



A GUIDE TO CHILDREN
MATTERS ON SEPARATION

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IMPORTANT INFORMATION

This booklet sets out the law, procedures and some options for you in relation to issues concerning children. It does not deal with child maintenance. There are separate guides for divorce and for financial matters arising from divorce and financial matters for unmarried couples which both deal with this issue. It is intended as a general guide and to give you some idea, for example of:-

- **What the law is**
- **The procedure**
- **What your choices are**
- **Frequently asked questions**
- **How costs are worked out**

This booklet cannot be a comprehensive statement of the intricacies of law and practice nor can it take into account your personal circumstances. As such you should not rely on this booklet. We will be able to advise you on what the law and current practice is, how the law may affect you and your family, what you might expect from the law and what the costs may be.

THE LAW

The Court will only intervene in a dispute involving a child/children in the event the parents cannot agree. Later in this guide we will look at some of the alternatives to going to Court. If there cannot be agreement then an application is made to the Court

What Orders can a Court make ?

The Court can only make certain orders relating to children - these are normally:

A Child Arrangements Order an Order settling the arrangements as to where the child will live and stating what contact the other parent will have with a child

Prohibited Steps Order an Order prohibiting somebody from taking specific steps without the consent of the Court

Specific Issue Order an Order given to decide a specific problem for example choice of school

Parenting Orders an Order/Orders to one or both parents to undertake certain tasks specified by the Court for example to attend parenting classes

What does the Court take into account when making its decisions?

The Court considers what is known as the "Welfare Checklist" which is set out in the Children Act 1989. The "Welfare Checklist" sets out what the Court looks at when deciding on issues concerning the child/children. It includes things such as:

- The ascertainable wishes and feelings of the child/children concerned (considered in the light of the child's age and level of understanding)
- The child's physical, emotional and educational needs
- The likely effect on the child of any change of circumstances
- The child's age, sex, background and any other characteristic which the Court considers relevant
- Any harm which the child has suffered or is at risk of suffering
- How capable each parent of the child is at meeting the child's needs
- The range of powers available to the Court

There is a presumption that following the breakdown of the parents relationship it is in the best interest of any child/children to maintain some sort of relationship with both parents. It is however important to note that this does not mean shared care. Each case will be determined on its own merits.

PROCEDURE IN MAKING A COURT APPLICATION CONCERNING CHILDREN

The following assumes that it will be a private children matter namely a dispute between two parents and also that we are acting for the parent making the application:

1. We will complete the application and submit it to the Court with the Court fee that applies.
2. The Court will provide us with a copy of the application and notice of hearing. The Court will serve the application and notice of hearing on the other parent and Cafcass (the Children And Family Court Advisory And Support Services for England and Wales).
3. Usually, no evidence is to be filed in relation to an application.
4. The Court when issuing the application will allocate to the appropriate level of judge in the Family Court. In determining the appropriate level of judiciary the Gatekeepers will consider:
 - The need to make the most efficient and effective use of the local judicial resources that are appropriate, given the nature and type of application
 - The need to avoid delay
 - The need for judicial continuity
 - The location of the parties/any relevant child
 - Complexity.



5. Any application for a child arrangements Order will be sent to Cafcass who will undertake safeguarding enquiries, the outcome of which is to be contained in a Safeguarding letter and is to be sent to the Court within 17 working days of receipt of the application and no later than three days prior to the hearing. Cafcass will seek information from local authorities and carry out police checks on the parties. Where possible Cafcass will undertake telephone risk identification interviews with the parties and if risks of harm are identified, may invite the parties to meet separately with the Cafcass officer. Cafcass will record and outline any safety issues for the Court in the Safeguarding letter. The Cafcass officer will not initiate contact with the child prior to the First Hearing.
6. The First Hearing Dispute Resolution Appointment (FHDRA) will usually take place in week five following issue of the application and no later than in week six. Once the Court has listed the FHDRA we will write to you setting out the what that hearing could entail.

