

Boys & Maughan Family Fact Sheet - CONTACT WITH CHILDREN AFTER DIVORCE OR SEPARATION.



If you are contemplating divorce, dissolution or separation from your partner, your first concern will probably be about where your children will live and how they will retain contact with both of you.

Even if you divorce or separate, you both continue to be parents. So it is important to make sure that the process of divorce or separation does not prevent you from co-operating on what is best for your children. A constructive approach will lay the best foundations for the children to feel settled with the new family situation.

Finding A Way Forward

Families come in all shapes and sizes and there are no magic answers - you know your children best, so you will be best able to consider the effects of your break-up on them and together find a solution that works for all of you.

Negotiation is important as agreements reached together are more likely to work in the long term and be respected by the wider family. Family mediation services, together with Resolution mediators and solicitors, may be able to help you achieve this. Members can help you decide how and when to tell the children what is happening. Not everybody is able to reach agreement on arrangements for the children, and where necessary you can ask the courts to decide the matter. Your solicitor will be able to advise you on the best way of doing this, without letting matters relating to children get tangled up in any financial disputes.

What Are My Rights As A Parent?

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 if necessary by applying to a court.

Since December 2003, a father who is not married to the child's mother acquires parental responsibility automatically if he jointly registers the child's birth. If both parents have parental responsibility, there are some things one parent cannot and should not do without first having the agreement of the other parent, who should be approached and asked to agree. If the other parent will not agree then an application can be made to the court to decide what would be in the best interests of the child. Some examples of actions which require the agreement of both parents are; removing a child from the UK (even for a holiday or a day trip) or changing the surname of a child. This list is not exhaustive but merely gives examples.

More About The Law

The Children Act 1989 is the main legislation dealing with disputes about children.

What used to be called 'custody' and 'access' are now known as 'residence' and 'contact'. The court can also make an order to stop a parent doing something 'Prohibited Steps' or to make a parent do something 'Specific Issue'. The child's welfare is the paramount consideration when the courts consider any question in relation to the upbringing of a child. To determine what arrangements will be best for the child, the court will apply what is known as the 'welfare checklist' to help it make its decision.

The welfare checklist looks at the child's:

- Wishes and feelings, considered in the light of his/her age, maturity and understanding.
- Physical, emotional and educational needs.
- Age, sex, background and any characteristics which the court considers relevant.
- The likely effect of any change in the child's circumstances.
- Any harm which the child has suffered or is at risk of suffering.
- How capable each parent is of meeting the child's needs.

An independent Child and Family Reporter (CAFCASS officer) may be asked by the court to help you resolve the dispute or to help the court decide and write a report to the court explaining all the information the officer has read and obtained and make recommendations to the court as to what the arrangements should be. 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 not making an order.

The Process

The application form is lodged with the court, a date for a first hearing is fixed and the papers are sent to the other parent.

You both attend the first hearing, when there will be discussions to see if an agreement can be reached. A CAFCASS officer might be at court to speak to you both to help with this. If an agreement cannot be reached the court will not usually be able to decide the arrangements on this occasion but instead will decide what further information and documents need to be obtained and decide the dates by which these should be produced. This is likely to include a statement setting out all of the points you want the court to consider and might include reports or statements from other organisations, such as medical reports or other people. Exactly what will be required in each case will depend on what the issues between you and the other parent are but we will advise you about this. We will explain the process and advise you on the merits of your case.

A first hearing is likely to take place 3 to 4 weeks after the application is issued by the court office. The rules require the other parent to be given 14 days notice of the hearing. If an agreement cannot be reached at the first hearing it could take between 6 to 12 months to conclude the case depending on the issues involved.

If the local authority social services department is involved, you might need the assistance of a Children Panel member - see www.lawsociety.org.uk 'find a solicitor', click more options and choose Children Panel Adult Representative.

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different and there is no substitute for individual legal advice.



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