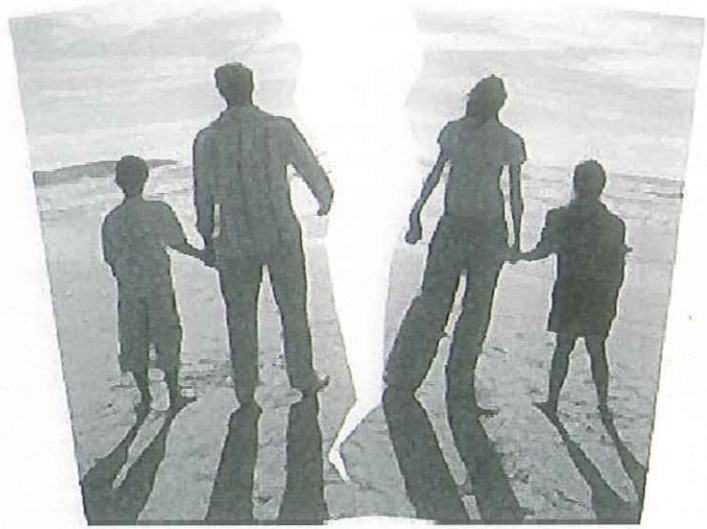


The court and your children

By Sarah Beskine



I am a partner at Hopkin Murray Beskine Solicitors and Mediators (www.hmbsolicitors.co.uk) where I advise on divorce/separation, and disputes regarding children.

In this article I am looking at what happens when parents have such a difference of opinion regarding what's best for their children that the court becomes involved. By this time it is likely that both parents have very strong opinions about what is best so the court steps in to try and facilitate an agreement or ultimately to make an order about what will happen.

Disputes about children at this stage are generally fraught. Feelings are running deep because compromising will often be against the parents' better judgment and they will feel that they are actually letting down their children.

How does the court look at these disagreements?

The court's view is that it is almost always in the interests of your child if parents can reach agreement because living with tension is in itself a real difficulty for children. The court will use opportunities to encourage parents to reach an agreement. If the situation is very complex or needs additional professional involvement the court can draw on the expertise of specialist officers, Children and Family Court Advisor and Support Service Officers (CAFCASS), or sometimes experts in other fields. These are

independent professionals with either a social work or psychological background and are very experienced in children and family matters. They will usually speak to the children independently and make a recommendation to the court. However, there are lengthy delays and a report from a CAFCASS Officer can take three to four months.

So another approach is for parents to consult a mediator qualified and trained to directly mediate with children. This can only happen with the agreement of both parents but when it does, it can provide the opportunity for a child to tell their parents how they feel and what they want outside of the emotions, love and pain, that accompany a family splitting up. Both parents can agree that the record of the child's independent mediation can be given to the court and this could assist and inform any court process so that the stages waiting for a CAFCASS Officer could be bypassed.

If an agreement cannot be reached then the main question for the court to consider is what is in the best interests of your child. The Judge will look at anything relevant and in particular the 'Welfare Checklist' which includes:

- the child's views, bearing in mind their age and understanding,
- the children's needs (physical,

emotional and educational)

- the effect on the child of any change in circumstances,
- any characteristics that are relevant to age, background, sex.
- Has the child suffered any harm or may be at risk of suffering harm
- how capable each parent is to meet the child's needs

They will then consider all the powers available to do their best for this particular child and if necessary will impose conditions on contact arrangements such as a limited period of supervision or specifying where a child can be taken or what they could watch. The court's involvement can crystallise matters in a blunt fashion and therefore much professional effort is put into trying to reach an agreement in the interests of the child, which both parents can live and work with.

Although there used to be a very clear perception that the law was very biased in favour of women who were usually the main carer, the last decade has seen a dramatic change, particularly among families where both parents have always shared care, when there is no particular bias in favour of either parent.

If you have any general questions or enquiries following reading this, please don't hesitate to contact me at reception@hmb-solicitors.co.uk

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