 and RP13/32.

arrangements order and the making of the order is opposed, to presume, unless the contrary is shown, that the involvement of each parent in the life of the child concerned will further the child's welfare. There are exceptions to the provision where parental involvement would put the child at risk of suffering harm.[27]

The Government explained that the purpose of the new provision was not to promote an equal division of a child's time between separated parents but to:

> … reinforce the importance of children having an ongoing relationship with both parents after family separation, where that is safe and in the child's best interests. […] The effect is to require the court, in making decisions on contested section 8 orders, the contested variation or discharge of such orders or the award or removal of parental responsibility, to presume that a child's welfare will be furthered by the involvement of each of the child's parents in his or her life, unless it can be shown that such involvement would not in fact further the child's welfare. Involvement means any kind of direct or indirect involvement but not any particular division of the child's time.[28]

3.4 No-order presumption

The legislation states that:

> Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.[29]

Children Law and Practice notes that "the importance of this provision should not be underestimated in practice", and observes that the legislation "is founded on the belief that children are generally best looked after within the family, with both parents playing a full part and with least recourse to legal proceedings".[30]

3.5 "Interim" child arrangements orders

A court may make a what could be termed as an interim child arrangements order even though it may not be in a position to dispose finally of the proceedings. The legislation states that:

> Where a court has power to make a section 8 order [such as a child arrangements order], it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.[31]

Children Law and Practice notes that the Children Act 1989 "does not recognise the making of an 'interim' s [section] 8 order; any s 8 order,

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27 The same presumption applies when a court is considering applications to award or remove parental responsibility. See the Library briefing paper, Children: parental responsibility - how it's gained and lost, and restrictions (England and Wales).
28 Children and Families Act 2014, Explanatory Notes, para 105
29 Section 1(5) of the Children Act 1989 as amended.
30 Hershman and McFarlane, Children Law and Practice, 1 May 2019, para B178
31 Section 11(3) of the Children Act 1989 as amended

however described, operates as a full order subject only to conditions (for example as to duration) that may be attached to it".[32]

[32] Hershman and McFarlane, *Children Law and Practice*, December 2019, para B254

4. The role of Cafcass

This section applies to England only.

4.1 Welfare reports

When a court is considering whether to make, vary or discharge a child arrangements order, under section 7 of the legislation it may ask an officer from Cafcass or a local authority to "report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report".[33] The local authority or Cafcass officer is under a duty to comply with such a request.[34]

In terms of whether it should be a Cafcass officer or a local authority officer that is involved in a particular case, Cafcass and the Association of Directors of Children's Services has produced good practice guidance.[35]

In regard to what actions a Cafcass Family Court Adviser will take:

> The Cafcass worker will decide what information they need for the report based on what the court has asked them to look into. This may include talking to children (depending on their age and understanding) about their wishes and feelings and what they would like to happen.
>
> The Cafcass worker will:
>
> - usually talk to your children alone – this may be at a neutral venue such as at their school
> - spend time with you and the other party and listen to any concerns you might have.
>
> They may also speak to other people such as family members, teachers and health workers.
>
> The Cafcass worker will not ask your children to make a decision or to choose between you and the other party.
>
> Having made these enquiries the Cafcass worker will write a report advising the court on what they think should happen. In most cases you will be able to see the Cafcass report before the court hearing.[36]

Cafcass uses its "Child Impact Assessment Framework (CIAF)" – which was updated in October 2018 – to "support our practitioners in assessing the harmful impact of a range of complex case factors on the children we work with in private law cases", such as child arrangements order cases.[37]

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33 Cafcass officers are also known as "Family Court Advisers".

34 Section 7 of the Children Act 1989, which equally applies to when "a court is considering any question with respect to a child" under the Act.

35 Cafcass and the Association of Directors of Children's Services, Good Practice Guidance: determining whether Cafcass or a local authority should prepare a section 7 report, document accessed on 10 December 2019

36 Cafcass, Section 7 report: What goes into a section 7 report?, webpage accessed on 10 December 2019

37 More information on the CIAF can be found in the Library briefing paper, Children: parental alienation (England).

Cafcass explains that:

> The CIAF brings together new and existing guidance and tools into four guides which our private law practitioners can use to assess the impact on the child of different case factors, including:
>
> - Domestic abuse where children have been harmed directly or indirectly, for example from the impact of coercive control.
> - Conflict which is harmful to the child such as a long-running court case or mutual hostility between parents which can become intolerable for the child.
> - Child refusal or resistance to spending time with one of their parents or carers which may be due to a range of justified reasons or could be an indicator of the harm caused when a child has been alienated by one parent against the other for no good reason.
> - Other forms of harmful parenting due to factors like substance misuse or parental mental health difficulties where these are assessed as harmful to the child.[38]

Cafcass publishes its tools and guidance for each of the above areas online.[39]

It is important to note that it is not the officer appointed under section 7 (e.g. Cafcass officer) who determines the contact and residence for a child: rather, it is a matter for the judge who will take into account the section 7 report and all the other information before the court, and viewed in light of the paramouncy principle and the other issues set out in section 3. As Cafcass notes:

