



Child Arrangements Orders

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- Parental Responsibility
- What is a CAO and types
- Who can apply
- Making an application
- Role of CAFCASS
- First Hearing (FHDRA)
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- Final Hearing
- What a court will consider when making a CAO
 - Welfare Checklist





Overview

- Children Act 1989 (CA 1989)
- Children and Families Act 2014 (CFA 2014)
- Private Law v Public Law

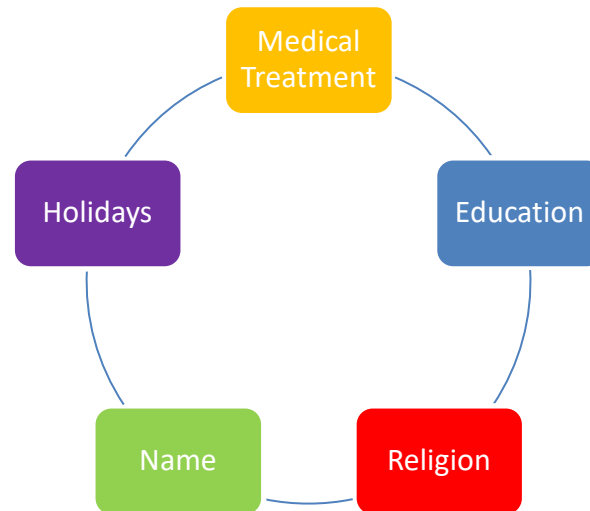


Parental Responsibility

- **Definition:**

All the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his property (s.3(1) CA 1989)

- Covers important decisions, that must be agreed with anyone else who has PR



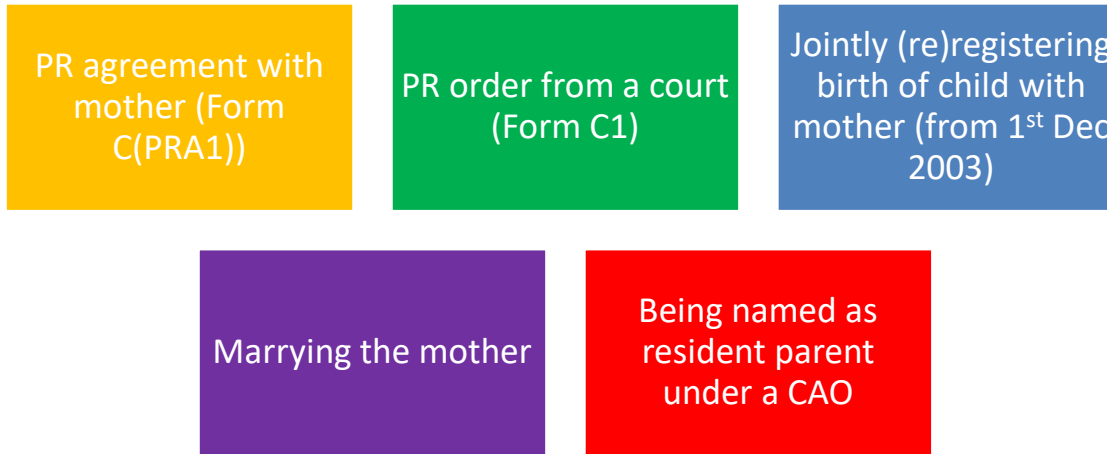
- Day to day decisions are made by person looking after child at that time; they do not have to be agreed with each person with PR

- **Who has PR?**
 - The following automatically have PR:
 - Birth mothers
 - Fathers married to mother at time child born
 - Fathers not married to mother, but registered on child's birth certificate (after 1st December 2003)
 - Same sex partners both have PR if they were married/CPs at time of treatment



- **Acquiring PR**

- An unmarried father can get PR by:



- A step-parent can get PR by PR agreement (with parent married to and child's other parent) or PR order
- Same sex partners who are not married or in a CP, can get PR by being named on birth certificate or can acquire via PR agreement or court order (as long as conceived through fertility treatment at licensed clinic in UK/signed election forms)
- Adoptive parents automatically get PR (birth parents lose)
- Special guardians will get PR (birth parents keep, but special guardian can override)
- Can appoint a guardian for child after death (signed and dated in writing or in a will)

- **Tips**

- Always establish whether client has PR
- Find out the child's DOB, whether father named on birth certificate, whether parents married etc.
- Why?
 - This will be a key question when considering an application for a CAO



Discussion



Who has PR?

