

CONTACT WITH CHILDREN AFTER DIVORCE, DISSOLUTION OF CIVIL PARTNERSHIP, OR SEPARATION

If you are contemplating divorce or separation from your partner, your first concern will probably be about where your children will live and how they will retain contact with both of you.

Even if you divorce or separate, you both continue to be parents. So it is important to make sure that the process of divorce or separation does not prevent you from cooperating on what is best for your children. A constructive approach will lay the best foundations for the children to feel settled with the new family situation.

Finding a way forwards

Families come in all shapes and sizes and there are no magic answers - you know your children best, so you will be best able to consider the effects of your break-up on them and together find a solution that works for all of you.

Negotiation is important as agreements reached together are more likely to work in the long term and be respected by the wider family. Family mediation services, together with Resolution mediators and solicitors, may be able to help you achieve this. Members can help you decide how and when to tell the children what is happening.

Not everybody is able to reach agreement on arrangements for the children, and where necessary you can ask the courts to decide the matter. Your solicitor will be able to advise you on the best way of doing this, without letting matters relating to children get tangled up in any financial disputes.

What are my rights as a parent?

Rather than considering the 'rights' of parents, family law talks of 'parental responsibility' for a child:

- If a child's parents were married when the child was born, both will have parental responsibility for the child
- A father who was not married to the child's mother when the child was born will not automatically have parental responsibility but can acquire it by agreement with the child's mother or if necessary by applying to a court. Since December 2003 a father who is not married to the child's mother acquires parental responsibility automatically if he jointly registers the child's birth

More about the law

The Children Act 1989 is the main piece of legislation dealing with family disputes about children.

In family law, what used to be called 'custody' and 'access' are now known as 'residence' and 'contact'.

The Children Act says that the child's welfare is the paramount consideration when the courts consider any question in relation to the upbringing of a child. Therefore, the court will apply what is known as the 'welfare checklist' to help it make its decision.

The welfare checklist looks at the child's:

- Wishes and feelings, considered in the light of his/her age and understanding
- Physical, emotional and educational needs
- Age, sex, background and any characteristics which the court considers relevant

It also looks at:

- The likely effect of any change in the child's circumstances
- Any harm which the child has suffered or is at risk of suffering
- How capable each parent is of meeting the child's needs

An independent Child and Family Reporter (CAFCASS officer) may be asked to help you resolve the dispute or to help the court decide. The court will not make any order relating to a child unless it is satisfied that making an order would be better for the child than not making an order.

If the local authority social services department is involved you might need the assistance of a Children Panel member – see www.lawsociety.org.uk/choosingand_using/find_a_solicitor and click more options and choose Children Panel Adult Representative.

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different and there is no substitute for individual legal advice.

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