

## **Arrangements for Children**

The Courts recognise that parents have equally important roles to play in the lives of their children. Where possible care is shared between parents with details of arrangements depending on the particular circumstances of each family. It is not for one parent to make unilateral arrangements for children.

In most cases, the parents will share parental responsibility for their children. "Parental responsibility" means all the rights, duties, powers, responsibilities and authority that a parent of a child has in relation to that child and his/her property by law. A child's mother will always have parental responsibility and, if a child's parents were married when the child was born, both automatically have parental responsibility. If the parents were not married when the child is born, then for any child born on or after the 1st December 2003 parental responsibility is conferred on the father if he appears on the birth certificate. For children born before 2003 or for fathers not on a child's birth certificate parental responsibility can be conferred by way of a parental responsibility agreement with the mother, or by application to the Court.

Sometimes other people obtain parental responsibility, for example, step-parents or grandparents, depending on the particular circumstances of a child's life.

Parental responsibility for children does not end on the separation of their parents and the practical arrangements for children made on separation take that into account.

Child arrangement orders regulate with whom a child is to live, spend time or otherwise have contact and the time a child will live, spend time or otherwise have contact with a person.

The Courts prefer a shared care regime where the children have two homes between which they move. This does not necessarily mean that the children spend equal time with each parent, which is often impractical.

Where one parent works full time or longer hours than the other, it may be that the children will spend the majority of their time with one parent and perhaps alternate weekends with the other together with one evening in the week. During school holidays, if possible, the children may spend an equal amount of time with each parent, and this often has built in arrangements for the main Bank Holidays such as Christmas and Easter to be alternated.

There may be other arrangements for children that cannot be agreed between parents, for example, which school a child should attend, or whether a child should be taken to a particular country on holiday or medical treatment. If parents simply cannot agree, even with the assistance of mediation, or if the matter is very urgent, for example, school applications have to be put in, then an urgent application can be made to the Court.

Research shows that it is in children's best interests if their parents can make arrangements for them by agreement, cooperate in their care and remain civil on occasions such as parents' evenings or school plays when they are both present.

### **If Arrangements for Children Cannot be Agreed**

If arrangements cannot be agreed, mediation may assist. Mediation with a solicitor in family law allows parents the opportunity to explain their views and discuss matters in a neutral setting with the assistance of a trained mediator. If mediation does not assist, then either parent may make an application to the Court for a Child Arrangement Order or such other as may be required in relation to a specific matter, under the Children Act 1989.

Once proceedings are issued positions can sometimes become more entrenched with neither parent wishing to be seen as 'giving in'. At each step of the way, therefore, the Court will try to encourage parents to reach an agreement if at all possible.

Once an application has been registered with the Court, the Court will list the matter for a First Hearing, known as a First Hearing Dispute Resolution Appointment. At this hearing the Court will identify the issues in dispute and make directions. Before the first hearing, a Court Welfare Officer (Cafcass) will in almost all cases speak to each parent by telephone to investigate whether there are any safeguarding issues that need to be brought to the Court's attention. Often a Cafcass Officer will be available at Court as well to assist, with the Judge, in helping parents reach an agreement.

If agreement cannot be reached the Court will identify the remaining issues in dispute and give directions, such as statements to be filed or a Cafcass Officer's Report written after speaking with the parents and, usually, with the children. The Court will also list the next hearing, a Dispute Resolution Appointment.

At the Dispute Resolution Appointment, the Court will again try to resolve or narrow the issues in dispute. If no final agreement can be reached then the Court will make any further directions necessary and list a Final Hearing.

Only a small number of cases proceed to a Final Hearing. At a Final Hearing, the Court will hear all evidence. At the end of the hearing, the Court will make an Order setting out the arrangements for the child or children.

### **Financial Arrangements for Children**

There is a statutory body, the Child Maintenance Service (CMS), which has jurisdiction for assessing and enforcing child maintenance. Either parent may apply to the Child Maintenance Service for a child maintenance calculation. There is a helpful child maintenance calculator on <https://www.gov.uk/calculate-your-child-maintenance>.

The Court retains the power to make financial orders for the benefit of a child where the parents agree a Child Maintenance Order by consent, or the Order is to 'top-up' maintenance over and above the CMS calculation, where the paying parent's income is higher than the ceiling imposed. Where parents are married, this is usually dealt with as part of the financial provisions on divorce. For the Court to make a top up order there must usually be a maintenance calculation through the CMS first.

