



SPECIALIST IN FAMILY LAW
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PARENTAL RESPONSIBILITY – WHAT IS IT?

I hope that you will find this letter helpful in relation to any potential dispute which may arise between yourself and your spouse concerning your children. This information is useful if you have any concerns so far as the short or long term position concerning the children is concerned. As you and your spouse are married, you both have what is called Parental Responsibility for which you share equally and, even following separation, you are expected to consult each other about major decisions concerning your children's future.

Parental Responsibility infers all the rights, duties and obligations that parents have in respect of their children. If however, either in the short or long term, you are unable to agree any aspect of your children's welfare with your spouse (e.g. which school they will attend at; issues concerning their health; any future property move etc.), you may need to consider taking legal advice and whether it is appropriate for the Court to be asked to determine any issues between you.



There are a number of key principles under the Children Act which, among other things, include:-

1. The Welfare Principle

You may ask what this means. If a Court has to be asked to determine any issue relating to one or any of your children, the Court has to have as its first and paramount consideration the child or children's welfare. If the children are of an appropriate age where their wishes and feelings can be taken into account and those wishes are in their best interests, then the Court can do so.

2. The Non-Intervention Principle

If at all possible the Court prefers not to interfere in the parents' decision making for their children and will encourage the parents to try and find a satisfactory resolution to those issues between themselves. The Courts prefer to adopt what is called the "No Order Principle" unless it is absolutely necessary for Orders to be put in place and that in making Orders that is in the children's best interest.

3. The Delay Principle

As you will appreciate the Court will endeavour to deal with any matters concerning children as quickly and as effectively as possible. If an application to the Court is necessary and matters are not capable of resolution at the first hearing then the Court will set out directions necessary to bring the issues to a speedy conclusion. Sometimes the Court needs the assistance of what is called the CAFCASS Officer to investigate matters and report back to the Court on any of the issues which may arise and if that is the case the Court will set a timetable for the CAFCASS Officer to provide any report to the Court necessary within a specific time frame.

There are various types of Orders that can be applied for or made by the Court and some of the examples of those are:-

- (a) A Residence Order (where a child will live)
- (b) A Shared Residence Order (determining how the parents are to co-parent the children and where the children will spend time with each parent.
- (c) A Contact Order – defining how much time a child will spend with one parent.
- (d) A Prohibited Steps Order – this is usually to prevent a specific step being taken, for example, taking a child out of the jurisdiction or moving to a different area or changing their schools.
- (e) A Specific Issue Order – this can cover a lot of issues, for example, a child's education, health treatment, dealing with any particular important matter upon which the Court is required to adjudicate.

The Court will expect parents, whatever the differences between themselves, to try and find a satisfactory resolution to any issues which may arise concerning their children. Courts can try and persuade the parties to attend Mediation or process the matter through the collaborative law process. In each case however, both the Court and the parties and their respective legal advisers can endeavour to work together to try and decide what is the best option in that particular case.

It is important for you to remember that, whether Court proceedings are issued or not, issues concerning children need to be dealt with sympathetically and sensitively and the Courts will always try and facilitate time to deal with difficult areas if at all possible and, again, encourage both parties to try and resolve the differences if necessary with the help of their legal advisers or without a final hearing where the Court will impose Orders which either side may not like.

There are certain expectations of what the Court expects parents to do. I am enclosing the CAF/CASS fact sheet which sets out The Separated Parents Information Programme which can often assist parents post-separation to deal with the impact of the separation both upon themselves and indeed the children.

4. The Welfare Checklist

In helping the Court to make decisions concerning children they have to take into account various factors and some of those include:-

- the wishes and feelings of the children which are considered in the light of the children's age and understanding
- the children's physical, emotional or educational needs
- the likely affect upon the children of any change in circumstances
- the child's age, sex, background and any characteristics which a Court consider relevant
- any harm the children have suffered or are likely to be at risk of suffering
- the capability of each parent or any other person in relation to whom the Court considers the question to be relevant in terms of meeting the child's needs
- the range of powers available to the Court

I am sure that the above information can sometimes seem daunting but it is important for you to know all the choices that are open to you and I hope that this will assist. I would equally hope that your spouse would receive similar information so that you can try and work together and co-parent your children in the best possible way.

No-one can know your children like you and I am sure both you and your spouse would wish to make the decisions yourselves rather than have them imposed upon you by a Court.



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