



children's issues

The first and paramount consideration when dealing with questions relating to a child is known as the "Welfare Principal" and is a guide in any court case concerning children in deciding whether or not to make an order relating to a child.

The factors to be considered are as follows:

1. The wishes and feelings of the child considering the child's age and understanding
2. The child's physical, emotional and educational needs
3. The likely effect on the child of any change in circumstances
4. The child's age, sex, background and any characteristics of the child which the court considers relevant
5. Any harm which the child has suffered or is at risk of suffering
6. How capable each of the child's parents, and any other person whom the court considers relevant, is meeting the child's needs
7. A range of powers available to the court under the Children's Act in the proceedings in question

parental responsibility

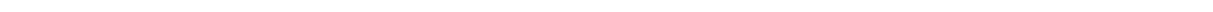
Parental responsibility is the legal term used to describe the rights and duties and liabilities the parents have towards their children. If the parents of the child are married to each other they automatically have parental responsibility. The mother automatically has responsibility and so does the father even if the parents are not married to each other provided the father's name appears on the birth certificate and he was present at the time of the registration. Prior to 1 December 2003, even if the father was named on the birth certificate he did not automatically obtain parental rights.

Parental rights can be obtained by the following:

1. Marrying the child's mother
2. Making a parental responsibility agreement with the mother
3. Obtaining a court order

Civil Partners become step parents if they enter into a civil partnership with the biological parent of a child. Parental responsibility is not acquired following civil partnership. However, a civil partner can enter into an agreement with the biological parent and anyone else with parental responsibility.

For further information on parental responsibility effecting civil partners see fact sheet "Parental responsibility".



Parental responsibility is not lost in the event of the parent's separating or divorcing. If you have parental responsibility you will continue to have full rights, responsibilities and liabilities in respect of the child whether or not that child lives with you or not.

arrangements for the children in the event of separation divorce or dissolution

In the event of separation, divorce or dissolution it is expected that the parents of children of the family will agree and make proper arrangements for the children as to where the children will live, who will have the care of the children and make proper arrangements for the parent without care of the children to have contact with them on a regular basis. The parents are encouraged to make these arrangements between themselves and to continue being active parents in relation to making major decisions about the children of the family.

In the case where the parents cannot agree then an application can be made to the court for an order. Before doing this, however, it is worth seeing whether any dispute between the parents can be resolved through mediation or through the collaborative law process. See fact sheet entitled "Mediation" and "Collaborative Law".

If having attempted mediation or the collaborative law process and this has failed to resolve issues then an application can be made to the court to deal with any of the following:- parental responsibility; residence; contact; prohibited steps and specific issues.

residence order

1. A residence order is an order stating with whom a child must reside and states who will be the primary carer.
 2. A residence order may be made in favour of a person who is not a natural parent. If this happens then that person will automatically be granted parental responsibility for the child concerned, but only for as long as the residence order is enforced
 3. It is possible for shared residence orders to be made in favour of one or more person but this is rare and is usually only done if it reflects the actual situation where the child shares his or her time between parents. It is usually considered in the child's best interests to have one main home.
 4. When a residence order is in force concerning a child, the child's surname cannot be changed without the consent of every other person who has parental responsibility for that child or with the consent of the court.
 5. Once a residence order is in force a child must not be removed from the jurisdiction of the courts of England and Wales without the consent of everyone who has parental responsibility for that child or the consent of the court (except the person with the residence order is permitted to take the child abroad for a period of less than one month in any year. This is specifically to cover holiday periods.).
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contact

1. A contact order is an order directing that the person with the care of the child, usually the person with whom the child lives, to allow the child to visit or stay with the other parent named in the order. A parent may apply to the court for a contact order if contact with that child is being denied or the arrangements for contact are not acceptable. A person who is not a parent of the child may apply for a contact order in certain circumstances, usually if they are a close relative of the child e.g. grandparent or sibling. Permission of the court will be required before an application can be made.
2. A contact order can define the amount of contact and specify the detail of the arrangements to be made by the parents concerned and in some cases setting out the contact program.
3. The contact order can also provide, apart from physical contact, indirect contact to include contact by letter, telephone or email.
4. Contact orders can be varied if there is a change of circumstances and in rare cases can be stopped if it is in the best interests of the child.
5. There is a presumption that a child benefits from a proper relationship with both parents. This situation may be departed from if there is evidence which the court accepts showing that contact would put the child at risk of serious and/or lasting harm

prohibited steps order

Prohibited steps order limits when certain parental rights and duties can be exercised. It is an order that no step which could be taken by a parent in meeting his or her parental responsibilities of the child and which the client specified in the order must be taken by a person without consent from the court.