In addition, the Court may make Orders for school fees or other specific costs for the child, for example, costs attributed to a disability.

### **Maintenance for Children of Unmarried Families — Schedule 1 claims**

The financial arrangements for children of parents who are not married to each other fall under Schedule 1 of the Children Act 1989. Schedule 1 was intended to make limited financial provision for the children of unmarried parents. Again, the Child Maintenance Service is the first port of call for assessing and enforcing child maintenance. If the paying parent's income is such that it is above the ceiling for the Child Maintenance Service, then the Court retains the power to make top up payments of maintenance.

Under Schedule 1 of the Children Act, the Court can also make orders with the purpose of providing housing. This can be a settlement of property or transfer of property for the benefit of the child. This provides housing for the child and the non-paying parent during the child's minority, but reverts to the paying parent when the child reaches their majority or completes their education. There can only be one settlement of property.

The Court can also order a lump sum payment, for example, to furnish a property, for payment of debts or purchase of a vehicle. Applications for further lump sums can be made, if necessary, whilst the child remains dependent. The Court can also make an Order for school fees to be paid or other necessary payments. Unlike on divorce,

however, there is no right to adult maintenance. There may be an element of 'carer's allowance' in the maintenance but once the child is an adult there will be no further financial assistance.

It is almost always better to attempt to reach agreement by consent, and the agreement can be enshrined in a Consent Order which can then be enforced if necessary. Not only is it better for children to know that their parents are agreed on arrangements for them, but an agreement can save both costs and time and may help to keep the relationship between parents civil.

The parent making an application to the Court for an Order under Schedule 1 of the Children Act can apply for an Order that the paying parent makes payment to cover their legal costs (or part of their legal costs) if they have no other means of doing so themselves. This can be a double edged sword however as costs orders against either party can be made by the Court on a Final Order.

### **Child Abduction**

If a child is either taken abroad without the permission of the other parent or is kept abroad following a period of holiday, then this is Child Abduction.

When Child Abduction happens time is of the essence and we always advise an immediate meeting with one of our family lawyers in London so that all the facts can be considered, advice given and appropriate action taken quickly. Often the abduction of a child follows the breakdown of a relationship between the parents, or an argument between them on separation. Although sometimes the abducting parent will try to conceal the whereabouts of the child, the Court does have powers to assist in locating missing children.

There is a convention, known as the 'Hague Convention', dealing with international child abduction. The purpose of the 'Hague Convention' is that a child removed from the jurisdiction or kept across an international border should be returned as soon as possible to the country of his/her habitual residence, and that it is for the Courts in that country to make any further orders about the child's future. Not all countries are signatories to the Hague Convention however and when agreeing that a child may go on holiday with a parent, the status of the country they are going to in relation to the Hague Convention can be a determining factor.

Sometimes a child is taken and not returned, although not taken out of the country. Again, we always advise an immediate appointment to look at the facts of the case. Under these circumstances, an urgent application can be made under the Children

Act 1989 for a Specific Issue Order for the return of the child and/or a Prohibited Steps Order setting out what the other parent may or may not do in future.

### **Relocation**

Most arrangements for children are made on the premise that the parents live near enough to each other for the children to see both parents on a regular basis. When parents first separate this is usually the case. However, it may be that one parent wishes to move either within England and Wales (internal relocation) or move to live abroad, perhaps to return to their country of origin (external relocation). As always, the Court's first concern is the welfare of the child and whilst the Court cannot stop a parent living where they wish, that parent may not take the child with them without the consent of the other parent or an Order of the Court.

In any relocation case, it is extremely important that legal advice from our family law firm is taken at an early stage whether it is you who are wishing to move with your child, or if you would be the parent left behind. The Courts take very seriously the need for a child to maintain a good relationship with both parents and would be looking carefully at the effect on a child of any plans by one parent to move and take the child with them. The Court will also consider what plans can be made for housing, education, maintaining contact with the other parent and the financial arrangements.

If both parents do not agree, then an application can be issued under the Children Act 1989 for Leave to Remove. This may either be for a specific period of time, and often for a specific reason, for example working abroad for a year, or for permanent Leave to Remove. Each case is decided on its merits but the hurdles are high. Early advice from a family lawyer in London is essential.