

## TERMS USED UNDER THE CHILDREN ACT 1989

### Children Act 1989

The Children Act 1989 came into force in October 1991 and changed the arrangements relating to custody, care and control and access.

The Act introduced three new arrangements in connection with children namely residence, contact and parental responsibility.

The Court also has power to make two other types of Order namely prohibited steps and specific issue Orders.

### Parental Responsibility

1. This is a legal term which is used to describe the responsibility that a parent has for a child in terms of taking decisions that will shape the future of the child such as where the child will live, what religion the child will follow and where the child will be educated.
2. Each married parents of the child born within that marriage or to those parents before they are married will have parental responsibility. Where parents are unmarried the mother will always have parental responsibility and by agreement may share that with the father. An unmarried father may also apply to the Court for an Order that he has parental responsibility. Since 1<sup>st</sup> December 2003 a Father who is not married to the Mother at the time of the child's birth will have parental responsibility if his name is placed on the birth certificate at the time of the registration of the birth.
3. Parental responsibility may also be gained when another Children Act Order is made, examples are that a Residence Order provides parental responsibility in favour of the holder or holders of the Order and a Care Order provides the same for the Local Authority. Parental responsibility can be shared and a mother and a married father will never lose parental responsibility although they may have to share it if such orders are made.
4. A Parental Responsibility Order can only end when a child reaches 18 years or by Order of the Court.

## **Residence**

A Residence Order settles the arrangements to be made as to the person with whom a child is to live. A Residence Order automatically gives parental responsibility to any person in whose favour it is made for as long as the Order is in force. The making of a Residence Order will not extinguish the parental responsibility of any person who has parental responsibility. It does not affect the legal relationship between the child and his parent. It settles the practical arrangements relating to the child's accommodation.

## **Contact**

A Contact Order requires the person with whom a child lives or is to live to allow the child to visit or stay with a person named in the Order or for that person and the child otherwise to have contact with each other. There may be more than one Contact Order made in respect of a child.

## **Prohibited Steps**

This Order limits when certain parental rights and duties can be exercised.

## **Specific Issue**

This Order contains directions to resolve a particular issue in dispute in connection with a child.

A Prohibited Steps or Specific Issue Order could be obtained where there is a dispute as to the child's education determining whether the child can be taken abroad or preventing a specific person from seeing the child.

In deciding whether an Order should be made the Court will have regard to:-

1. The ascertainable wishes of and feelings of the child concerned (considered in the light of the child's age and understanding)
2. The child's physical emotional educational needs
3. The likely effect of the child of any change in his/her circumstances
4. The child's age, sex, background and any other characteristics which the Court considers relevant
5. Any harm which the child has suffered or is at risk of suffering
6. How capable each of the child's parents and any other person in relation to whom the Court considers the question to be relevant is of meeting the child's needs.
7. The range of powers available to the Court under the Children Act in the proceedings in question

Under the Children Act the Court will only make an Order where one is needed and is in the best interests of the child concerned – otherwise no Order will be made. When making any decision the Court's paramount consideration is the welfare of the child. The Court recognises that delay is likely to be harmful to the child's welfare.

- a) If both parents can agree where the children should live and when and how the children shall see the non-resident parent then there is no need for a Court Order.
- b) Reasonable contact between children and a non-resident parent, if such cannot be agreed between the parents will often be ordered by the Court at a frequency of every other weekend and part of school holidays but possibly more for very young children under school age. Each case will depend upon the particular facts.
- c) Either parent can be the full-time carer of children. The Courts look at what is in the best interests of the children and at the status quo. That is, it is preferable to keep children in the home they have known and going to the same schools but this is not always possible.

For further information on any of the above please contact a member of the team on **01376 321311**.