

# SEPARATION AND CHILDREN



## Children

One of the greatest anxieties faced by parents who are separating are the arrangements involving their children. Where they are going to live, who are they going to live with and when an absent parent may get to see them, are key concerns. This, at a time when relations are often fraught, can result in ongoing disputes.

The law presumes, unless the contrary is shown, that continued involvement of both parents is in the best interests of the child. However, the law is clear that there is no presumption of shared parenting, only that the child should maintain a meaningful relationship with both parents wherever possible.

## Parental rights

What are parental rights? Defined in law as ‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’. These are the basic rights required to raise a child and include:

- the right to decide on day-to-day care
- the right to give consent for medical treatment
- the right to decide on a child’s religion
- the right to decide where a child lives
- the right to decide on a child’s education
- the right to take a child abroad for a holiday or to live

Married parents enjoy equal parental rights as do fathers of children born to unmarried mothers, provided their name appears on the birth certificate. For children whose father is not on the birth certificate, parental rights are not automatic. In those cases, it is the mother who automatically has those rights granted by law.

If you are an unmarried father who does not have automatic parental rights these can be acquired by application of a Parental Responsibility Agreement to the court (see below).

### Parental Responsibility Agreement

A Parental Responsibility Agreement is a contract entered into by both parents to allow both parents to have parental responsibility for a child or to give an unmarried father parental responsibility in the absence of the child’s mother. It also gives the father the right to be consulted about major decisions, such as those regarding education, religion and medical care.

As parents you will need to complete the form making sure your signatures are witnessed. Once the High Court has received them, a stamped approved copy of the form will be returned to you.

You can enter into a Parental Responsibility Agreement using the [form here](#).

### Parental Responsibility Order

If the mother of your child does not agree to give you parental responsibility it may be necessary to

apply to the court for an order to be made. Before you do this, it will be necessary for you to attend a mediation meeting, known as a Mediation, Information and Assessment Meeting (MIAM).

To arrange this, you could contact National Family Mediation [here](#) to find a mediator in your area who may be able to help. In some cases the mediation process may be free. If the matter is not resolved at the end of the consultation the mediator will complete the form so you can apply to the court if necessary.

To apply to the court, you will need to complete the necessary form C1, which can be downloaded [here](#), and pay the relevant fee, currently £232. If you are on a low income you may be eligible for a reduction. See [here](#) if you are eligible.

## Contact & residence arrangements

### Reaching an agreement

Being able to discuss matters and reach an agreement about arrangements for children is the best outcome parents can have. The ability to be flexible in order to accommodate changes is often key to the success of any ongoing arrangements.

We often have callers concerned with:

- how often should contact take place?
- what happens with joint residence arrangements?
- what happens if one parent does not want to discuss matters?
- how does a court decide what happens?

If it is not possible to reach an agreement, parents can apply to the family court for a Child Arrangement Order. Recent changes to the process for making a child-related application, also resulted in a change of terminology. The words 'custody, residence, access and contact' are no longer used within this process but are still frequently referred to. A Child Arrangement Order, made by the court, is now the terminology which is used and confirms where a child may live and when they are to spend time with others.

It is increasingly common for the court to refer to 'shared care' orders which incorporate how a child's time is divided between parents, even if the time spent is unequal. These types of orders underpin the right of the child to see the absent parent.

However, before a parent can go to the family court, the separating couple must have attended a Mediation Information and Assessment Meeting (MIAM).

A MIAM is a meeting designed to raise the awareness of the benefits of mediation in relation to disputes about children or finances. Without attending such a meeting it will not be possible to proceed to a court hearing on the issue. It is not necessary for both parties to attend together. During a MIAM, it is the role of the mediator to inform the parties about the mediation process, how it works and the benefits to all parties. Once completed, the mediator will certify that the MIAM has taken place and whether or not the case is suitable for the mediation process to proceed.