> The court will make the final decision about what should happen to your children after reading the Cafcass worker's report and listening to what you and other people in the case have said.
>
> The court will:
>
> - pay particular attention to your children's wishes and feelings – but may not always do what your children want
> - make its decision based on what it thinks is best for your children
> - set its decision out in a 'court order' which you must stick to.[40]

4.2 Risk assessments

As the Department for Education explains, under section 16A of the legislation, "Cafcass officers … are required to carry out a risk assessment in relation to a child in certain circumstances and to provide a report to the court in respect of that risk assessment".[41] Specifically:

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38 Cafcass, Cafcass publishes new assessment framework for private law cases, news, 11 October 2018 and Cafcass, Child Impact Assessment Framework (CIAF) – Overview, webpage accessed on 10 December 2019

39 See Cafcass, Resources for professionals – Child Impact Assessment Framework, webpage accessed on 10 December 2019

40 Cafcass, Section 7 report: What will the court decide?, webpage accessed on 10 December 2019

41 Section 16A of the Children Act 1989.

> The circumstances in which a risk assessment must be carried out are where the Cafcass officer is carrying out a function in connection with private family law proceedings and the officer is given cause to suspect that the child concerned in those proceedings is at risk of harm.

The statutory guidance explains that a risk assessment is defined as "an assessment of the risk of the child suffering the harm that is suspected. The risk of harm to the child may relate directly to harm experienced by the child himself or to harm caused by the witnessing of harm".[42]

4.3 If someone has a concerns or a complaint against Cafcass or their report to court

Complaints against a Cafcass officer

If the complaint concerns an individual member of staff, then Cafcass states that:

> Complaints about the performance or conduct of a Cafcass worker may be referred to the worker's line manager for information or action. Where there are serious concerns about the worker's conduct these may be referred to the relevant senior manager to consider whether informal or formal action is required under Cafcass' Employee Relations Policy. These complaints may also be drawn to the court's attention where Cafcass considers that they are relevant to the proceedings.[43]

Cafcass notes that a complaint has to be considered by Cafcass first – either the member of staff's manager or a more senior member of staff, but if the complaint is not resolved satisfactorily then it can be referred to the independent Parliamentary and Health Service Ombudsman (PHSO):

> 4.8 Complaints relating to the performance or conduct of a Cafcass officer may be referred to the officer's manager. Complaints which raise serious concerns about the conduct of a Cafcass officer will be referred by the Customer Service Team to the relevant Head of Practice/Assistant Director to consider whether informal or formal action is required under the Employee Relations Policy.
>
> 4.9 Where the complaint relates to both Cafcass and a commissioned service provider, the Customer Service Team will discuss the complaint with the provider to decide how to respond. This may be a single response issued to the complainant, or separate responses from both the provider and Cafcass. Cafcass has a responsibility to ensure that commissioned service providers have a procedure in place for addressing the concerns of service users.
>
> **The response to the complaint**
>
> 4.10 Following the assessment, the Customer Service Team will provide a written response to the service user no more than five working days before the next hearing where possible or, if there is no immediate court hearing, within a maximum of 15 working days after the receipt of the complaint. The response will explain:

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42 Department for Education, Court orders and pre-proceedings – For local authorities, April 2014, p10, para 20

43 Cafcass, Concerns and complaints, April 2014, p2

- Cafcass' understanding of the complaint and the complainant's desired remedy; and
- The outcome of Cafcass' assessment of the complaint and an explanation of the decision made, including any steps Cafcass has taken/will be taking to put things right.

> 4.11 All complainants have the right, through an MP, to refer their complaint to the PHSO if dissatisfied with our complaint response. All complaints and complaint responses are sent to the manager of the practitioner to whom the complaint relates. Learning from complaints is shared with relevant operational managers, to enable improvements to be made.
>
> 4.12 In exceptional cases, it may take longer than 15 working days to get the evidence necessary to resolve the complaint. In these cases, we will provide an update to the complainant and issue a written response once the necessary evidence is received by the Customer Service Team.[44]

Complaints concerning the contents of a welfare report or risk assessment

If the matter concerns evidence put before the court by a Cafcass officer i.e. "Cafcass worker's professional opinion or judgment, such as the recommendations that have been made in court reports", Cafcass states that:

> we will always send the court a copy of your complaint and our response so that it can take this into account in the decisions it makes. You are also free, subject to the judge's agreement, to tell the court about what you think about our work, or the advice we have provided to the court.[45]

Cafcass adds that "where factual errors are identified within a report or other communication to the court, the Customer Service Team will take action to ensure that either the court is notified or the errors are corrected, where possible, before the next court hearing".[46]

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44 Cafcass, Cafcass complaints and compliments procedure, 18 December 2017, pp3–4
45 Cafcass, Concerns and complaints, April 2014, p2
46 Cafcass, Cafcass complaints and compliments procedure, 18 December 2017, p3, para 4.7

5. When a court makes a child arrangements order

5.1 Accompanying parental responsibility orders

When a court makes a child arrangements order specifying with whom a child is to live and the person named in the order is not a parent or guardian of the child, then the person automatically gains parental responsibility for the child for so long as the child arrangements order continues to specify them as the person with whom the child is to live.

