



## Children Matters

When relationships break down, there can be disputes over what is to happen with the children.

In the midst of our own hurt feelings, it is easy to forget that children suffer too when parents part. The law focuses very much on the needs of children. The wishes or needs of the adults concerned are not part of this process, and they are not considered. There is an assumption in the Children Act 1989 that both parents should be involved in a child's life, unless it would cause harm.

Children are vulnerable, so **we should secure their well-being first.**

The **Children Act 1989** governs the sort of situations which can arise. It brought in some new concepts, and has itself been amended in the 20 years since. Here are the “new concepts”:

### **Parental Responsibility (PR):**

This is a “bundle of rights and responsibilities”. In everyday words, it is all about who has a say in the important things that happen to a child. It is more about duties than rights.

### **Child Arrangements:**

This covers questions about where the child(ren) should live, and who should have “contact” with them. A child should live with the person who can best meet the child's needs. The old idea of “custody” has gone. A child is not a trophy to be fought over! Contact is dealt with in a similar way. Should the child see the other parent, or grandparents? If so, when, where, how often and for how long? Should it be direct or indirect? Should there be supervision? Courts are very practical about these things. They decide according to the needs of the child - what benefits him or her. It is important to focus on the child, not on “winning” or “losing”.

### **Prohibited Steps Order:**

To prevent the other party doing something e.g. moving to another area many miles away which might threaten the loss of contact arrangements.

### **Specific Issue Order:**

To decide an issue where you can't agree e.g. should the child have particular medical treatment, or can one parent leave the country with the child, and so forth.

## **Married Family**

If you are married and going through a divorce you both have **PR** for any children. You are encouraged to agree **child arrangements** with your spouse. If they can be agreed, then the court will not become involved and no orders will be made. If there is a dispute between you, and you can't resolve it by mediation or other means, one of you will have to file an Application to the court for one of the orders listed above.

## Unmarried Family

If you are unmarried, then only the mother automatically has **PR**. Fathers have PR if they were registered as the father on the birth certificate after 1 December 2003, or if you have both signed a PR Agreement, otherwise they can only get it by making an application to the court. Having PR doesn't allow the father to interfere with day to day decisions about the child's upbringing. It gives him a right to be involved with major decisions, such as which school the child will attend. It also formally recognises that he is a parent and so is entitled to receive things like copies of school reports, and to be consulted about things like medical treatment for the child.

## Grandparents and other members of the family

It's a myth that "Granny rights" exist. This can cause a lot of heartache. When parents part, grandparents and other extended family can be "frozen out" because they are related to the former spouse or partner.

Parents can apply to the court "as of right" for orders, but sometimes other relatives (grandparents, aunts, uncles or step-parents) want to apply for contact or even for a child to live with them in certain circumstances. They can apply but they have to get the court's permission first.

This is called "applying for leave". It's not as hard as it might sound, and the Court almost always grants leave to apply. You don't need to make a separate application. The application can be in two stages: first, for leave to apply, and second, for the order you really want. The court deals with "leave to apply" as a preliminary issue. Courts recognise the contributions grandparents make. They are sympathetic!

## Change of Name

Changing a child's surname is a really thorny issue. The reasons are usually that the children live with the mother, father is not in close contact, and mother remarries. The child often wants a change of name so as to feel included, or to avoid being "different" at school. Often, the father has had no contact for years, and only shows an interest when the mother says she wants to make the change.

A parent wanting to reverse a change of name, or prevent it, should apply to the courts for a Specific Issue order. The Courts usually say that severing a child's links with its father by changing its name is a drastic step that is not usually good for the child. For this reason, if a court is asked, it usually comes out against the change. It is a gamble of course as to whether an absent parent will take the matter to the courts.

If you can show a good reason for wanting the change, and it is not just to "close the door" on the links with an absent father, the courts are willing to grant permission, so don't be put off, just be sure that your reasons will stand up to scrutiny.

In our experience bodies like the Passport Office are very "proactive" over issues like who the child lives with, or changes of name, so don't underestimate their capacity to make a simple holiday difficult. Plan well in advance and, if in doubt, try to get agreement to the proposed holiday in writing from the other parent.