

Making arrangements for your children is among the most difficult and potentially most upsetting issues that you will have to deal with following a relationship breakdown.

The issues are familiar but no less challenging for that: who has parental responsibility; children's name changes; contact with the children; ongoing living arrangements; grandparents' rights and contact; taking children on holiday or to live abroad; financial arrangements for housing and maintenance; schooling and school fees; special guardianship, and many other issues.

At Morr & Co, we understand the complex issues you are facing and we can provide advice and guidance on the best ways to resolve them. We will help you to work out a way forward that suits your family and help you to reach constructive solutions that enable you and your former partner to co-parent effectively for the months and years ahead. We can also refer you to helpful support services including counsellors and therapists should you need them as the process progresses.

We are also skilled and experienced in mediation, which can be a very useful tool in finding the best way to work together to address the individual needs of your children and parenting them together.

We can help you with all issues relating to the continuing care and provision for your children, including:

- Parental responsibility
- Contact, residence and the new Child Arrangements Orders:
- Grandparents' rights
- Removal from the Jurisdiction and Re-location Applications
- Child maintenance
- Financial claims on behalf of children

### **Parental responsibility**

Parental responsibility is defined as 'all the rights, duties, powers, responsibilities and authority which, by law, a parent has in relation to the child and his property.'

Mothers automatically have parental responsibility and nowadays fathers generally do too, unless the parents are unmarried and the father's name is not recorded on the birth certificate. Where a father does not automatically have parental responsibility, he can:

- Enter into a Parental Responsibility Agreement with the mother; or
- Apply to court for a Parental Responsibility Order.

Having parental responsibility does not affect financial claims, nor give a parent with parental responsibility but not living with the child a right to interfere with the minutiae of their day-to-day living arrangements. However, it does give that parent the right to be consulted about key matters affecting them, such as health, religion, education, adoption, or removal from the jurisdiction.

One especially important issue relating to Parental Responsibility is that if one parent dies, the remaining parent with parental responsibility automatically becomes the children's guardian. Parents can also appoint others to be named guardians in their wills and, in the event of death, such matters may become contested through the courts.

Contact, Residence and the new Child Arrangements Orders:

Child Arrangements Orders were introduced in England & Wales in April 2014 to replace residence and contact orders and remove the established perception of one parent having greater importance and influence by virtue of one of these orders. Child Arrangements Order are intended to focus instead on co-parenting the children into the future.

## **Child Arrangements Orders were defined as:**

- With whom a child is to live, spend time with or otherwise have contact; and
- When a child is to live, spend time with or otherwise have contact with any person.

These arrangements can usually be agreed between the parents. Typically, courts are only involved if there is a dispute.

There are three key principles to bear in mind:

- “No order” principle: courts will not generally interfere with the parents’ arrangements for their children; the court must be persuaded that it is in the children’s best interests for an order to be made.
- Presumption that both parents should be involved: This was set out in The Children & Families Act 2014. Unless it is proved otherwise, it is presumed that the children’s welfare is best served by both parents being involved in their children’s lives.
- Delay: The avoidance of delay in child-related proceedings is based on the assumption that delay is almost always harmful to the children involved. Proceedings are therefore given priority in court listing. The first hearing is usually listed within four weeks of the application being received by the court. Many cases settle within one or two hearings.

The welfare of the child is considered paramount. In reaching any decision the Judge and the Children and Family Court Advisory Service (known as ‘CAFCASS’) are guided by the following Welfare Checklist:

The ascertainable wishes and feelings of the child concerned (in light of the child’s age and understanding);

- the child’s physical, emotional and educational needs;
- the likely effect on the child of any change in 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 each of the parents and any other relevant person is of meeting the child’s needs;
- the range of powers available to the court.

It is also important to bear in mind that courts will generally try to preserve the status quo – with the view that upheaval is disturbing and potentially harmful to the children – so that a key consideration in determining where a child should live will be the arrangements that are already in place.

A Child Arrangements Order determining where a child should live also has the following attributes:

- That order brings with it parental responsibility;
- Parents with that order can take the child out of the jurisdiction, for example on holiday, for up to one month at a time without needing the permission of the other parent.

## **Grandparents’ Rights**

Grandparents can play an important role in helping couples with children to cope with the difficult process of relationship breakdown. They can form a bridge for communications between the parents, actively assist with childcare, and provide the comfort, support and continuity that children need in turbulent times. However, they have no automatic rights in law in the way that parents do. Because of this grandparents’ relationships with their grandchildren can be overlooked or seriously damaged as a result of the parent’s relationship breakdown.

Occasionally you may even find that your contact with your grandchildren is directly or indirectly blocked by one of the parents, despite your best endeavours to maintain a neutral or amicable approach. As with all disputes concerning children, mediation is often the most helpful way to achieve a workable resolution. However, where agreement simply cannot be reached another way, you can apply to court.

Family courts will generally recognise and promote the involvement of grandparents in children’s lives. You will need to show:

- That you have a strong connection with the child;
- The nature of the contact application itself (direct/indirect, frequency, location, etc.);
- Whether the application might be potentially harmful to the child’s wellbeing in any way.

