

Dunn & Baker Family Team

8. CONTACT ENFORCEMENT (post 8th December 2008)

Contact Activity Directions

Designed to promote and facilitate contact, they can be used either where a parent is applying for contact or where an existing Order is being varied. The welfare of the child remains the paramount consideration in making an Order, however the new Act amends the Children Act 1989 to insert new provisions enabling conditions or directions to be attached to Contact Orders.

Contact Activity Directions are designed to direct parents to take part in an activity to promote contact with their child or children. The intention being to offer a helping hand in the resolution of the dispute and is part of the Government's push towards dispute resolution, rather than ongoing litigation.

Contact Activity Conditions

The purpose of Contact Activity Conditions is slightly different in that they aim to reinforce and underpin the Contact Order itself. It becomes part of the formal order and is enforceable in the event of breach. Contact Activity Conditions require a parent to take part in an activity to promote the contact.

Contact Activity Directions or Conditions can be made to direct or require one or both parents to take part in programmes, classes or counselling sessions to assist in establishing, maintaining or improving contact with their child or children. Counselling for parents could help not only with communication in relation to their children but to address underlying issues which may be getting in the way of contact.

Counselling would help parents to put their child/children's needs and interests before their own reluctance to agree to contact or before their own personal arrangements. Other examples of information to parents could involve parenting skills classes and in serious cases, there could be conditions to attend sessions designed to address a parent's violent behaviour. A contact activity direction cannot however require a parent to undergo medical or psychiatric examination, assessment or treatment.

Before imposing Contact Activity Directions or Conditions, the Court must have regard to the following:

- Whether the activity proposed is appropriate in the circumstances of the case.
- Whether the person proposed to provide the activity is suitable to do so.
- Whether the activity is provided in a place to which the parent can reasonably be expected to travel.

The Court must also obtain information about and consider the particular parent's circumstances and the likely effect of a direction or condition on him or her. This could, for example, be whether the direction or condition might conflict with religious beliefs or interfere with any work commitments.

Powers of the Court in Default

The Act gives the Court powers to deploy Cafcass (Children and Family Court Advisory Support Service) officers to monitor compliance with Contact Orders and Contact Activity Directions and Conditions and report

back to the court if there is a failure to comply. The aim being to provide assistance in resolving contact disputes before resorting to enforcement proceedings, however unless more Cafcass Officers are recruited, then there must be concern about how quickly they will be able to provide such reports.

There has been wide concern about the difficulties in enforcing Contact Orders either where the parent with whom the children live resists it or the other parent (the absent parent) fails to turn up. The Act also introduces new sanctions which a Court can impose on a parent who refuses to comply with a Contact Order.

Until now, given the Courts limited powers and unwillingness to use them, parents often felt able to deliberately flout Orders, for example the parent with whom the child or children live might put successive obstacles in the way of the child or children's contact with the other parent, or the absent parent might persistently fail to collect the child or children at the agreed time thereby disappointing the children and frustrating the other parent's plans.

The Courts were very reluctant to make Orders committing a parent to prison given the impact that would have upon the child or children and, although a Court could order that children live with the other parent, when the parent with whom they live persistently refuses contact, that may not be possible because of the absent parent's work or his or her home conditions.

The new Act introduces provisions which it is hoped that the Court will use because if a difficult parent realises these sanctions will be imposed hopefully they will be more willing to comply with the Order.

The Court will, for instance, be able to

- impose an unpaid work requirement on a parent who breaches the terms of a Contact Order
- award financial compensation to a party who has suffered a financial loss by reason of the other's breach of the Contact Order. This could apply, for example, where a parent has incurred travel or other costs in order to see their children, or where a parent has booked and paid for a holiday, but where consent to that holiday is subsequently withdrawn.

Warning Notice

A warning notice can be attached to existing Orders warning of the consequences of breaching that Order. An Enforcement Order cannot be applied for before a warning notice has first been attached to the Contact Order.

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