



myerson

# Myerson **Family**

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**Our guide to children matters**

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# Welcome

We understand the complexities of modern life and, therefore, everything we do is ultimately about you, and it is important you get to know the team that will be working with you every step of the way. It's a deep source of satisfaction that so many clients choose Myerson as their trusted adviser.

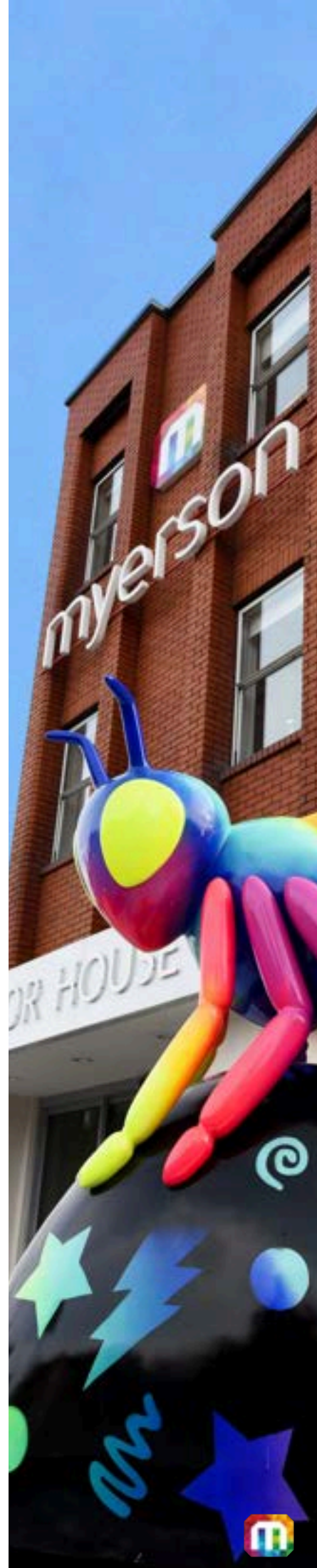
## Why Myerson?

Our highly experienced and discreet family lawyers, provide clear and supportive legal advice, tailored towards your individual family needs.

As a Top 200 UK Law Firm, we are also proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will be receiving the highest quality legal advice.

Being a full-service law firm means we are well placed to provide wide-ranging, tailored legal advice to meet your individual needs. We work closely with other departments internally including Real Estate, Corporate, Commercial and Private Wealth Lawyers to ensure that your needs are protected comprehensively.

You can find out more about our **Family Team** by clicking [here](#).



# Children Matters

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Where possible and safe to do, so the court expect parties to try to resolve disputes about children without using the court system.

Our experienced solicitors can help you to negotiate child arrangements best suited to your personal circumstances.

## Mediation

If you are unable to resolve matters about your children with the other parent direct, then you may benefit from attending mediation.

Family mediation is where an independent trained mediator helps you and the other party to try and reach an agreement about things like the arrangements for children in a positive and constructive way.

It is not possible to make an application to the Court without first attending a Mediation Information Assessment Meeting (MIAM) with a family mediator. This is an initial meeting with a mediator to provide information about whether mediation may help to resolve your dispute without going to Court and the suitability of any other type of dispute resolution process that may assist you in resolving the dispute.

In some circumstances, it may not be possible to reach an agreement, or you may have concerns that require formal Court investigation. If you are unable to reach an agreement at mediation or if mediation is not suitable, then you may want to consider making an application to the Family Court.



You may be exempt from attending a MIAM. If you have been the victim of domestic violence, if there are child protection concerns or if the application is urgent, then you will not have to attend a MIAM prior to issuing a Court application.

At Myerson, we have good connections with accredited solicitor mediators to put you in touch with:

- Maura Mckibbin – 0161 928 5974
- Marcia Lister – 0161 425 3940
- Jacqueline Gregory – 07778 411196

## Child Arrangement Orders.

If you are unable to reach an agreement about the arrangements for your child, then you may wish to consider applying to the Court for a Child Arrangements Order.

A Child Arrangements Order decides the arrangements for with whom a child is to live with, spend time with or otherwise have contact with and where a child is to live, spend time or otherwise have contact with any person. Before making an application to the Court it is important that parents consider attending a mediation service to discuss the arrangements for children.

If you have agreed that your child will live with one parent but cannot agree the time the child will spend with the other parent, then you can apply to the Court for a Child Arrangements Order regulating the contact arrangements. A Child Arrangements Order regulating contact arrangements requires the person with whom the child lives to allow the child to visit or stay with the person named in the order.



