

How the court makes decisions about children



*working for
accessible justice*

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Although all steps should be taken to try and agree arrangements for children, where these can't be agreed you can ask the court to become involved.

Having spent over 25 years helping clients with their legal problems and running large family law firms, two well known experts decided to set up Beck Fitzgerald to deliver legal services to clients in a personal and effective way. We hear what our clients have to say about what they want and have embraced modern ways of delivering our services.

Our aim is to enable more clients to get the expert help they need, when they need it, at a price they can afford.

The best interests of the child will be the court's main concern - all court decisions will focus on the child's welfare and the court is most likely to be persuaded by the parent who is putting forward proposals that are in the child's best interests.

In order to help the court decide what is in a child's best interests they will consider a number of equally important factors. These factors are legally known as the 'welfare checklist'.

The wishes and feelings of the child

The court will want to know the child's view, however it is not appropriate to ask children directly about who they want to live with and who they want to see. The court process ensures that the children's views are appropriately taken from professionals involved in the case. The court considers these depending on how old the child is and how mature they are.

The child's physical, emotional and educational needs

The court will try and make sure these needs are met. The court's starting position is that children need a relationship with both parents.

The likely effect of any change in the child's circumstances

The court will want to try and limit change in a child's life where possible. Where change is unavoidable, the court prefers this to occur gradually.

The child's age, sex, background and any other characteristics that the court considers relevant

A child's background can cover, among other things, race, culture and religion.

Any harm that the child has suffered or is at risk of suffering

If the court is concerned that a child is suffering harm it can ask social services of CAFCASS to carry out an assessment. The court may also require other evidence, such as testing for drug or alcohol abuse, if there is evidence that this may be an issue which could cause the child harm.

How capable each of the child's parents, and any other person the court considers relevant, is of meeting the child's needs

The court will want to make sure that both parents are putting the child first and are able to meet all the child's needs. This will include providing stable accommodation for the child, taking them to school and meeting their medical needs.

Presumption of continued parental involvement

There is a presumption by the court that it is better for the child to have both parents involved with their upbringing whenever possible. Because children benefit from relationships with both parents, the court will start with the assumption that regular contact to both parents will be in a child's best interest. However, this does not mean that a child should spend equal time with both parents and each case will be different depending on the circumstances.

The range of powers available to the court under the Children's Act in the proceedings in question

The court will consider every option and can make a wide range of orders, even if they have not been applied for.

What's it like going to court?

Going to the Family Law Court is not as frightening as it sounds. The process is designed to try to encourage agreement and for this reason steps have been taken to try to make the process as accessible as possible. The court process

does, however, have timeframes and obligations which everybody involved has to stick to in order to help the court reach any decisions. It can be an expensive process and can often involve delay and the possibility of widening the gap between you and causing tension. In deciding whether or not you need to go to court this means you should seriously consider whether or not you absolutely require a judge to reach a sensible agreement.

How long will the case take?

Most usually parents agree on some or all of the issues before a final hearing takes place. However, if you are unable to agree on anything, proceedings can take some time, sometimes even over a year. Working together to narrow the issues between

you can help.

How long do court orders last?

Orders usually last until a child is 16, unless there is a special reason for them to last until they are 18.

Who can apply for a court order?

The parents of a child and those with 'parental responsibility' have an automatic right to make an application to court. Other people usually need to ask for the court's permission in a separate application before they can apply to court.

For more information please contact us on:

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