

Making the Law Child's Play

There are several new and exciting changes taking place in children's law, all of which are geared towards encouraging a more open and conciliatory atmosphere between parents, professionals and experts dealing with issues concerning meeting a child's needs. Here are the highlights of some of those changes.

Unmarried Fathers and Parental Responsibility

The Children's Act 1989 states that the only parent who automatically has Parental Responsibility (P.R.) for a child (all the formal and essential rights, duties and responsibilities) is the child's mother. This applies whether the mother is married or not. However, an unmarried father must be named on the birth certificate and the child's details registered after Dec 2003, for there to be a presumption that he shares P.R. with the mother.

Approximately 45,000 children are registered by one parent only each year, meaning that many children lose out on having both parents named on their birth certificate. It is often the case that the mother registers the birth and so, for a number of reasons no doubt, the father's name is then left off the register, meaning he doesn't acquire P.R.

The Welfare Bill proposes that both the mother and the father must attend the registrar office to register the newborn child. Once done, the father acquires Parental Responsibility.

The registrar will decide when it is impossible, impracticable and/or unreasonable for both parents to attend to register the details. It is assumed that the existence of domestic violence in the relationship or the imprisonment of one parent would be clear exemptions.

Watch this space as to when this becomes law!



The Child Support Agency

It is now a criminal offence for a parent paying maintenance for their child, (the “non-resident parent”), not to give change of address details to the Child Support Agency (CSA).

In November 2008, the Child Maintenance Enforcement Agency took over the work of the CSA, however the new regime is not functional until 2011 so the usual smooth running prevails in the meantime!

The introduction of the Media in all levels of Family Cases

As of April 2009, approved members of the press will be allowed to report on family cases of all types. The Ministry of Justice is promoting this as a means of ensuring that justice is literally seen to be happening in our courts. It is hoped that the transparency will bring about renewed confidence in the justice system. It is felt that the public need to know that there are competent and efficient professionals working in the best interests of children. Public confidence in Social Workers was most certainly dented further as a result of the Baby P tragedy. It was agreed that all professionals, including expert witnesses, need to be scrutinised regularly.

Does publicity achieve justice? Is it right and appropriate that the press will be free to sensationalise and expose the details of very personal matters?

It is accepted that there will be safeguards put in place as to preserving the anonymity of the parties and their children. The parties will be able to make representations to the Court as to why their case should not be reported.

Adoption cases will not be published in the press.

We at Bennett Griffin subscribe to the national organisation of Resolution as it promotes a non-inflammatory approach to family work. Resolution have suggested that a “lay inspectorate” is set up to report on cases for the benefit of the public, thus taking away the clear potential for only those cases capable of boosting newspaper sales being published.



Making Contact work for your Child and for You

Before the Children and Adoption Act 2006 came into force fully in December 2008, the only action the law allowed to be taken against a parent who breached a contact order, was to apply to attach a penal notice to the order, stating that if he/she doesn't comply in the future, they "...may be sent to prison..." If the father/mother didn't comply still, the only recourse was to return to Court again to start enforcement proceedings. This was neither speedy nor terribly effective as the courts soon realised that sending a parent to prison wasn't in the best interests of a child.

The 2006 Act has introduced much more focussed measures from the outset of the making of the order. The main three measures are set out below.

Contact Activity Directions which the contact parent must attend, such as domestic violence workshops or counselling as to an addiction. They cannot be forced to attend mediation or a medical assessment.

Contact Activity Conditions can be imposed on the contact and/or the resident parent, but not on the child. The person ordered to do something will have to bear the related costs. Even if a party is publicly funded and their certificate covers the costs of attending the activity in accordance with the condition, he/she will not be able to claim any associated travel.

An automatic Warning Notice will be attached to the order from the start, stating that not only will he/she risk a fine and/or going to prison if they do not comply with the order, also, he/she could be required to undertake voluntary work (Community Service) and/or pay compensation to the other party.

It's worth noting that CAFCASS (the court advisory service for children) and the Probation Department will liaise as to the implementation of orders. A parent found in breach, and required to work unpaid for a number of hours, will not acquire a criminal record as it is a civil contempt. It is recognised that there may be a "reasonable excuse" as to why an order cannot be complied with and that the court will consider all aspects of the case before making a Community Service order.

It remains to be seen whether the mandatory nature of these orders will hinder or assist in some cases. If a dilemma arises as to a parent's ability to comply with an order, the case should be returned to court for the direction and/or condition to be varied immediately so as to avoid an application for enforcement by the other parent.



Sorting it out without the Court being involved

“Parenting after Parting” is Resolutions new initiative that aims to ease the transition from parenting as a couple, to co-parenting as separated, divorced or former Civil Partners.

The Bennett Griffin Family Team is committed to you, as a parent, staying in control of all matters concerning your children. We will ensure you understand your options. We will help you to make robust choices that will stand the test of time. Please do take a look at the Resolution website for general information about making contact work.

If you would like specific advice about your circumstances and how to move things forward, please call one of our two highly experienced practitioners: Jackie Gifford on 01903 229903 or Jackie Mensah on 229938.