This all being said, there can often be delays in the progress of a case because of delays at Court, Cafcass, or because of delays by the other parent in providing information and documents or taking part in the Court's proceedings.

FREQUENTLY ASKED QUESTIONS ABOUT CHILDREN MATTERS

Do I have to get a Court order ?

No. In many cases, a separating couple will simply agree between themselves what will happen. Some people also find it helpful to draw up a written record of any agreement via solicitors.

What is “Parental Responsibility”?

If you are the birth mother or if the father and you are or were married when the child was born or if named on the birth certificate and the birth is registered after the 1st Dec 2003 then you will automatically have parental responsibility for the child. You do not need to apply to Court. Parental Responsibility gives certain rights such as the child’s name cannot be changed without everyone with Parental Responsibility giving consent and a child cannot be removed from England and/or Wales without consent. It also gives the right to be consulted about major decisions concerning a child such as choice of school or of religion. It does not however give the right to interfere in the day to day care of a child.

How do I get Parental Responsibility?

If you do not automatically have Parental Responsibility then you can either get parent responsibility by entering into a Parental Responsibility Agreement or by applying to Court. A Parental Responsibility Agreement Form is available from www.gov.uk/parental-rights-responsibilities/apply-for-parental-responsibility and can be registered by sending the same in triplicate to the Central Family Court.

Can I have a say in how the children are brought up even if they live with my ex-partner?

Yes. If you have Parental Responsibility you have a right to have a say in how your children are brought up. If you cannot reach agreement with your ex, you can apply to the Court for a Specific Issue Order - for example, on where the child should be educated. The Court’s decision will be based on what is in the child’s best interests.

What rights do I have to see the children?

You and your ex-partner can reach agreement as to when you have time with the child. This can include coming to the house, taking the children out, overnight stays and telephone contact.

If you cannot reach agreement, you can at any time apply to the Court for a Child Arrangements Order which will set out what time you spend with your child. The Court's decision is based on what the Court thinks is in the best interests of the child, which will almost always include some time for the non-resident parent. Typically, you might be granted regular weekly (or fortnightly) arrangements.

In some circumstances, it can be more difficult to obtain extensive contact rights. For example, if you have not been in contact with the child for a significant period of time since you separated from your ex, the Court might want to minimise the disruption to the child's established routine. It is also likely to be difficult if your child says that he or she does not want to see you, particularly if the Court feels the child is old enough to make an informed decision.

What can I do if my ex-partner won't let me see the children?

If you have not already been granted a Child Arrangements Order you can apply to the Court for one. The Court will then follow the procedure set out earlier in this guide.


If your ex continues to stop you seeing a child despite an order, you can go back to the Court. In theory, the Court can then take action against your ex for breaching the order: for example, the Court could fine or imprison your ex or make them do unpaid work.

This means that enforcing your rights can be a drawn-out and distressing process. You may need to return to Court several times, and keep careful evidence of how your ex is frustrating your attempts to have the agreed contact with your child. Crucially, you must take action rather than allowing non-contact to become the status quo.

What can I do if I think my partner will change my child's surname or move abroad?

You will need to apply to the Court for a Prohibited Steps Order. This prevents the other parent from doing something without the consent of the other party or the Court: For example you would apply for this order to prevent the following:

- a change of surname
- removal from jurisdiction
- you or the father from enrolling a child at school
- or from preventing a child receiving medical treatment



***Children
ought not to
be the victims
of the choices
adults make
for them***

ALTERNATIVES TO COURT

You should always try and sort a matter out by talking directly to one another where possible. Advice from a solicitor followed by correspondence between solicitors can sometimes help if you cannot reach agreement directly. If this does not work then there are alternatives to going to Court.

MEDIATION

Mediation is not marriage or relationship counselling. The starting point for mediation is that the marriage/relationship is at an end and that you need to sort out the practical arrangements for the child/children for the future. Mediation is a process whereby you will sit down with an independent third party who try and assist the two of you in coming to an agreement as to what should have happened in relation to the child/children.

