



## Children and Divorce

### How do we put our children's interests first?

The wellbeing of your child/ren depends on both parents being able to rely on each other as parents, even though you and your spouse will no longer be living together.

It may help for you and your spouse to discuss a parenting plan. This is a useful tool for any separating parents.

Spend some time trying to understand what your child is going through and do not be afraid to get outside help for you or your child if it is needed.

### What is parental responsibility?

Parental responsibility gives parents the right to make all the important decisions in the child's life, i.e. which school they attend. All mothers have parental responsibility unless it has been surrendered through an adoption.

For fathers, if you were **married** at the time of your child's birth, then the father will have parental responsibility.

If you were **unmarried** at the time of the birth then the child's date of birth is important. If your child was born after 1 December 2003 and the father was named on the child's birth certificate, he will have parental responsibility. If your child was born before that date then only the mother will automatically have parental responsibility.

A father can acquire parental responsibility through one of the following:

- subsequently marrying the mother of the child
- applying to the court for a parental responsibility order
- making a parental responsibility agreement (in a set procedure) with the mother
- applying for and getting a residence order
- being appointed the child's guardian

### What happens if we do not agree about our children?

Separating can be a highly emotional time and sorting out the arrangements for their children can be very difficult for the parents, particularly in the early stages. Hopefully, the parents can reach a stable co-parenting relationship where arrangements for the children can be discussed and agreed amicably.

If an agreement cannot be reached then **mediation** or **collaborative law** should be considered.

Attending counselling can often help in these situations, either together or separately. It can often make speaking with your partner easier.

Although there will be some circumstances where court intervention is required, going to court should be a last resort.

## **How to deal with children during divorce**

The following can help your child through this difficult time.

### **Do:**

- explain appropriately what is happening
- give lots of reassurance
- follow the usual family routine as much as possible
- listen carefully to their feelings, concerns and questions
- encourage them to have a relationship with both of you
- encourage them to talk about their feelings, particularly about the other parent, in a way that avoids them feeling divided loyalties

Remember – there is no such thing as a perfect parent. It is vital to seek as much support as you and your child needs.

### **Don't:**

- be critical of the other parent
- do anything that would undermine the child's relationship with the other parent
- ask older children for advice or support
- ignore children's feelings or questions
- assume that children who are quiet or placid on the outside are not suffering – they still need reassurance and tolerance
- involve the children in your battles with your spouse

## **Who a child is to spend time with ("contact" or "access")**

### **What is a contact order?**

From April 2014, the court can no longer make contact orders. Instead, they can make arrangements about who a child is to spend time with ("contact") as part of a child arrangements order. As part of a child arrangements order, the court can require the parent (or guardian) living with the child to allow the child to stay with or visit a named individual which is usually the child's other parent. Child arrangements orders dealing with contact can also instruct that contact is made indirectly, such as by telephone, webcam or email.

If needed, the court can give detailed instructions as part of the child arrangements order, i.e. pick up and drop off times and places.

People may talk about contact or access orders. Access orders have not existed for a number of years. From April 2014, the court can no longer make contact orders although they can make contact arrangements within a child arrangements order.

### **How often will I see my children?**

It is usual for the parent that doesn't live with the child to be granted regular contact and involvement, particularly when the children are young.

The frequency of contact isn't determined by any set rules but rather what is in the best interests of the child. Practical considerations are also taken into account such as how close the parents live to one another and the age of the children.

Every case and family is different and is treated as such.

### **What should I do first?**

The first step in making arrangements for contact with children should be mediation or collaborative law to provide a forum to help resolve disagreements. Going to court should always be a last resort.

Separated Parenting Information Programmes are also recommended, these can help parents understand what separation means for their children and how this impacts on their needs and time with the other parent. This would be the quickest and most cost-effective option. If it isn't possible, then do speak to a family lawyer.

### **Will the fact I have a new partner affect the contact arrangements?**

A new relationship can be very difficult for both the ex-partner and children, especially if the separation was recent. It can lead to fears that the new partner will replace them in their child's life.

The introduction of a new partner to a child should be done sensitively and slowly.