1. The mother and father are married when the child is born?
2. The mother and father are married when the child is born but later divorce?
3. The mother and father are not married when the child is born and never marry?
4. The mother and father are not married when the child is born but later marry?
5. The child is made subject to a Care Order?
6. The child lives with his grandparents under a Child Arrangements Order?

Child Arrangements Order

- A Child Arrangements Order (CAO) is a court order that regulates arrangements for a child/children
- Replaces 'custody' and 'access'
- Replaces Residence and Contact Orders
- CAOs regulate:
 - with whom the child shall live, spend time or otherwise have contact
 - when the child shall live, spend time or otherwise have contact with any person

S.8 CA 1989 as amended by S.12 CFA 2014

Child Arrangements Order

Living arrangements:

- Will identify the person with whom a child is to live, but not specifically where
- Will detail how the child's time will be divided
- May provide for the child to live with one parent only or for the child to share their time between both parents
- An order that provides for a child to share their time between both parents does not necessarily mean the time will be spent equally



Child Arrangements Order

Contact:

- Will identify the person with whom a child is to have contact
- Will provide details of such contact

Direct contact

Indirect contact

Unsupervised
contact

Supervised
contact

Child Arrangements Order

Try to reach an agreement:

- Directly between parties
- With assistance of legal representative (e.g. correspondence)
- At mediation

If agreement reached, the options are:

- Record agreement in writing
- Draft a Consent Order and file at Court
- No Order Principle **s.1(5) CA 1989**

If cannot reach an agreement, next step is to make a court application

Mediation and MIAM

- Mediation is where an independent, professionally trained mediator helps both parties to reach an agreement in relation to various matters arising from their separation
- No requirement to undertake mediation
- Requirement to attend a Mediation Information Assessment Meeting (MIAM) before issuing an application for a CAO unless exemption applies
- Cost: Legal Aid available
- **ReCovid-19:** Offering remote mediation online via platforms such as Skype, FaceTime, WhatsApp and Zoom.





