COLLAS CRILL

Different types of court order

DECEMBER 2020

Parental responsibility order

Prior to the 2008 Law, this was called joint custody. This was very confusing because in this context, the word custody has nothing to do with where a child lives.

Parental responsibility is defined as all the rights and obligations involved in the raising of a child. Parental responsibility gives each party, usually the parents, the right to be consulted and participate in all major decisions relating to a child's life. Examples of such decisions are as follows:

- Change of surname
- Permanent removal from the Bailiwick
- Consent to medical treatment
- Education

Mothers always have parental responsibility. Where the parents were married at the time of the birth, then each parent has parental responsibility. Parties who were married at the time of the birth and then divorce retain parental responsibility, unless the Court rules otherwise.

Unmarried fathers can acquire parental responsibility, as follows:

- By marrying the mother
- For births registered after 4th January 2010, by being named on the birth certificate
- By Court order
- By entering into a parental responsibility agreement

If none of these apply to you, then you do not have parental responsibility. This means that as a matter of law, you have no parental rights to your child until and unless the Court grants you a parental responsibility order or you enter into a parental responsibility agreement. In practice, parental responsibility applications are seldom opposed and very rarely refused.

Other individuals who are not parents of the child can also acquire parental responsibility by obtaining a residence order or by adoption.

In the event that parents disagree about any major aspect of a child's life, then ultimately the Court will decide on the basis of the best interests of the child. This is called a specific issue application.

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Residence order

Under the old law, this was called care and control or custody.

A residence order determines with whom the child should live on a day to day basis.

The following persons can apply for a residence order:

- Mother or father of the child
- Anyone with parental responsibility
- Any person with permission of the Court
- Any person with whom the child has lived for at least a year

Some of this is new law. The old law was very restrictive as to who could apply for care and control. Even close relatives, such as grandparents, could not apply for custody and could only apply for access if a parent had applied to the Court or an order had been made previously.

Under the new law these restrictions have been swept away and with the permission of the Court, anyone having a close connection with the child can bring an application.

Orders for shared residence, whereby children divide their time between their parents, are becoming more common. It was once thought that children always needed one settled home and that shared residence orders were only workable when the parents were able to maintain a harmonious working relationship post separation. However, recent case law from England suggests that these are no longer pre-requisites for such orders.

Shared residence, if organised and managed well, can be of great benefit to children, particularly so here in Guernsey where invariably the two households are within close proximity.

In practice, the most common arrangement for shared residence provides for the children to spend half the week with one parent and half with the other, with weekends to be shared on an alternating basis. There are however endless permutations of shared care arrangements.

In contested applications for residence orders, as with any other applications, the Court will apply what is called the welfare checklist.

In reality, the Court will look at what is in the best interests of the children on a practical basis. This will include, amongst other things:

- Who is best able to meet the children's needs on a day to day basis
- What is the status quo, ie, who has been the primary carer to date and what is the child's domestic routine
- What are the respective work commitments of the parties and do these impact upon each parent's ability to care for the child

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The importance of the status quo argument cannot be overstated. In practice, the reason most people are granted a residence order is to confirm the existing arrangements. This is on the basis that, generally speaking, the Courts will only change the existing custody arrangements if there is a real need to do so.

The other point to make is that siblings are rarely separated under the terms of a Court order. For obvious reasons, the children are almost invariably kept together, unless there is a very good reason to the contrary.

A common question is at what age can a child make up their own mind about where they live or when they sees the absent parent. Under the new law, the views of an averagely mature twelve year old are given considerable weight, ie, their views will usually dictate the outcome. That said, if the child's views are irrational and clearly not in their best interest, then the Court can and will overrule the child's views.

Generally, the older the child, the more the Courts will listen to what the child wants and why. This is clear from the welfare checklist.

In practical terms, the views of the child will generally be presented by the Family Proceedings Adviser (FPA). The FPA is an independent social worker appointed by the Court to investigate disputed residence and contact applications. Whether in a particular case the FPA will interview the child is a matter entirely for the FPA. The FPA will also raise any concerns there may be about a child's view being influenced by one or both of the parents. See Family Proceedings Advisory Service (FPAS).

