

FAMILY OFFICE

GUIDE TO THE LAW AND PROCEDURE IN PRIVATE LAW CHILDREN MATTERS

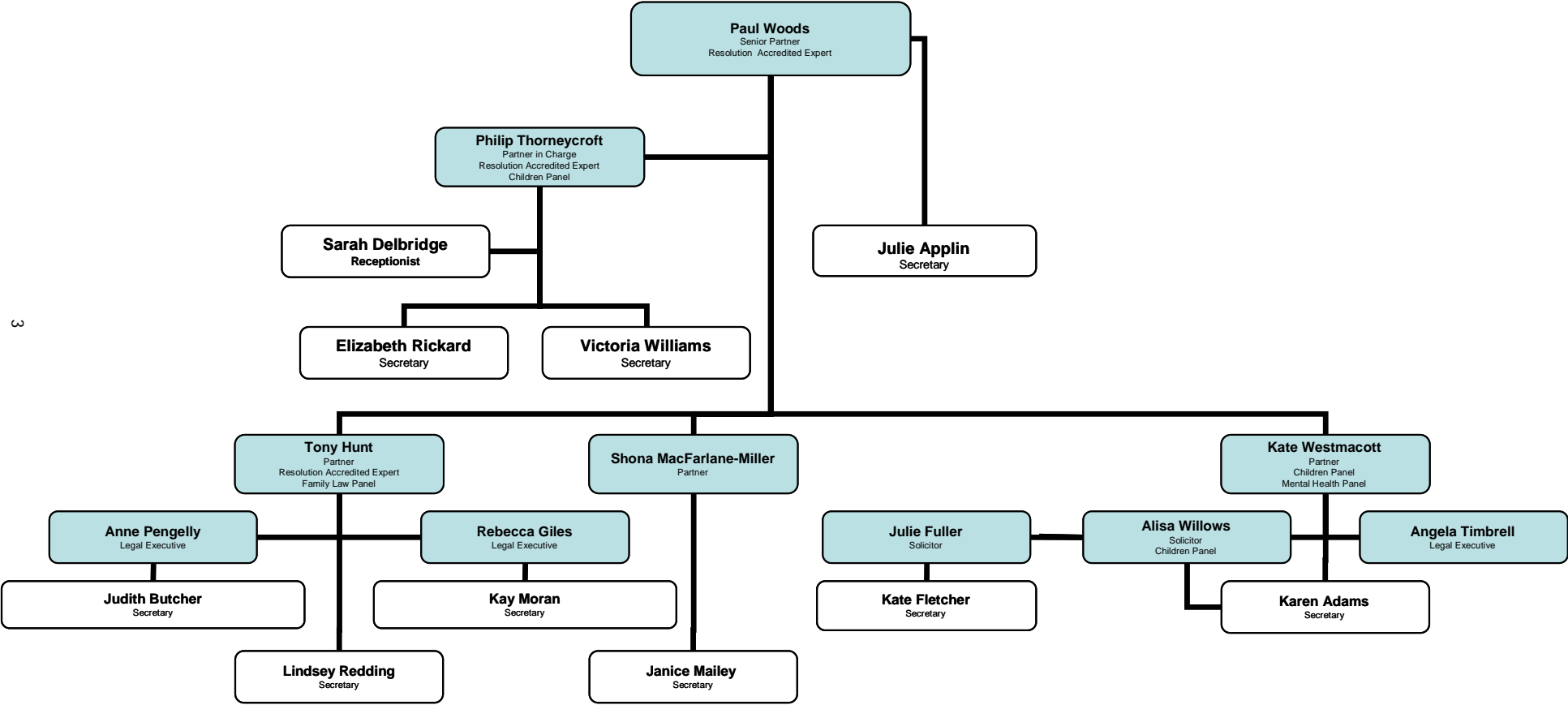


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Family Office



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PRIVATE LAW CHILDREN UNIT

At Wolferstans, not only do we have experts within the area of Family Law, but in addition we have developed specific units to work within specific areas to provide even greater specialised advice. Hopefully this means the service we carry out will be quicker and more efficient.