The court can impose conditions on contact if there are genuine concerns regarding a child's welfare when spending time with a new partner. Every case is considered carefully as every child and case is different.

### **What do I do if access to my child is blocked?**

Seek legal advice from an expert family lawyer as soon as possible.

Unless the parent disallowing the contact can demonstrate that contact isn't in the child's best interest, the parent being denied contact will usually be favoured. The child's best interests will always be the priority and the family courts will presume that each parent's involvement in their child's life will further their welfare, unless shown otherwise.

Your lawyer will tell you about the alternatives to court and how to make a court application if needed. The first step will be to contact your ex-partner (or their lawyer) to try and reach an agreement amicably. This could be via telephone or in writing.

The courts can take action if you already have a court order that has been obeyed. It is possible to ask the court to impose sanctions on child arrangements orders, to encourage compliance with contact arrangements. Action can include unpaid work directions, monitoring of contact by **Cafcass**, payment of financial compensation, imprisonment (although this is rare) for contempt of court and, in some cases, an order that the child live with the other parent on a permanent basis.

### **Are alternate weekends the usual arrangements for contact?**

There are no set standard arrangements for contact, however in many cases alternate weekends are often agreed (or ordered by the court) so that both parents can enjoy leisure time with their child.

Alternate weekend arrangements may not work in cases which involve very young children for whom it is not appropriate to be away from their primary caregiver for prolonged periods of time. However, the time spent with the other parent can be built up over time.

## **Is there a bias towards contact orders for fathers and children living with mothers?**

The law has no bias at all for children living with mothers and contact arrangements being made for fathers.

In the past, arrangements would often be made this way due to mothers traditionally being the primary caregiver responsible for the bulk of childcare. Each case is considered individually and the best interests of the child are always considered first and foremost.

## **What happens if there are allegations made by a parent?**

During disputes over childcare arrangements it isn't uncommon for one parent to make an allegation against the other. These can either be genuine concerns or sometimes allegations can be exaggerated or concocted. Concerns can include alcoholism, drug taking, domestic violence, mental disorder or sexual abuse which might make unsupervised child contact inappropriate. More minor allegations might be made such as a parent driving too fast when with the children.

In these cases the courts provide a forum for the allegations to be heard, and it might be that the judge orders a 'finding of fact hearing' where the judge will hear evidence on the allegations and decides whether they are true. Drug, alcohol, psychologist or psychiatrist reports may be ordered.

Contact can be restricted while the allegations are being investigated which can be frustrating. Both sides will have the opportunity to be heard during the process.

The second stage of the judge's decision making will be considering the effect that the finding of facts will have on child contact. Even in the more serious cases, arrangements for contact may still be made.

## **What is interim contact?**

Interim contact is temporary contact arrangements made pending a full hearing which will decide the overall and final arrangements. You may wish to consider applying for interim contact if you are unable to see your children, and fear that delays in establishing contact arrangements could adversely affect your relationship with them.

## **What is a parental responsibility order?**

A mother automatically has 'parental responsibility' when their child is born. This means that they have responsibility for making all their life decisions, such as schooling and health.

Fathers are not automatically given parental responsibility, unless they are listed on the child's birth certificate, or married to the child's mother.

If a father doesn't have parental responsibility, they can apply for a parental responsibility order from the courts. If granted, a parental responsibility order gives the applicant the same responsibilities as a child's mother has.

Alternatively, you can come to an agreement with the child's mother outside of court and enter into a parental responsibility agreement.

It is important to note that a parental responsibility order does not give the holder the right to see a child. It isn't a substitute for agreeing contact arrangements with the other parent or obtaining a child arrangements order through the courts.

# The Court's Approach

## What issues does the court consider?

The child's welfare is the most important consideration when the court considers any issues relating to a child's upbringing. The court applies a checklist/set of principles contained in the Children Act 1989 (see below).

These principles should be applied by any lawyers and parents making arrangements to ensure that the best interests of the child are being prioritised. This hopefully lessens the need for court intervention.