The Court may make an order to confirm contact arrangements and may order the following types of contact: -

- Direct contact
- Indirect contact such as telephone or video call
- Overnight contact
- Supervised contact

The Court can also make a Child Arrangements Order to confirm where a child lives. The Court may make an order to: -

- Name one person with whom a child is to live
- Name two persons who live in different households as persons with whom a child is to live

When considering an application for a Child Arrangements Order, the child's welfare is the Court's paramount consideration. The Court will try and deal with matters without delay for the child as the general principle is that any delay in determining an application is likely to prejudice the welfare of the child.

When considering an application, the Court will not make an Order in respect of a child unless the Court considers that making an Order would be better for the child than making no Order at all.

The Court may not make an order for an older child if the order will conflict with the child's wishes and feelings. This is on the basis that an older child will vote more with their feet.



# Specific Issue and Prohibited Steps Orders

A Specific Issue Order is an order to decide a specific dispute that has arisen or may arise, in connection with a personal exercise of parental responsibility for a child.

These types of orders will usually be applied to determine some of the following issues:

- Which school a child will attend
- Whether a child receives a particular type of treatment
- Whether a child can permanently relocate to another part of the country or abroad

A Prohibited Steps Order is an order that can curtail the right and responsibility of a person with parental responsibility to make decisions about a child.

The court has the power to make a prohibited steps order to restrain a person from taking a step in the order

- Changing a child's school
- Changing a child's name
- Relocating a child to another part of the country or abroad

Specific Issue Orders and Prohibited Steps Orders can be applied for on their own or in conjunction with child arrangement orders.



# How do I apply for a Child Arrangements Order, Specific Issue Order or Prohibited Steps Order?

## Step One – Mediation

It is not possible to apply for an order without first attending a Mediation Information Assessment Meeting (MIAM) with a family mediator. Family mediation is where an independent trained mediator helps you and the other party to try and reach an agreement about things like the arrangements for children in a positive and constructive way. In some circumstances, you may be exempt from attending mediation. If you have been the victim of domestic violence, if there are child protection concerns or if the application is urgent.

## Step Two – Application

The application is made using form C100. If you have concerns that a child has suffered or is at risk of suffering harm, supplemental form C1A must also be completed. When the application is issued, a copy of the C100 is sent to the Children and Family Court Advisory and Support Services (Cafcass).

## Step Three – Safeguarding Checks

The application will be listed for a Court hearing known as a First Hearing Dispute Resolution Appointment (FHDRA) usually within six weeks of the application being issued. The hearing will likely take place by telephone. In advance of the FHDRA Cafcass will prepare a safeguarding letter/report confirming the outcome of their safeguarding checks and risk identification.



## **Step Four – First Hearing**

The purpose of the FHDRA is for the parties to attend and understand the issues which divide them and to see if agreement can be reached.

If an agreement is reached at the FHDRA the Court can make an order reflecting the terms of the agreement reached and the Court will assist the parties in implementing the agreement or order in a constructive manner.

The Court will only make an order if satisfied that there are no outstanding safeguarding issues.

## **Step Five – Second Hearing**

If an agreement is not reached, the Court will consider what if any issues are agreed and the key issues that need to be determined. The Court will list the application for a Dispute Resolution Appointment (DRA) hearing to consider the available evidence and to identify the extent to which the dispute can be narrowed or resolved.

If an agreement is reached at the DRA, the Court will make an Order to reflect the parties' agreement.

## **Step Six – Final Hearing**

If no agreement is reached at the hearing, the Court will list the matter for a Final Hearing.

Once all the relevant evidence has been prepared, a Final Hearing will be listed. At the Final Hearing, the Court will consider all the evidence and decide about the issues in dispute.



# What will the Court consider?

When considering an application in respect of a child the child's welfare will be the Court's paramount consideration and it will have regard to the statutory checklist and the following: -

- the wishes and feelings of the children concerned to far as they can be ascertained, and bearing in mind each child's age and understanding
- the children's physical, emotional and educational needs
- the likely effect on the children of any change in their circumstances
- the children's age, sex, background, and relevant characteristics
- the risk of the children suffering harm, and
- how capable each parent is of meeting the children's needs

When a Court is considering whether to make an Order for a child, it must consider the no order principle. The Court will not make an Order unless it is satisfied that doing so will be better for the child than making no order at all.

The court will also consider the rebuttable presumption that involvement of each parent (whether direct or indirect contact) in the child's life will further the child's welfare.



# I am worried that I need to protect a child urgently, what can I do?

In certain circumstances, it may be necessary to take urgent action to protect a child. If there is an urgent need to prevent a step being taken, you can ask the Court to make a Specific Issue Order or Prohibited Steps Order without informing the other party.

Urgent orders will only be made where there are exceptional circumstances. If an order is made without notice to the other party, it must be personally served on them to be effective. Within 48 hours of receiving the order the other party can apply to the court to set aside the order.

When the Court makes an order at an urgent hearing without notice to the other party a full hearing will need to be listed as soon as possible with all parties present.



