

Children and divorce

What you need to know

What you need to know to protect your children during a divorce

- More often than not divorces involving children go smoothly and do not require assistance. However when satisfactory arrangements can be made the situation can become contentious, and Court action may become unavoidable, particularly to ensure the well-being of the children.
- Courts will generally encourage the parties to resolve their differences, but should questions of residence and / or contact have to be decided by them, the decision will always be based on the best interest of the child / children concerned.
- When dealing with teenagers, their concern / preferences will more than likely influence the Courts' decision, whereas with young children those wishes will not be the deciding factor.
- The Courts will rarely deny a parent contact with a child, particularly if it is in their best interest to have contact with both parents.
- Allowing contact and payment of child maintenance are not connected, i.e. one does not necessarily mean the other will happen

PARENTS - ADVICE

Do:

- Give as much reassurance to your child as possible;
- Advise the child of what is happening in ways understood by them;
- Encourage them in pursuing a relationship with the other parent;
- Clearly reply to any enquiries or perceptions by the child;
- Explain that the parents are responsible for their own affairs and the children do not need to be responsible for helping you;
- Encourage the child to talk about their feelings, especially about the other parent in a way that overcomes any sense of divided loyalties;

Don't:

- Criticize the other parent;
- Do anything that undermines the child's relationship with the other parent;
- Ask older children for advice or lean on them;
- Ignore the children's feelings or questions;
- Assume that any child who is quiet are not suffering as they still require reassurance and comfort;
- Involve the children in your own personal battle.

COURT ORDERS RELATING TO CHILDREN

Orders may be made about children under the age of 16 years by:

- Either parent applying to the Court;
- An application by others, ie grandparents, in specific cases;
- The Court itself.

- Prohibited Step Order;

This is used to prevent a specified event or course of action taking place.

This is generally used mainly to stop a child being taken out of the country or to prevent the changing of a child's name.

- Specific Issue Order.

This decides a specific question regarding the upbringing of the child.

It is commonly used by the Court when asked to decide which school the child should attend or if there is a dispute about medical treatment the child may require to undergo

- Residence Order;

This decides who a child should live with and was previously known as a Custody Order.

The issues that will be considered when reviewing the question of residency are:

- ❖ Is the mother always in the strongest position?
- ❖ What happens if there is more than one child, are they kept together?
- ❖ How long does a Residence Order last for?
- ❖ At what age can a child make up their own mind?

In addition, the wishes of the child will be listened to; this will be carried out by a CAFCASS (Children and Family Court Advisory Support Service) officer, who will interview the child

- Shared Residence Order;

This is when the child of the family resides with both parents at different times and each parent has equal status in law. The child can alternate periods of residence between the homes of both parents

Courts will now favourably consider an application for a Shared Residence Order when:

- ❖ A child has strong attachments to both parents;
- ❖ Both homes are close;
- ❖ A child is happy and confident at both homes;
- ❖ Both homes are close to the child's school;
- ❖ A child is familiar with both homes;
- ❖ A child has a sense of belonging in both homes;
- ❖ A child understands that he has 2 homes;
- ❖ There is no upheaval involved with the child passing between both homes;
- ❖ Care for the child was shared equally between the parents

- Contact Order;

This Order allows the child concerned to visit or stay with the person named in the Order, generally the other parent and were previously called access orders. A father could ask the Court to order that the child stays with him at certain times and days, if that child was residing with the mother.

Contact could also be in the form of a letter, telephone call, email or even video link/web cam. The Court will also usually make detailed Orders confirming the times and places to be used for the pickup if this is required and also make certain that all special details are included in the order.

PARENTAL RESPONSIBILITY (PR)

"All the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his property". Having parental responsibility means you can take decisions about education, religion and any medical consent for the child.

The biological mother of a child automatically has parental responsibility and a married father also automatically obtains parental responsibility, even if the marriage occurs before or after the birth of the child. A father is actively encouraged to play an active role in a child's life.

A child's biological father may get PR by entering into an agreement with the mother. This agreement has to be filed with the Court to have any effect. However since 1 December 2003 a father who is registered on the child's birth certificate will also automatically assume parental responsibility for that child.

Call Goddard Smith **FREE on 0800 160 11 44** to speak to our specialist solicitors. They will be able to tell you over the phone whether or not you need the services of a solicitor to help you and your children during your divorce proceedings.