To arrange a MIAM you could contact National Family Mediation [here](#) to find a mediator in your area who may be able to help. In some cases the mediation process may be free. At the end of the consultation if the matter is not resolved the mediator will complete the necessary form so that you can apply to the court if necessary.

Legal aid may be available for mediation, and legal support with the mediation, where it would not be available for a court hearing. For more information about qualifying for free mediation see [here](#).

## Other types of court orders

A specific issue order is an order relating to an issue concerned with parental responsibility where the parents cannot agree such as:

- schooling
- change of surname
- medical treatment

The purpose of any application made in these circumstances is to allow the family court to

determine the specific question or issue that has arisen that those with parental responsibility do not agree on.

A prohibited steps order prevents one parent taking a particular action related to parental responsibility such as:

- stopping medical treatment
- removing a child from the country
- stopping a child being adversely influenced by someone

These orders are collectively referred to as section 8 orders made under section 8 of Children Act 1989. Where an order is made under this section it usually lasts until the child reaches 16. In reaching a decision on any of these matters the court will use the welfare principle for guidance and will consider matters such as:

- the feelings and wishes of the child (depending on their age and understanding of the situation)
- the child's physical and emotional needs
- the age of the child and their general history
- any risk or harm that may be present if the order is made or not
- the likely impact on the child of any order being made or not

Appointment of a guardian may be made by the court in the event that no guardian is specified in the Will of the deceased and only remaining parent with parental responsibility. In this case, the court may be asked to make the decision, possibly preferring one applicant over another. In making this decision, the same welfare principles as above will be applied.

### **Maintenance**

Most cases for child maintenance are dealt with via Child Maintenance Options (see below). However, there are a small number of cases where the issue may be dealt with by way of a court order:

- where either parent or the child lives outside the UK
- when the paying parent's gross income exceeds £156,000

- if the child has special needs
- if the child is wishing to be maintained beyond secondary school education

These types of application can be made against adults who are not the biological parent of the child, for example, in the instance of step-parents where a child has been treated as their own.

A number of these applications are relevant to more wealthy parents, where the issue of university fees and expenses is something the parents face. In those cases it is possible for the child to make their own application.

### **Child maintenance**

**Child maintenance** is the financial payment by one parent to another for the support and maintenance of a child. It is usually paid by the absent parent to the parent with day-to-day care of the child. Maintenance for children is not generally dealt with by the courts, leaving most couples to deal with the matter in one of two ways:

**Family agreements:** Family-based arrangements are child maintenance arrangements which parents have agreed between themselves. You might also have heard them referred to as family arrangements, voluntary arrangements, or private agreements.

**Statutory child maintenance arrangements:** arrangements put in place by the Government's statutory child maintenance service.

The Child Maintenance Service manages all new applications for a statutory arrangements.

The child named in the application must be:

- under 16
- between 16 and their 20th birthday and undertaking full time non-advanced education i.e. sixth form or college rather than university
- between 16 and their 20th birthday and registered with a government training course and child benefit is also being paid

Find out more about the statutory child maintenance service and use the child maintenance assessment tool [here](#). The calculation will take account of all the required factors such as:

- the paying parent's income
- the number of children who need child maintenance
- how often those children stay overnight with the paying parent
- if there are any other children who the paying parent (or their partner) get child benefit for
- if the paying parent also pays child maintenance for any other children

If an agreement cannot be reached and an application has to be made to the Child Maintenance Service, there may be fees to pay. These are as follows:

- a £20 application fee for applying to the statutory scheme
- a 20 per cent collection fee on top of their usual child maintenance amount for paying parents using the Collect & Pay service
- a 4 per cent collection fee deducted from their usual child maintenance amount for receiving parents using the Collect & Pay service
- a range of enforcement charges for paying parents who don't pay child maintenance in full and on time

Where the paying parent does not make the payments as required there are penalties and enforcement action which may be considered, including deductions directly from salary and a charging order against property.

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