# Who are CAFCASS and what is their role?

Cafcass stands for Children and Family Court Advisory Support Service. Cafcass work with children and young people in Family Court cases to make sure that the voices of children are heard, and decisions are made that are in their best interest.

The duty of the Cafcass officer is to safeguard and promote the welfare of children going through the family justice system and assist with the following:

- Investigate and report to the Court on issues concerning the welfare of children.
- Assist separated parents in resolving disputes concerning arrangements for their children, if possible, during their enquiries.
- Supervise family assistance orders once made.
- Act as a children's Guardian where a child is made a party to the proceedings.

Cafcass may become involved in your matter if you are separating and cannot agree on what is best for your child or if you are trying to make sure that a child is safe.

Cafcass may be ordered by the Court to prepare a report where there are welfare issues or specific considerations which need to be addressed. A report may be ordered in accordance with section 7 of the Children Act 1989. These reports are known as Section 7 Reports.

A Section 7 report may often be ordered in matters where there is a dispute about where a child should live or the time they should spend with the other parent. A Section 7 report will not be ordered in all cases. A report will only be ordered when the Court and Cafcass are of the view that it is necessary to resolve the dispute.



A Section 7 report can consider but is not limited to some of the following issues:

- With whom the child should live.
- Whether the child should see the other parent.
- The wishes and feelings of the child so far as they can be ascertained.
- The home conditions of the parents and suitability of the accommodation.
- How the child would be affected by any proposed change.
- Whether or not it appears that the child has suffered or is at risk of suffering harm.
- The parenting capacity of the parents.

In some circumstances, the Court may consider that it is necessary for a child to be made a party to the proceedings. A children's Guardian who is a Cafcass officer will be appointed to represent the child in the proceedings and the children's Guardian will appoint a solicitor.

## When is a fact-finding hearing required?

When the Court considers an application in respect of a child, the Court must, at all stages of the proceedings, consider whether domestic abuse is raised as an issue by the parties or by the Children and Family Court Advisory and Support Service (Cafcass).

Domestic abuse includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to psychological, physical, sexual, financial or emotional abuse.

Domestic abuse is harmful to children and children may suffer direct physical, psychological and/or emotional harm from living with domestic abuse. Children also may suffer indirect harm where the domestic abuse impairs the parenting capacity of either or both of their parents.



The Court must consider whether domestic abuse is raised as an issue which is likely to be relevant to any decision of the Court relating to the welfare of the child. The Court must determine as soon as possible whether it is necessary to conduct a fact-finding hearing in relation to any disputed allegation of domestic abuse.

The fact-finding hearing is a separate hearing conducted for the Court to consider any disputed allegations of domestic abuse and to make findings as to whether the allegations did or did not happen.

When the Court considers whether a fact-finding hearing is necessary the following will be considered:

- The views of the parties and Cafcass
- Whether there are any admissions
- Whether there is evidence available to the Court to provide a sufficient factual basis on which to proceed
- The nature of the evidence required to resolve the disputed allegations
- Whether the nature and extent of the allegations of proof would be relevant to the issues before the Court
- Whether a separate fact-finding hearing would be necessary and proportionate in all the circumstances of the case

If the Court considers that a fact-finding hearing is not required, the order must include the reasons for that decision.

When a fact-finding hearing is needed, the Court must give directions to ensure that the disputed allegations are determined as soon as possible. The Court will direct the parties to file Scott schedules and statements, setting out the allegations and any responses.

The Court will consider if any documents are needed from any third parties such as the police or health services.

At the fact-finding hearing, the focus is to ensure that the allegations are put and responded to.



Both parties are provided with the opportunity to give oral evidence and to cross-examine. Once the hearing has taken place, the Court has to consider the arrangements for the child.

If findings are made, the Court must consider the arrangements for the child in light of the findings made. The Court must consider any potential risk to the child and the parent and how the risk can be managed or minimised.

The Court will consider whether it will be assisted by any further report or assessments. The Court will consider if it is necessary to direct a Section 7 report to be prepared by Cafcass or the local authority.

The Court must consider whether it is necessary for there to be any further assessment of either of the parties or the child concerned. This may include psychiatric, psychological, social work or other assessment to include a risk assessment.

The Court will consider whether any party should seek advice or treatment before any child arrangements can be considered.

If no findings are made the court must proceed on the basis that the allegations did not happen.

## **How much does it cost to apply for a Child Arrangements Order?**

The Court fee to apply for a Child Arrangements Order, Specific Issue order and Prohibited steps order is £215.

We will be able to provide you with a cost estimate when we have undertaken an assessment of your specific circumstances.