Box 4: Parental responsibility explained

Under the Children Act 1989 as amended, the term "parental responsibility" is defined as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property".

In addition, where someone has the care of a child but who does not have parental responsibility for them, they may still, subject to the provisions of the Children Act 1989, "do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare".

For more information, see the Library briefing paper Children: parental responsibility - how it's gained and lost, and restrictions (England and Wales).

If a child arrangements order states that a child is to have contact or spend time with (but not live with) a person who is not the parent or guardian of the child, then a court may provide in the order for the person to have parental responsibility while the circumstances set out in the order continue to prevail.[47]

The other circumstance set out in the legislation in connection with child arrangements orders and parental responsibility orders concern:

- fathers who have not already acquired parental responsibility (e.g. because they were unmarried to the child's mother and not named on the birth certificate);
- second female parents where a child is conceived through artificial semination and the conditions in the relevant legislation are met.[48]

If either is named in a child arrangements order as the person with whom a child is to live and they do not otherwise have parental responsibility for the child, then the court must make an order giving the person parental responsibility at the same time as it makes the child arrangements order.[49] The parental responsibility order may not be revoked for as long as the child arrangements order continues to name that person as someone with whom the child is to live.

Alternatively, if either is named in a child arrangements order as a person with whom a child is to spend time or otherwise have contact

47 Section 12 of the Children Act 1989.
48 Namely, section 43 of the Human Fertilisation and Embryology Act 2008.
49 Parental responsibility is granted under the Children Act 1989, specifically section 4 for the father, and to the second female parent under section 4ZA.

(but not live with) and they do not otherwise have parental responsibility for the child, then the court must decide whether to make an order giving the person parental responsibility. The court bases it decision on "whether it would be appropriate, in view of the provision made in the [child arrangements] order with respect to the father or the woman, for him or her to have parental responsibility for the child". If it decides to do so, the court must also make the parental responsibility order at the same time as the child arrangements order under the relevant legislation.[50] However, the parental responsibility order remains in force regardless of whether the child arrangements order is revoked.

5.2 Taking the child out of the UK

When a child arrangements order that states with whom or when a child is to live with any person, then the child cannot be removed from the UK except:

- by the person named in the order as to whom they are to live with, but only for a continuous period of up to four weeks; or
- in any other circumstances:
  - by any person but only with the written consent of every person who has parental responsibility for the child; or
  - the leave of the court (although a court may grant leave to relax the statutory restrictions set out above on a specific basis or more generally).[51]

Failure to compile with the requirements set out above could mean that someone commits the offence of international child abduction.[52]

5.3 Family Assistance Orders

When a court is considering whether to make a child arrangements order, it can make a "family assistance order" (whether or not it decides to make the child arrangements order). However, a family assistance order can only be made if the court has obtained the consent of every person to be named in the order (other than the child).

A family assistance order allows a court to require a Cafcass or a local authority officer to "advise, assist and (where appropriate) befriend any person" named in a child arrangements order. However, this only applies to a child's parent or guardian, any person with whom the child is living or who is named in a child arrangements order as a person with whom the child is to live, spend time or otherwise have contact, or the child themselves.[53]

Family Assistance Orders are time-limited to a maximum of 12 months, although a court may specify a shorter period.

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50 Parental responsibility is granted under the Children Act 1989, specifically section 4 for the father, and to the second female parent under section 4ZA.
51 Section 13 of the Children Act 1989.
52 For more information, see the Library briefing paper, International child abduction – preventing abduction and recovering children (England and Wales).
53 Section 16 of the Children Act 1989 as amended.

5.4 Activity directions and conditions

When a court is considering whether to make, vary or discharge a child arrangements order,[54] it may make either an "activity direction" or an "activity condition".

Both require an individual who is a party to the proceedings concerned to take part in an activity that would, in the court's opinion, help to establish, maintain or improve the involvement in the life of the child concerned of that individual, or another individual who is a party to the proceedings". However, as their names imply, a activity direction "requires" an individual to take part in the activity, where a activity condition "imposes" a condition to take part in an activity.[55]

The type of activities include programmes, classes and counselling or guidance sessions which may assist with establishing, maintaining or improving involvement in a child's life, or may address a person's violent behaviour in order to facilitate involvement in a child's life. It can also include sessions in which information or advice is given as regards making or operating arrangements for involvement in a child's life, including making arrangements by means of mediation.[56]

54 Where the order concerns one or more of the following: with whom a child is to live; when a child is to live with any person; with whom a child is to spend time or otherwise have contact; or when a child is to spend time or otherwise have contact with any person.
55 Sections 11A and 11C of the Children Act 1989 as amended.
56 Section 11A and 11C of the Children Act 1989

6. Enforcement for non-compliance

6.1 Remedies when a warning notice is issued

Attachment of a warning notice to a child arrangements order

Whenever a court makes or varies a child arrangements order, a "warning notice" must be attached to the order itself (or the order varying the child arrangements order) which warns of the consequences of failing to comply with the child arrangements order.[57]

A warning notice states that if someone breaches a child arrangements order, "the court may fine or imprison them for contempt of court, or may make an enforcement order or an order for financial compensation".[58]

The attachment of a warning notice to a child arrangements order allows enforcement of the order by committal proceedings.