## What should I do first?

Disagreements about contact with children should always be attempted to be resolved amicably before going to court. Not only will it be quicker and cheaper for all parties but having that good channel of communication between parents will make any future decisions or disagreements easier to overcome.

## What will the court consider when making its decision?

Often referred to as the 'welfare checklist', the law sets out a list of things that the court should consider in a case.

The actual wording of the law is as follows:

A court shall have regard in particular to:

1. the ascertainable wishes and feelings of the child concerned (considered in the light of his or her age and understanding)
2. their physical, emotional and educational needs
3. the likely effect on them of any change in his circumstances
4. their age, sex, background and any of their characteristics that the court considers relevant
5. any harm which they have suffered or are at risk of suffering
6. how capable each of his or her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his or her needs
7. the range of powers available to the court under this Act (Children Act 1989) in the proceedings in question

## Can we make an arrangement without the court?

Arrangements can be made between the parents without any court involvement and without a court order.

However, you can turn your agreement into a legally binding consent order by sending it to the court and asking a judge to approve the arrangements. If you are considering doing this, then do speak to a family lawyer.

## How long does a court order take?

When an application is made to the court for an order about a child, both the lawyers and courts have a duty to avoid delay in the proceedings at all times. Deadlines for the filing of documents and the listing of the next hearing will stop the process drifting.

# Child abduction

## What is child abduction?

Child abduction is a criminal offence and can include:

- Taking a child abroad without the other parent's consent or without the consent of the court
- Not returning a child from abroad

Depending on your circumstances the other parent may not need your consent to legally take your child abroad.

## Does the other parent need consent to take their child abroad?

### If there is no order specifying who your child lives with:

If both parents have parental responsibility, then neither parent can take their child outside of the UK without consent from the other parent or without a court order permitting them. It is a criminal offence for the other parent to take your child without consent.

### If there is an order specifying who your child lives with:

If a parent has a child arrangements order that states that the child is to live with them (or named as someone the child lives with) they are entitled to take their child abroad for less than a month at a time without needing consent from the other parent. If the trip is for more than a month then the other parent will need to give consent.

## I suspect my child may be abducted abroad. What should I do?

You need to act quickly to do everything you can to prevent the abduction. Seek legal advice as soon as possible from an experienced family lawyer.

Consent is not checked at point of exit from the UK, so it is important you act quickly. If you have concerns about the child going abroad you may be able to stop the trip, even if the other parent doesn't need your consent to take your child abroad.

As well as speaking with a family solicitor there are some steps that you can immediately take yourself:

- Try to contact the other parent and / or your child to find out where they are.
- Check where your child's passport is.
- Is it possible the other parent will have obtained additional passports for your child?

- If you have their passport and the other parent has not left the country you should contact the UK passport agency to ask them not to issue a new passport for your child.

- You should also contact the Embassy or Consulate of any country of which the other parent is a national to ask them not to issue a passport to your child. They may ask to see a copy of any court order you have.

There is no guarantee that the other parent will not be able to obtain additional passports for your child but it could still be worth taking this step to help reduce the risk that they will be able to.

- Contact the police to report your child as having been abducted / being at risk of abduction. The police may ask you to make a statement. Take photos of the other parent and your child to the police station to help the police identify them, as well as any court order.

If the police think there is a real and imminent risk of abduction, then they will issue a Port Alert. Your child's name will be circulated to all point of exit from the UK and will remain there for 4 weeks. This does not guarantee that your child won't leave the country as it requires your child's passport to be matched against this list.

If the police don't take any action you could consider contacting the National Ports Office to see whether they will issue a Port Alert – you can contact them on 020 7230 4800.

Support and help is also available from Reunite (a specialist child abduction support network) at [www.reunite.org](http://www.reunite.org).

### **I suspect my child may be abducted to somewhere in the UK. What should I do?**

As well as consulting a specialist family solicitor there are some steps that you can immediately take yourself:

- Try to contact the other parent and / or your child to find out where they are.
- Contact the police to report your child as having been abducted / being at risk of abduction. The police may ask you to make a statement. Take photos of the other parent and you child to the police station to help the police identify them, as well as any court order.