MIAM exemptions

Domestic violence

Urgency/
Application without
notice

No mediation within
15 miles of home

Bankruptcy

Insufficient contact
details for other
party

Prevented by
disability/inability

Imprisonment/bail
conditions/contact
prohibited

Not resident in
England and Wales

No mediator
available in 15
business days





Mediation Services



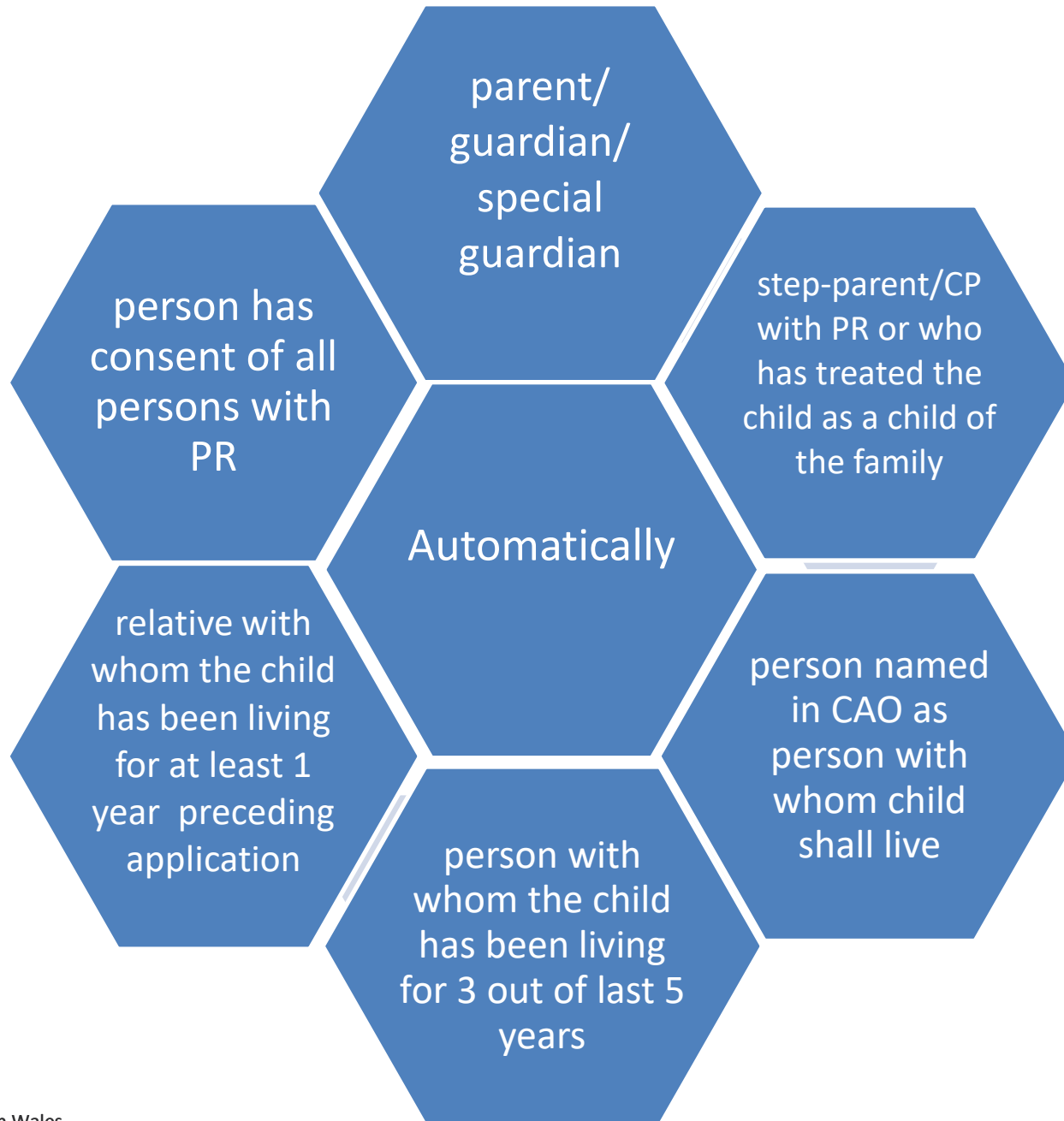
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Who can apply?





Who can apply?

Need permission:

- Child
- Grandparents (exceptions)

If not automatically eligible, first step is to obtain permission from the court



Making an application

Application

- C100 (C1A – if applicable)

Court Fee

- £215 (can pay with debit or credit card over phone)
- Help with fees (EX160)

Send to Court

- Online (recommended due to Covid-19)
- Local family court



Role of CAFCASS

Children
And
Families
Court
Advisory and
Support
Service



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- CAFCASS (England)
- CAFCASS Cymru (Wales)

- Eyes and ears of the court



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Safeguarding Enquiries

- Receive a 'Schedule 2' letter from CAFCASS
- Both parties likely to receive a telephone call from CAFCASS to find out their views
- CAFCASS undertake basic police and social services checks
- Finding set out in the letter, together with any preliminary recommendations (if able to make any)
- Should receive no later than 3 days before FHDRA





First Hearing Dispute Resolution Appointment (FHDRA)

- **FHDRA** – court will investigate the issues and explore possibility of settlement
- Usually someone from CAFCASS present and parties meet with them and the other party to see if an agreement can be reached (Conciliation)
- **If matters agreed:** Consent Order
- **If no agreement:** Consider what evidence is required to assist the court in reaching a decision on what is in the child’s best interests. Directions will be given
- How to support Litigants in Person during remote hearings





Directions

- **Some examples:**

Report by CAFCASS Child Impact Analysis/section 7	Expert evidence e.g. drug/alcohol or DNA testing	Medical/police records
Activity Directions e.g. WT4C/SPIP	Finding of fact hearing (allegations domestic abuse)	Witness Evidence (Statements)
Bundles	Dispute Resolution Appointment (DRA)	Final Hearing (FH)

- If no risks, and parties simply cannot agree, court is likely to list a FH and direct statements be filed.