Enforcement order if someone breaches a child arrangements order

If someone breaches a child arrangements order and the order has a warning notice attached, then a court is able to make an "enforcement order" requiring the person who breached the child arrangements order to undertake between 40 and 200 hours of unpaid work.

A court will only make an enforcement order if it is applied for, and those who can apply are limited to a person named in a child arrangements order as: someone with whom the child lives or is to live or have contact with; someone named in an activity direction or whom a child arrangements order imposes conditions; or (subject to gaining the leave of the court) the child themselves.

If a court deems that someone has a "reasonable excuse" for not complying with a child arrangements order, then the court may not make an enforcement order.[59] Further, an enforcement order cannot be made against some categories of people, including anyone under 18 years of age.[60] See section 7.2 for more information on this point.

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57 This requirement has been in force since December 2008 – for any contact orders which pre-date this which do not have a warning notice attached (because they have not been varied), a warning notice is added if an application is made to do so by any person named in an order as someone with whom a child is to live or have contact with, someone named in an activity direction or whom a child arrangements order imposes conditions, or the child themselves. Prior to April 2014, contact orders and residence orders existed, before they were replaced by child arrangements orders. See section 8 of the Children and Adoption Act 2006.

58 HM Courts and Tribunals Service, Form C78: Application for attachment of a warning notice to a child arrangements order, 2016, p1

59 For more information on this point, see section XXX of this note.

60 See section 11K of the Children Act 1989 as amended.

When a court is considering making an enforcement order, it must be satisfied both that "making the enforcement order proposed is necessary to secure the person's compliance with the child arrangements order" (or any replacement child arrangements order), and "the likely effect on the person of the enforcement order proposed to be made is proportionate to the seriousness of the breach". Among other factors, a court must also "take into account the welfare of the child who is the subject of the child arrangements order".[61]

If an enforcement order if not complied with, then a court can increase the number of hours of unpaid work, or (if the first order is still in force) make a second enforcement order in addition (or in place of) the first order.[62]

Compensation for financial loss

If someone fails to comply with a child arrangements order and in so doing incurs a financial loss on another person,[63] then a claim can be made to the court to recover that loss but only if a warning notice had been attached to the child arrangements order.

It is for the person affected to apply to the court for recompense, and if successful the court can only order an amount up, but not in excess of, the loss incurred.

In deciding whether to make such an order for compensation, if the person who breached the child arrangements order had what the court judges to be a "reasonable excuse" to do so, then no order for financial loss may be made.

Further, a court is take into account the welfare of the child concerned when deciding whether to make an order for financial compensation and the other powers available under the relevant legislation. This includes the amount to be paid, and a court must also take into account the individual's financial circumstances when determining how much financial compensation they should pay.

If a person fails to comply with the order for recompense, then it can be recovered by the applicant as a civil debt due to them.

6.2 Contempt of court proceedings

If someone commits a contempt of court – which can include a breach of a court order (such as a child arrangements order), or making a false statement of truth – then they can be subject to committal proceedings and, if found guilty, fined or imprisoned.

Penal notice

In order for an application for contempt of court to be made, a penal notice needs to have been attached to the child arrangements order (or

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61 Section 11L of the Children Act 1989 as amended.
62 Schedule A1, paragraph 9 of the Children Act 1989 as amended.
63 Specifically, by any person named in an order as someone with whom a child is to live or have contact with, someone named in an activity direction or whom a child arrangements order imposes conditions, or the child themselves if they have the leave of the court to apply.

the consequences of failing to comply with the order conveyed by some other means).

A penal notice can only be added to a child arrangements order if it is applied for to the court by someone entitled to enforce the order.[64]

Committal orders

Children Law and Practice notes that "committal orders in family cases should be remedies of the 'very last resort', and: 'should be made very reluctantly and only made when every other effort to bring the situation under control has failed or is almost certain to fail'".[65]

If, once a committal order has been made, a court finds that contempt of court has been proved, then the court has a range of powers available including to impose a custodial sentence of up to two years in jail, a fine, or to grant an order to restrain repetition of the act of contempt.

