



CHILD ARRANGEMENTS ORDERS - "LIVE WITH" AND "SPEND TIME WITH"

The question of which parent is more likely to get a Live With Child Arrangements Order (custody in old money) is an ever evolving one.

Historically there was a presumption that young children needed to be with their mothers in their early, developmental years. But now, the courts have realised that the question is much more difficult to determine.

The court has a presumption that it is better for a child to have the involvement of both parents in their life and that will further their welfare. The starting point is often the child will live with the parent they stayed with when the parties separated and spend time with the other parent.

How do the courts decide?

The courts will ask themselves a series of questions when faced with the decision of who the child should live with and spend time with, this is known as the Welfare Checklist.

- Does the child have a particularly strong emotional bond with either parent? Is the child capable of conveying their views to a Court Advisor?
- How old is the child, does the child have any special needs either physically, emotionally or educationally?
- What will be the effect on the child of any change in the current arrangements?
- Which parent is most financially and physically able to provide for a child's essentials, like food, medical care, shelter, and clothes?
- What is the mental and physical health history of each parent? Is there any information that may affect the child (e.g., excessive drinking, history of violence, mental health issues of either parent)?
- Will the child have to adjust to a new school, city, quality of life, and friends if living with one parent versus the other?

After asking these types of questions, the court will decide which parent should be given primary care via a Live With Order and how much time should the other parent have. As you can see, the

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DAWN HUMPHRIES JOINS LB PARTNERSHIP



The number of partners has increased at Lanyon Bowdler to 27 with the appointment of Dawn Humphries, a personal injury specialist with more than 25 years' experience.

Dawn is a solicitor with the firm, specialising in helping people with serious and catastrophic injuries pursue their claims through the courts.

Brian Evans, managing partner, said: "Dawn has played a major role in the success of Lanyon Bowdler since she joined us 20 years ago and we are delighted she has now become a partner with the firm.

"She has a particular interest in spinal injuries and works closely with the Midland Centre for Spinal Injuries at the Robert Jones and Agnes Hunt Orthopaedic Hospital in Oswestry.

"She recently co-chaired our spinal injury conference which brought together many leading experts in the field to discuss research, treatments and the latest technology.

"Dawn has also worked on a number of employers' liability claims and high profile work-related stress cases. She is a strong advocate of mediation as a cost effective resolution. Dawn endorses early interim payments to put in place rehabilitation, case management, care, accommodation and

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“ Everything was explained verbally as well. Questions answered promptly and clearly.

R & K Goodman, Shrewsbury

MILITARY PERSONNEL POTENTIALLY MISSING OUT ON JUSTICE

Changes to the law could see military personnel missing out on thousands of pounds in compensation if they are injured whilst on duty.

Louise Howard, specialist in personal injury claims at Lanyon Bowdler, has raised concerns with local MPs about Government plans to change the way compensation claims are made by serving and former military personnel.

Under the proposals, people would no longer be able to bring a civil claim against the Ministry of Justice, meaning a vital avenue of justice would be closed, Louise said.

The Armed Forces Compensation Scheme (AFCS) currently provides compensation for injury, illness or death caused whilst serving in the Armed Forces, other than in combat.

These payments are graded in relation to severity up to a maximum £570,000. This is a no fault scheme, which means if the injury was caused by service, the scheme will provide compensation, but the amount that can be recovered is limited.

At present, servicemen and women can also bring a civil case to seek, as far as is possible, damages to return them to the position they would have been in if it were not for their injury.

To be successful in a civil case the claimant must prove on the balance of probabilities, that the defendant, in this case the Ministry of Defence (MoD), was at fault. Civil cases often relate to injuries received in training, and from using faulty equipment.

The MoD is also the provider of medical treatment for servicemen and women, civil claims can therefore include clinical negligence cases against the MoD.

Louise represents a number of military clients in negligence cases against the MoD and in AFCS claims. She says the proposed AFCS scheme would extend a principle known as Combat Immunity, leaving claimants without fair and adequate compensation.

“The proposed scheme is out for consultation but if it goes through it would mean a civil action would no longer be possible in many circumstances - the only recourse for those injured during service would be a claim under the AFCS,” she said.

