



Family

Common Questions about Parental Responsibility & Children



Understanding Parental Responsibility, how it works and the resolution of issues relating to children

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Solicitors

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What is Parental Responsibility and do I hold in it in relation to my child?

Parental Responsibility means the rights and responsibilities you have for your child and the things they own. This allows you to make decisions for them and be kept up to date with important information.

People who hold Parental Responsibility for a child can include the following:

1. A Mother, who has given birth to a child
2. A biological Father, who is married to the Mother or has been named on the child's birth certificate
3. A same-sex parents who are married or in a civil partnership at the time of undergoing fertility treatment
4. Someone who has a Child Arrangements Order to confirm a child lives with them;
5. Someone with a Parental Responsibility Order or Agreement

Can I use Parental Responsibility to the exclusion of the other parent?

If you share Parental Responsibility with your ex-partner or another person, then you must be considerate of their rights. You should make sure they are informed about any routine matters, such as dentist or doctor's appointments. They have a right to be informed, attend or get medical information should they wish. You can use your Parental Responsibility to make day-to-day decisions for your child but on important issues, such as choice of school, you should try and reach an agreement with your ex-partner.

Do I need my ex-partner's permission to take my child on holiday?

If you are planning a holiday outside of England and Wales, then you will need the permission of all people who hold Parental Responsibility for your child to travel.

You should not take steps to leave the UK with your child, without gaining consent. If your ex-partner will not provide consent for the holiday, you can apply to the Court for a Specific Issue Order to ask the Court's permission for you to travel. The same rules apply each time you want to travel unless you have a 'Live With' order that allows you to take a child out of England and Wales for up to a month at a time for the purposes of a holiday.

Common Questions about Parental Responsibility & Children

Can I change my child's name?

In order to change any part of your child's name you will need the written permission of everybody that holds Parental Responsibility for your child to make a Deed Poll application.

If the other parent does not consent to this, you may be able to apply for a Specific Issue Order to ask for the Court's permission to change the name. The Court will make their decision based on the welfare checklist and, if permission is granted, you will then be able to make the Deed Poll application to legally change your child's name. This applies to all, first, middle and last names and even the spelling of them.

What can I do if I do not agree with my ex-partner on an important issue?

If you and your ex-partner disagree on something important concerning your child, such as which school they should attend or what medical treatment they should have, you may need to apply to Court for an Order which would allow you to take your chosen steps.

If you want to take action, such as changing your child's school, then you should consider a Specific Issue Order, which is an Order allowing a specific action.

If you wish to prevent your ex-partner taking action, such as leaving the UK with your child, then you may consider applying for a Prohibited Steps Order. If granted, this would stop your ex-partner for taking the disputed steps.

Agreement is always encouraged by the Court, and it is important to try and agree matters if you can.



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Common Questions about Parental Responsibility & Children

I don't agree with my ex's parenting style, what can I do?

Parenting children with another person is hard at the best of times, let alone when you no longer like or trust that other person or communication between you is difficult.

The bottom line is that whilst we all feel that our 'style' of parenting is the correct one, there is no right or wrong way to parent and the biggest part of learning to co-parent is to realise that you will do things differently, and that is okay.

Unless the other parent's care falls to a standard that would cause a third party to raise serious safeguarding concerns, you are better to simply accept that you both parent differently and focus your attention on parenting the way you want when the children are in your care and leave the other parent to do the same in their time.

There are obviously some things that fall well below the acceptable level of safe parenting. For example, drink driving, allowing children to travel without a car seat or seat belt, and allowing young children to be around water or busy roads unsupervised are examples of matters that you are right to raise as serious and potentially deadly faults in parenting.

However, a different approach to bedtimes, screen times, food choices or clothing are not safeguarding issues, they are parenting choices and co-parenting effectively requires some give and take from both parents. The children will benefit from you being able to accept the differences and that will allow them to adapt to the different styles too.

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What different types of contact are there?

Common types of contact which are often agreed or ordered by the Court include:

- Direct contact; this is when you get to see your child in person, such as spending time with them in the park
- Overnight contact; this is when your child spends time in your care overnight
- Daytime contact; this is when you spend time with your child during the day, between certain times
- Indirect contact; this includes phone calls/video chats/messages between you and your child
- Supervised/supported contact; this is when you spend time with your child with the presence of a third party. This can either be a professional supervisor, such as at a child contact centre, or you could be supervised by a family or friend

What is a reasonable contact arrangement?

This is a tough (but common!) question. Simply, it depends on the needs and wishes of the child and each child is different.