The police may be able to find and contact the other parent to ensure your child is okay, but they may not be able to return the child to you.

### **What should I do if my child has already been abducted?**

Act quickly. You need to seek advice as soon as possible from a specialist family lawyer.

You should also contact The International Child Abduction and Contact Unit on 020 7911 7047 or 020 7911 7045 or [enquiries@offsol.gov.uk](mailto:enquiries@offsol.gov.uk) to see whether you might be eligible for free legal help.

## **Holidays**

Holidays usually mean that the usual contact arrangements are altered. Having a good co-parenting relationship with good communication will make this as smooth as possible and avoid any problems.

If you are struggling to come to an agreement over holiday arrangements then seek legal advice from a family lawyer.

### **Do I need consent to take my child on holiday abroad?**

#### **If there is no order specifying who your child lives with:**

If both parents have parental responsibility, then neither parent can take their child outside of the UK without consent from the other parent or without a court order permitting them. It is a criminal offence for the other parent to take your child without consent.

#### **If there is an order specifying who your child lives with:**

If a parent has a child arrangements order that states that the child is to live with them (or named as someone the child lives with) they are entitled to take their child abroad for less than a month at a time without needing consent from the other parent. If the trip is for more than a month then the other parent will need to give consent.

### **Do I need consent to take my child on holiday in the UK?**

You do not need permission to take your child on holiday in the UK but it's still important that you communicate your plans to the other parent so that they know where your child will be and so that you can agree in advance any changes that need to be made to the existing contact arrangements.

## **Moving with your children**

As always it is best to be open and honest with your child's other parent about any plans to move so that any worries and problems can be sorted in advance, as amicably as possible.

### **Moving within the UK**

A parent does not need the other parent's formal permission to move elsewhere in the UK, however it is not wise to just move without warning. The other parent could then ask the court to make an order stopping them, at least until the circumstances are properly investigated.

If the dispute comes to court, the court's main concern will again be the best interests of the children. The court applies the **welfare checklist** in considering what is in the best interests of the children.

### **Moving abroad**

Whatever the circumstances you need to plan well ahead and communicate your wishes if you want to move your children abroad.

Firstly, you need to seek agreement from anyone else with parental responsibility. If this agreement is not given, you will need to apply to the court for permission to move your child abroad. This is called an application for "permission to remove from the jurisdiction".

The court's primary concern will be the welfare of the child and what is in their best interests. If your reason for moving is simply to prevent the other parent from having contact with your child you will not be given permission to go. The court will also consider the impact of the proposed move on the parent left behind as well as the impact on the parent leaving if it refuses to allow the move.

Do contact a family lawyer for advice.

### **How can I increase my chances of succeeding with my application for relocation?**

Moving abroad permanently with your children can be harder – recent international relocation cases have shown us. There is a difference between a parent wanting to return to their home country or where they have lived before and moving to a country where they have no connections.

You need to have a clear plan including why you are moving, where you will live, what schools your children will attend and have considered health provisions. You also need to consider how your child and their other parent will have contact and whether you will help with their international travel costs. This is something that an international family lawyer will be able to help with.

### **What should I do if my child has moved elsewhere in the EU?**

Within the EU, contact orders are automatically recognised and enforceable without further court orders. Any existing child arrangements order may need altering to reflect the move.

### **What should I do if my child has moved outside the EU?**

You will need to take legal advice in the country your child is moving to. It may be an option to obtain a 'mirror order' which replicates the terms of your current court order from the UK and makes it enforceable in the new country.



Any cases with an international element need to be looked at carefully and you should ensure that the solicitor you instruct has the expertise and contacts to advise you effectively.

### **Which country would make decisions about my child?**

The general rule in relation to children is that jurisdiction is based on the child's habitual residence (the country where the child usually lives) There are certain exceptions such as:

- where there has been child abduction
- where there may be a closer connection with another country (for example if the child has only just move to the country they are living in)
- where it is not possible to determine the child's habitual residence
- where the child has previously lived in another EU member state
- where the court which has jurisdiction transfers the case to a country which is better placed to deal with it