There has been a long held perception that the Courts are biased towards mothers in custody proceedings. The new law clearly states that there must be no discrimination on the grounds of gender, age, race etc.

Some might say that the law works against men. All that can be said with some certainty is that there are now more fathers having custody of their children than has ever been the case in the past and that, going forward, this trend is likely to continue.

Contact order

It is a sad fact of life that on divorce or separation, a large proportion of children have only restricted contact with the absent parent or lose contact altogether.

Under the new law, a contact order requires the person with whom a child lives to allow that child to visit, stay or have contact with a person named in the order.

Contact, previously known as access, is usually face to face but it can also include indirect contact by telephone, letters, email and photographs. Communication by Skype and webcam can also be very useful, especially if one party is off island.

Most contact is unsupervised. If required, contact can be supervised, monitored or supported at the Contact Centre. Supervised contact is self explanatory, whereas supported contact is more loosely controlled in that there is no individual supervision of each family. Such arrangements are usually short term and aimed at

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moving towards unsupervised contact as soon as possible. The Contact Centre will not provide supervised or supported contact indefinitely.

The contact details for the Contact Centre are:

Guernsey Child Contact Centre
Roseville Community Centre
Le Bouet
St Peter Port
Guernsey
GY1 2BY

Tel: 07781 138504 or 01481 726473 during contact hours

As lawyers, we spend much of our time negotiating contact arrangements and trying to reach agreement so as to avoid Court proceedings.

If the arrangements cannot be agreed and assuming all other attempts to reach a settlement have failed, then the Court will intervene on the application of either party.

The Court will approach the matter on the basis that contact is seen to be the right of the child and that in most cases, everything should be done to promote and encourage face to face contact.

In its investigation of the case, the Court often employs the services of the FPAS in dealing with disputes over contact, as well as issues of parental responsibility and residence.

Usually, a Court order will refer to reasonable contact or alternatively will define the contact arrangements.

A reasonable contact order simply establishes the principle of contact and leaves it to the parties to determine when and where contact takes place. Such orders work well where there is a high level of communication and co-operation between the parents, and where the parents wish to retain flexibility. The difficulty comes in trying to enforce a reasonable contact order in circumstances where contact is denied.

Such orders do not work well in cases where there is a high level of acrimony and mistrust between the parties. In such cases, the only effective order is going to be a defined contact order where the arrangements are fixed.

A defined contact order stipulates the date, time and place where contact takes place. This can include weekly contact, holiday contact and indirect contact by telephone, etc. A defined contact order is capable of being enforced by the Court.

A frequently asked question is how often should contact take place and what are the 'standard' contact arrangements.

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The answer is that really there is no such thing as a standard contact order. Over the years we have seen all sorts of arrangements, some that work and some that do not. The law provides for a highly flexible approach and orders can be tailored to individuals and their family circumstances as appropriate.

Perhaps the most common arrangement is for the absent parent to have staying contact every other weekend and possibly for one night during the week if that is not too disruptive for the children. There can also be additional contact during holidays and for birthdays, Christmas, Easter, etc. As you might expect, there are infinite variations which can be adapted to the particular needs of the parties and the children themselves who, as they get older, may have their own commitments to be taken into account.

Specific issue order

An application for a specific issue order will arise when those with parental responsibility for the child cannot agree on a particular matter, such as change of surname, religion, consent to medical treatment, education or permanent removal from the Bailiwick.

In the absence of any agreement, the Court will need to determine what is in the best interest of the child. This will be determined in accordance with the welfare checklist.

With regard to change of surname, the general principle is that the Court will not allow a surname to be changed from that of the birth parent unless it is agreed by both parents or there is a very good reason to do so. See Change of Name.

If one parent seeks to permanently remove a child from Guernsey then, in the absence of agreement from the other parent, they will need the consent of the Court. This is also an application for a specific issue order. See International relocation.

Prohibited steps order

A prohibited steps order prevents something being done in relation to a child, for example, removing a child from the jurisdiction. It takes the form of an injunction order, for the breach of which there are serious penalties.

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