“The AFCS is administered by an arm of the MoD, which would effectively mean the MoD is judge and jury on claims - the claimant is likely to struggle to afford independent legal representation and cases would not be open to public scrutiny.”

“In a civil action, the decision as to whether to award damages, and the correct amount to be paid, is currently made by an independent judge.”



“The current principle of Combat Immunity prevents claims for injuries sustained in combat. These risks are assumed known and part of the job - the Government wants to extend that principle to cover risk of injury in areas outside the combat arena.”

“This fundamentally removes the rights to pursue justice for those that have given the most in service of their country. If Combat Immunity is extended it will lead to those in the armed services having fewer rights to justice than the average citizen.”

“Changes are required to the current AFCS and I believe it is important that views and experiences of applicants of the scheme are taken into account. It is paramount this scheme serves its purpose in providing fair and adequate compensation for those who have served their country and become injured in the process.”

“However, the Government’s consultation does not focus on the real issues, but instead proposes removing the right to bring a case to public attention through any civil case. This also removes scrutiny into the MoD’s policies and procedures.”

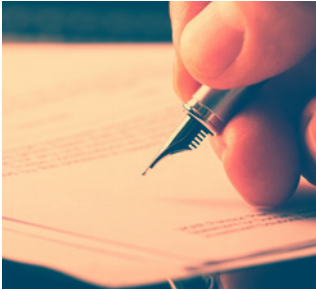
Louise said there were issues with the current legislation which needed to be addressed and those have been sent out in correspondence to local MPs and the Defence Secretary, but added an extension of Combat Immunity would only compound the feeling of injured military clients, that the promise of support for armed services personnel from the Government was often an empty gesture.

“Clients I am currently representing say it is not just about compensation but feel strongly that the MoD should admit its failings in their individual circumstances,” she added. *“They also feel that by pursuing litigation they are helping to highlight and prevent fellow servicemen facing similar situations.”*

“ Good, clear advice, amendments dealt with very quickly.

G & M Jones, Ellesmere

BE WARY WHO YOU APPOINT AS YOUR EXECUTORS



The role of an executor is an important one; the executor is entrusted by the testator with the administration of their estate, which usually entails collecting in the estate assets, discharging the liabilities, preparing estate accounts and ensuring that the estate is distributed to the beneficiaries in accordance with the terms of the Will.

However, the role can also include more delicate tasks, such as organising the funeral/wake (together with an appropriate memorial), or disposing of the contents of a house.

An executor is an important role

Given the importance of the role, it is surprising how many testators appoint two or more individuals as their executors (often family members such as children), who they know do not get on, or may even be positively hostile towards each other. Unfortunately, this can and does lead to difficulties and delays in applying for the grant and administering the estate. One of the executors may seek to take control of the process by removing financial or other documents from the deceased's home without their co-executors' permission and then trying to apply for the grant of probate alone, or by removing articles from the deceased's home and refusing to grant access to the other executor.

One or both of the executors may decide to lodge caveats at the probate registry in order to prevent the other from obtaining the grant to the estate, leading to a stalemate situation. In extreme cases it can become necessary for the "wronged" executor to apply to the court to remove the other executor from his post altogether, but this is costly and time-consuming.

Not essential to appoint a family member

It is essential that a testator considers very carefully whether the executors he is contemplating appointing in his Will are capable of cooperating with each other. If he has any doubts, it is best to reconsider the matter. The Will draftsman should also be alive to the issue of potential conflict between executors and, in appropriate cases, be willing to offer the testator advice on the subject, so as to avert any problems occurring later on.

It is not essential for a testator to appoint family members, or friends, as executors. Some testators seem to feel obliged to appoint all of their children as executors, even when they are aware that there is a real potential for conflict between them. No testator wants his or her estate to be locked in a dispute caused by the executors, resulting in legal costs being incurred unnecessarily.

The same importance ought to be attached to identifying suitable executors of the Will as to the beneficiaries of the estate, as they are the individuals who will jointly be responsible for carrying out the testator's last wishes.

