

## Children on Family Breakdown

### Your questions answered

**Q. “What is Parental Responsibility?”**

**A.** This term was introduced by the Children Act 1989 and covers all the rights and duties which by law a parent has in relation to his/her child or children.

**Q. “Who has Parental Responsibility?”**

**A.** In the case of married parents, both parents have Parental Responsibility.

In the case of unmarried parents, only the mother has Parental Responsibility automatically but an unmarried father will automatically have parental responsibility where the child’s birth is registered after 1<sup>st</sup> December 2003 by the parents jointly, otherwise an unmarried father can acquire it either by entering into a **Parental Responsibility Agreement** with the mother or by applying to the Court for a **Parental Responsibility Order**.

**Q. “What happens if the parents separate or get divorced?”**

**A.** Since October 1991 the Courts no longer have power to make “custody” or “access” Orders.

Parental Responsibility is not “lost” by either parent on separation or divorce and where both parents share Parental Responsibility, either parent can act independently of the other in exercising it. If the parents cannot agree on what is in the best interests of the child, one or other can apply to the Court for one or more of the following orders:

**Residence Order:** An Order settling the arrangements as to with whom the child is to live.

**Contact Order:** An Order requiring the person with whom a child lives or is to live to allow the child to visit or stay with the person named in the order and/or for that person and the child to otherwise have contact with each other. (eg by writing to each other, telephoning etc.)

**Prohibited Steps Order:** An Order preventing a person from exercising the rights conferred by Parental Responsibility in a particular way (eg an Order preventing the change of surname, the change of school or preventing abduction).

**Specific Issue Order:** An Order giving directions in relation to a specific question concerning the child. (eg to settle a particular dispute with regard to schooling, medical treatment, permission to live abroad etc).

**Q. “What factors does a Court take into account in making a Court order?”**

**A.** In all proceedings involving children the paramount consideration is the welfare of the child.

In determining what is in the best interests of a child, the Court will consider the following matters:



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- The wishes and feelings of the child taking into account the child's age and understanding.
- The child's physical, emotional and educational needs.
- The likely effect on the child of any change in circumstances.
- The child's age, sex, background and relevant characteristics.
- Any harm the child has suffered or is at risk of suffering.
- The parent's ability to meet the child's needs.
- The Court's range of powers.

**NB: The Court will only make a Court Order if it considers that to do so would be better for the child than making no order at all. Preferably the parents should try to reach an agreement so that it is not necessary to make an Order.**

**Q. "What happens if my ex-partner and I disagree about the arrangements for the children?"**

**A.** Normally legal advisers and the Court will encourage parents to discuss problems and to try and reach agreement. Sometimes it may be of assistance for the parents to discuss matters in dispute with an independent third party who is trained to advise and assist. This process is known as conciliation and can be arranged either voluntarily by the parties or through the Court. Discussions which take place in conciliation are confidential and cannot be used in Court proceedings unless allegations of child abuse are raised.

If it is impossible for the parties to reach agreement through conciliation the Court may be invited to make a Court Order after hearing both parties' points of view. If this becomes necessary sometimes the Court will order the preparation of a report by the Children and Family Court Advisory Support Service "**CAFCASS**". The CAFCASS officer will then meet with the parties, the children and any other relevant persons, for example school teachers, social workers and grandparents. A confidential report will then be prepared for the Court, a copy of which will be supplied to both parties' solicitors for discussion with the parties themselves.

**Q. "Can I take my children abroad without the consent of my spouse?"**

**A.** Previously, Custody Orders made in divorce proceedings contained a general restriction preventing either parent from removing a child from England and Wales without the consent of the other person or an order of the Court.

Under the present law there will normally be no Court Orders in existence following separation or divorce restricting either parent taking the children abroad.

**But:** The Child Abduction Act 1984 makes it a **criminal offence** to remove a child under the age of 16 with whom you are connected from the UK without the consent of all persons with Parental responsibility.

A parent who suspects that the other parent is about to remove a child from the UK can apply to the Court for the additional protection of a **Prohibited Steps Order**.

Further if a **Residence Order** has been made in relation to a child, no person can remove that child from the UK without either the written consent of the others with Parental Responsibility or the leave of the Court.

**But:** If a Residence Order exists there is a general power for a person in whose favour the order is made to take the child out of the UK for less than one month without the consent of the other parent or leave of the Court.

**Q. “Can we change the children’s surname?”**

**A.** Previously a Custody Order contained a restriction against either party changing the surname without either the consent of the other party or an order of the Court. Under the current law in most cases no such order will be in existence and there will be no general restriction against changing the child’s surname.

**But:** Recent case law indicates that it is inappropriate to change a child’s surname without the consent of all persons with parental responsibility or an Order of the Court

An aggrieved parent can apply to the Court for a **Prohibited Steps Order**.

If a **Residence Order** has been granted, no person can cause a child to be known by another surname without either the written consent of everyone with parental responsibility or leave of the Court.

**Q. “Can I apply for a Court Order to see my grandchildren?”**

**A.** Yes, a grandparent or other interested party can apply to the Court for a Contact Order, or even a Residence Order but would normally require leave of the Court to make such an application unless the child has lived with them for more than 3 years out of the previous 5.

**Q. “Can I stop my ex-spouse from having the children if anything happens to me?”**

**A.** A parent can appoint a guardian effective in the event of his/her death.

**But:** The appointment will not take effect until there is no surviving parent with Parental Responsibility.

**Unless:** There was a Residence Order in favour of the appointing parent in force at the time of his/her death then the guardian and surviving parent would share Parental Responsibility and either can apply to the Court for an Order in the event of a dispute.

**NB:** In the past guardians had to be appointed by Deed or Will. They can now be appointed in writing signed and dated by the parent making the appointment.

**Q. “Can I continue to be involved in my child’s education?”**

**A.** Even after divorce both parents retain Parental Responsibility and both parents have the right to be involved in their child’s education by attending parent teacher meetings and requiring copies of school reports etc.

***This fact sheet is intended as a general guide only. If you have specific queries not covered in this fact sheet please ask for further advice.***