

Enforcement of child arrangements orders

The Children Act 1989 introduced new concepts to family law and made reference to "residence" and "contact" with a child. However, the labels "residence" and "contact" were replaced in April 2014 with child arrangements orders. The court now makes orders determining "with whom a child is to live" and "with whom a child is to spend time with". The court also has the power to support and encourage parents to comply with child arrangements orders and also, where necessary, to enforce such orders.

Activity directions

When a court considers making a child arrangements order outlining with whom a child should spend time with, an activity direction can also be made. These directions require a parent to take part in an activity, "that helps establish, maintain or improve the involvement in the life of the child of the person or other party to the proceedings". Examples of such activities are programmes, classes, counselling or guidance sessions (possibly anger management or parenting classes).

Certain activities are specifically excluded such as mediation and medical or psychiatric examination, assessment or treatment.

The court cannot make an activity direction when it is making a final child arrangements order - it can only be made when interim child arrangements orders are being made.

Activity conditions

When the court makes a child arrangements order to determine with whom a child should spend time with, it can also impose an activity condition. This may require the

parent with whom the child is spending time with, to take part in an activity which promotes contact with the child.

Monitoring child arrangements orders

The court also has powers to monitor child arrangements orders. This is undertaken by an officer of the Children and Family Court Advisory Service (Cafcass). The court can direct a Cafcass officer to monitor an individual's compliance with a child arrangements order, and report back to the court. This should enable judges to be much more proactive in deciding whether a child arrangements order is working, and also to intervene before contact totally breaks down.

Penalties for failing to comply with a child arrangements order

1 An enforcement order

If a court is satisfied (to the same level as for a crime) that a person has not complied with a child arrangements order, the court can order that person to carry out "unpaid work". This is what used to be called community service. But the court cannot make such an order if the judge is satisfied that the person has a "reasonable excuse", for not complying with the child arrangements order.

The court can only make an enforcement order if it is necessary to "secure that person's compliance", with the child arrangements order, and after considering the likely effect of the order on that person. The court also has to consider whether it would conflict with that person's religious belief, or interfere with them attending their

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normal work or place of education. The nature and effect has to be proportionate to the seriousness of the breach of the child arrangements order. Therefore, if there was a very minor breach, it is hard to imagine that a court would make an enforcement order against that parent. Crucially, a court must also take into account what effect, if any, there will be on the welfare of the child. The court has the power to ask a Cafcass officer to monitor compliance with an enforcement order, and to report back to the court.

2 Compensation for financial loss

The court can order that compensation is paid by one parent to the other parent for financial loss suffered as a result of non-compliance with a child arrangements order. For example, if the parent denied contact with a child incurred travel costs to visit the child. However, again, the court cannot make an order for compensation for financial loss, if the parent who was in breach of the order has a reasonable excuse for non-compliance.

As with an enforcement order, before making an order for compensation for financial loss, the court must consider what effect it may have on the welfare of the child concerned. This may limit the circumstances in which the court will make a compensation order.

This information sheet has been prepared to highlight some key issues relating to enforcement of child arrangements orders. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2015 and may be affected by subsequent changes in the law.

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