# Can I get Legal Aid?

Legal aid is only available in a limited range of family cases, including:

- Non-molestation order and occupation orders.
- Private family cases where there is evidence of domestic abuse.
- Private family cases where there is evidence of child abuse or child protection concerns.
- Public law proceedings regarding the protection of children.
- Representation of children who are made parties to private family proceedings.
- Child abduction.
- Force marriage protection order proceedings.
- Legal advice in support of mediation.

At Myerson, we do not have a contract with the legal aid agency, but we can signpost you to family specialists local to you who will be able to help you.

# Can I relocate abroad with my child?

If you are separated or divorced and you want to move permanently abroad with your children, you need to have the written consent of the other parent or anyone else who has parental responsibility for the child.

If you are not able to obtain consent, then you will need to apply to the court for permission.

If you are considering relocating abroad, then you must consider the practical arrangements so that you can show the court what your plans would be for you and the children in the new country.



You will need to consider some of the following practical arrangements:

- Where you will live.
- Details of work available.
- Information about schools.
- Healthcare arrangements.
- Your plans for how contact with the other parent will work.
- Details of your support network in the new country.
- How you would feel if your proposed move was refused.

## What will the Court consider?

When the Court considers an application to relocate, the judge's primary concern is the welfare of the children and the judge will consider the welfare checklist as set out below:-

- the wishes and feelings of the children concerned as far as they can be ascertained, and bearing in mind each child's age and understanding.
- the children's physical, emotional and educational needs.
- the likely effect on the children of any change in their circumstances.
- the children's age, sex, background, and relevant characteristics.
- the risk of the children suffering harm, and
- how capable each parent is of meeting the children's needs.

The judge will consider how permission or refusal to relocate will affect the parents and the children and will consider the parents' plans and whether they wish to relocate, and any opposition to it is genuine.

## Can I relocate in this country with my child?

If you would like to move with a child to a different part of the UK, the correct approach is to apply to the Court for a Specific Issue Order.



# What will the Court consider?

Like applications to relocate abroad, an application to move with a child to a different part of the UK will be determined by the child's welfare.

The Court will be resistant to preventing a parent from exercising their choice about where to live in the UK unless the child's welfare requires it.

The Court will consider the interests and the child and the parents. If it is not possible to accommodate everyone's wishes, the Court will make a decision based on the best interest of the child.

To enable the Court to determine the application, the Court will likely need more information about the following:

- a history of the parties' relationship.
- the practicalities of the proposed move.
- research undertaken into schools.
- details of motivation for a move.
- proposed arrangements for contact following relocation.
- what the effect of a refusal will be.

## My ex is threatening to move with the children to another part of the country what can I do?

If you are concerned that your children may be removed to a different part of the country without consent, you should consider applying for a Prohibited Steps Order.

The application process is the same as applying for a Child Arrangements Order and Specific Issue Order and is detailed above.



# My children have been removed from the country without my consent - what can I do?

- Seek specialist legal advice from an international child abduction specialist on Reunite International
- Get together useful information in respect of the child and alleged abductor such as recent photographs, passports, flight details and existing court orders
- Seek advice from the Foreign and Commonwealth office
- Inform the police
- Contact Reunite International a UK charity offering support and information

## Can I change my child's name?

A child's name can be changed at any time provided it is not done with the intention to deceive someone.

If only one parent or person has parental responsibility for the child, that person can lawfully change the child's name, however if the parent without parental responsibility objects it is good practice to seek permission from the court.

If two or more people have parental responsibility for a child, all of them must agree to change the child's name. The agreement does not need to be in writing, but it is advisable to obtain this.

We can assist you with the preparation of a change of name deed for your child. The deed would stand as evidence of the child's new name.



If no agreement can be reached, then you can make an application to the court for a Specific Issue Order asking for an order to give permission to change the name.

If a child's name has been changed without your consent you can ask the court to change the name back.

When determining whether to provide permission to a name change or the court will consider what is best for the child when deciding whether to allow or undo a name change.

## **I have an interview with CAFCASS before the first hearing what I can expect?**

When anyone makes an application to the court in respect of a child the Children and Family Court Advisory and Support Service (Cafcass) carry out safeguarding checks with the local authority and police.

Where they can before the First Hearing Dispute Resolution Appointment (FHDRA) Cafcass will also arrange a telephone interview with the parties. Cafcass will discuss with you whether you have any safeguarding concerns and your position in respect of the application.

The Cafcass officer will not contact the child before the FHDRA.

Cafcass record and outline the safety issues for the court in a safeguarding letter. The letter will provide some initial advice to the court to assist the court and the parties at the FHDRA.

If the Cafcass officer suspects that a child is at risk of harm they are required to undertake a risk assessment under Section 16A of the Children Act 1989.



# You're in safe hands!

If you would like further information about how we can help you with **child matters**, or if you have any questions, please don't hesitate to contact a member of our **Family Law Team** today.

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Call: 0161 941 4000

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