

# Children, Divorce and Separation

## Who will be responsible for the children?

Despite separating or getting a divorce you are still a parent and the court will expect you to continue to act as a parent. You will not lose your position as a parent even if the children are living elsewhere. You keep what is known in law as 'parental responsibility'.

## Which parent will the children live with?

As parents, you are expected to try and agree where the children will be living. If you can't agree you may have to ask the court to decide for you.

The divorce court can make a residence order and decide in which house and with whom the children shall live. In making that decision the court will look at all matters involving the children.

The court will decide what it thinks is best for the children. The court will, however, take into account what both parents have to say on the matter. Often the court will ask a court reporting officer to prepare a report to help the judge in his/her decision.

You may be expected to meet with the reporting officer and the other parent to discuss what is best for the children. If the children are old enough to understand how they feel about the problem, the officer may talk to them privately.

## Will I have to go to court?

If the arrangements for the children are agreed and there are no problems, then normally there will not be a court appearance. Matters are dealt with by the Judge reading the papers.

If you can't agree with the arrangements for the children you may be asked to go to court. When the Judge reads the divorce papers he looks at the facts to see if there is a problem with the arrangements for the children. If there is, because the parents don't agree on an issue, the Judge may ask the parents to attend a hearing. Such hearings are held in private. They are usually heard sitting around a table and friends and family are not normally allowed to attend.



## **Mediation**

This is an alternative to going to court. The mediator tries to work with you both to resolve any matters upon which you are not agreed. If you want to apply for public funding (legal aid) to deal with any dispute regarding the children, it is usually a condition that you first try mediation. Mediation may not be suitable however in all cases.

## **Will there be a court order?**

In a divorce, if the parents agree about the arrangements for the children, there will not usually be a court order. The court will usually only make one if it thinks it is necessary for the benefit of the children.

## **How long will the divorce take?**

If there are problems with the arrangements for the children, the divorce court will want to sort these out as quickly as possible.

## **Can I see the children if they do not live with me?**

Yes, this is called contact. Providing you have agreed contact and where the children will be living, the court will not usually make an order.

If parents cannot agree the contact, the court may decide on the contact that the children are to have with the parents. The order may be in general terms, like "reasonable contact". If that does not work, the court order can set dates and times.

## **Can the court punish a parent who has not obeyed its orders?**

Both parents are expected to avoid involving the children in their arguments. The parent with whom the children live should not try to turn the children against the other parent. It is important to remember that young children can be permanently affected by the arguments between their parents. The court may in appropriate circumstances take action against a parent who does not comply with orders made.

## **Can other people see the children?**

Even if parents don't agree, other people such as grandparents, for example, can ask the court for permission to have contact with the children and to visit them. Contact may not just mean visiting, but can also mean being in touch on the telephone and by writing or sending cards.

## **Can we share the children?**

As parents you can agree, after you separate, to share the time that the children spend at each house. The court will rarely intervene if you reach an agreement.

However usually a divorce court will not encourage splitting the children up from each other. Brothers and sisters will normally be expected to grow up together in one house.

## **Will I have to pay maintenance for the children?**

Despite the children living most of the time with one parent, the other parent, if working, will usually be asked to pay maintenance for the children. How much will depend on what they earn and what they have to pay out their living expenses.

The Child Support Agency (CSA) now have the main responsibility for this. They apply a formula to work out how much should be paid. However the agency does not have to be involved unless you are in receipt of certain state benefits.

## **Will a social worker be involved?**

The divorce court will not normally involve a social worker even if there is a problem regarding the children. The court reporting officer will usually deal with the matter.

## **Will problems regarding the children hold up the divorce?**

If there is a problem regarding the children it may delay the divorce from going through until the problems are resolved. The last divorce court order is called a decree absolute. It makes you single again.

The court encourages you to try and sort things out by agreement. It will allow for changes that happen as the divorce goes through.

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