

Children Private Law

My ex-Partner says that I have no rights in respect of our children. Is this right?

They are talking about parental responsibility. Parental responsibility means all the rights and duties which by law a parent has in respect of their child. It confers rights, and responsibilities. Mothers acquire parental responsibility automatically for their children. Fathers will acquire it automatically if they marry the child's mother. If you are not married, the father must be named as the father on the birth certificate (this became law after 1st December 2003). Adoption also confers automatic parental responsibility. Otherwise, a father needs to enter into a parental responsibility agreement with the mother, or, if she refuses, make an application to the Court. In considering whether to grant parental responsibility to a father, the Court will consider the degree of commitment the father has shown towards the child, the degree of attachment between him and the child, and the reasons why he is applying.

My ex-Partner won't let me see the children. What can I do?

If this has happened as a result of a simple misunderstanding, then often we can help get matters back on the right track. If the difficulties are a little more entrenched, then sometimes Mediation can help. This is a confidential process that will give you the chance of having neutral and impartial help to reach a solution. For mediation to work, both parties must agree to mediate, and attend sessions together.

You may need to make an application for contact. The application would include details of what contact you would like with your children. Unless it is an emergency application, you will need to show you have attempted Mediation. If Mediation has not been successful (perhaps because the other party did not engage or because Mediation has broken down), and if you decide to proceed further with an application to the Court for an Order, you will need to append a Mediation Exemption Certificate.

My ex-Partner is threatening to move out of the area with my children. What can I do?

Both parents should consent to any move of the children whether it is to a different school or a different area. Such moves may have a detrimental impact upon the level of contact you have with your children. You may wish to oppose such a move if there is good reason to do so. We can advise you upon this. Depending upon the urgency of the matter, we may make an urgent application to the Court to prevent the parent from going through with their sole intentions. The Court will list the matter for a Hearing and the parents will be contacted by CAFCASS in the first instance by way of a Safeguarding telephone call or if the matter comes into Court urgently, a face-to-face meeting.

What does the court take into account when arriving at decisions?

Section 1 of the Children Act 1989 says that when a Court determines any question with respect to the upbringing of a child, the child's welfare shall be the Court's paramount consideration.

The Court takes into account:

- a) The ascertainable wishes and feelings of the child(ren) concerned (considered in light of their age and understanding);
- b) Their physical, emotional and educational needs;
- c) The likely effect on them of any change in their circumstances;
- d) Their age, sex, background and any characteristics of theirs which the court considers relevant;
- e) Any harm which they have suffered or are at risk of suffering;
- f) How capable each parent is of meeting their needs; and
- g) The range of powers available to the Court under The Children Act 1989.

How does the court assess this?

In cases where the parents cannot agree, the Court often refers the case to CAFCASS (The Children and Family Court Advisory Support Service) and directs that a Court and Family Reporter prepares a report. They will meet both parents and the child and will usually see the child with each parent. They will then prepare a report containing a recommendation for the Judge. This often takes three to four months.

How long does all of this take?

Contact applications can take some nine to twelve months to reach their conclusion, although very few cases actually get to a final hearing. Most cases settle along the way, and the Court will allow time for contact to restart, and gradually increase, thus lengthening the time that the proceedings overall can take.

Will the application be successful?

This will depend on the type of Order you are seeking in respect to your child, the strength of your case and the view of the Court. It is possible to make an application for the following:

- A Contact Order
- A Live With Order
- A Prohibited Steps Order
- A Specific Issue Order
- A Family Assistance Order
- A Special Guardianship Order

In certain circumstances, and if you know you do not have parental responsibility, it may still be possible to make an application to the Court to seek the Court's leave (permission) to continue. Note that an Order does not usually extend beyond the child's 16th birthday and cannot continue beyond the child's 18th birthday.

The Court will support the principle of contact continuing save for in very particular circumstances. The Court very much supports the child to have contact with both parents but will look at each case on its merits.

It may be appropriate for contact to start slowly and be built up. If there are justifiable concerns about contact, it may be limited to indirect contact, e.g., letters and telephone calls. Alternatively, contact can be supported or supervised at contact centres, but this is the exception rather than the rule. Any Order made by the Court will bind both parties to the terms of that Order. If one party fails to comply with the Order, they will be breaching that Order and the matter may be placed before the Court once again for further consideration and, perhaps, reinforcement and/or to bring penalties to bear because of the non-compliance.