



Divorce and Children matters

During and after the divorce proceedings, it is of top priority to ensure that the welfare of the children is looked after. The Court will only grant a decree to finalise a divorce if it is satisfied with the arrangements for children under the age of 18. The Court will express its satisfaction with the arrangements for children through a "Section 18 declaration" (section 18(1) of the Matrimonial Proceedings and Property Ordinance (Cap 192)).

The Court encourages the parties involved in divorce proceedings to resolve children arrangements in mediation to reach a mutual and voluntary agreement which can subsequently be made into a Court Order.

In respect of children matters, the Court may make the following orders:

1. Custody of the child

- The term "custody" means making the important decisions about a child's life such as education, health, religion and removal from the jurisdiction.
- The Court can order joint custody of the child to both parents, or sole custody of the child to one of the parents.
- Even if one parent is granted sole custody of the child, the non-custodial parent still has the right to be consulted on all matters affecting the child. If the non-custodial parent feels strongly about a particular issue, then he/she can make an application to the court to clarify matters.

2. Care and Control of the child

- The term "care and control" means the day to day looking after of the child. This includes responsibilities such as supervising the child doing homework, arranging school drop-offs/pick-ups, and deciding when the child will go to bed every night. A parent who is granted care and control of the child is the parent with whom the child will primarily reside.
- The Court can order joint/shared care and control to both parents of the child, or sole care and control to one of the parents.
- If sole care and control is granted to one parent, the other parent will normally be granted "access" to the child.
 - The term "access" refers to the time that the child spends with the non-care and control parent such as through emails, text messages, telephone calls, video calls visiting the child ("visiting access") and taking him/her out or having him/her to stay overnight ("staying access").

- There are various forms of access arrangements, namely:
 - "Reasonable access" whereby the parties can agree between themselves the details of how and when access will take place.
 - "Defined access" whereby access arrangements are defined in detail in advance and both parties are to comply with such arrangements.
 - "Supervised access" whereby it is necessary for an independent third party to be present during access.

Court proceedings

The Court's first and paramount consideration is the best interests of the child in question. The Court will look at factors such as the views of the child or parents, the age or sex of the child and the behaviour of the parents. In practice, to determine what is in the best interest of the child, the Court will consider the recommendations in relevant social welfare report(s) and/or the findings in child psychologist report(s) and any relevant evidence submitted by both parties.

In the event there is a dispute over children and their arrangements, a Children's Dispute Resolution ("CDR") will begin. The Court will direct both parties to attend a Children's Appointment.

Before the Children's Appointment both parties are to simultaneously exchange and file their Children's Forms (Form J) which set out their respective arrangements for the children. The Children's Appointment is a directions hearing where the Court can make a variety of directions/orders.

The objective of a CDR hearing is for the Court to assist the parties to reach settlement on children arrangements. At a CDR Hearing, the Judge will act as a facilitator to assist parties in settling children arrangements. The Judge will give indications of how he/she may rule on the issues in dispute if the matter comes before him/her at trial. These indications often facilitate parties' settlement discussions.

If settlement cannot be achieved in a CDR Hearing, then both parties will need to proceed to trial for determination of children matters. At any time throughout the proceedings, the parties are open to attend mediation sessions or a range of alternative dispute resolution processes outside of Court to reach settlement.

*The information contained in this leaflet is for reference only.
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