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questions are gender neutral, so no preference is given under the law to either parent.

What happens when both parents are granted a Live With Order?

In some instances it may be appropriate for the parents to share care - they both have a Live With Order allowing the child to spend large blocks of time at one parent's home (like summer and winter breaks), and the rest of the year with the other parent.

If the child is able to convey their wishes and feelings then their views are relevant to the determination of their living arrangements and are routinely considered in a number of different ways.

- At what age may their views be considered?
- The court has to consider the views of the child conceivably from as soon as they can talk. The level of consideration and influence those views may have over a Judge however will be very much affected by the degree of maturity the child is assessed as having.
- Their views are weighed in balance with the other factors in the Welfare Checklist

What rights do other family members have?

People frequently ask what are other member of the family's rights, e.g. grandparents when the parents separate and they have been denied time with the child. The sad truth is that family members do not have an automatic right to contact with the child. However, family courts do recognise the invaluable role that relatives (especially grandparents) have to play and it is very rare that the court would refuse a grandparent permission to make an application to spend time with the child unless there is evidence that it would not be in the child's best interests.

Even if the separation is amicable it is often advisable to have the arrangements recorded in a Parenting Agreement or Court Order. This provides both parents with a secure framework for the Child Arrangements to be recorded and to avoid any disagreements.

“First class service conducted in a pleasant and friendly manner at all times. Polite professional satisfied service. It was a pleasure to use you.”

N & C Williamson, Ludlow

KELLY STANT QUALIFIES AS SOLICITOR

Lanyon Bowdler is pleased to announce a newly-qualified solicitor has strengthened the clinical negligence team.

Kelly Stant joined the firm in September 2015 and became a trainee solicitor 12 months later. She qualified in March this year and has taken up her new position as a solicitor within the firm.

Colin Spanner, training partner at Lanyon Bowdler, said: *“Kelly has impressed us during her time with the firm and we are delighted to welcome her on board as a fully qualified solicitor.”*

“She will be working in our clinical negligence team, an area of law that is increasingly in demand, so Kelly will be an important addition to the team.”

Kelly was born and raised in the Oswestry area before moving to Cardiff where she graduated from Cardiff University with a law degree in 2015. She completed the Legal Practice Course and a Master’s Degree in Professional Legal Practice at The University of Law in their Chester branch.

“I find clinical negligence a fascinating area of law. I am very proud of the NHS in England and Wales, but like most people I am concerned that cuts in government spending do not lead to lower standards in care. When you act for a client in a clinical negligence claim you assist to maintain those standards and simultaneously help somebody who has been unnecessarily injured,” she said.

“Our clinical negligence department has an excellent reputation and we act for patients whose lives have been devastated by the impact of the negligence.”

Kay Kelly, head of the clinical negligence department said; *“I am delighted to welcome Kelly to our department. She is highly intelligent, incredibly empathetic and she will always go the extra mile for our clients. I have absolute confidence she will be an excellent solicitor.”*

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support, with valuable input from the client as part of a multi-disciplinary team.”

Dawn said she was passionate about ensuring clients who have sustained a personal injury get the representation and financial outcome they deserve when pursuing legal claims.

“It is important they have a voice through professional guidance at what is probably the most difficult times of their lives,” she said.

“Life-changing injuries are devastating to come to terms with, but I strongly believe it should not stop anyone pursuing their goals and getting back to living their lives as independently as possible.”

“Working with people who have suffered such adversity is often very inspiring. The courage, resolve and determination they show is amazing and can be very humbling.”

“The recent spinal injuries conference at the Robert Jones and Agnes Hunt Hospital in Oswestry was organised by Lanyon Bowdler and I was delighted to be involved in the event.”

“It was such a worthwhile day for all concerned, hearing from pioneers of spinal injury treatments, how accident victims are helped through the process from diagnosis to recovery, and the wonderful advances being made in the world of technology to help these people lead as normal a life as possible.”

“We also heard some inspirational stories from those most affected by spinal injury, how they dealt with the realisation of what had happened to them and how they fought back from adversity to remain positive and upbeat.”

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