Children Law and Practice notes that "whenever there is a reasonable alternative available instead of a committal to prison, that alternative must be taken", and that "a judge is entitled to consider the welfare of the child when deciding whether to impose a sentence of imprisonment".[66]

6.3 Refusal to deliver child for contact

There are a number of powers available if someone fails to deliver a child for contact in breach of a child arrangements order (or an order requiring the child to be delivered up), including:

- a "search and recovery" order
- a collection order made under the inherent jurisdiction of the High Court; or
- committal proceedings.[67]

The legislation allows for a court to make an order (known as a search and recovery order) authorising either an officer of the court or a police officer to take charge of the child and deliver him to the person concerned. In doing so, they are permitted to both to enter and search any premises where they have reason to believe the child may be found, and "to use such force as may be necessary to give effect to the purpose of the order".[68]

Children Law and Practice note that "the inability of the court to trace a child who is the subject of proceedings is an extremely serious matter; breach of the requirements of a location or collection order are likely to

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64 Ministry of Justice, Family Procedure Rules 2010, 30 January 2017, rule 37.9
65 Hershman and McFarlane, Children Law and Practice, December 2019, para B1495
66 Hershman and McFarlane, Children Law and Practice, December 2019, paras B1519 and B1520
67 Hershman and McFarlane, Children Law and Practice, December 2019, para B1421
68 Section 34 of the Family Law Act 1986

be met by a prison sentence if established within contempt proceedings".[69]

Box 5: 2012 consultation on enhanced enforcement measures

In its November 2011 "Final Report", the independent Family Justice Review (commissioned by the Government) found that "failure to enforce orders leaves parents deeply disillusioned" and proposed that "where an order is breached the case should go straight back to court, to the same judge. The case should be heard within a fixed number of days with the intention that the issue be resolved within a single hearing. If an order is breached after 12 months, parties should be required again to attend a MIAM with a view to further mediation if appropriate, before a return to court".[70] Its Final Report did not advocate any of the other suggested enforcement measures it had raised in its Interim Report (which included suspension of driving licences, the use of curfews (enforced through electronic tagging) and increased use of orders to reverse residence), with the Panel having "concluded that these would have little if any effect".[71]

In its response to the Final Report, the Government accepted this new approach but also said that it "does not agree with the Review's conclusion that additional enforcement measures are not the answer" and "therefore intends to explore the feasibility of providing the courts with wider enforcement powers so that in appropriate cases these can be used to address wilful disobedience in respect of the court's order".[72]

A Government consultation on possible new enforcement powers was launched in June 2012, in which it said that "the Government believes that there should be a level playing field on enforcement so that denial of maintenance or refusal to facilitate contact both give rise to the same or very similar penalties". It explained that it was "therefore considering extending enforcement powers to mirror those already agreed by Parliament for enforcing payment of child maintenance".[73] The Government also said that it "intend[ed] to amend the warning notices on court forms and change court information materials to emphasise to parents, from the outset of the court process, the potential consequences of breaching an order", namely that where there is "wilful obstruction of contact by a parent with whom a child lives … courts can also use their existing order-making powers to make different care arrangements for the child" (i.e. to change the residence of the child).[74]

Conceding that "enforcement of court-ordered child arrangements is a complex and difficult area", in its February 2013 response to the consultation the Government said that it had "concluded that, on balance, it would be premature to legislate now to give the courts additional enforcement sanctions". It added that "changing a child's residence is never an enforcement response as it must meet the welfare needs of the child but this will also remain an option available to the court", noting that "a strong message from consultation was that measures designed to 'punish' parents are unlikely, in many cases, to be appropriate or to encourage parents to be co-operative in the future".[75]

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69 Hershman and McFarlane, Children Law and Practice, December 2019, para B1421
70 Family Justice Review, Final Report, November 2011, pp169–170, paras 4.152–4.155
71 Family Justice Review, Interim Report, March 2011, p179, para 5.158
72 Ministry of Justice and Department for Education, The Government Response to the Family Justice Review: A system with children and families at its heart, Cm 8273, February 2012, pp79–80, recommendation 128
73 The Library briefing paper Child maintenance: enforcing payment of arrears (GB) sets out the current range of collection powers and enforcement powers available to the Child Maintenance Service (CMS).
74 Department for Education and Ministry of Justice, Co-operative Parenting Following Family Separation: Proposed Legislation on the Involvement of Both Parents in a Child's Life, 13 June 2012, pp7–9, sections 6–8
75 Ministry of Justice, Co-operative parenting following family separation: proposals on enforcing court-ordered child arrangements – Summary of consultation responses and the Government's response, February 2013, pp14–15

7. Safeguards

7.1 Imposition of leave requirement

As noted in section 2.2 above, certain categories of people, such as a child's parents, can apply for a child arrangements order as of right i.e. they do not require the leave of the court before they can apply. However, in a limited number of cases this privilege can be used in a way not intended by the legislation e.g. to make multiple or spurious applications.

As a safeguard, section 91(14) of the Children Act 1989 as amended allows a court to impose a leave condition on those who otherwise would not be subject to such a condition. The legislation states that:

> On disposing of any application for an order under this Act [such as a child arrangements order], the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

The legal text Children Law and Practice says that this provision "should be used sparingly", but highlights that it "may be particularly useful to prevent a further application after the determination of the hearing of an unmeritorious application".[76]

It also notes that case law has determined that it is not necessary that there should be have been multiple applications for a child arrangements order before a court makes a section 91(14) order, "where the litigation has become protracted owing to a party's lying and manipulation".[77]

In terms of some of the other factors that a court should take into consideration when considering whether to make an order for leave under section 91(14), Children Law and Practice notes that:

> The Court of Appeal extracted the following guidelines from the cases considering orders under CA 1989, s 91(14):
>
> - CA 1989, s 91(14) should be read in conjunction with CA 1989, s 1(1) which makes the child's welfare the paramount consideration;
> - the power to restrict applications is discretionary and in exercising its discretion the court must weight in the balance all the relevant circumstances;
> - an important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the court and to be heard;
> - the power should therefore be used sparingly and should be the exception and not the rule;
> - in suitable cases and on clear evidence, the court might impose the leave restriction where the welfare of the child

[76] Hershman and McFarlane, Children Law and Practice, para B582
[77] Hershman and McFarlane, Children Law and Practice, para B910, citing Re K (Special Guardianship Order) [2011] EWCA Civ 635, [2012] 1 FLR 1265

required it, even though there was no past history of unreasonable applications;

- in cases where there was no past history of unreasonable applications, the court would need to be satisfied:
  - that the facts went beyond the commonly encountered need for a time to settle to a regime ordered by the court and the all too common situation where there was animosity between the parties (adults and/or local authority); and
  - that there was a serious risk that, without the imposition of the restriction, the child or primary carers would be subject to unacceptable strain;
- a court might impose a restriction in the absence of a specific request, subject to the rules of natural justice, allowing a party to be heard;
- restriction might be imposed with or without limit of time;
- the degree of restriction should be proportionate to the harm it was intended to avoid;
- without notice orders should not be made other than in exceptional cases;
- an absolute prohibition on making an application could not be ordered under s 91(14), but only by an order made under the inherent jurisdiction of the court.[78]

[…]

In Re S (Permission to Seek Relief)[79] and S v S[80] the Court of Appeal gave further guidance in relation to CA 1989, s 91(14), stressing in particular:

- it is not permissible to attach a condition to a s 91(14) direction (for example, requiring a parent to engage in treatment) … (save as to ambit and duration);
- it is, however, permissible for the court to indicate that unless a particular issue is addressed, any application for permission to make a subsequent application is likely to be unsuccessful;
- a party who is subject to a s 91(14) restriction because of past conduct must have addressed that conduct if an application for permission to apply is to warrant renewed judicial investigation;
- a s 91(14) direction made without limit of time or until a child reaches 16 should be the exception rather than the rule;
- when making a s 91(14) direction, the court may direct that if an application for leave to apply is made it need not, in the first instance, be served upon the resident parent;
- where there is a risk that a litigant may feel that the judge imposing the restriction had prejudged a subsequent application for permission against him, the order should

78 Hershman and McFarlane, Children Law and Practice, paras B910 and B911
79 Case reference: [2006] EWCA Civ 1190, [2006] 3FCR 50, [2007] 1 FLR 482
80 Case reference: [2006] EWCA Civ 1617, [2006] 3 FCR 604; sub nom Stringer v Stringer [2007] 1 FLR 1532

> provide for the permission application to be made to the relevant Family Division Liaison Judge.

where "CA" means the Children Act 1989 as amended, and "s" is short for "section".

7.2 Not compiling with a child arrangements order when there is a "reasonable excuse"

Section 6 sets out the range of enforcement powers available to the court when the terms of a child arrangements order are not complied with.

However, the legislation does permit the non-compliance with a child arrangements order in certain circumstances, for example where to comply would be to place the child at risk. The legislation states that a court "may not" (rather than e.g. "must not") make an enforcement order "if it is satisfied that the person had a reasonable excuse" for failing to comply with the order.

It adds that "the burden of proof … lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities".[81]

The term "reasonable excuse" is not defined in the legislation or in the accompanying explanatory notes,[82] but during the passage of the legislation that introduced the "reasonable excuse" rule, the then Parliamentary Under-Secretary of State for Education and Skills, Parmjit Dhanda, told the House:

> I am happy to repeat that a reasonable excuse could include a genuine fear of domestic violence, whether to the adult or the child. In so far as ensuring that the courts have sufficient regard to child protection issues, the change proposed is not necessary. Similarly, the court will already take into account the safety of another adult. We should also bear it in mind that not all reasonable excuses involve domestic violence. A medical emergency could be why an order was breached.[83]

As section 6 notes, failure to comply with a child arrangements order can be a serious matter and a court may use its powers of enforcement. Someone considering breaching a child arrangements order on the grounds that they have a "reasonable excuse" to do so would be strongly advised to seek legal advice before doing so.

Looking beyond the immediacy of the original decision to not comply with a child arrangements order on the grounds of there being a "reasonable excuse", a variation of the order should be sought to provide a more permanent solution. As the website Family Law Advice notes:

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81 Children Act 1989 as amended, section 11J

82 The Children and Adoption Act 2006 amended the Children Act 1989 by inserting section 11J, which sets out the "reasonable excuse" rule. A copy of the 2006 Act and the explanatory notes are available online.

