

CHILDREN

When two parents separate there are often difficult decisions to be made in relation to the arrangements for the children whether it be who the children live with, when contact takes place or which school the children should attend.

In the first instance the Court will rely on you to reach an agreement with your previous spouse/partner. It is generally felt that the best interests of the children are served by parents reaching an agreement without making an application to Court as proceedings can increase the feeling of animosity between the parents. It is felt that both parties are more likely to stick to an agreement that they have made rather than one that has been imposed on them.

If appropriate you will be encouraged to attend Oxford Family Mediation where you and your former spouse/partner will sit down together with a qualified mediator to identify issues in dispute and attempt to reach an agreement.

We will also attempt to reach an agreement for you through correspondence with your former spouse/partner's solicitors.

If you are unable to reach an agreement there are a number of applications that you are able to make to the Court and these are as follows:-

1. **An application for the residence of your children** - an application of this nature may be made if you are unable to agree who the children should live with.
2. **An application for contact with your children** - an application for contact can be made seeking to ensure that you have regular contact with your child/children.
3. **An application for parental responsibility** - parental responsibility represents the rights, duties and obligations that parents have towards their children regarding all major decisions such as which school the children should attend. The child's mother automatically acquires parental responsibility upon the child's birth. If your child was born prior to 1st December 2003 the father only acquired parental responsibility if the mother and father were married or subsequently married. Since 1st December 2003 the child's father acquires parental responsibility if his named on the birth certificate as father or is subsequently registered as the father. It does not matter whether the parents are married. A Parental Responsibility order confers legal status on a father who did not previously have it and it gives him the right to be consulted on important decisions in relation to his child but not the right to interfere in the day to care of the child by the other parent.

4. **An application for a prohibited steps order** – A prohibited steps order is an order controlling the exercise of parental responsibility by one parent. An application of this nature could be made if you were afraid that your former spouse/partner was going to take the child out of the country without your knowledge and agreement.
5. **An application for a specific issue order** – a specific issue order is an order relating to a specific aspect of a child's care or the proposed exercise of parental responsibility by one parent in respect of a child which may not be agreed by the other. An application of this nature could be made if the parents were in dispute about which school the child should attend.

When deciding on any of the above matters the Court's main concern will be the welfare of the children and this remains the first or "paramount consideration" throughout any proceedings. In addition to this the Court is required to take into account the following factors:-

1. The ascertainable wishes of the children
2. The physical, emotional and educational needs of the children
3. The likely effect on the children of any change of circumstances
4. The age, sex, background and any other relevant characteristics of the children
5. Any harm that the children may have suffered or may suffer in the future
6. The capability of the parties to meet the children's needs
7. The range of powers that are available to the Court

The Court has to balance all of the above considerations (known as "welfare check list") to come to any decision as to what is in the best interests of a child.

It is important to bear these considerations in mind when attempting to reach an agreement before any Court proceedings have begun, or during any proceedings, as these are the factors that will ultimately be taken into account if the matter has to be decided by the Court.

It is not just the parents of the children who can make an application under the Children Act 1989. However, if someone else wants to make an application in relation to the children they will need to ask for the Courts permission to do so (leave to do so). When reaching a decision whether to give permission for the application to be heard and if leave is granted, in making a final decision, the Court will take the above factors into account in the same way.

No Order Principle

It is important to be aware that the Court will only make an order if it is shown to the satisfaction of the Court that there is a need to do so. This is because it is felt better for parents to reach agreements which are hopefully more appropriate and flexible than for a Court to impose an order on them which possibly neither parents is entirely happy or comfortable with. The Court will only make an order if it is satisfied that it is in the child's best interests for an order to be made.

Delay Principle

In addition, it is a general principle that any delay in resolving a dispute involving a child is likely to be to the detriment of the child and so Courts are anxious to move matters forward without delay by setting time tables which the parties to the proceedings are expected to comply with whilst allowing time for matters to be resolved by agreement.