

FAMILY OFFICE

GUIDE TO CHILD CARE PROCEEDINGS AND RELATED MATTERS

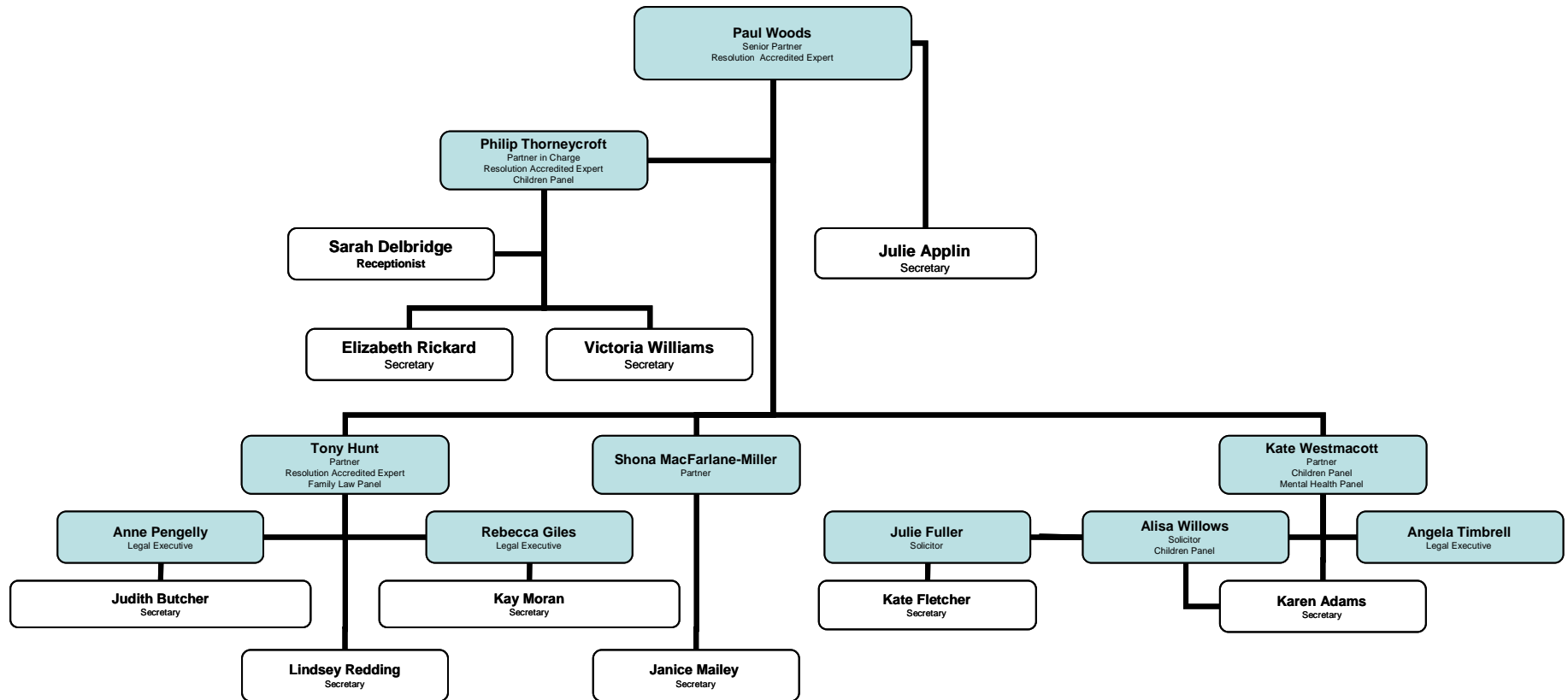


Deptford Chambers 60/66 North Hill Plymouth Devon PL4 8EP

DX No: 8206 Plymouth 1 • Tel No: (01752) 663295

www.wolferstans.com • Established 1812

Family Office



Branch Office

Louise Vigus
Legal Executive

Debbie Pomfret
Secretary

7 Radford Park Road, Plymstock, Plymouth
Telephone: 01752 401515

We can arrange for a solicitor from the Children Unit to visit you at our Plymstock Office.

PARENTAL RESPONSIBILITY

1. Meaning:

Parental Responsibility means all the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child or his property. A person with Parental Responsibility for a child is able to make decisions on behalf of the child.

2. Who has Parental Responsibility?

1. A natural mother automatically has Parental Responsibility for the child upon the birth of that child.
2. Where the natural parents are married, either at the time of the birth or subsequently, the father shares Parental Responsibility with the mother.
3. Until the 1 December 2003 an unmarried father could only obtain Parental Responsibility either by entering into a Parental Responsibility Agreement with the mother or by Court Order.

