

PENGILLYS

SOLICITORS • MEDIATORS

Children

Protecting the best interests
of children during disputes



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Your guide to Children

Whether you are a parent, young person, grandparent or a wider relation, where arrangements for children are in dispute, this can be a time of stress and uncertainty.

We in the Pengillys' Children Team do our utmost to help using our many years of experience in assisting the resolution of disputes involving children.

The disputes between members of the family are known as Private Law proceedings, but if the Local Authority is involved (perhaps where there is a claim for a Care Order) they are Public Law disputes.

Living arrangements

Although it is frequently still misapplied, the notion of "custody" was abolished by the Children Act 1981. Instead this issue became known as residence, but more commonly simply an Order directing with whom a child should "live with". Similarly misapplied is the reference to "access" which then became known as contact directing how much time children spend with parents or grandparents.

These aspects are now covered within Child Arrangements Orders and it is also possible to seek Specific Issue Orders (perhaps directing which school a child attends), or even a Prohibited Steps Order (if there is a need to curtail any particular occurrence).

First steps

In the event of any dispute the first step would be to try and negotiate a resolution. If that fails we have access to local mediators. There are various other alternative dispute resolution options, but, as a last resort, an application can be made to the Court. Generally, unless exemptions apply, before any application to the Court is made, there must have been a Mediation Information and Assessment Meeting (MIAM) undertaken by the Applicant.

Parenting plans

On separation these plans can frequently help iron out any particular difficulties. They are available via the Children and Family Court Advisory and Support Service (CAFCASS) website and the link is:
www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parenting-plan/.

Court / The Law

As a background to all negotiations and any ultimate Court decision, the guiding principle is that a child's welfare is the paramount consideration. This determination is made against the Welfare Checklist which sets out the circumstances to be taken into consideration. Once there is an Order in place, the Court, if there is non compliance with that order, can impose sanctions against the non-compliant party.

Parental responsibility (and obligation)

In the most part (but not always) parents of children have parental responsibility which means they are to remain actively involved in all of the important decisions concerning their child's life. This, for example, would include schooling arrangements, relocation and holidays.

Private Law / Public Law

All of the above considerations relate to Private Law proceedings. There are sometimes circumstances where a Local Authority is worried about a child's welfare and they consider they have become in need of intervention either via Child Protection Conferences, pre-proceedings legal meetings or, if matters are serious enough, a Care or Supervision Order.

Funding, timescales and costs

Every situation is unique. We will discuss with you the likely timescales and costs involved. In some very limited circumstances Legal Aid may be available.

We hope that this short guide has helped you. We would be pleased to meet with you to discuss any questions that you may have.

Please call us on 01305 768888

We will then put you in touch with a member of our experienced Family team.

Please visit www.pengillys.co.uk where full details of our Family team are available.

For further details about Pengillys and how we work, please refer to our Terms of Business and Privacy Policy which are available on our website or on request as printed documents.

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Our Offices:

Weymouth

67 St Thomas Street
Weymouth
Dorset DT4 8HB

Dorchester

Challacombe House
Beechwood Square
Poundbury
Dorchester
Dorset DT1 3SS

We can also advise on:

Private Clients
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