The advantage of mediation is that it is much quicker and a lot cheaper than going through Court proceedings. It leaves decisions about the child/children to you and your ex-partner. A mediator will not tell you what to do. The mediator's role is to facilitate negotiations between the two of you in order to enable you to reach your own solutions. Mediation can help you reduce tension and hostility, communicate and co-operate, express your feelings in safe surroundings, explore and examine other options, make decisions on an informed basis, appreciate and consider the needs of children and come to a tailor-made solution for your particular circumstances.

Mediation can be considered at any point though it is not always appropriate for everyone.

COLLABORATIVE LAW

Collaborative lawyers sign an agreement with you which disqualifies them from representing you in Court if the Collaborative process breaks down. That means they are absolutely committed to helping you find the best solutions by agreement rather than conflict.

The best solutions are often those which you are able to work out together in which all of you can share rather than a Judge, who doesn't know you, imposing a settlement. The process is carefully prepared with you and your former partner sitting down in a room together with your solicitors and discussing the issues face-to-face.

For it to work, the Collaborative approach needs the right people with the right frame of mind. They have to have a genuine desire to make it work and a willingness to disclose honestly and fully all information about their circumstances. It is often successful because you have the benefit of your own legal advice at the time when you are discussing matters rather than in mediation where the mediator is not able to give advice and there is a significant time delay with you being able to seek advice from us in the mediation process.

You set the agenda so you talk about the things that matter to you most. You set the pace because you are not governed by Court dates and appearances. You maintain a level of contact with your former partner which could form the basis of a long term understanding and accord which is immensely beneficial if there are children involved.

In Collaborative law there is full and frank disclosure. All discussions take place in a four way meeting. The lawyers and you commit to working in a non-confrontational way with mutual respect and a desire to resolve things sensibly and amicably. In particular situations it is possible to have matters referred to trained counsellors who can help you emotionally and improve communication with your spouse and partner or experts who are able to deal with any particular problems that the children might have.

CHILDREN ARBITRATION

Children arbitration can offer a more efficient solution. In children arbitration you and your partner appoint an experienced barrister to make a decision and provide a written determination. Arbitration is something to consider for most private law cases, The flexibility and the fact that you will get a decision much more quickly can make arbitration more cost-effective than Court.

The Children Arbitration Practice Guide confirms the following:-

1. Suitability

First, check if the nature of your dispute is covered and suitable for Arbitration.

The scheme covers:

- Issues between parents (or those with Parental Responsibility or a sufficient interest in the welfare of the child) which relates to the exercise of Parental Responsibility or the present or future welfare of the child.

- This includes: where and with whom the child shall live, contact, arrangements concerning the child's upbringing e.g. division and allocation of holidays, religious up-bringing, schooling, medical treatment for non-life threatening or non-life changing conditions.
- Children Act 1989, s.8 orders.
- Relocation where the country is a signatory to 1980 and 1996 Hague Convention and Brussels IIA.

The scheme does not cover:

- Child abduction cases.
- Relocation cases where the country not a signatory to 1980 and 1996 Hague Convention or Brussels IIA.
- Article 11(7) and 41 of Brussels IIA.
- Medical treatment for life-threatening or life-changing conditions.
- Mental Capacity Act cases.
- Child litigant or child party.

2. Starting Process

- **The parties must agree** to use arbitration to deal with either the whole of their dispute, or just one part of it. If in the middle of proceedings, you must agree to halt them. Once arbitration starts you should not start new Court proceedings simultaneously.
- **Choose an Arbitrator** registered with the **Institute of Family Law Arbitrators**. You can approach a specific Arbitrator directly, and the Arbitrator will inform IFLA to ensure the correct forms are completed. At this stage, you can agree the Arbitrator's fees.
- **If you disagree on using a specific Arbitrator** the IFLA can nominate one.
- **Sign and submit** Form ARB1CS (now in its 4th edition) to IFLA's administrator info@ifla.org.uk. The parties should include full details of their dispute.
- **Conditions of Arbitration:** parties must agree to comply with the terms set out in the ARB1CS Form, which includes an obligation to comply with the Arbitration Rules, comply with decisions made by the Arbitrator and agree that the determination of the Arbitrator is final and binding (subject to certain exceptions).

