

Our Services

Divorce and Family Law

Divorce: what happens if you have children?

Any relationship breaking down is an emotional and stressful situation, but arguably more so when children are involved.

When embarking on the divorce process, it is important to remember that both partners will continue to be parents. It is always best to try and reach decisions about your children's living arrangements and maintenance payments together if possible, away from the courts. This will avoid the often stressful court process for you and your family.

Both parents have equal legal status in respect of the children, known as 'Parental Responsibility'. This means all rights, duties, powers, responsibilities and authority, which by law a parent has in relation to their child. In reality, it gives the parent the responsibility of taking all the important decisions in the child's life, for example, education, religion and medical care. It also enables a parent to take day-to-day decisions. This is not changed by divorce or separation.

The start of the process

At the commencement of divorce proceedings, you will need to provide the court with details of your children's current living and contact arrangements on a 'Statement of Arrangements' form. As your Solicitors, we will then enter a period of negotiation with your partner's Solicitors to agree any financial, living and contact arrangements for your children.

Court Orders are only made in relation to children if the parents cannot agree arrangements between themselves. If the court has to become involved, we will be there to advise and support you through the process. We will help you reach a workable solution that you are happy with.

Remember, you are likely to know what is best for your children.

What happens if we are unable to agree amongst ourselves?

If you are unable to agree amongst yourselves, the court can make four main orders with regard to your children. They may not all be relevant to your particular case:

1. Residence Order (previously custody)

A residence order is an Order settling the arrangements to be made as to the person with whom the child is to live.

- A residence order can be granted to more than one person and can be made jointly to an unmarried couple
- A residence order can be made in favour of non-parents
- A residence order prevents anyone changing the surname of any child who is the subject of the order without the agreement of everyone with parental responsibility or a Court Order
- Where a residence order is in force, no person may remove the child from the UK for a period of over one month without the written consent of every person who has parental responsibility or without the court's permission
- A residence order lasts until the child is 16 unless the court has ruled otherwise in a specific case.

2. Contact Order (previously access)

The courts can make orders relating to contact with a named person other than the main carer. For example, if the child has a residence order with his/her mother, a contact order may be drawn up with his/her father. This can include staying or visiting contact, telephone contact or contact by correspondence (such as emails or letters). Some orders will be very specific about times, dates and arrangements for contact; others will be more open, allowing for specific arrangements to be made between the parents. In some cases, the court will order for this contact to be supervised.

3. Prohibited Steps

A prohibited steps order is an order that no step - as specified in the order - can be taken by any person without the consent of the court. This order deals with a specific problem that has arisen.

4. Specific Issue

This is an order of the court to determine a specific question which has arisen in connection with any aspect of parental responsibility for a child. For example, the court can rule over a dispute between parents about the education of their child or dispute over medical treatment.

Ensuring your child comes first - what will the courts consider?

The courts always have the child's welfare as their paramount concern when making any decisions. The court will apply a 'welfare checklist' to help make their decision - which includes taking the feelings and concerns of the child into account.

This includes:

- The wishes and feelings of the child (depending on their age and understanding)
- His/her physical, emotional and educational needs
- The likely effect of any change in his/her circumstances
- Any harm which he/she has suffered or is at risk of suffering
- How capable each parent is of meeting his/her needs.

To make a decision about an order, a Judge will often ask a Children and Family Reporter from the Children and Family Court Advisory Support Service (CAFCASS) to talk to both parents and the child/children. They will advise the court about the best decision to make for the child. A court hearing may be arranged to discuss the final arrangements, which both parents will be invited to attend.

Who are Children and Family Reporters?

CAFCASS is an organisation which safeguards and promotes the welfare of children involved in family court proceedings. They are independent of the courts, social services, and all similar agencies. They are qualified in social work and experienced in working with children and families. The welfare of children is always their prime concern.

Child Support - Maintenance

The Child Support Agency calculates and collects child maintenance. This is the amount of money paid regularly by a non-resident parent when a child lives apart from one or both parents. Maintenance is compulsory until your child reaches the age of 16, or is between 16-19 and in full time or advanced education.

The child maintenance payable depends on the number of children you have; the non resident parent's weekly income; and the number of children living in the non-resident parent's household.

What if I do not agree with the Court Orders?

If you are unhappy about the court ruling you need to make a prompt decision about whether you want to appeal against it. You will be able to discuss your concerns with your Solicitor who will advise you.

Alternative ways to reach agreements

Collaborative Law - reaching agreements together

Collaborative Law provides an alternative to the court system. Both you and your partner are represented by a specially trained Solicitor, and the four of you attend round-table discussions to reach solutions which you both find fair and reasonable. As long as everyone is committed to open communication, Collaborative Law can be a less stressful and more amicable way to reach a workable solution.

Mediation -

helping you find a fair solution through talking

Mediation can help couples talk through and reach decisions on key issues such as child arrangements. This route involves you communicating face-to-face in order to reach a settlement, with a qualified mediator in the room. Your Solicitor is not present, and the Mediator cannot give legal advice.

Before you think of Mediation as an option, consider if you are both prepared to commit to a number of sessions with a Mediator. It usually takes between 5 and 6 two-hour sessions to help you reach a fair solution.

Useful Contacts

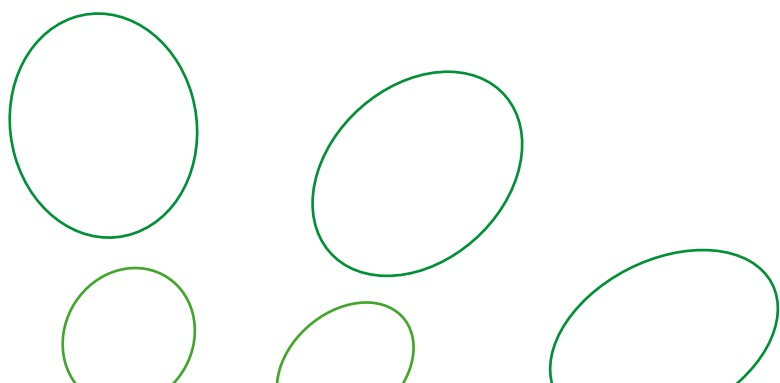
Child Support Agency national helpline:

08457 133133

Or visit www.csa.gov.uk

For further information, please contact the Divorce and Family Law team on Chester 01244 357400 or Wrexham 01978 340400.

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