



CHILDREN

When a relationship breaks down it is important to try to ensure that any children do not become distressed or emotionally hurt.

Of course both parents want what is best for their child but very often those views differ and the parents may find themselves in direct conflict with each other. In circumstances where the parents may be unable to agree future arrangements for their child then inevitably it is the child who will suffer as a result of any dispute.

If the parents can communicate with each other to agree future arrangements for their child then there is reduction in any acrimony. This is of clear benefit to the child in both the short and long term.

In matters relating to children it is important to seek the advice and assistance of a Family Law Solicitor who has the experience and expertise of dealing with these issues. Child Law is a sensitive area and as such requires the skills of a Solicitor experienced in this field.

What is Parental Responsibility?

This is defined as "all the rights, duties, powers responsibilities and authority which

by law a parent has in relation to the child and his property". Parental responsibility is generally required to enable a parent to deal with matters such as (but not limited to) changing a child's name, taking decisions in respect of medical treatment and education, emigration, foreign travel and so on.

Who has parental responsibility?

The mother of a child automatically has parental responsibility, as does the father where the parents are married. Similarly, where a child is born after 1 December 2003 and the father is named on the birth certificate he will have parental responsibility. However where a child was

born before 1 December 2003, an unmarried father will not have parental responsibility in respect of the child unless:

- ||| He subsequently marries the child's mother; **OR**
- ||| He enters into a formal Parental Responsibility Agreement with the mother. There is however no obligation on either party to enter into an agreement: **OR**
- ||| The Court grants him a Parental Responsibility Order. This can be achieved by the father issuing an application to the Court. Your Solicitor will be able to advise you as to the merits of an application



What are Residence and Contact Orders?

Where there is a dispute between parents as to the arrangements for their children the Court may be asked to make orders in respect of Residence and Contact.

- III **Residence Orders** - deal with where and with whom a child lives
- III **Contact Orders** - deal with how often and in what circumstances a child sees the parent with whom they do not live. Contact orders may deal with direct contact including overnight stays; and indirect contact including by telephone, letters, cards etc.

In any circumstances when the Court is asked to intervene in these issues, the welfare of the child will be the Court's paramount consideration and all arrangements must be in the best interests of that child.

What can a parent do if they are prevented from seeing their child?

If one parent does not allow the other to see their child then the absent parent is entitled to make an application to the Court for a contact order. Generally the Court will order that a child should see both parents regularly, provided it is safe for the child and in their best interests. If one parent is opposed to contact taking place then the other parent should ensure they instruct a determined Solicitor to represent their interests. It is important to ensure the child is not deprived of spending quality time with the parent with whom they do not live, and having the benefit of an ongoing relationship with them.

Can a parent be prevented from taking a child to another part of the country?

A parent with whom a child is living will generally be allowed to move to another part of the country taking the child with them, provided that:

- III The child's living arrangements will be satisfactory
- III Future contact arrangements with the other parent are carefully reviewed.

Can an absent parent prevent the removal of their child from the country on a permanent basis?

If a parent is worried that the other parent is proposing to remove the child from the country on a permanent basis then they can make an application to the Court for a Prohibited Steps Order to prevent the child's removal from the jurisdiction. An application of this nature is not always successful and will depend upon all of the individual circumstances of the case. If there are concerns that this might happen then it is vital that the advice of a Solicitor with expertise in Child Law is sought immediately so that if necessary an emergency application can be made to the Court.

Do the Courts always favour the mother in disputes over where the children are to live?

No. There is no legal presumption that either the mother or the father is in a better position to care for the child. Any decisions taken by the Court will always be based upon what is in the best interests of the child concerned.

Does violence within a relationship have an effect on contact arrangements?

Violence in a relationship is a factor which the Court will need to consider when

deciding upon the contact arrangements. The Court must above all ensure that any contact is safe for both the child and the parents. In some circumstances the Court may have to carry out a risk assessment before contact arrangements are put in place. The Court is however aware that, provided it is safe for the child and in their best interests, they should have the opportunity of maintaining a relationship with the absent parent.



This Guide contains summaries of complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems.

**For further assistance, please contact Mary Kaye, Partner & Head of the Family Law Team on
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