There is no mathematical formula for working out contact arrangements and the Court will base their decision on what they feel is in the best interest of your child, having considered the welfare checklist. The Court will want to ensure that your child is able to spend quality time with both parents. This includes a fair division of 'premium' time, such as weekends, holidays and special days. It may be a case of quality over quantity.



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Is contact connected to child maintenance?

The Court rarely link the contact a child has with a parent to the payment of maintenance. Child maintenance is dealt with by the Child Maintenance Service and anybody with care of a child can use the online calculator or contact the service to discuss if they can apply for maintenance. You are obliged to pay child maintenance if you have a child that does not live with you.

If making a decision about what time your child should spend with you, the Court will not make a decision solely based on the payment of maintenance but if maintenance is regularly paid/received this will help prove to the Court your level of commitment to your child.

Do the children get spoken to as part of the Court process?

Your child will never be expected to attend any Court hearings, but they may speak to a CAFCASS Officer as part of the Court process to better understand their wishes.

This will normally happen in a neutral location, such as at school, or CAFCASS may speak to them when they spend time with you. The conversation with your child will be based on their age and understanding and often involves gaining information from them through interactive work, such as drawing pictures or playing with toys.

Your child's wishes and feelings will be important to the Court but will not be the only factor for the Court to consider when making their decision.



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Who are CAFCASS and what do they do?

CAFCASS stands for the Children and Family Court Advisory and Support Service.

CAFCASS officers are usually appointed to your case in the early stages and their main role is to advise the Court as to what they feel is best for your child. Their view will be independent of either parent, most likely having spoken to you as a parent/carer of the children.

CAFCASS may also speak to other professionals that your child might be involved with, such as teachers or medical staff, to get the best understanding of what they think would work best for your child. They will tell the Court their views and the Court must consider this view when making their decision. CAFCASS' recommendations are highly persuasive to the Court when making decisions.

What is a shared care order and can I get one?

'Shared care' is a term used to describe an arrangement in which the parents share the practical care arrangements for their child or children. This can be a 50 / 50 division of time, but it is not necessary for time to be divided equally to count as a shared care arrangement.

The concept of Court Orders defining contact arrangements as shared care (or sometimes a lives with / lives with Order) reflects the Court's view that both parents are equally important and there should not be a hierarchy of parenting based on one parent being seen as the 'primary carer' and the other therefore being a lesser parent.

In recent years, the use of shared care orders to reflect the equal importance to the child of a relationship with both their parents has increased significantly and it is likely that will continue into the future.

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How do the Courts decide where a child should live and how much time they should spend with each parent?

The Court must make a decision that they feel is in your child's best interests and to do that they have to consider a number of factors. These are known as the Welfare Checklist and include the following:

- Wishes and feelings of your child, based on your age and level of understanding - the older the child, the 'louder' their voice will be in proceedings
- Your child's physical education and emotional needs.
- The likely effect on your child as a result of a change in their circumstances, including considering what your child is used to in terms of contact/living arrangements
- Your child's age, sex, background and any characteristics of theirs which the Court considers relevant
- Any harm which your child has suffered or is at risk of suffering, including the Court's concern about either parent or their behaviour, if relevant
- How capable each parent is of meeting their needs (this can include any other people that the Court may feel are relevant)
- The parent's practical ability to care as well as their emotional ability
- The range of the powers available to the Court, who can make any Order it feels is right for your child when the matter is placed before it and may not be the Order that either parent has applied for.

Some factors may be more or less relevant to your circumstances and all points of the checklist will be balanced to reach a decision. The Court will also consider the opinion of any experts such as CAFCASS.



Common Questions about Parental Responsibility & Children

What steps should I take if my ex-partner stops my contact with my child?

The first thing you should do is see if you can talk to your ex-partner, to better understand their reasons and see if agreement can be reached directly to best suit your child.

If this does not work, or you cannot speak to your ex-partner, then you may consider taking the following steps:

- Make a referral to mediation: you can refer yourself and ask the mediation company to make contact with your ex-partner. Mediation is a voluntary process, but the Court expects you to have attempted mediation before issuing an application to Court in most cases (except for a few reasons as to why mediation is deemed inappropriate, for example urgency or domestic abuse between the parents). Child Arrangements often work best when both parties have agreed to them
- Consider sending a letter to your ex-partner setting out your views about what would work best for your child. You could do this yourself or with our help. This will hopefully lead to you being able to agree the long term arrangements
- If the above steps fail, you could consider making an application to Court for an Application for a Child Arrangements Order. The Court will encourage agreement between you throughout the Court process but will make a decision on where your child should live and when they should spend time with you if you cannot agree with your ex-partner.