Section 7 report/Child Impact Analysis

- Report is ordered under s.7 CA 1989 and prepared by a CAFCASS officer
- Safeguarding letter may have recommended whether a report is appropriate or not
- Direction should indicate nature and purpose of report
- Timescale: 8-12 weeks
- CAFCASS officer will decide what information they need
- Section 7 reports
 - May have included talking to children about their wishes and feelings. Usually talk to them alone
 - Spend time with parties and listen to concerns
 - Speak to other people e.g. family members, teachers
- Replaced by: Child Impact Analysis Reports



Child Impact Analysis Reports

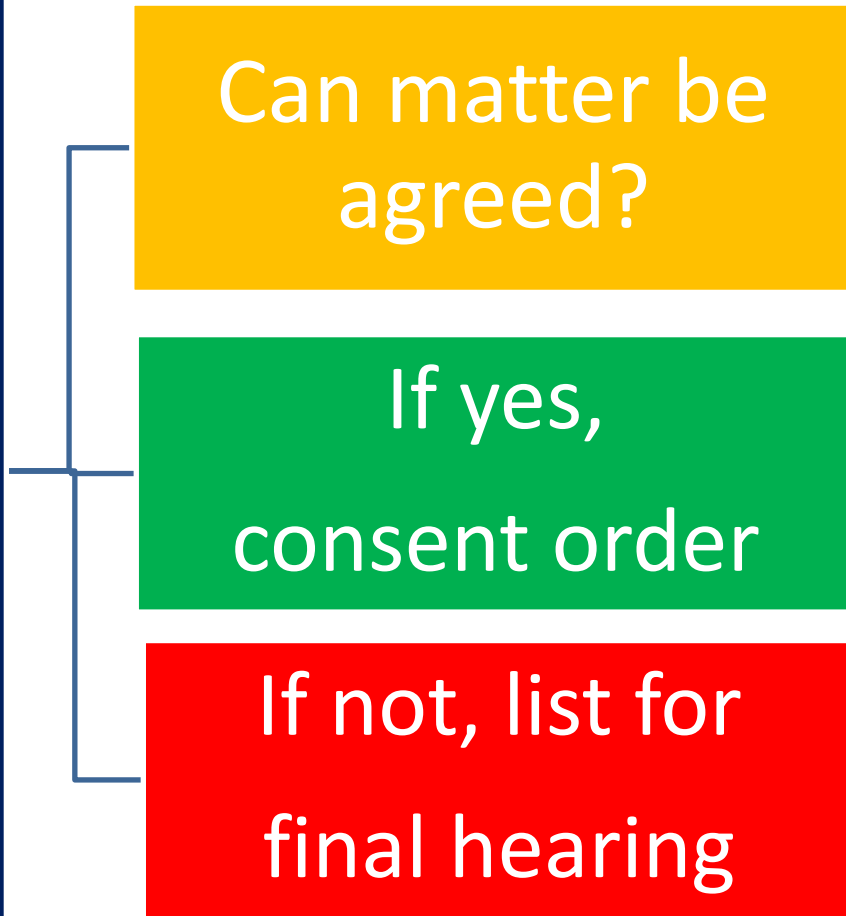
- Piloted 2017/18
- Rolling out the Child Impact Assessment Framework 2018/19
- Represents the voice of the child: focus on an individual child in much more depth than a more family-based report.
- Main issues are emotions and mental health concerns faced by children, rather than finer details of arrangements e.g. for spending time with a parent
- Distinguishing between outcomes for a child and outcomes for a parent
- Work with parents to help them understand and see issues for their child's perspective





Dispute Resolution Appointment

DRA





Final Hearing

FH - the trial



How the court reaches a decision

- **Principles**
- **Paramountcy Principle s.1(1) CA 1989**
 - Welfare of the child in matters of upbringing is paramount
- **No Delay Principle s.1(2) CA 1989**
 - System streamlined to avoid any unnecessary delay in decision making which could be harmful to the child
- **No Order Principle s.1(5) CA 1989**
 - Court should consider whether making ‘no order’ may be the preferred outcome. Focus is on getting parents to work together and cooperate wherever possible. Orders will only be made where the court considers that making one is the only way to serve the child’s best interests.
- **Presumption of Parental Involvement s.1(2A) CA 1989**
 - Court will presume, unless evidence to suggest otherwise, the involvement of both parents is in the child’s best interests.
 - Involvement can be direct or indirect, and does not mean an equal division of time.



