

Pengillys LLP

Client Guide to Arrangements for Children and Finances on Marriage Breakdown

1. Children

The term “children” includes all young people under the age of 16 or in full-time education.

Where a divorcing couple have children a form is sent by the parent seeking the divorce to the court with the Divorce Petition outlining arrangements for the children. The law encourages parents to try and agree those arrangements and we can advise regarding the mediation and conciliation services available.

Where no agreement can be reached applications can be made by both married and unmarried parents for the court to settle disputes. The court can deal with issues such as residence ie with which parent the children are to live, contact arrangements and specific issues such as whether it is appropriate for a child’s surname to be changed or whether a child can be taken to live abroad.

In deciding issues regarding a child’s future the court must consider the welfare of that child before and above any other interest including that of the parent. Normally a social worker will interview the parties and prepare a written report to assist the Judge in reaching a decision.

In most cases where the Child Support Agency has made an assessment the court has no power to make financial provision for the children.

Court proceedings involving children are conducted relatively informally and are presided over by judges with specialist training. Although the Court arranges hearings as quickly as possible, most disputes still take many months to be resolved. Children almost never attend court hearings.

2. Finances

In order to advise you on the terms of any proposals for financial settlement we will need to have full details of your and your spouses income and assets including earned and other income, investments, pension rights, the value of any property owned and the amount of the outstanding mortgage. It is helpful to bring as much of this information as possible to the first interview.

Documentary evidence of these assets of the marriage are then provided or “disclosed” to your spouse who will give details of their financial means at the same time.

Where an agreement can be reached the terms of that agreement are put into the form of a document called a Consent order for approval by the court. The

agreement is then enforceable by the Court and prevents either party from bringing any future claim against the other.

Where no agreement can be reached we will prepare an application to the court for ancillary relief which means the court will determine financial arrangements between the parties.

It is very difficult to advise with certainty on the likely outcome of such an application. A very senior judge has described the process of advising a client in these cases as “a matter of trial and error and imagination”. The Court will hear evidence from both sides and will take into account a number of factors including the current and likely future earning capacities of the parties, the age of the parties and duration of the marriage. If there are children their welfare will be given first consideration.

The types of order available include, periodic maintenance payments, the payment of a single lump sum, pension splitting and transfer of property. You should also be aware that if you remarry before ancillary relief matters have been resolved any claim you have against your former spouse may be lost.

To ensure that your spouse does not become entitled to your own property or to your share in jointly owned property in the event of your death we can advise you regarding the preparation of a notice of severance and a new Will. Please let us know if you would like us to prepare these documents.

3. Costs

At the outset of the case you are asked to pay £300 on account of our costs and disbursements ie expenses such as court fees. Our legal charges for settling arrangements for children and financial matters are difficult to estimate and vary according to the complexity of the family finances and the extent of the dispute between the parties. You will be sent a terms of business letter at the outset explaining the basis of our charges and will be provided with estimates of the likely costs to arise from time to time as appropriate.

If you are in receipt of Income Support or on very low wages you may be entitled to Legal Aid. You should however be aware that the Legal Aid Board will seek to recover our costs out of any money or property which we succeed in obtaining or preserving for you.

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