83 HC Deb 20 June 2016 c1272

> Contact should only be refused where there is very good reason for doing so, for instance if there is an issue of safety or violence, when contact could be refused. Refusal to allow a parent to have contact is likely to result in an application being made to court. If contact is refused and the non-resident parent takes the case to court, the resident parent will have to explain why contact was restricted. If there is already a court order in place for contact, refusal to allow the contact to take place may amount to contempt of court and possibly further legal action. To avoid this, an application should be made for a variation of the existing Contact Order (now known as a Child Arrangements Order) where there are valid reasons for concern.[84]

7.3 Forms of contact other than direct contact

Safeguards can be established where it is not appropriate for a child to be in the presence of someone due to the risk posed to the child of meeting them.

The legal text Children Law and Practice observes that:

> The court has a wide and comprehensive power to arrange contact … The forms of contact other than allowing the child to visit or stay with the person may be various and diverse. They may include contact by visiting the child in his home, or meeting him at some neutral location such as a family centre. In appropriate circumstances the order may limit the contact to correspondence or telephone calls … [or] over a time delayed video link.[85]

Supervised contact

The National Association of Child Contact Centres notes that:

> Supervised contact is used when it has been determined that a child has suffered or is at risk of suffering harm during contact. Referrals will usually be made by a court, CAFCASS officer, local authority or another child contact centre, but in exceptional circumstances a child contact centre may accept a self-referral.[86]

Cafcass notes that supervised contact (or "Child Contact Interventions", or CCI) can be effective in cases where:

- parental conflict is intractable and needs positive practical reframing
- contact has lapsed and needs support to re-establish
- there are risk issues which need to be further assessed.

A Cafcass Family Court Adviser can make CCI referral, and it can also be accessed by families independently of Cafcass .[87]

Indirect contact

Children Law and Practice notes that:

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84 Child Law Advice, Contact – Can I refuse contact?, webpage accessed on 3 December 2019
85 Hershman and McFarlane, Children Law and Practice, 1 May 2019, para B328
86 National Association of Child Contact Centres, Supervised contact, webpage accessed on 3 December 2019
87 Cafcass, Child Contact Interventions, webpage accessed on 3 December 2019

A child arrangements order that makes provision for indirect contact may, for example, contain conditions that the residential parent:

- sends photographs and progress reports to the other parent;
- informs the other parent of any significant illness and sends medical reports;
- accepts delivery of cards, letters or presents for the child and reads or shows any such communication to the child, and delivers any present to him.[88]

[88] Hershman and McFarlane, Children Law and Practice, 1 May 2019, para B328

8. Seeking a change to an order

8.1 Appealing a judge's child arrangements order decision

The "routes of appeal" – depending on who heard the original case – are set out in paragraph 2.1 of Practice Direction 30A of the Family Procedure Rules 2010.

As the legal text Children Law and Practice by Hershman and McFarlane notes, "a decision, order or judgment of a court may be set aside or varied on the basis that it was wrongly made, either by the same level of judge or by an application to a different level of judge" [para E1].

However, the case of Re N highlighted the challenges of appealing a decision which was of itself a choice between two "imperfect solution". As Lord Justice Ward said in his judgment on the case:

> It may be an irony that the more finely balanced the decision, and the more acutely the judge has agonised over his decision, the less prospect there is of the decision being successfully appealed. The understandable reaction of the disappointed party is that the judge has got it wrong; therein lies the fallacy. That fallacy was exposed by the House of Lords in G v G (Minors) (Custody Appeal) [1985] FLR 894. The fallacy is this: in a case involving the welfare of a child there is often no right answer. There cannot be an absolute of right where the choice is between two solutions, each of which is imperfect. That state of affairs does, therefore, confront the profession with the necessity, I would say duty, of making a dispassionate analysis of the judgment, to identify whether there is any prospect at all of persuading the Court of Appeal that the factual substratum of the judgment can be attacked, bearing in mind how difficult it is to sustain such an attack; and if not, whether the balance, so finely held, can ever be said to be plainly wrong.[89]

8.2 Varying or ending an order

Who can apply

An application to vary or discharge a child arrangements order can be applied for by the same people who are allowed to apply for the making of such an order (see section 2).

In addition, any person who is named in an order can apply for its variation or discharge (without the need for obtaining leave first, if so required) if they are named in the order as "with whom the child concerned is to spend time or otherwise have contact, or when the child is to spend time or otherwise have contact with any person". The same applies if the order was made on their application.[90]

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89 Hershman and McFarlane, Children Law and Practice, 1 May 2009, para E5 citing Re: N (Residence: Hopeless Appeals) ([1995] 2 FLR 230 at 236)

90 Section 10(6) of the Children Act 1989 as amended.

Alternatively, a court may choose itself to vary or discharge a child arrangements order in any family proceedings in which a question arises with respect to the welfare of the child.[91]

Variation or termination of an order

Children Law and Practice notes that on either a variation or discharge application, "the court has the full range of orders available to it, including the power to give directions or impose conditions. The court will approach the matter on the same basis as an original application for a s 8 order, making the child's welfare the paramount consideration".[92]

8.3 Other reasons to terminate a child arrangements order

A child arrangements order may also come to an end because:

- it ceases to have effect due to the age of the child;
- it will be discharged automatically upon the making of a care order with respect to the child;
- it will cease if the child's parents live together with the child for over six months.[93]

91 Hershman and McFarlane, Children Law and Practice, 1 May 2009, para B351A
92 Hershman and McFarlane, Children Law and Practice, paras 351A and 351C
93 Hershman and McFarlane, Children Law and Practice, para 351B

9. An outline of the law in Scotland

The Children Act 1989 as amended applies only to England and Wales – in Scotland, the Children (Scotland) Act 1995 sets out the legislative framework for contact and residence.

