



**Family &
Matrimonial**

FAQ Children





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FAMILY LAW FAQ: CHILDREN

Will the court automatically become involved in child arrangements upon separation?

The court has a non-intervention principle meaning that no order will be made in respect of a child unless it considers that making an order would be better for the child than making no order. This generally means that where parents can agree arrangements for their child, the court will not intervene or make an order to confirm those arrangements.

What orders can the court make if there is no agreement?

If the parties cannot agree arrangements for a child, the court can make an order called a Child Arrangements Order which can define with whom a child lives or with whom a child has contact, either direct or indirect. Direct contact is face-to-face contact, whereas indirect contact is any non face-to-face contact such as the sending of cards, letters or presents or communication by telephone or email.

The court may also decide a specific issue between the parents, for example, which school the child should attend, or prevent a person with parental responsibility from exercising parental responsibility in a particular way, for example stop a parent taking a child out of the country. These orders are called a specific issue order and a prohibited steps order.

Do I have to go to mediation before issuing a court application?

Mediation has become a pre-requisite to making an application to the court. The Government is trying to reduce the number of cases that go to court and is trying to encourage people to reach a negotiated solution wherever possible. Therefore, before anyone can make an application to court, they are first required to attend a Mediation Information and Assessment Meeting (MIAM) unless the case is very urgent or one of the very few exemptions can be claimed, such as domestic violence. **See our Q&A on Mediation.**

What is Parental Responsibility?

Parental Responsibility is sometimes described as all the rights and duties which a parent may have in relation to their child. There is no complete list of what forms Parental Responsibility but generally all decisions parents make in bringing up a child, both minor day-to-day decisions and major decisions are part of Parental Responsibility. Major decisions include the right to determine a child's religion, education, name, medical treatment, lawful correction and administering their property. A mother automatically has Parental Responsibility for her child from birth. A father obtains Parental Responsibility by being named on the birth certificate (for a child born after December 1st 2003), marrying the mother, entering into a Parental Responsibility Agreement or obtaining a court order.

What is a Child Arrangements Order?

A Child Arrangements Order is an order that defines with whom a child lives or with whom a child has contact, either direct or indirect. These orders used to be called 'Residence' and 'Contact' orders but the court no longer uses this terminology.

My ex-partner has stopped me from seeing my child. What are my rights?

The starting point in law is that it is in the best interests of a child to have a relationship with both parents unless it would be harmful in any way to the child's welfare. If an agreement cannot be reached then the parties are encouraged to try to mediate to reach an agreement before making an application to the court. If an application to the court is made, the judge will often seek the assistance of the Children and Family Court Advisory and Support Service (known as CAFCASS), which will carry out enquiries and make recommendations as to what the court should order in the child's best interests.

What is the role of CAFCASS?

CAFCASS advises the court as to what they consider to be the best interests of individual children. Usually CAFCASS officers are qualified and experienced social workers and they work exclusively in the family court. Often the judge will ask the CAFCASS officer to write a report advising the court as to how the case should proceed. Although the court is not bound by the recommendations of CAFCASS, the judge will usually follow its recommendations. Indeed, if a judge does not follow the recommendations of CAFCASS, they will need to explain why the recommendations have not been followed.

Usually, if a CAFCASS officer has been asked by the court to write a report, they will meet with both parents and will see the child. Depending on the age of the child, the CAFCASS officer may also meet with them on their own to establish their views.

Useful Links

www.resolution.org.uk
www.relate.org.uk
www.cafcass.gov.uk
www.lawsociety.org.uk
www.gov.uk/divorce

**For more information, contact
Ian Lipscombe or Emma Rothstein
on 020 8949 9500.**



Both are members of Resolution, which means they are committed to dealing with family disputes in a constructive and non-confrontational way.

We offer an initial free 20-minute consultation or a fixed-fee appointment for 40 minutes.

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