Adoption and Children Act 2002

The law changed on 1 December 2003 to make it easier for unmarried father's to acquire Parental Responsibility. An unmarried father shall acquire parental responsibility for the child if he becomes registered as the child's father. This means that if the parents register the baby together the father will share parental responsibility with the mother. This change to the law only applies in relation to children born after 1 December 2003.

4. The Local Authority obtains Parental Responsibility for a child once an Emergency Protection Order, Interim Care Order or Care Order is made. The Local Authority will then share Parental Responsibility with the mother and the father if he had Parental Responsibility before the Order was made.

The mother and father will lose their Parental Responsibility if a Freeing Order or an Adoption Order is made.

Placing the child's name on the Child Protection Register does not give the Local Authority Parental Responsibility.

Any other person who has a Residence Order will have Parental Responsibility for as long as the Residence Order is in force. (See page 8).

**WORKING WITH SOCIAL SERVICES
PRIOR TO THE ISSUE OF PROCEEDINGS**

1. Social Services are involved with many families. The fact that Social Services are working with your family does not mean that your children are going to be taken into care or even that Care Proceedings will be started. If Social Services become involved with your family you are advised to try to work with them. This does not mean that you have to agree with all of their suggestions, but you may need to discuss matters with the Social Worker in an attempt to reach a compromise. It is better to work with the Social Workers to try to reach an agreement about what is in the best interests of your children. It is the aim of the Social Services to keep your family together whilst protecting the children.

2. The Child Protection Register (“At Risk” Register)

If Social Services have concerns about your child they may call a Child Protection Meeting. This is a non-legal meeting, which means that the Social Services will not have their solicitor present. However, you are entitled to have a solicitor present at the meeting. If you do not want to take a solicitor to that meeting you can take with you a friend or other relative for support. The purpose of a Child Protection Meeting is to decide whether the child/children’s names should be placed on the Child Protection Register. This is the Register, which is often called the “At Risk” Register. The children’s names can be placed on the Register under any one or combination of the following categories:-

- (a) Neglect
- (b) Physical Injury
- (c) Sexual Abuse
- (d) Emotional Abuse

Where a child’s name is placed on the Child Protection Register, a Child Protection Plan will be made, a date will also be set for a further meeting to review whether the child/children’s names should remain on the Register. The Review will be within six months.

CARE PROCEEDINGS

1. If a Social Worker has concerns about a child and wishes to consider taking Legal Proceedings in respect of a child, a Case Conference with Legal Implications will be held. A Local Authority solicitor will also be present at that meeting. The parents are entitled to have legal representation at that meeting and are advised to do so.
2. At that meeting a decision will be made as to whether the Local Authority intend to take any Court Proceedings in relation to the child/children. A decision may also be made about whether the child/children's names should be placed on the Child Protection Register (see previous section).
3. The Local Authority may decide to apply for an Emergency Protection Order, Care Order, or Supervision Order.

4. **Children's Guardian:**

Where there are Care Proceedings a Children's Guardian will be appointed. A Children's Guardian is independent of Social Services, being a member of a body known as CAFCAS (Children and Family Court Advisory and Support Service). The Guardian is appointed by the Court to represent what is in the best interests of the child/children. The Guardian will be represented by his/her own solicitor, who will also be the child/children's solicitor.

Where the child is considered to be old enough to give his/her own views and those views are different from the Guardian's views, the child may be separately represented by his/her own solicitor independent of the Guardian's solicitor.

5. **Other Experts:**

During the course of the proceedings experts may be appointed to undertake a particular assessment, and to report to the Court. These may include: Child/Adult Psychiatrists, Child/Adult Psychologists or Independent Social Workers. This is not an exhaustive list. If an expert is considered to be appropriate to the particular case they may be appointed.

6. **Care Plans:**

Prior to the Final Hearing the Local Authority will have to produce a Care Plan setting out their plans for the child/children if a Care Order is made.

7. **Threshold Criteria:**

In order to make Interim Care/Supervision Order the Court has to be satisfied that there are reasonable grounds for believing that the child concerned is suffering or is likely to suffer significant harm and that the harm of likelihood of harm is attributable to:-

- (i) the care given to the child or likely to be given to the child if the order were not made not being what it would be reasonable to expect a parent to give to the child, or;
- (ii) the child being beyond parental control.

This is known as the "Threshold Criteria".

At the commencement of the proceedings the Local Authority will have to produce a Threshold Criteria Document. This will set out on what grounds the Local Authority believe the Threshold Criteria are met. The parents' solicitors will be given an opportunity to produce a response to the Local Authority's Threshold Criteria Document.

8. Statements and Reports

During the course of the proceedings statements and reports will be produced by anyone who is involved with the child/children who the Local Authority consider to be appropriate.

Any experts who are appointed will produce a report for the Court.

The parents with their solicitor's help will produce statements responding to the Local Authority's statements and the reports of any experts.

Prior to the Final Hearing the Children's Guardian will produce a report setting out his/her views.

