

Do I need to go to court regarding the arrangements for my children?

When a relationship breaks down, typically the parties' main concern will be the arrangements for their children. Questions such as "How will the Court decide who the children will live with?" and "What are the children and I entitled to financially?" commonly arise.

It is important to note that the same issues and potential areas for dispute arise whether parents are married or unmarried. Parents are encouraged to mediate in order to resolve issues and court action should only be considered if no agreement can be reached.

On separation, typical disputes relating to children tend to focus on who the children will live with and how much time they will spend with the other parent. Terminology such as 'custody' and 'access', or 'residence' and 'contact' have been phased out in favour of labels which suggest that there is no controlling parent and that there is no 'winner' or 'loser'.

Instead, the law now makes provision for Child Arrangements Orders and there is a new presumption which states that both parents should be spending time with their children. The presumption does not say how much time or in what form but it is as close to suggesting a presumption of a shared care regime as children law has ever come.

What rights do I have in respect of my children?

Parental Responsibility ("PR") was introduced by the Children Act 1989 and provided a deliberate shift towards the idea that parents have responsibilities to their children. In summary, PR gives you the right to make decisions regarding all of the important aspects of your child's life such as medical, education and religious matters.

Mothers automatically acquire PR for their children as do Fathers who are married to their children's mother. Unmarried fathers do not automatically acquire PR for their children. However, from 1.12.03 onwards, if the unmarried father is named on his child's birth certificate, he automatically acquires PR. There are also other ways in which an unmarried father can obtain PR.

What types of Orders can the Court make?

The Court has the power to make various orders in relation to a child which will last until the child is 16 years old (18 in exceptional circumstances):

Child Arrangement Orders – setting out who the child will live and the frequency of time spent with each parent.

Prohibited Steps Orders – which prevent a person from acting in a certain way, such as removing the child from the jurisdiction of England and Wales.

Specific Issue Orders – giving decisions on specific issues relating to any aspect of parental responsibility for a child, such as where they will be educated.

What is the Court required to consider when making Orders?

The welfare of the child is of utmost importance to the court. Any questions the court has surrounding a child and their upbringing must adhere to the Welfare Checklist as follows:

- The wishes and feelings of the child concerned (considered in light of their age and understanding)
- The child's physical, emotional and/or educational needs
- The likely effect of any change in circumstances on the child
- The child's age, sex, background and any characteristics that the court considers relevant
- Any harm which the child has suffered or is at risk of suffering
- How capable each parent and any other person in relation to who the court considers to be relevant, is of meeting the child's needs
- The range of powers available to the court.

Blaser Mills' Family & Divorce team are highly experienced solicitors who can advise you on your respective rights and obligations. Should you require further information on this matter, or any other advice concerning family or divorce matters, we are happy to discuss your options with you over the telephone at no charge.

Please call 020 3814 2020 or alternatively, email us on family@blasermills.co.uk to arrange a conversation.

General legal information can be found at our website www.blasermills.co.uk