

New rules for making contact with children work

The Children Act 1989 brought totally new concepts to family law. Previously we talked about "custody" of a child, and the absent parent having "access" to that child. Since the Children Act 1989, we now talk about the child's "residence", and the child having "contact" with the absent parent.

There were further changes late in 2008 - introduced by Part 1 of the Children and Adoption Act 2006, which finally came into force on 8th December 2008. The new provisions give Courts new powers to support and encourage contact, and also to enforce Contact Orders.

Before 8th December 2008, once the Court had made a Contact Order, the methods of enforcement were largely less than effective. Now the Court has been given enhanced and what is intended to be more realistic ways of enforcing Contact Orders.

Contact Activity Directions

When a Court considers making a Contact Order, a Contact Activity Direction can also be made. These Directions require a parent to take part in an activity "that promotes contact with the child concerned". Examples of the activities are programmes, classes, counselling or guidance sessions (possibly anger management, or parenting classes).

Certain activities are specifically excluded, that is mediation and medical or psychiatric examination, assessment or treatment.

The Court cannot make a Contact Activity Direction when it is making a Final Contact Order - it can only be made when Interim Contact Orders are being made. This may mean more Interim Orders and fewer final Orders.

Contact Activity Conditions

When the Court makes a Contact Order, it can impose a Contact Activity Condition. This requires the parent having contact to take part in an activity which promotes contact. The Contact Activity Condition must specify the activity.

Monitoring Contact

The Children and Adoption Act 2006 gives the Court better powers to monitor contact. The monitoring will be done by an Officer of the Children and Family Court Advisory Service (CAFCASS). The Court can ask a CAFCASS Officer to monitor an individual's compliance with a Contact Order, and report back to the Court. This should allow Judges to be much more pro-active in keeping an eye on whether a Contact Order is working and to intervene before contact totally breaks down.

Penalties for failing to comply with a Contact Order

The Act also provides for the enforcement of Contact Orders. The Courts have wider powers than they had before, although we will have to wait and see how frequently or easily the Courts use the new powers.

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 Contact Order, then 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 Contact Order.

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The Court can only make an Enforcement Order if it is necessary to "secure that person's compliance" with the Contact Order, and that the likely effect 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 normal work or place of education. The nature and effect has to be proportionate to the seriousness of the breach of the Contact Order. So, if there was a very minor breach of a Contact Order, 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 which is suffered as a result of non-compliance with a Contact Order. But 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 would make a compensation Order.

This type of Order can be made against either parent.

This article only skims the surface of what family lawyers are hoping will enable the Courts to assist families in making contact work in every case.

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