

# Considering children in divorce and relationship breakdown.



At Wards Solicitors, our family lawyers are experienced in providing practical and supportive advice and can help you identify and prioritise the issues. This factsheet is designed to give you information on children matters. We have factsheets on grandparents rights, divorce procedure, finances, dissolution of civil partnerships and injunctions. If you have any questions, please contact us.

## Putting your children first

Children need information about what is happening in a way which is appropriate to their age and understanding. Children will feel loyalty to both parents and do not want or need to hear the other parent criticised or blamed. It is not unusual for children to feel that they are responsible for their parents' difficulties or that they must protect and support their parents.

Children need the support of their parents and to understand that they are not at fault. Older children may have views and listening to them is important but children are not responsible for making adult decisions.

Unless children are at risk of emotional or physical harm in most families maintaining a relationship with both parents is in a child's best interests.

Conflict between parents has a negative impact on children.

## Future Arrangements for your children

The Court does not get involved with arrangements for your children unless parents cannot agree. The Court does not make orders about children in divorce proceedings.

It can be hard to reach agreement, parents will be experiencing strong emotions, anxiety and a period of significant change.

## When parents can't agree arrangements for the children

There are several ways in which parents can try to resolve any disagreements about their children. Mediation and collaboration are non Court processes which aim to help parents make decisions which are child focussed and tailored to their family. We can make referrals to mediation and can advise during the mediation process. We have trained collaborative lawyers who can discuss with you whether collaboration would be suitable for you.

If arrangements for children can't be agreed it may be necessary to apply to the Court. The family Court has wide powers to regulate arrangements regarding children by making 'Child Arrangement Orders'. These orders can set out who a child will live with (can be both parents at different times), where a child will spend their time and who a child will have contact with. The Court does not make 'custody' orders.

A parent can apply to the Court. Other people connected to the child who are not the parents, such as grandparents, can apply with the Court's permission.

In addition to child arrangement orders, the Court can make Specific Issue Orders which decides a single issue which the parents can't agree, eg whether a child should have a particular medical procedure and a Prohibited Steps Order which prevents a parent taking a step in relation to a child's upbringing, for example preventing a child being taken out of the country.

## Applying for an Order

Before making an application to the Court for an order the person applying must attend mediation and the other parent(s) will be invited to attend Mediation. If Mediation has not been attended before the Court application the Court can refuse to deal with the application or can direct that the first hearing will not take place until the parties have attended.

There are some exceptions to this rule; for example victims of domestic abuse will not be expected to attend Mediation and urgent applications will not require attendance at Mediation first either.

The Court will presume that direct or indirect contact with both parents is in a child's best interests. An order will therefore be made for contact with the parent applying for the order unless there is evidence that contact is not in a child's interests, for example a parent would pose a risk to the child. Violence or abuse between the parents does not automatically mean that contact with a child will be refused, but Courts are careful as to how such cases are dealt with for the protection of children and the victim of domestic abuse.

The procedure for applying for a child arrangement order is as follows:

Unless an exception applies, the parent wishing to apply for the order must make a referral to Mediation and attend a 'Mediation Information and Assessment Meeting' (MAIM). The other parent should be given notice of the mediation referral and have the opportunity to take part.

If the other parent does not agree to take part in Mediation, it is not considered suitable to resolve the issues or breaks down an application can be made to the Court.

A written application is made to the Court with the appropriate fee. The Court arranges a First Hearing, usually within 21 days of receiving the application. The papers are then served on the other party.

The Child and Family Court Advisory and Support Service (CAFCASS) will contact you about the case and undertake preliminary checks. The result of the checks and their discussions with you and the other parent will be sent to the Court for the First Hearing.

At the First Hearing, a CAFCASS officer is usually present and the parties may be given the opportunity to discuss the case to see if any agreement can be reached. If agreement can be reached, then an order will be made if the judge agrees.

If agreement cannot be reached the Judge will set a timetable (directions) for evidence the Court will need to make a decision.