Welfare Checklist

- **7 factors**
- The **CA 1989** contains a checklist of factors ('the statutory checklist') the court must consider when deciding what children's needs are and what order to make in the circumstances:
- **S.1(3) CA 1989**
 - the ascertainable **wishes and feelings** of the child concerned (considered in the light of their age and understanding)
 - their **physical, emotional and educational** needs
 - the likely effect on them of any **change in their circumstances**
 - their **age, sex, background** and any characteristics of theirs that the court considers relevant
 - any **harm** that they have suffered or are at risk of suffering
 - how **capable each of their parents**, and any other person in relation to whom the court considers the question to be relevant, is of **meeting their needs**
 - the **range of powers** available to the court under CA 1989 in the proceedings in question



Wishes and feelings

- Considerations:
 - Age of child
 - Understanding of situation
- Once ascertained
 - Court consider what weight to attach to them
- How obtained?
 - Views usually ascertained by a CAFCASS officer speaking to the child.
- Even where views are the child's, they may be contrary to child's long term interests, and not followed
- ***S v S (Child Abduction)(Child's Views)[1992] 2 FLR 492***: no minimum age for taking views into account automatically



Physical, emotional and educational needs

- Material wealth is not the determining factor
- Closeness of ties with parents, siblings is considered
- No general rule that children should live with their mother
- ***C v C (Minors: Custody) [1988] 2 FLR 291***: splitting siblings /ages



Likely effect of change in circumstances

- Sometimes called ‘**the status quo**’ factor
- The court will not lightly remove a child from a home where settled
- Hence the importance of the ‘no delay’ principle
- Where parents just separated and absent parent has maintained regular contact – hard to establish a status quo argument
- ***Re S (a child) (transfer of residence: consent order) [2010] All ER (D) 88 (Aug)***
 - In deciding whether to change status quo, need to balance risk of future harm child might suffer if order were and were not made



Child's age, sex, background and relevant characteristics

- *Re W (A Minor) (Residence Order) [1992] 2 FLR 332* no presumption with either parent
- Young children with mother: a “consideration” that must be taken into account, but not a presumption or principle
- Background can include:
 - Religious upbringing
 - Racial origin, cultural and linguistic background
 - Harm



Any harm child has suffered/at risk of suffering

- Definition of harm **s.31(9) CA 1989**
*“harm” means ill-treatment or the impairment of health or development **including, for example, impairment suffered from seeing or hearing the ill-treatment of another***
- Health – physical or mental
- Development - includes physical, intellectual, emotional, social or behavioural
- Ill-treatment - covers sexual abuse and other forms of ill-treatment which are not physical
- Harm of not seeing one parent: ***Re S (Minors: Access) [1990] 2 FLR 166*** - it is a right of the child not the parent



How capable is each parent of meeting child's needs

- The court can consider a wide variety of factors in this context:
 - Capability to provide housing
 - Lifestyle e.g. criminal record: suitability
 - Mental and physical illness
 - Religious views – *Re R (Residence: Religion) [1993] 2 FLR 193* child went to live with father despite differing religion
- The court will also consider how capable any other person who is considered relevant e.g new partner



Range of powers available to court

- Child Arrangements Orders
- Specific issues order
 - E.g. to return a child
- Prohibited steps order
 - E.g. to prohibit the removal of a child from the jurisdiction
- Care order
 - LA shares PR with parents. LA decide where child will live
- Supervision order
 - Legal power to monitor child who may continue living at home. LA does not get PR



Enforcement of existing orders during Covid-19

- Expectation that parties will comply with orders
- Parties work together in best interests of child/ren
- Considerations:
 - Shielding
 - Availability of public transport
 - Venue
- Guidance issued by President of Family Division, Rt. Hon. Sir Andrew McFarlane



Task



Emma and Jamie began living together in 2004. Their son, Steven, was born in March 2009. In 2010, Jamie left.

In 2011, Emma met Jake and they got married in 2013. Their daughter Louise was born in 2014. Steven is happily settled with Emma, Louise and Jake, whom he calls dad.

Last week, Jamie wrote to Emma out of the blue saying that he wants Steven to live with him and his new partner, Peter.

Emma does not want Steven to have anything to do with Jamie as she suspects that he is using drugs. Jamie has made an application to the Court.

Discuss the principles and the factors that the Court will consider when deciding whether Steven will live with Jamie or have contact with him

Thank you!

Any questions?



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