The following personnel comprise the Private Law Children Unit:-

Paul Woods	<i>(Senior Partner) (Resolution - First for Family Law accredited expert)</i>
Phil Thorneycroft	<i>(Partner in Charge) (Resolution - First for Family Law accredited expert)</i>
Tony Hunt	<i>(Partner) (Resolution - First for Family Law accredited expert) (Family Law Panel)</i>
Shona Macfarlane-Miller	<i>(Partner)</i>
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Julie Fuller	<i>(Solicitor)</i>
Anne Pengelly	<i>(Legal Executive)</i>
Rebecca Giles	<i>(Legal Executive)</i>
Angela Timbrell	<i>(Legal Executive)</i>

Secretaries

Karen Adams
Julie Applin
Judith Butcher
Kate Fletcher
Kay Moran
Lindsey Redding
Elizabeth Rickard

Receptionist

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The Children Act 1989 is the most comprehensive piece of children legislation this century and will be considered by the Court when making orders relating to children.

One of the main principles of the Act is that the welfare of the children is to be the paramount consideration of the Court.

Another important principle of the Act is something called the "presumption of no order". What this means is that the Court should not make an Order unless satisfied that making an Order would be better for the children than not making the Order. The Court is therefore unlikely to make an Order relating to children where matters are agreed, unless there are special circumstances which would justify the making of the Order.

The Act introduces a new concept called Parental Responsibility and also sets out the various orders which the Court can make in connection with the children. The concept of parental responsibility and the other more usual orders are explained, as follows:-

PARENTAL RESPONSIBILITY

Parental Responsibility is defined as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". The concept of parental responsibility has replaced the concept of parental rights and duties under the old law.

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.

Parental Responsibility is a very important matter, and may well be sought by natural fathers, who do not have parental responsibility automatically. Parental Responsibility allows a parent to consent to emergency medical treatment and have a say in the important day to day decisions in relation to the child, such as education and religion.

Please note that the consent of parental responsibility is being reviewed by the Law Commission.

RESIDENCE ORDER

This is an order which settles the arrangements as to where the child or children are to live. It replaces the Custody Order under the old law. As the Court is now adopting the "no order" principle, the Court will not make a Residence Order on divorce unless it is better for the child or children to make such an order. It is normally left for the parents to decide with whom the child should live and the Court will only become involved if there is a dispute with regard to this.

CONTACT ORDER

This is an order requiring the person with whom the child lives to allow the child to have contact with the other parent or such person as the Court may order.

The Contact Order replaces the old Access Order. The Contact Order may be in two forms, namely direct contact and indirect contact. Direct contact would mean that the child has face to face contact with the absent parent. Indirect contact means just that, i.e. that the child will be able to receive letters or speak on the telephone with the absent parent.

In addition, a Contact Order can provide for something called staying contact, which means that the child would stay overnight with the person with whom he or she is having contact. It is quite usual for a child to have staying contact with the absent parent on alternate weekends or during school holidays, unless there is a good reason why this should not happen. Particular attention should be given to say Christmas holiday arrangements.

PROHIBITED STEPS ORDER

This is an order which provides that no step should be taken by an individual with or without parental responsibility without the Court's consent. It imposes a specific restriction that no important step may be taken without the Court's permission. For example, the father could apply to the Court to prevent the mother changing the child's surname if the child were living with the mother.

SPECIFIC ISSUE ORDER

This is an order giving directions to determine a specific issue or event. It should not, and cannot be used to give one parent a general right to make decision about a particular aspect of the child's upbringing and is used by the Court more with regard to resolving a particular dispute over a particular matter. Such an order would be useful in determining, for example, where a child were to go to school if both parents disagreed.

All the order mentioned above are subject to limitations. The Court cannot make any of these orders after a child's sixteenth birthday unless there are exceptional circumstances. Any existing order normally ceases to have effect on the child's sixteenth birthday.

The Act also allows for other to apply for orders relating to the child, i.e. grandparents. If, however, grandparents wish to apply for an order relating to the child, they would need the specific permission of the Court before making such an application.

It is important to advise you that the Court can make orders relating to children without the need for divorce proceedings. It may well be the case that the only matter before the Court is the application for an order in respect of the child.