What can I do if my ex-partner breaches an existing Court Order in relation to my child?

In the event that you have obtained an Order to spend time with your child(ren), it may be possible for you to apply to the Court to enforce the terms of the Order. These proceedings will be very similar to the Court proceedings which helped you get the original Order but the Court will want to consider what breaches have occurred and why. The Court may feel that the original Order needs to be amended if they believe it no longer meets the needs of your child.

Common Questions about Parental Responsibility & Children

Communication with my ex-partner is really difficult. What are my options?

Finding a way to communicate effectively with your ex-partner is the best way to achieve your child's long term best interests and to enable them to move between you in a way that causes the least amount of upset and distress. It is not always easy to communicate with an ex-partner, but having a child together means it is something that has to work, at least on some level.

If there is a history of domestic abuse in the relationship or since the breakup, you may need to consider the use of intermediaries to aid communication, which initially may be solicitors, but this is rarely a long term solution. A friend or family member may be willing to assist or the use of written communication, such as emails sent to dedicated email addresses set up for the purpose can work well.

There are co-parenting apps you can use, such as 'myfamilywizard', which give you a method to communicate and have a diary system you can both access to keep up to date.

Ultimately, there is nothing better than respectful, calm, child focused discussions for communication but if this is not achievable, either not initially, or not ever due to the past history, then a safe way of communicating needs to be identified for the sake of the children.

Avoid heated or difficult discussions in the presence of the children and do not use the children to pass messages, as this has the effect of putting your children into the middle of a conflict, which is emotionally damaging and distressing for most children, even if they do not show it.



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I feel that my ex is trying to alienate the children from me. What can I do?

Alienation is thankfully rare, but when it does occur, the long-term psychological harm to the children involved can be considerable. Sometimes alienation occurs as a result of deliberate alienation, where the other parent purposefully tries to alienate the children from their other parent.

More commonly, but just as damaging for the children, is when it occurs indirectly, because the children are exposed to the feelings, anger and distress of the other parent.

Such indirect alienation can arise from a range of actions, such as hearing their parent speak negatively about their other parent to third parties, witnessing their parents' distress and sometimes declining health in the run up to contact happening, telling the children about the reasons for the marriage breaking down and putting all the blame on the other parent, for example for the financial difficulties arising from separation. This leads to children being reluctant to have contact and the 'alienating' parent will then 'hide behind' the children's reluctance to attend and blame it on the behaviour of the alienated parent.

It becomes a circular problem and the best thing you can do is to try to stop the deterioration early, whilst contact is still happening. It is important to understand that children experiencing the breakdown of their parents' relationship can become challenging and want to 'take sides', to some extent this is to be expected and is usually fairly short lived, but where direct or indirect alienation appears to be occurring, early intervention of the Court may be the way to resolve issues before they become entrenched.



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My ex was violent – does that affect the arrangements for the children?

The answer is maybe, depending on all the circumstances. It is certainly not the case that because there has been domestic abuse in a parental relationship in the past, that a Court will refuse to allow a relationship between the child and the parent.

There is no 'rule' that provides that contact must be minimal or supervised and it is not the intention or the purpose of the Family Court to refuse or limit contact as a form of punishment to a parent who has behaved badly in the relationship. Every situation is considered based on the specific facts of that family and with the welfare of the children at the centre of its decision making.

Violence in a relationship is harmful to the victim. It is often also harmful to the children, who can suffer directly or indirectly as a result of abuse or violence. Allegations or evidence of violence or abuse are certainly factors that a Court will take into account when considering what the best and safest arrangements are for contact between children and parent. The Court will have regard to all of the circumstances when determining the best arrangement going forward.



Common Questions about Parental Responsibility & Children

How long do cases involving children take to reach a conclusion?

Whilst we do not want to say 'how long is a piece of string' it sometimes feels that would be the best answer.

Some cases involving children can be resolved swiftly, sometimes even at the first hearing, and matters can be resolved in 6 – 8 weeks from the application being issued.

Other cases, particularly those involving tricky issues, such as allegations of abuse or alienation, can become entrenched, require expert assessment and evidence and can take months and sometimes years to resolve.

The Family Court has a principle that delay is not in the best interests of children and will avoid protracting matters unnecessarily, however sometimes the case evolves, or new evidence comes in. It is in the interests of the children for matters to continue to ensure that the final Order, when made, is the one that the Court believes will be in the best interests of the children.



Why choose Nash & Co?

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- We are transparent about costs
- We keep things simple and understandable
- We will always be straight with you and keep you informed
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