9. Transfer of Proceedings

Care Proceedings are commenced in the Family Proceedings Court. Proceedings can be transferred to the County Court if it is felt appropriate. The reason for transferring a case to the County Court is generally because it is a case with complex issues, which it is felt would be better dealt with by the County Court or because the Final Hearing is likely to last for more than three days.

10. Assessments

The Court can direct that there is medical or psychiatric assessment of a child. This can include a residential assessment with parents. The Court will need to be sure that certain conditions are met before making the order. Your solicitor will advise you on whether these conditions can be satisfied in your case.

11. Final Hearing

At the Final Hearing the Court will generally hear evidence from the Local Authority witnesses, the parents and the Children's Guardian. The Court could make a Care Order, Supervision Order, Residence Order or no Order.

EFFECT OF ORDERS

1. Emergency Protection Order:

This is a short term Order, which will last for a specified period but cannot be for more than 8 days. The Local Authority can apply for an Emergency Protection Order without giving notice to the parents. As the name suggests this is an Order that is applied for where the Local Authority consider that there is an emergency and the matter needs to be dealt with quickly. Social Services can apply for an Emergency Protection Order without having a Case Conference with Legal Implications first. An Emergency Protection Order gives the Local Authority parental responsibility, which they share with the parents. It allows the Local Authority to remove the child to Local Authority accommodation or to prevent the child's removal from hospital or other place in which he/she was being accommodated immediately before the making of the Order.

At the end of the specified period an Emergency Protection Order can be extended for not more than seven days. An Emergency Protection Order can only be extended once.

2. Care Order:

If the Local Authority decides to apply to the Court for a Care Order an application will be issued in the Family Proceedings Court (Magistrates' Court). The Local Authority will usually apply for Interim Care Orders. Because it will take some time for the Court to be in a position to make a final decision as to whether a Care Order should be made, the Court can make short term Orders known as Interim Care Orders. The first Interim Care Order can last for up to eight weeks. After that, the Orders can last for up to four weeks at a time. Parents can oppose the making of an Interim Care Order. Once there has been a contested hearing, the parents can only oppose again in the future if there has been a change in circumstances.

A Care Order gives the Local Authority parental responsibility, which they share with the parents. This allows the Local Authority to make decisions in respect of the child. The Local Authority should generally follow the Care Plan, which was prepared during the course of the proceedings.

3. Supervision Order

A Supervision Order does not give the Local Authority parental responsibility in respect of the child. Therefore, it does not allow the Local Authority to make decisions in respect of the child without the parents' consent. A Supervision Order places the Local Authority under a duty to:-

- i. Advise, assist and befriend the supervised child;
- ii. To take such steps as are reasonably necessary to give effect to the Order; and
- iii. Where the Order is not wholly complied with, or the supervisor considers that the Order may no longer be necessary, to consider whether or not to apply to the Court for its variation or discharge.

As with Care Orders the Courts can make Interim Supervision Orders.

4. Residence Order:

A Residence Order is an Order which states who the child/children should live with. A Residence Order can be made to any person. If the Court considers it appropriate for a child to live with a particular person the Court can make a Residence Order. A person who has a Residence Order in respect of a child has parental responsibility for that child during the existence of the Residence Order.

5. Contact Order:

This is an order requiring a person with whom the child lives, or the Local Authority to allow a child to have contact with the other parent or such person as the Court may order. The contact order may provide for direct or indirect contact. Direct contact is face to face contact with the child. Indirect contact means just that and would include telephone calls or letters. Staying contact means overnight contact.

6. No Order:

If the Court feels it is appropriate it can make no Order.

FREEING FOR ADOPTION AND ADOPTION APPLICATIONS

1. If the Local Authority considers that it is in the child's best interests for him/her to be placed permanently away from his/her parents, they may make an application to free the child for adoption once a Care Order has been made.
2. A Freeing Order will revoke a Care Order. Parental Responsibility is then removed from the parents. Whilst a Freeing Order is in place it is the Adoption Agency who have Parental Responsibility in respect of the child. This will usually be the Local Authority.
3. Once a Freeing Order has been made the parents will lose Parental Responsibility. Therefore, the parents will not be a party to any subsequent Adoption Proceedings.
4. If a Care Order has been made in respect of a child and the child has not been freed for adoption, prospective adopters can make an application to adopt the child. Where the child has not been freed, the parents will be a party to the adoption proceedings. Therefore the parents will be able to give their views in respect of that application.
5. A Freeing Order/Adoption Order may be made if the Court is satisfied that the parents have either freely, and with full understanding of what is involved, agreed generally and unconditionally to the making of an Adoption Order, or that the parents' agreement to the making of an Adoption Order should be dispensed with on one or more of six possible grounds. Namely that the parent or Guardian:-
 - (i) Cannot be found or is incapable of giving agreement.
 - (ii) Is withholding his/her agreement unreasonably.
 - (iii) Has persistently failed without reasonable cause to discharge his parental responsibility for the child.
 - (iv) Has abandoned or neglected the child.
 - (v) Has persistently ill-treated the child.
 - (vi) Has seriously ill-treated the child and the rehabilitation of the child within the household of the parent or Guardian is unlikely.
6. The whole area of freeing and adoption is currently being dealt with by Parliament under the Adoption and Children Act 2002.