- **Safeguarding:** As part of the ARB1CS, the parties must also obtain a 'basic check' from the Disclosure and Barring Service (DBS). If the parties are in current proceedings, they must provide the up to date welfare/afcass reports or any local authority/ safeguarding checks.
- **Arbitrator accepts appointment and Arbitration commences.** Once an Arbitrator has been appointed, they will contact the parties, to agree the terms of the arbitration, including the nature of the dispute, the procedure to be adopted and fees. The venue may also be considered but most Arbitrators can use their Chambers or offices, if face-to-face meetings are required.

3. The Arbitration

- **English Law applies** to the substance of the dispute.
- **Parties in control of process.** The Arbitration process can be done as a paper exercise (where the Arbitrator can decide, based on the papers submitted) or by telephone, video conferencing or face-to-face meetings.
- **Procedure:** The parties can agree a general procedure or an alternative procedure.
- **General procedure** is one where the Arbitrator will conduct a case management conference at the start of the process and set down a final meeting if this is required.
- **Alternative procedure** is one that is agreed between the parties – for example a document only procedure or some other expedited process.
- **Final Meeting** can be agreed to suit everyone's availability and be set down swiftly.
- **Prompt Determinations** are delivered, which will include full reasons.
- **Fees of Arbitrator** must be settled before the determination is delivered, as well as any other costs, such as experts and venue hire.
- **Court Order:** The determination of the Arbitrator can be converted into a Court Order by the parties.
- **Enforceability:** The Court Order is enforceable in the usual way.
- **Right of Appeal:** The Arbitrator's determination is subject to a right of appeal if there are legal errors or a serious irregularity.

This information on Arbitration has been sourced from: Children Arbitration: A Speedy Solution for Contact Disputes during Covid-19 and beyond www.familylawweek.co.uk

COSTS

The most frequent question asked we get is how much is this going to cost me. At Wellers Law Group we are open and upfront about our fees. Our hourly rates vary from £200 - £450 per hour plus VAT depending on what member of our family team you see and our fees are based on how much time is spent on a case.

We do offer an initial reduced rate consultation for £100 plus VAT which covers a one hour meeting.

We do not offer legal aid and do not believe in fixed fees. A fixed fee means you get a fixed level of service and we believe that every client is different and as such, in treating them as an individual and not just a number.

We can give you an idea how much your case is going to cost during an initial consultation once we have more background information from you as to what may or may not be involved.

It is unusual for the Court to make an order that the other party pays your costs so as such the normal presumption is that each party pays their own costs.

We will also provide you with regular monthly or bi-monthly bills so that you do not find yourself in the position of having to pay sporadic large bills. These bills on average will be for a few hundred pounds which we believe to be much more manageable. In addition should you wish you can set a limit on the amount of your fees and we will advise you as soon as it appears that the limit may be exceeded and will not exceed that limit without your consent.

To find out more please check out our website www.wellerslawgroup.com or to arrange a reduced rate consultation please call us on **0208 464 4242**.

