

Guide to children matters

A relationship breakdown is likely to be a difficult and stressful time regardless of whether a couple are married, in a civil partnership or cohabiting.

Matters can become considerably more complicated and emotionally charged where children are involved, particularly if there is a dispute regarding the arrangements for the children, or confusion over the rights of family members, such as grandparents. In such cases, it is wise to consult a solicitor at the earliest opportunity to find out what your options are.

Any issues relating to children are dealt with under the Children Act (as amended), whether the parties are married or not, although unmarried fathers may not always have the same rights as married fathers when it comes to parental responsibility.

The courts are unlikely to interfere where couples have reached an agreement and made their own arrangements, provided there are no concerns about the child's welfare. However, where an agreement cannot be reached between the two parties, the matter may need to be dealt with by a court, where a judge or Magistrates will make a decision based on the child's best interests. Such a decision is legally binding and must be adhered to by both parties.

This guide covers some of the key points relating to children issues in the event of a relationship breakdown. However, please note that this is for general guidance only. You should always seek professional advice tailored to your own circumstances before entering into any arrangements.

The rights of children

Any issues relating to children when a relationship breaks down are dealt with under the Children Act, regardless of whether the parents are married, in a civil partnership or cohabiting. All children have the same rights irrespective of their parents' legal status.

The Children Act recognises that children are best cared for within their own families and that arrangements for the care of the children are best made by the child's parents. The courts are unlikely to interfere in a voluntary arrangement, as it is the expectation of the courts that the parents and families should be able to make arrangements for the children themselves. Such agreements are also considered to be more likely to succeed than those imposed on the parties by the court.

If you and your former partner cannot agree on arrangements for your children then it is worth considering mediation before resorting to court proceedings.

However, where required to do so, the courts will decide with whom a child should live and when and how they should spend time with the other parent, based on what the court considers to be in the child's best interests, not those of the parents.

**“A helping hand
when you need
it most”**



Parental responsibility

The Children Act defines parental responsibility as all the rights, duties, powers, responsibilities and authority which by law you as a parent have in relation to your child and their property. It is important to note that the Children Act refers to parental responsibility, rather than parental rights, with the emphasis being on the rights of the child.

Parental responsibility covers a wide range of matters, including:

- naming the child;
- protecting the child;
- choosing their school and ensuring they attend between the ages of five and 16, as legally required;
- ensuring they receive any medical treatment they need;
- deciding where they will live;
- choosing their religion;
- appointing a guardian to act for the child if the person with parental responsibility dies.

If a child's parents were not married when the child was born and the child's birth was registered after 1 December 2003 and the father is named on the birth certificate, both parents have parental responsibility for the child.

If the birth was registered before 1 December 2003 the father will not automatically have parental responsibility. He can however obtain it either by way of a court order or by a formal Parental Responsibility Agreement signed by both parents in front of a court official and registered at the High Court.

Generally speaking either parent with parental responsibility can make decisions affecting the child, but some significant decisions such as medical treatment, changing the child's name, taking a child abroad and choice of school should be made by all those who share parental responsibility.

Where such matters cannot be agreed, it is possible for any person with parental responsibility to apply to court for a "Specific Issue" order, whereby the court will decide a particular issue relating to a child.

If there is no-one to provide parental responsibility for a child, the court can appoint a guardian for the child.

A parent generally has financial responsibility for a child, until they reach the age of 20 or they leave full-time education, whichever is the later. For the majority of children, the law in this area is governed by the Child Maintenance Service (formerly the Child Support Agency or CSA) rather than the courts. Maintenance is a legal obligation whether or not the children see, or spend time with the other parent.

Child Arrangements

Previously known as "custody" and more recently as "residence" and "contact", child arrangements refer to where, and with whom a child usually lives and what time they spend with the other parent.

It is usually the case that parents work together to agree such arrangements after they have separated. However in the event of a dispute, an application can be made to the court for a "Child Arrangements Order", where a judge will decide what those arrangements should be.

If the court is required to make a Child Arrangements Order, the judge can determine which parent will have day-to-day responsibility for the child's care.

In addition to decisions about where and with whom a child should live, the court can also determine how much time a child should spend with their other parent and what form that contact should take. Previously known as "contact" or "access", the court may order contact between the parent and child, whether by letter, card, email, telephone, Skype or by face-to-face time together.

In particularly acrimonious relationship breakdowns a parent with whom the child usually lives may sometimes try to prevent the other from having contact with the child.

If a parent feels they are being denied contact with their children then they can apply for a Child Arrangements Order, which will set out how and when the child will have contact with their parent. If necessary, such an order can stipulate where this will take place, on what days and at what times. The court will only grant such an order if it believes it would be in the child's best interests to do so.

Legal advice should be sought before considering issuing court proceedings in such cases. It is worth noting that a referral to mediation is now required before most children applications can be issued at court.

The rights of grandparents

Grandparents have no automatic right to contact with their grandchildren. Instances where they might be denied access could include a particularly difficult divorce, where the children have gone to live with the son or daughter-in-law, or where relationships between the grandparents and their own children have broken down, regardless of whether or not there has been a divorce.

While step-parents or guardians can apply for a Child Arrangements Order, grandparents must first obtain permission to apply for the order. In deciding whether permission should be granted, a court will consider the applicant's relationship to the child, the nature of their application and whether it could be potentially harmful to the child's wellbeing.

If permission is granted, the grandparents can apply for a Child Arrangements Order in the same way as a parent can.

The courts do recognise the important role that grandparents generally play in their grandchildren's lives and it is only in very exceptional circumstances – for example, where there is evidence of abuse or violence – that it will not be considered to be in the best interests of a child to have a positive relationship with their grandparents. However, it is still important to seek legal advice before considering court proceedings to ensure that you are able to put forward the best possible case to obtain an order.

The rights of step-parents

An increasing number of households now include step-children. As such, step-parents are likely to develop close relationships with their spouse's children, particularly if they play a more significant role in the children's lives than their birth parent.

However, being married to the parent of a child does not automatically give step-parents parental responsibility, even if they take on parental duties such as looking after their step-children, or even raising them.

There are a number of options for step-parents wishing to acquire parental responsibility. These are:

- **a Parental Responsibility Agreement** – an agreement giving parental responsibility, although it must be agreed by everyone with parental responsibility for the child.
- **a Child Arrangements Order** – stating with whom a child should live (although such orders are rare in cases involving step-parents).
- **Adoption** – a legal procedure which puts step-parents in the same position legally as a birth parent. Whilst this is an option, it is very rarely appropriate where the children have an existing, on-going relationship with their other parent.

If you live with your partner and their children but are not married, then you are not a step-parent, even if you take on a parental role with their children. If you wish to acquire parental responsibility then you would need to apply for a Child Arrangements Order or apply to adopt their children.

As with any case involving children, the court will always make its decision based on what is in the best interests of the child.

Contact us for advice

The specialist family team at our firm can assist you with all family-related issues including those relating to children.

Although helpful, the brief information included in this document is intended as a guide only and does not constitute legal advice. For more detailed information regarding any of the matters raised in this guide, tailored to suit your specific circumstances, please contact a member of Mander Hadley's family team.