The timetable can where relevant include provision for the disclosure of police records, hair strand testing for drug and alcohol abuse, DNA testing and medical evidence. Sometimes parties have to make formal statements about their case.

CAFCASS and Social Services (if they are already involved with the family) can be instructed to prepare a report on the case.

If during the proceedings an agreed outcome has not been reached a Final Hearing will be arranged when a Judge or Magistrates will make a decision. Throughout the proceedings the Court can make interim decisions to make arrangements for children until a final decision can be reached. The Court relies heavily on the recommendations of the CAFCASS or Social Services report in reaching its final decision. He or she will be very experienced and usually with a social work background. He or she will see both parties in a case and may talk to the child too depending on his or her age. It is unlikely that the child will have to attend Court.

The Court has to give 'paramount consideration' to the welfare of the child and has to pay specific attention to the following:

- The wishes and feelings of the child concerned (considered in the light of his or her age and understanding).
- His or her physical, emotional and educational needs.
- The likely effect on him or her of any change in his circumstances.
- His or her age, sex, background and any characteristics which the Court considers relevant.
- Any harm which he or she has suffered or is at risk of suffering.
- How capable each parent - and any other person the Court considers to be relevant - is of meeting his or her needs.
- The range of powers available to the Court. The Court cannot make an order unless it is better for the child than making no order at all.

It is important that serious thought is given to a case before an application is made for an order and you take legal advice about likely outcomes and the issues and evidence which will be before the Court.

### **What happens if a parent does not comply with a contact order?**

If a parent does not comply with an order for example preventing the other parent having the contact with their child which has been ordered, further proceedings can be taken against the parent. If the Court considers that the parent had no reasonable justification for not complying, the Court has power to impose sanctions on the parent, for example financial compensation and carrying out unpaid work as directed by Probation. In very serious and extreme cases the Court can imprison a parent for failing to comply with an order and can make an order for the child to live with the other parent.

### **Domestic abuse and contact**

Where domestic abuse is alleged, it must be fully investigated and the Court must decide whether the allegations have been proved. Where it has been proved that domestic abuse took place, the effects of it on the children and their carer are highly relevant when considering what type of contact should take place. There is no presumption that there should be no contact where domestic abuse has been proved. In fact it is the presumption of the Court that some form of contact with both parents, regardless of their previous behaviour will be in a child's best interests. The Court will therefore consider arrangements for contact perhaps in a supervised or supported environment or order indirect contact by way of cards, letters etc.

### **Parental responsibility**

A mother automatically has parental responsibility for her child. Fathers do not automatically acquire parental responsibility, which gives them the right to be consulted about major issues, such as education, the child's religious upbringing, medical treatment, agreement to adoption, consent to marriage or removal out of the country.

The usual ways for a father to acquire parental responsibility are:

- He and the mother were married at the time of the child's birth.
- His name is listed on the birth certificate and the child was born after 1/12/03.
- The parents have entered into a formal written parental responsibility agreement.

- He obtains a parental responsibility order from the Court or as a result of previously obtaining a residence order from the Court, or obtaining a child arrangements order either ordering Parental Responsibility or that the child will live with him.

Having parental responsibility means the parent can obtain information from the child's school or doctor about the child's progress. It does not give the parent the right to interfere with routine matters nor does it give them the power to override the other parent's decisions. In the event of a dispute, either parent can apply to the Court for an order to decide the issue. Courts generally like both parents to have parental responsibility. In deciding this, the Court looks at the degree of the parent's commitment and attachment to his child and the reasons for applying for the Parental Responsibility Order.

The fact that a parent does not pay maintenance does not mean he will not get parental responsibility.

Please note that this information sheet is designed to cover a wide range of cases and circumstances. You will be given specific information relating to your own case. If you have any queries please don't hesitate to ask.

For more information on divorce and relationship please contact one of our Family and Divorce team on 0117 9292811.

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