TIMETABLE IN PRIVATE CHILDREN ACT PROCEEDINGS

1. On the filing of an application under the Children Act the Court lists an initial short directions hearing before a District Judge approximately four weeks later.
2. At this first hearing a Reporting Officer will be present to deal with a mediation appointment. Any mediation is privileged, which means that anything discussed will not be revealed to the Court unless there are Child Protection issues. The mediation appointment is voluntary, but parties are encouraged to attend by the Court.
3. The Reporting Officer will inform the Court and the solicitors of the outcome of the meeting and whether agreement has been reached, and if it is felt that further mediation sessions should be attempted.
4. The Court can record any agreement reached by way of a formal order, but does not have to do so. It has to be shown that making an order is better for the child than making no order.
5. If no agreement is reached the District Judge will usually order the preparation of a full report by the Reporting Officer to investigate the circumstances of the case and make a recommendation to the Court as to what order, if any, should be made. The report will take between ten to twelve weeks to prepare and the District Judge will also order that a further directions hearing takes place once the report has been prepared.
6. If both parties accept the recommendation contained in the report then the Court can convert the recommendation into an order but, as mentioned above, does not have to do so. See paragraph 4. The Court must take the view that making an order is better for the child than making no order at all.
7. If the recommendation in the report is not accepted by one or both parties the Court will list a final hearing date and direct that the parties sign and file with the Court written statements of evidence setting out their case.
8. At the final hearing the party making the application gives evidence first. At the conclusion of the evidence the Judge will make a decision and an Order will be made recording this.
9. The process from stage 1 to 8 usually takes approximately six months but can take longer depending on the circumstances. Agreement without the need to involve the Court is usually the best solution for the child concerned if at all possible.

PARTIES ARE EXPECTED BY THE COURT TO ATTEND AT ALL OF THE HEARINGS UNLESS THERE IS A GOOD REASON WHY NOT.

Child Support

A referral can be made to the Child Support Agency (unless their jurisdiction is excluded) so as to ensure that the absent parent makes child support payments for any qualifying children.

Different rules are applied by the Child Support Agency depending on whether the referral was made prior to the 3 March 2003 or after this date.

Referrals made prior to 3 March 2003 (Child Support Act 1991)

The way that child support payments are calculated by the Child Support Agency involves a complicated formula which looks at the maintenance requirement of the primary carer of the children and the ability of the absent parent to meet that need. The financial circumstances of both parents are considered with the absent parent's housing costs are taken into account. In addition 50% of pension contributions are taken into account.

A reduction of child support is possible in the event that the child or children spend at least 104 nights each year with the absent parent.

Referrals made after the 3 March 2003 (Child Support, Pensions & Social Security Act 2000)

As from the 3 March 2003 new rules were introduced relating to the way that the Child Support Agency calculates the level of child support payable by the absent parent. The new rules will apply to cases referred to the Child Support Agency after this date and possibly on reassessments following changes of financial circumstances.

In general terms the absent parent will now pay a percentage of his net income by way of child support regardless of (1) whether he or she can afford to and (2) whether the primary carer of the children needs the money or not. The housing costs of the absent parent will not be taken into account. All pension contributions will be taken into account.

Generally, the absent parent will pay 15% of their net income for one child, 20% of their net income for two children and 25% of their net income for three or more children. Different rules apply to those whose income is less than £5.00 per week and prisoners.

In the event that the child or children stay with the absent parent for one evening each week (52 nights per year) then the child support payment will be reduced by 1/7. In the event that the child or children stay overnight with the absent parent 2 evenings each week then the child support payment will be reduced by 2/7 and so on.

It is possible for the Court to make child maintenance orders by consent. However, the jurisdiction of the Child Support Agency can now only be excluded for 12 months with either parent being able to apply for an assessment thereafter on the expiry of a two month notice thereafter.

Generally, the Child Support Agency will not take on cases where:-

- a) either of the parents of the child live abroad (unless they are in the Armed Forces or employed by the Crown or even employed by a company registered in England, Wales or Scotland)
- b) maintenance is claimed on behalf of a step child
- c) the child in question is 19 or over

In both cases the Child Support Agency will automatically have become involved if the primary carer of the children has made an application for income support.

We can give general advice with regard to the relevant legislation and its effect but Legal Aid does not cover assisting or handling or resisting claims through the Child Support Agency. Information booklets can be obtained from the Child Support Agency in this respect.

COSTS

It costs money to see a Solicitor. Our costs are based on how long we spend with a matter and 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

- (a) **Legal Help Scheme** for initial advice and dealing with divorce proceedings is available to clients on Income Support or modest incomes. Under the Scheme we can do two hours work (three hours if we prepare a divorce Petition) but that limit may be increased in appropriate circumstances.

Please remember however that if in subsequent financial proceedings, property or money valued at more than £3,000 is preserved, you will have to repay costs which were incurred under the Legal Help form.

- (b) **Public Funding** for dealing with disputes over children issues or finance.