A prohibited steps order could be used, for example, where there is no residence order in place to prevent one parent from taking the child out of the country without the consent of the other parent.

specific issues order

A specific issues order contains a direction to one of the parents that they must comply with a requirement of the court on any specific point in which the parties have been unable to agree. For example, to decide:

- a) Which school the child should attend
- b) Whether a child should have particular medical treatment

the no order principal

The court will only make an order regarding a child if it is clear that it is of more benefit to the child that an order should be made rather than making no order at all. Residence and contact orders are not routinely made on divorce and will only be made in the event that the parties are unable to resolve their differences concerning any issue relating to a child.

application to the court

An application to the court should be seen as a last resort in dealing with issues relating to children. You can apply to the Court for an order for residence, contact, prohibitive steps, specific issues, parental responsibility.

1. who can apply?

- a) A parent
- b) A guardian
- c) A person with a residence order in respect of the child
- d) Anyone over 18 when the child has lived with them for the previous 3 years

There is provision that certain other people may apply subject to them obtaining permission of the court to do so.

2. the application

The application includes basic information about parents and the child and a brief statement as required as to the reason for the application. A fee will be payable to the Court upon issuing an application.

3. the court

The court is usually the Family Proceedings Court where the parties reside. If the application has arisen in the case of divorce proceedings then the application must be made in the court dealing with the divorce which will be the County Court. In exceptional circumstances if there are complicated issues to be addressed the High Court may be the appropriate venue.

The application is sent to the Court who will issue the proceedings and the proceedings are then served on all other parties who have an interest in the child e.g. the other parent or person who is caring for the child.

4. court hearing

There will be a first hearing when the Court will wish to know what the case is about and will give appropriate directions as to what steps need to be taken before the matter can be fully heard.

In most cases the issues may be referred to the Children and Family Court Advisory and Support Service (CAFCASS) who will arrange to see all parties concerned and will endeavour to help the parties come to an agreement. This is known as Dispute Resolution. If an agreement can be reached on the issues an order will be made by the court by agreement subject to the Court's approval.

If agreement through CAFCASS fails, or it is inappropriate for any reason, the court may consider asking CAFCASS to prepare a detailed report. The CAFCASS officer appointed will meet with the parties involved



and if appropriate the child and any other relevant people involved in the child's care and also make all necessary enquiries. The report will usually contain a recommendation to the type of order which the court ought to make. The time it takes for a CAFCASS report to be prepared is currently in the region of 12 to 16 weeks and will usually only be requested if there are issues concerning the welfare of the child.

Finally the court will arrange for the case to be fully heard at a final hearing and all the evidence will be put before the court including witnesses and any relevant experts. The evidence will be tested and ultimately a final decision will be made as to the issues by the Court.

5. termination of the order

Orders relating to children will usually end when the child attains 16 years of age.

financial support

1. maintenance

In most cases reports no longer have power to make orders for child maintenance. The Child Support Agency has the power to assess and require maintenance to be paid by an absent parent for the support of the child. You are referred to the Child Support Agency website at www.csa.gov.uk.

In certain circumstances the courts can make "top up" orders for additional maintenance for a child for example where the child is in a fee paying school.

2. capital sums

The court have the power to make orders in relation to capital and property settlements for the benefit of children. The person with care of a child following the breakdown of a relationship or upon divorce or dissolution can bring a claim against the other parent seeking the transfer and/or settlement of a property and/or a lump sum. This is particularly important if, following separation you may find yourself without resources with which to purchase a home for yourself and child. This is not normally the type of application to be used if the parents of the children are or have been married to each other or are in a civil partnership. See "Financial Arrangements" fact sheet.

The factors which the court must take into account when considering such an application for a capital and property settlement are as follows:

- a) Income, earning capacity, property and other financial resources you each may have or are likely to have in the foreseeable future.
- b) The financial resources, obligations and responsibilities which each of you has or is likely to have in the foreseeable future.
- c) The financial needs of the child(ren)





- d) The income earning capacity (if any), property and other financial resources of the child(ren)
- e) Physical or mental disabilities of the child(ren) and
- f) The manner in which the child(ren) is being or is expected to be, educated or trained.

It is unusual for the court to transfer a property outright for the benefit of the children. It is more likely that if there are resources available a lump sum order will be made which will be used to finance the purchase of a property for the occupation of the parent with care of the children, to live in, or more usually, that the property is put in a trust during the children's minority.

A lump sum either to be used as described above or to help the parent with care to pay off debts or to reimburse specific costs e.g. baby equipment, would not be repayable.

If an order were made putting property in trust for children it would only be for their minority, that is until they reach the age of 17 or complete their full time secondary, or in some cases, university education whichever was the later. There would be a trust deed setting out precise terms of occupation. It is normal for the carer of the children, usually the mother to have the right to live in the property free of rent during that period. When the children reach the age of 17 or finish full time education the property would then be sold and the entire proceeds of sale (or a portion of the property that you had invested expressed as a percentage of that property) would be paid back to the parent who advanced the funds in the first instance.

The relevant issues would seem to be considered in each individual case.

We would advise that, in the event of you considering any applications to the court in respect of children you first of all seek advice from one of our specialist family lawyers, Catherine Longshaw, Barbara White or Jim Jones or alternatively arrange an appointment.

get in touch

To find out more about what we can do for you contact:

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