

Arrangements For Children

If you are contemplating divorce or separation from your partner, your first concern will probably be about how your children live and how they will retain contact with both parents. When you separate from each other, you will both continue to be parents.

Therefore it is important to make sure that the process of unravelling your marriage or relationship does not stop you being able to co-operate on what is best for your children.

A constructive approach through the divorce or separation will lay the best foundations for the children to feel settled with the new family relationship.

You know your children best, so you will be best able to consider the effects of your breakup on them and together devise the most suitable living arrangements.

Negotiation is important as agreements reached together are more likely to work in the long term and be respected by the wider family.

If you reach agreement, no court orders are necessary. If you cannot agree on the arrangements, you can ask the court to decide the matter. We will be able to advise you on the best way of doing this and we will always aim to prevent matters relating to the children getting tangled up in any financial disputes.

Rather than considering the 'rights' of parents, family law talks of 'parental responsibility' for a child. If a child's parents were married when the child was born, both will have parental responsibility for the child.

A father who was not married to the child's mother when the child was born, will not automatically have parental responsibility but can acquire it by agreement with the child's mother, or by applying to a court. New rules from 1 December 2003 say that a father who is not married to the child's mother will acquire parental responsibility if he jointly registers the child's birth.

"Parental responsibility is all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and to its property"

It should be noted that since 30 December 2005 a person in a same sex relationship is now able to acquire parental responsibility for all their partners' children as long as all persons with parental responsibility agree.

If there is no agreement an order can be sought from the court. Stepparents can also now seek these orders if an agreement is not forthcoming. The Children Act 1989 is the main piece of legislation dealing with family disputes about children.

In family law, what used to be called 'custody' and 'access' or 'residence' and 'contact' are now known as 'Child Arrangement Orders'. The Children Act says that the child's welfare is the paramount consideration when the courts consider any question in relation to the upbringing of the child. Therefore, the court will apply what is known as the 'welfare check list' to help it make its decision.

The welfare check list looks at:

- The wishes and feelings of the child (considered in light of his/her age and understanding).
- His/her physical, emotional and educational needs.
- The likely effect in any change in his/her circumstances.
- His/her age, sex, background and any characteristics which the court considered relevant.
- Any harm which he/she has suffered or is at risk of suffering.
- How capable each parent is of meeting his/her need.

If court proceedings are issued, then the judge may feel that an investigation by a specially appointed CAFCASS Officer will be necessary.

This individual may be asked by the judge to help you resolve the dispute or to prepare a formal report which will contain recommendations about an appropriate court order. The court will not make any order relating to a child unless it is satisfied that making an order would be better for the child than making no order.

If parents cannot agree what should happen after they have considered the recommendations of the CAFCASS officer, then ultimately a decision will be made by a judge at a final hearing and recorded in a court order.

The new Adoption and Children Act 2002 came into force on 30 December 2005. It entitles same sex couples to apply for residence and contact orders. It also entitles them to apply jointly to adopt a child.

Most family disputes can be resolved without using the courts and we can help you make suitable arrangements while ensuring that the welfare of the children comes first.

For more advice on these issues contact a member of the family team on 0845 128 6960 or email welcome@freeths.co.uk