

All family break ups are difficult for parents and children. Our aim is to help you consider your child's future and to reach positive agreements wherever possible.

PARENTAL RESPONSIBILITY

Parental Responsibility is all those rights and responsibilities you would think of when bringing up a child i.e. deciding on education, medical treatment, etc.

Generally, mothers have Parental Responsibility for their child. If the parents are married, then both will automatically have Parental Responsibility. This does not necessarily apply in same sex marriage/relationships.

From **December 2003** all unmarried fathers also have Parental Responsibility with the mother provided their name is on the child's birth certificate. This does not apply retrospectively and so unmarried fathers of children born before December 2003 do not have automatic Parental Responsibility.

There are other ways an unmarried father can acquire Parental Responsibility such as by agreement with the mother. Both parents should get legal advice before entering into such an agreement.

If the mother does not agree, a father can apply to the Court for a **Parental Responsibility Order**. The requirements basically look at whether the father can demonstrate a consistent commitment to the child[ren].

If you have children they will inevitably be affected by your separation or divorce. It is vital that parents, and other family members, do not run down the other parent or discuss the details of disagreements with the children or within hearing range.

ORDERS A COURT CAN MAKE

The **Children Act 1989** places emphasis on trying to avoid the making of a Court Order in connection with children. There is now a requirement that parents attend **mediation** before making an application to the Court under the Children Act with a view to reaching an agreement and to avoid having to issue proceedings. We are able to give you details of local mediators.

However, sometimes there is no alternative and the Act provides a procedure for dealing with disputes which cannot be resolved otherwise.

The main Orders that the Court can make are:

A Child Arrangements Order

This is an Order setting out where the child will live and how much time they will spend with each parent (formerly known as **Residence Orders** or **Contact Orders**).

A Prohibited Steps Order

This is an Order providing that a particular step cannot be taken by a parent in relation to a child without the specific permission of the Court such as an Order preventing the removal of the child from the UK; an Order preventing a change in the child's schooling; an Order that the child's name should not be changed; an Order preventing the child from undergoing certain surgery.

A Specific Issue Order

This is an Order when the Judge decides on a specific issue or question relating to a child when the parents cannot agree, such as a decision over whether a child can be taken out of the jurisdiction for an overseas holiday or disputes over which faith a child should be raised in.

Before the court will consider making an Order, they must have regard for the following principles:

- Children are usually best looked after by their family;
- The welfare of the child is paramount;
- Delay is usually prejudicial to the child's welfare;
- The welfare check list.

The welfare checklist requires the Court to consider the following key issues before an Order can be made:

- The ascertainable wishes and feelings of the child, taking into account the child's age and understanding;
- The child's physical, emotional and educational needs;
- The likely effect on any child of a change in his/her circumstances;
- The child's age, sex, background and any characteristics which the court considers relevant;
- Any harm which the child has suffered or is at risk of suffering;
- How capable the child's parents and anyone else who is relevant, are of the meeting the child's needs;
- The powers available to the Court.

There is a "**no Order**" principle in Children Act cases i.e. the court will only make an Order if it believes that to do so will be better for the child than making no Order.

Most couples make their own arrangements about contact, residence and any child maintenance. Children thrive on routine and stability and it is usually best for some routine to be established, with both parents applying common sense and flexibility wherever necessary.

MAINTENANCE

Maintenance for children is separate from their right to see both parents. Neither parent can legally use payment or failure to pay maintenance as a reason to extend or refuse contact.

If you are not able to agree maintenance either parent can refer their case to the Child Maintenance Service (formerly the Child Support Agency). The Courts no longer have jurisdiction to make orders for maintenance, except in a financial Consent Order in divorce proceedings, where there has been a previous written agreement.

All of these issues are complex and the experience offered by a specialist practitioner can be invaluable. If you would like advice on these or any other matters connected to the care of a child, our experienced legal team will be able to assist.

Perveez Sethna

Partner

Whitstable Office

01227 276276

Perveez.Sethna@parrylaw.co.uk

Victoria Evans

Solicitor

Whitstable / Herne Bay Office

01227 276276

Victoria.Evans@parrylaw.co.uk

IMPORTANT NOTICE

This literature is intended purely as an overview of this area of law in England and Wales and no action should be taken upon it without specific legal advice. It is not intended as a substitute for formal legal advice on your specific circumstances