

Solicitors in Bournemouth expert Jacqui Forrest explains how **divorce** can legally affect your children and what to do about it.



Children and the Law

Emotions run high when getting divorced.

Children may be feeling sad, confused and scared. It is vital that any child knows that despite marriage problems parental responsibility continues during all the stages of separation, divorce and life.

Time is a healer; things will get better. One way to show children that you care is to do something constructive for your spouse, something that could build trust and co-operation for the future, even if it is apart.

Stand back and reflect. Remember to see everything through the eyes of your child

Fighting Over the Child Is Unlikely To Help With an Agreement

Although some people think that 'fighting' over their child shows them how much you love them, this is not the case.

A child, like the courts, will be waiting for you to co-operate together.

And fighting does not lead to voluntary agreements. And it's voluntary arrangements which are likely to be honoured.

Are There Alternatives To Getting Courts Involved?

Most parents agree on arrangements for children although difficulties do arise frequently, especially when matters of finance are also in dispute.

Your child, like the courts, would prefer you both to do your utmost to put them first, to see things through the eyes of your child.

Therefore, mediation may be an alternative to the court process.

What Happens To Children When You File For Divorce?

When filing for divorce, a Statement of Arrangements is filed, giving details of the proposed arrangements for the children.

It is therefore generally understood that the courts **will not** intervene unless it is in the best interests of the child. If these are agreed by both of you, the court is unlikely to interfere although you can ask for the court to help at any time.

If you can't agree the Judge may ask for you both to attend a hearing to see if you can agree. Mediation may again be advised by the Judge.

Reports may be requested and further meetings, probably with the children in attendance at a CAFCASS (court welfare) office or at home will take place. **This is best discussed with your solicitor.**

What Law Is It That Affects My Children When Getting Divorced?

The Children Act of 1989 says that ***“The child's welfare is the most important consideration.”***

Many old and archaic terms have been replaced to bring it more up to date. Old words like 'access' have been replaced by “contact.” This can refer to contact by letter, phone and actual visits. 'Custody' has been replaced by “residence.”

The Act describes „parental responsibility” rather than “parents' rights”. Your solicitor will advise you how the Children Act affects you.

Who Has Responsibility For The Welfare Of Children In Divorce Cases?

Being married when the child was born means both of you will have parental responsibility.

A father, who was not married to the child's mother when the child was born, will not automatically have parental responsibility.

A father who was not married when the child was born can acquire parental responsibility by agreement with the child's mother or by applying to the court.

He can also acquire it by marrying the child's mother after the birth.

Parental responsibility

Parental responsibility means that you are both responsible for the following but this list is by no means complete:

- protecting and maintaining your child,
- naming the child,
- choosing the school,
- making sure he goes to school from age 5 to 16,
- making sure they receive medical treatment
- appointing a guardian to act after death
- applying for a passport
- representing the child
- deciding where he is to live
- Choosing the child's religion etc.

What about money?

A parent has financial responsibility for the child until they reach the age of 17 or leaves full-time education, whichever is the later. There is no 'clean break' (an end to providing financial support) between parents and children. This is the law.

A child's father (or mother) is obliged to pay for this support whether or not there is any contact.

In disputes regarding where the child should live, 'residence' and other issues such as finances and property we recommend you ALWAYS seek legal advice from your solicitor.

Because even if things seem ok now, things change in the future and a legal agreement will protect you.

The two issues are entirely separate but in reality disagreements about maintenance sometimes lead to problems with contact.

On the other hand, a father or mother who has regular contact is more likely to pay maintenance on a regular basis.

Try to keep these two issues separate and discuss them at separate times.

Abuse or Violence affecting you and the children?

If violence or psychological abuse contributed to your separation, then it may be that it gets worse when you do separate. This is likely to affect the child at contact times and afterwards. Physical and mental safety is crucial for children's mental health.

If you have a problem with domestic violence you can get 24 hour help and advice. Please ask your solicitor for contact details.

Can we avoid going to court about the children?