A briefing paper by the Scottish Parliament's Information Centre (SPICe) sets out the position under the 1995 Act, which is similar to that for England and Wales:

> Section 11 of the 1995 Act provides for a range of court orders relating to PRRs. These include a 'residence order' which stipulates where a child should live, if the parents cannot agree.
>
> Similarly, a 'contact order' sets out the arrangements for contact between a child and a person that the child does not live with.
>
> […]
>
> In making any court order under section 11 the welfare of the child is the paramount consideration.
>
> […]
>
> In considering whether to grant any court order under section 11 of the 1995 Act, the court will have regard to three principles, namely:
>
> 1. the welfare of the child is the paramount consideration;
> 2. taking account of the child's age and maturity, the child shall, so far as practicable, be given an opportunity to express his or her views; and
> 3. the court will not make any order unless it considers that to do so would be better than making no order at all (1995 Act, section 11(7)).
>
> The Family Law (Scotland) Act 2006 (section 24) also amended section 11 to require the courts to "have regard in particular" to the need to protect the child from actual or possible abuse, the effects of such abuse on children, the ability of the abuser to care for the child, and the effects of abuse on a person's capacity to fulfil PRRs [parental rights and responsibilities – the Scottish equivalent to parental responsibility].[94]

In terms of enforcement, SPICe notes that:

> Breaches of contact orders can be difficult to enforce. A parent who is not complying can be held in contempt of court, with the possibility of a fine or imprisonment. However, the courts are reluctant to resort to a prison sentence. The existing living arrangements for the child can also be varied to the detriment of the parent in breach, although the welfare of the child remains the key consideration.[95]

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94 Scottish Parliament Information Centre, Parenting when parents live apart, 15/17, 31 March 2015, pp3 and 8

95 Scottish Parliament Information Centre, Parenting when parents live apart, 15/17, 31 March 2015, p3

For more information, see the SPICe Briefing, Parenting when parents live apart (31 March 2015).

10. Other sources of information and advice

The Family Mediation Council can provide information about family mediation and how to find the nearest mediation service (including those providing a MIAM).

A guide about the family courts for separating parents and children and is available from Cafcass or, for Wales, CAFCASS Cymru.

For advice about Contact Centres, which are neutral places for contact to take place between children of separated families and family members, contact the National Association of Child Contact Centres.

The Library note Legal help: where to go and how to pay sets out information about where to seek legal help or advice.

Organisations that may be able to help with queries related to contact and residence include:

- AdviceNow (run by the charity Law for Life: the Foundation for Public Legal Education) – contact form;
- Child Law Advice (part of the charity Coram Children's Legal Centre) – 0300 330 5480;
- Citizens Advice – 03444 111 444;
- Families Need Fathers (a single parents' charity not just for fathers) – 0300 0300 363;
- Family Law Panel (offers initial information free of charge and reduced fee scheme for low income individuals) – links to find local solicitors, barristers and mediators.
- Family Lives (a charity providing advice to families) – 0808 800 2222;
- Family Rights Group (a charity that works with parents whose children are in need, at risk or are in the care system and with members of the wider family who are raising children unable to remain at home) – 0808 801 0366;
- Gingerbread (a single parents' charity) – 0808 802 0925;
- GOV.UK, Making child arrangements if you divorce or separate;
- Grandparents Plus (a grandparents' charity) – 0300 123 7015;
- Resolution (a member organisation for professional who believe "in a constructive, non-confrontational approach to family law problems") - online directory.[96]

The NSPCC also provides a list of organisations who can help with private law matters, such as parental responsibility, on their webpage Separation and divorce.

[96] Organisations include those listed on the Advice Now website's "Help Directory" under the heading "Family Problems".

36 Children: child arrangements orders – when agreement cannot be reached on contact and residence (Great Britain)

In terms of the legislation and related guidance, the following is relevant:

- Children Act 1989 as amended;
- Children Act 1989: court orders, statutory guidance, April 2014, Department for Education (in particular chapter 1);
- Family Procedure Rules 2010, Ministry of Justice.

Other Library briefings on private child law and related topics

- Children: parental responsibility – how it's gained and lost, and restrictions (England and Wales)
- Children: child arrangements orders – grandparents and court orders for contact with grandchildren (Great Britain)
- Children: parental alienation and the role of Cafcass (England)
- Children: child arrangements orders – safeguards when domestic abuse arises (England and Wales)
- Confidentiality and openness in the family courts: current rules and history of their reform (England and Wales)
- International child abduction – preventing abduction and recovering children (England and Wales)

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1.0	10/2/20	Replaces SN3100 (last updated 9/8/17) and SN3101 (last updated 2/6/14) and provides new information (chapters 1, 4, 7–10 and Box 5 added in particular) in new template

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