

## Family Law Factsheets

# Children and divorce

### Basics

If you are getting divorced, ensuring the welfare of any children (including any adopted children or stepchildren who are part of the family) will be a priority. You will need to agree where the children will live and sort out financial arrangements.

Negotiating arrangements for children is separate from the divorce proceedings - though the court will want to be satisfied that appropriate arrangements are being made before granting your divorce. It is also separate from the financial negotiations between the two parents - though the arrangements made for the children may have a practical impact (for example, where the parent with whom the children will live retains the family house).

As far as possible, you should negotiate arrangements for the children between yourselves. It is in the children's best interests if their parents can cooperate on agreeing what is best for the children. Ideally, you will work towards an arrangement where both parents continue to be involved with the children and with each other. Using the children as a weapon against each other is only likely to increase the emotional upset and costs for everyone involved.

You may find mediation helpful, or want to make use of the range of counselling services available to help children and their parents through what is often a very difficult time. Even if you cannot agree and go to court, this generally involves an initial conciliation meeting aimed at helping you reach an agreement yourselves. The court will be reluctant to impose a solution unless there is no other choice.

Once you have reached an agreement, you may want to apply to the court for a consent order confirming it. This can help ensure that both parties stick to the agreement in the future.

### Residence

In principle, a child can live with either parent after they separate, depending on what is in the best interests of the child. Factors to consider (and which the court would take into account if it had to decide) include:

- The child's own wishes and feelings (particularly for older children)
- His or her physical, emotional and educational needs
- The likely effect of any changes
- The child's age, gender, circumstances and any other relevant background
- Any harm or risk of harm
- How capable each parent is of looking after the child's needs (leaving aside the separate issue of who will provide financial support)

In practice, this usually means that children remain with the parent who has taken the major role in looking after them so far (typically the mother), often staying in the existing family home. While it is possible for residence to be shared (with a child staying part-time with each parent) this does not generally provide the kind of stable environment that is in the child's best interests. Similarly, it would be unusual (but not impossible) for one child to live with the mother and another with the father.

Although the parent with whom a child lives will make day-to-day decisions about their upbringing, both parents continue to have a right to be involved in major decisions. If you cannot agree on something about which you feel strongly, you will be able to apply to the court for a decision.

### Contact

As part of your agreement, whichever parent does not live with a child will almost always have some contact rights - again, based

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on what is in the child's best interests. Exceptionally, an older child may not wish to have any contact, or a parent may be a danger to the child.

Often, the parents agree that the 'non-resident' parent has weekly or fortnightly contact with a child. This could include overnight stays at the non-resident parent's home, contact on special occasions (such as the child's birthday) and/or an annual holiday together. Contact arrangements may also include other family members (eg grandparents). If agreement cannot be reached, you can apply to the court for a decision.

After an agreement has been reached, the non-resident parent will be able to apply to the court if the resident parent is not allowing the agreed contact or plans to do something (eg relocating overseas) that will have an effect. In practice, however, these can be very difficult situations - it is hard for the court to compel the resident parent to do something (eg with a fine or even imprisonment) while still acting in the best interests of the child. Wherever possible, maintaining a constructive relationship with your former spouse - and ensuring that you are both acting in the child's best interests - will be the best approach.

### **Financial maintenance**

Normally, the non-resident parent provides financial support towards the costs of bringing up the children. You can negotiate this between yourselves, apply to the Child Support Agency (CSA) or in some cases involve the court. If the resident parent claims benefits such as income support, the CSA will normally automatically be involved.

Whether the CSA is involved or not, the basis on which the CSA calculates maintenance provides a useful benchmark for reaching your own agreement. This is calculated as a percentage of the non-resident parent's net income (after tax, National Insurance and pension contributions):

- 15% for one child, 20% for two children, or 25% for three or more children. (Children must be under 16, or between 16 and 19 and in full-time secondary education.)
- Reduced rates if net income is below £200 per week.
- Any net income over £2,000 per week is not taken into account.
- Various other adjustments may apply (for example, if the non-resident parent has other children to support as well).

Separately, the resident parent may be entitled to extra maintenance to meet educational costs (eg school fees) or care costs for a child with special needs, or if the non-resident parent has an income over £2,000 per week. If this cannot be agreed between the parents, the resident parent will need to apply to the court.

Both parents should be aware that child maintenance payments may change - for example, if the non-resident parent's financial circumstances change (or if he or she dies). You may want to protect against this risk by putting in place appropriate insurance or arranging for the children to benefit under the non-resident parent's will.