Yes you can. If you can agree to contact arrangements, putting children first, and maintaining stability it is possible not to go to court over your children. It may be possible to use mediation, which is preferable to going to court about issues regarding children.

A mediator is a trained professional who listens to both parents' wishes and concerns and tries to help you both come to some arrangement about contact.

Your solicitor can put you in touch with a family mediation service.

If there is domestic violence involved the mediation is not the course for you to take.

You can either request a mediator through your solicitor or contact NFM at www.nfm.org.uk/ Tel: 0207 383 5993

If mediation does not seem possible at the moment, bear this in mind for later when your emotions are more stable. Always remember to talk to your child. Put yourself in their shoes.

What happens when mediation and talking don't work?

You may have to consider court action, which may not be an instant solution because the court will only make an order *if it is in the best interests of the child*.

It is not your 'access' to the child that comes first; it is what is best for the child.

The Courts looks at these factors:

- the child's feelings and wishes, depending on age and understanding
- physical, emotional and educational needs and wants of the child
- the likely effect of any changes in circumstances
- the age, sex and background and any characteristics the Court considers relevant
- any harm the child may have suffered or is at risk from
- How capable each of the parents is of meeting the child's needs (this may include other involved people).

You will need a good solicitor – there's no way you can do this without one.

What if we can't agree where the child should live?

It may be worth remembering that many families do not involve the courts in access issues and they generally consider that it is the right of the child to have a relationship with both parents.

It is rare for families to disagree about where a child will live - this is referred to as Residence. The court considers many things, including the following:

- the working parent who must arrange childcare will not be preferred to the parent at home - continuation of the status quo
- maintenance of family contacts
- 'normal' family life permanence and stability
- the child's wishes when able to express these in a mature and balanced way
- adequate mothering especially for young children avoiding separating siblings

What else can the courts do?

The courts can also deal with specific issues as well as contact and residence orders.

A 'Specific Issue Order' could be sought to decide where a child will go to school or to decide on medical treatment.

There is also a 'Prohibited Steps Order' which can stop something from happening. One example would be to stop one parent from taking the child abroad. A solicitor's advice should be sought.

What happens at court?

CAFCASS, the Children and Family Court Advisory and Support Service for England and Wales will be involved. It is a group of professionals, answerable to the Lord Chancellor, who provide advice to the courts about the wellbeing of children and their families.

Both parents are requested to attend a meeting with the Judge four to ten weeks after applying for a court order. Your solicitors generally attend too.

CAFCASS and the court welfare report.

A CAFCASS officer normally attends but practices vary from court to court.

This meeting is for the court to judge whether you can come to an agreement. If not, it is normal practice for the Judge to request a CAFCASS (court welfare) report.

This can be a lengthy document and is only drawn up after the Judge meets the parents together or individually and the Judge meets with the child/children either on their own or/and with a parent/s.

The Judge can also check whether their respective schools have any concerns. The Judge can also check with doctors, Social Services, the police etc.;

Visits may also be arranged at home. Although everyone is a professional, this process can still be emotional and traumatic.

Try to agree yourselves...

Throughout the whole process, you will be encouraged to come to an agreement that is in the best interests of the child.

The hearing would then be arranged for perhaps three to six months later if you haven't already found a solution.

The Judge will then deliver his decision which is often in agreement with the welfare report's recommendations. The Judge could also delay his decision for a further period of time and order another hearing in the hope of agreement.

An appeal against the decision could also be considered. This could turn out to be a lengthy procedure which could add to the stresses of the divorce and diminish your ability to co-operate as responsible parents.

What is international parental child abduction?

This is the removal or retention of a child across an international border by one parent (or person who has parental responsibility), which is either in contravention of a court order or without the consent of the other parent (or person who has parental responsibility).

Reunite is the leading UK charity specialising in international parental child abduction.

See their website at www.reunite.org

Want more advice and information?

**For a fixed price, £99 initial consultation please
call Jacqui Forrest on 0844 874 5377**