CHILDREN GLOSSARY

Explaining the jargon used by the Court in simple English

Applicant	The person who makes an application either in relation to Children matters, financial matters or injunction proceedings.
Cafcass	The Children And Family Court Advisory And Support Services for England and Wales. You will meet a Cafcass officer if you apply to the Court for any order affecting your child, for example Contact or Residence.
FHDRA	This is the First Hearing Dispute Resolution Appointment. This is the hearing at which the Court will first consider your case. It will encourage you and your co-parent to agree arrangements if possible for your child/children, but if not possible it will make directions to enable to Court to make a decision.
Child Arrangements Order	The arrangements for who the child/children will live with and the time they visit or stay with the parent who no longer lives with them. This can include indirect arrangements such exchanges of letters, telephone calls, video conferencing or presents. These types of orders can also be made in favour of others, for example grandparents. Historically these types of orders have been called custody and access or residence and contact.
Parental Responsibility	This means the rights and responsibilities that mothers and married fathers have to their children. Non-married fathers can acquire Parental Responsibility through marriage to the child's mother, by entering into a Parental Responsibility Agreement with the child's mother, by being named as the father on the child's birth certificate after 1st December 2003 or by applying to the Court for a Parental Responsibility Order.
Prohibited Steps Order	This is a Court Order used to prohibit something being done to a child, for example removing a child out of the country.
Respondent	The person who responds to proceedings issued at Court.
Shared Care	If you agree, and/or the Court Orders, that your child or children are to live with both of you following separation/divorce, usually in blocks of time e.g. Monday to Thursday, Friday to Sunday, although not necessarily so. Though this will normally be done by way of a Child Arrangements Order that sets out the time the child/children will spend with each of you.
Specific Issue Order	An order to resolve a particular issue in dispute relating to a child, for example when parents cannot agree about schooling or medical treatment.

USEFUL INFORMATION

For Parents

Family Lives is a national charity offering help and information for parents and families through a range of services including a free 24-hour confidential helpline, Parents Together workshops and groups, information leaflets, email helpline and website

- 24 hour helpline 0808 800 2222
- Free textphone for people with a speech or hearing impediments 0800 783 6783
- www.familylives.org.uk

Families Need Fathers is a registered charity providing information and support on shared parenting issues arising from family breakdown to divorced and separated parents, irrespective of gender or marital status. Support is provided through a national helpline, a website, a network of volunteers, and regular group meetings, held in a variety of locations.

- Helpline 0300 030 0363 - (**Helpline is available from 9am-10pm Monday - Friday and from 10am-3pm at weekends**).
- www.fnf.org.uk

Gingerbread provides a professional freephone advice service for lone parent families, membership services, and a network of self help groups.

- Helpline 0800 802 0925 (Mon 10am-6pm, Tues, Thur, Fri 10am-4pm, Wed 10am-1pm and 5pm-7pm)
- www.gingerbread.org.uk

Relate. Local Relate centres offer relationship counselling and life skills courses. The national office can put you in touch with local centres. Counselling is also available over the telephone for a small fee – details on their website.

- Helpline 0300 100 1234
- www.relate.org.uk

National Association of Child Contact Centres promotes safe child contact within a national network of child contact centres. A child contact centre is a safe place where children of separated families can spend time with one or both parents and sometimes other family members. Details of local centres can be found on their website or by ringing them.

- Phone 0845 4500 280 (Mon-Fri 9.30am-4.30pm)
- www.naccc.org.uk

Mediation

If you find it difficult to discuss the arrangements for the children or financial matters on your own, a trained mediator can help you with this. To find a mediator, ask us or contact one of the organisations shown below.

Family Mediators Association

- National helpline 01355 244 594

National Family Mediation

- Telephone 0300 400 0636 (Mon-Fri 9.00am-5.00pm)
- www.nfm.org.uk
- Email general@nfm.org.uk

Cafcass looks after the interests of children and young people involved in cases in the family Courts. Although Cafcass only works with families following a referral from the Court, their website contains useful information, case studies, advice and contact links.

- www.cafcass.gov.uk

Coram Children's Legal Centre offers information on all aspects of child law in England and Wales. A useful website and email response service are also available.

- www.childrenslegalcentre.com

Family Rights Group provides a specialist advice and information service for families in England and Wales who are in contact with social services about the care of their children and their advisors.

- Helpline 0808 801 0366 (Mon-Fri 9.30am -3.30 pm)
- www.frg.org.uk

Citizens Advice Bureau is an independent organisation providing free, confidential and impartial advice on all subjects to anyone via a network of local offices. The address and telephone number of your local office can be found in your telephone directory.

- www.citizensadvice.org.uk
- Advice online www.adviceguide.org.uk.

TALK TO US TODAY

If you would like to talk to us about any of our services please get in touch.



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