THE HUMAN RIGHTS ACT 1998

There are two Articles, which are most likely to be relevant:

Article 6 – Right to a fair trial

Article 8 – Right to private and family life.

It is unlawful for the Local Authority to interfere with these rights unless the law allows it, it pursues legitimate aim and is necessary. The Human Rights Act can be considered within any Children Act proceedings or a separate application can be made.

COSTS

It costs money to see a solicitor. Our costs are based on how long we spend dealing with a matter, how many letters are received and sent, and telephone calls made and received. Each matter is different and we can only give very general indications as to likely costs.

Certain clients qualify for assistance with their costs.

1. PUBLIC FUNDING PROVIDED BY THE LEGAL SERVICES COMMISSION (LEGAL AID)

(a) Legal Help Scheme

This is available for initial advice and is available to clients on Income Support, Income Based Job Seekers Allowance, or low incomes where the disposable income is below a certain amount. Under the Scheme we can do two hours work but that limit may be increased in appropriate circumstances.

Please remember, however, that if property or money valued at more than £3,000 is preserved you will have to repay the costs that were incurred under the Legal Help Form. This is unlikely to occur in Child Care Proceedings.

(b) Public Funding Certificates

- (i) Public Funding for Care Proceedings is non-means and non-merits tested for natural parents in Public Law Proceedings, i.e. an Application by the Local Authority for a Care or Supervision Order. This means that for those proceedings all natural parents are automatically entitled to Public Funding.
- (ii) Public Funding will be available to other people who may wish to be involved in the proceedings if that person qualifies financially and the Legal Services Commission consider that they have a suitable case to pursue (The Merits Test).
- (iii) Public Funding may be available without a contribution to clients on Income Support and those with low incomes.
- (iv) An offer of Public Funding is made if you have to pay a contribution. If you accept the offer, the instalments required are payable throughout the time the dispute continues and until the Certificate is discharged.
- (v) If you are not a natural parent involved in Public Law Proceedings and your means change during the existence of a Public Funding Certificate the contribution can be varied up or down. It is essential that you inform the Legal Services Commission or any change of address or change in circumstances including the commencement of living with another partner (when the partner's means are then required to be taken into account).

(c) The Statutory Charge

This does not apply in Care Proceedings, but may apply in other proceedings in certain circumstances.

2. PAYING CLIENTS

Clients who are not natural parents involved in Public Law Proceedings and who do not qualify for assistance with their costs will be expected to pay a sum on account of costs periodically or to pay costs by instalments. A client who is in this situation will be given details of the hourly charging rate of the person dealing with the matter at the outset of the proceedings and details of payment arrangements.

OTHER SERVICES

(a) **Have you made a Will?**

You can appoint someone to look after your children in the event of your death.

(b) **Do you want to change your name?**

If so, we can produce a simple document evidencing the fact.

(c) **Are you receiving the right State Benefits?**

We can advise.

(d) **Are you involved in Divorce Proceedings?**

We have a Divorce Unit who will be able to assist.

(e) **Has a child been abducted?**

We can arrange a Port Alert.

(f) We can advise on **Cohabitation Contracts** and problems occurred by living with another person.

OTHER HELP

If you want help from other Agencies you can contact:-

1. **"RELATE"** formerly Marriage Guidance Council – 3 Blenheim Road, North Hill, Plymouth (Tel: 01752 665708) for help solving marital problems.
2. **PLYMOUTH MEDIATION** – St Peter's Centre, 18 Hastings Street, Plymouth, PL1 5PB (Tel: 01752 671078) for help solving marital problems and resolving disputed matters particularly concerning children.
3. **CITIZENS ADVICE BUREAU** – Virginia House Settlement, Looe Street, Plymouth (Tel: 01752 228819) and at Devonport Guildhall, Ker Street, Devonport, Plymouth (Tel: 01752 565522).
4. **WOMEN'S REFUGE** – (Tel: 01752 562286).
5. **SAMARITANS** – (Tel: 01752 221666).

WOLFERSTANS deal with all aspects of law at our MAIN OFFICES:-

**DEPTFORD CHAMBERS
60-66 North Hill
PLYMOUTH
Devon
PL4 8EP**

Telephone: 01752 663295
(All Departments)

THE FIRM'S BROCHURE IS AVAILABLE ON REQUEST.