- (1) An application is submitted to the Legal Service Commission who will assess your means.
- (2) Public Funding will be available if you qualify financially and the Legal Services Commission consider whether you have a suitable case to pursue (the Merits Test).
- (3) Public Funding may be available without a contribution to clients on Income Support and those with low incomes.
- (4) 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 the certificate is in force, until the Certificate is discharged.
- (5) If 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 of 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”** under the Legal Aid Act

If you preserve or recover more than £3,000 capital in divorce proceedings the Legal Services Commission will not insist on the costs being reimbursed immediately.

If a house or other property is retained to provide a home then the Legal Services Commission will not expect the costs to be reimbursed immediately. They will take a **Charge** over the property and will only expect to be paid when the house is sold. The **Charge** is for the amount of the costs. Interest is charged (currently at a rate equivalent to 1% above base rate for each year the deferred Charge remains in force) but not payable until the property is sold i.e. simple interest is charged by adding to the debt.

- (d) It may be necessary to submit a private bill for work undertaken outside the scope of the Legal Help and Public Funding Schemes or where the costs incurred exceed the maximum extension authorised under Legal Help.

2. PAYING CLIENTS

Clients who do not qualify for assistance with their costs are expected to pay a **sum on account of costs** periodically or to pay costs by **instalments**. In this way a client will not be financially embarrassed by a large bill at the end of the matter.

At the present time our charging rate is between £80 and £120 per hour, together with VAT, with individual letters and telephone calls being charged at 10% of the charging rate. The charging rate may vary, notice of any variation will be given to you.

Certain clients have indicated to us that they would prefer to pay our fees by way of standing order during the course of the proceedings. Instalment payments can be arranged by Bankers Order direct to our Bank to be credited to:-

WOLFERSTANS Client A/C No. 42454441 Sort Code: 56-00-63

Nat West Bank, PO Box 226, 14 Old Town Street, Plymouth (for head office clients)

WOLFERSTANS Premium Client A/C No. 10983438 Sort Code: 20-68-10

Barclays Bank, 19 Princess Street, Plymouth (for Plympton and Plymstock office clients)

This then spreads the cost over the period of time that the proceedings are taking place. In that way your financial budget can reflect the costs incurred as the case proceeds. We will submit interim accounts periodically based on the work done during that period.

During the case we may need to incur expenses on your behalf (e.g. Court fees or valuation fees) and we will normally expect to be paid those in advance and will discuss the arrangements for the during the course of the matter.

In addition we have the facility to accept credit card payments in both our Family Office, and by telephone through our Accounts Department.

COSTS GENERALLY

- It is better to try to agree matters to keep costs to a minimum. Going to Court may be very expensive.
- You must always take account of the possible costs of litigation before going to Court. Litigation costs should remain proportionate to the value of assets in issue.
- The Court may order your spouse to pay your costs but you cannot rely on such an Order.
- You may be at risk of having an order for costs made against you, and that may occur even if you have Public Funding in respect of your own costs.

OTHER SERVICES

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

If so you have probably left your estate to your spouse. If you have not made a Will your estate will go to your spouse under the Law of Intestacy. Is this what you want? *MAKE A NEW WILL!*

(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 your children in trouble with the police?**

We act for children in the *Youth Court*.

(e) **Are your children in Care?**

We act for children in care proceedings. Solicitors in this Firm are on the *Law Society Children Panel*.

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

We can arrange a Port Alert.

(g) **We can advise on most Welfare rights problems.**

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

Remember WOLFERSTANS deal with ALL aspects of law

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: 665708) for help solving marital problems.
2. **PLYMOUTH MEDIATION** – St Peter's Centre, 18 Hastings Street, Plymouth, PL1 5PB (Tel: 671078) for help solving marital problems and resolving disputed matters particularly concerning children.
3. **CITIZENS ADVICE BUREAU** – Virginia House Settlement, Looe Street, Plymouth (Tel: 228819) and at Devonport Guildhall, Ker Street – Devonport (Tel: 565522).
4. **WOMEN'S REFUGE** – (Tel: 562286)
5. **SAMARITANS** – (Tel: 221666).
6. **DEVON LAW CENTRE** – Virginia House, 40 Looe Street, Plymouth, PL4 0EB (Tel: 519794)

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

**Deptford Chambers
60/64 North Hill
Plymouth
Devon
PL4 8EP**

Telephone: (01752) 663295
All Departments

THE FIRM'S BROCHURE IS NOW AVAILABLE ON REQUEST