

Principles applied by the Courts in considering matters of religious disputes

The principles applied by the Courts in considering matters of religious disputes have effectively remained constant for a number of years.

When parents from different religious backgrounds have children together, upon separation, their disagreements about religious upbringing could concern the following matters:-

- in which religion is the child brought up?
- the child's attendance at religious events or venues whilst with each parent
- the child's education which might have a religious emphasis
- a parent's approach to medical treatment which might be dictated by religious belief, e.g. if a child can have a blood transfusion
- circumcision of a male child (*we note here that it is an offence to perform or aid or abet the performance of female circumcision*)
- change of name to reflect cultural background
- concern that one parent may be trying to arrange the forced marriage of the child
- a parent's wish to take a child abroad may have an element of cultural and religious reasons in the factual background

Parents who hold parental responsibility can exercise their parental responsibility separately, without consulting the other in most circumstances (see below for exceptions). However, family lawyers will always encourage both parents to try and resolve their disputes by consulting each other and by negotiation or mediation, as this will benefit the children and the family as a whole.

In the event that the parents cannot agree the issue after advice and assistance, an application to Court might be necessary to resolve the dispute. Section 1 of the Children Act 1989 states that the welfare of the child is the Court's paramount consideration in considering any matter of a child's upbringing. Sometimes the Court will seek expert evidence on the religions and cultures of the parents to assist the Court in making the decision

The Court has determined, in broad terms, in the cases that it has decided:-

- the Court does not prefer one culture or religion to any other or have a fixed concept of what is in the child's interest
- each case will be determined on its facts focusing on the welfare assessment of the particular child
- the Court is very unlikely to force a particular religion on a child in the event of a dispute

- neither parent has a predominant right to choose the child's religion
- it is most likely that the Court will determine that the child should be brought up to know of both religions, unless the religion or its practice is considered by the Court to be harmful to the child's welfare
- determining how the child is to be brought up, which may be against the views of one parent, is not an interference with the parent's right to practice his or her religion
- if one parent wishes to arrange for the circumcision of a male child, if the other parent does not agree, then an application must be made to Court to determine this issue – a parent cannot exercise his or her own parental responsibility alone and arrange this
- If one parent wants to change the name of the child, again if the other parent disagrees (even if they do not have parental responsibility) then an application must be made to Court to determine this issue – a parent cannot exercise his or her own parental responsibility alone and change the name
- the Court may seek undertakings from each parent to regulate how he or she parents the child whilst s/he is caring for the child, e.g. a parent who does not wish their child to be given a blood transfusion, might be asked to undertake that in the event the child needs medical treatment, the hospital is told of the other parent's ability to consent to the treatment. Additionally, a parent may be asked to undertake that s/he will not prevent certain activities being undertaken whilst the child is in their care, even if the activity is not in accordance with their religion

The lawyers in our Children Law team can advise you in connection with any difficulties regarding your children following the breakdown of a relationship, in particular those relating to disagreements about religious disputes.

Contact Samantha Little for further information.

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