Grandparents need to make a preliminary application for the right to bring a contact application. If that is successful you may then bring a full application. Courts adjudicating such matters will be guided by the Welfare Checklist to assess

what is best for the children and to consider suitable orders they might make regarding the nature and level of the grandparents' future involvement, and will occasionally instruct CAFCASS to provide a report. Orders may ultimately be made for contact to be re-established or structured.

At Morr & Co, we can help you with negotiation, mediation, or an application to court to establish your ongoing involvement with your grandchildren.

### **Removal from the Jurisdiction and Re-location Applications**

If you wish to take your child to live abroad, or prevent another parent from taking your child abroad, we can help.

In cases of emergency you may be able to bring an application for your child to be returned under The Hague Convention or otherwise. In these circumstances, it is critical that you take specialist advice at a very early stage in order to ensure that you do not do anything that might prejudice your case.

Anybody who has Parental Responsibility for a child is allowed to remove the child from the jurisdiction for a period of up to 28 days with the permission of all those who have Parental Responsibility for the child.

However, if there is a Child Arrangements Order in place stipulating that a child should live with one parent, no permission is required for taking the child out of the jurisdiction for less than a month. No one can remove the child from the jurisdiction for more than a month without the permission of every person who has Parental Responsibility.

As always in child-related matters, the Welfare Checklist will be used to assess what is in the child's best interest and this assessment will be the primary concern of the Court.

Recent cases have criticised an over-reliance on the detrimental impact of denying an order to the applicant wishing to take the child abroad (following the case of Payne, in 2001). It is inadvisable to assume the Court will always find in favour of the parent wishing to move the child abroad. Instead, the parent should make reasonable, detailed proposals about where they propose to go and how the family will live, focusing on practical details, and particularly addressing the arrangements for nurturing and supporting the relationship between the child and the parent left behind.

These applications can often become much more complex in the detail and issues than the average case, but should revolve around the welfare of the children.

If you seek an Order from the court, the application is likely to take 6 – 9 months if it is defended. There will be more than one hearing and attempts to ascertain if matters can be agreed. A CAFCASS report will usually be required, which is important but adds to the timeline. Decisions and plans must therefore be made well in advance.

Maintenance for children is generally dealt with by reference to the guidance provided by the Child Maintenance Service ('CMS'), which replaces the CSA and C-MEC. There is a quick and easy calculator available on the CMS website to enable parents to assess roughly how much they would be required to pay if the case was dealt with by the CMS: <https://www.gov.uk/calculate-your-child-maintenance>

The basic rule is that the non-resident parent must make payments to the parent with care of the children, calculated as follows:

- One child: 12% of gross income up to £800 per week is payable, and 9% of gross income between £801 and £3,000 per week;
- Two children: 16% of gross income up to £800 per week is payable, and 12% of gross income between £801 and £3,000 per week;
- Three children or more: 19% of gross income up to £800 per week is payable, and 15% of gross income between £801 and £3,000 per week.

This is up to a maximum of £156,000 per annum. Income beyond £156,000 p.a. is excluded from the CMS calculation but may be the subject of a court order by way of 'top-up' maintenance. The calculation is further affected by the number of nights per week the children spend with the non-resident parent and whether the non-resident parent has to support other children financially.

Child maintenance is generally dealt with by agreement between parents, who carry out a calculation on the CMS website calculator and try to reach agreement on that basis. However, if agreement cannot be reached and the matter is referred to the CMS, fees are now payable as follows:

paying parents: a 20% fee on top of their regular child maintenance payment is payable by way of CMS fees.

receiving parents: 4% is deducted from their regular child maintenance payment.

These fees cannot be avoided by making payments in advance.

## Financial claims on behalf of children – Property, lump sums, etc.

A parent, guardian, special guardian or a person in whose favour a Child Arrangements living with Order has been made can apply to the court for financial provision for a child under Schedule 1 of the Children Act 1989. This is a financial remedy available to both married and unmarried parents of a child, although it is typically used by unmarried parents. These powers are primarily used to secure adequate provision of a home for the children, and the primary carer of the children. Maintenance can also be claimed where the non-resident parent has significant income, exceeding the Child Maintenance Service maximum of £156,000 p.a.

The court can make a number of orders, including the following:

- Periodical payments
- Secured periodical payments
- Lump sum
- Settlement of property, for example, for accommodation until the child is 18
- Transfer of property

In deciding whether to make an order, the court will have regard to a checklist of factors quite similar to those applied in financial remedy applications in divorce, including:

- The income, earning capacity, property and other financial resources that each party has or is likely to have in the foreseeable future
- The financial needs, obligations and responsibilities that each party has or is likely to have in the foreseeable future
- The financial needs of the child
- The income, earning capacity, property and other financial resources of the child;
- Any physical or mental disability of the child
- The manner in which the child was being, or was expected to be, educated or trained

The procedure for bringing a claim is almost the same as for financial remedy proceedings.

Schedule 1 can therefore provide real financial help to parents with care of minor children of the family following relationship breakdown.