

JUST FAMILY LAW

Children

We can assist you in reaching a solution either by

- **constructive negotiations**
- **collaborative law (see our separate factsheet on collaborative law)**
- **court proceedings**
- **referral to mediation**

Children and your rights

Parental Responsibility

Parental responsibility is the legal term describing your rights and responsibilities as a parent. Mothers automatically have parental responsibility for children, but fathers only acquire it if they are

- married to the mother at the time of the child's birth
- subsequently marry the child's mother
- registered as the father on the child's birth certificate for births on 1st December 2003 or after
- have a registered parental responsibility agreement or a parental responsibility order

Step-parents can acquire parental responsibility for a child by agreement with the parent(s) with parental responsibility or by court order. This gives them the ability to share parental responsibility for a child with their new spouse and does not remove existing parental responsibility. In addition, parental responsibility can be delegated.

Parental responsibility provides an adult with the right to make decisions affecting your child's welfare including choosing schools and authorising medical treatment. If there is a conflict as to how parental responsibility should be exercised then the conflict can be resolved by an application to the court for a prohibited steps order or specific issue order.

Prohibited steps orders

This is an order that something must not happen in respect of a child e.g. one parent must not take a child to another country or change its name

Specific issue orders

This is an order that something must happen in exercise of parental responsibility e.g. that a child should have medical treatment or attend a specific school. Only parents, guardians or persons with a residence order can apply for these orders. Other connected persons such as extended family members may be able to apply for these orders with permission from the court.

Where the child lives and who they spend time with

A residence order is an order as to where a child lives. It can be with one parent or shared between parents. The court only makes an order for residence if it is considered in the child's interest that an order is made

A contact order requires one parent to make the child available to spend periods of time with a specified person. This can be supervised or unsupervised, overnight or for a day or holiday, direct or indirect such as by letter, email or telephone. The court can set out the frequency, duration and type of contact and other specifications that are necessary to make contact workable.

Only a parent, guardian or person with a residence order can apply for these orders. Extended family members are not automatically entitled to make these applications and need the permission of the court to do so.

Reaching agreement for arrangements for the children

It is undoubtedly better for your children if arrangements can be made amicably without the conflict caused by court proceedings which can polarise family disputes.

The collaborative process and mediation can assist with providing a supported forum to facilitate problem solving.

However if agreement cannot be reached, an application to the court will be necessary. Further opportunities to mediate may be available through the court process.

Factors taken into account by the court in making a decision

- the wishes and feelings of the child in light of the child's age and understanding
- the physical emotional and educational needs of the child
- the likely effect on the child of any changes in circumstances
- the child's age, sex, background and relevant characteristics
- any harm the child is at risk of suffering
- how capable each parent or other relevant person is of meeting the child's needs

Court procedure

Court resources are limited and proceedings can therefore be long drawn out and delayed. In usual circumstances, the court will list a first hearing within a few weeks of issuing an application. Applications can be made on an emergency (ex parte) basis if the facts merit this.

At the first court appointment, you are likely to be given the opportunity to reach an agreement with the other party with the help of a Cafcass officer or other mediator. If agreement is reached, the district judge will invite the parties to draw up an order for approval, perhaps to accommodate a review at a later date. If agreement is not reached, the case will be listed for a further directions hearing and the court may order the preparation of evidence, perhaps statements from the parties or a Cafcass report prepared by a Cafcass officer appointed by the court.

If a Cafcass report is ordered, the Cafcass officer will interview relevant adults and the child if appropriate. The Cafcass officer prepares an impartial report for the court and considerable weight will be given to its findings. If statements are required they should be factual and precise. Neither statements or reports should be shared with third parties or the child.

There may be several short appointments at court before a final hearing is allocated. At a final hearing the court will hear all the evidence and make a decision. The length of the hearing will depend on the complexity of your case.

All efforts should be made in children proceedings to resolve matters amicably, unless of course there is an emergency issue involving the need to protect a child from harm or abduction.

Grandparents

It is recognised that grandparents may provide significant child care and often have strong bonds with children which can be very important to a child, particularly when their parents are separating. We can assist you if you are a grandparent and have concerns that your important bond with a grandchild is in jeopardy following parental separation.