

# Child Matters

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The very fact that you have sought legal advice means that there may be a potential problem relating to your child or children. It may be as simple as wanting to change your child's name or as important as the Local Authority having concerns for your children's welfare. Whatever the problem, it is likely that it is regulated by The Children Act 1989.

Most people who seek legal advice in connection with children, do so to clarify where they stand on issues such as Residence and Contact (Custody and Access). However on this page you will also find information about other issues such as Change of Name deeds, parental responsibility and care and supervision proceedings.

### Residence and Contact

In normal circumstances, when a relationship breaks up, there is no dispute over where the children will live or when they will see the other party.

In circumstances such as this there is no need for any Court intervention and the informal agreement reached works for the benefit of all concerned, most especially for the children. The Children Act 1989 specifically states that unless it is necessary, there should be no order.

However, on those occasions that the parties cannot agree then there are 2 basic approaches to be examined.

Negotiation through legal representatives or the family mediation service to try and resolve the issues.

### Court action

The first option is an attempt to resolve any issues without the trauma and upset of court appearances. Indeed since 8th November 1999 before a party can obtain a Legal Aid Certificate in County Court proceedings, they and their former partner must attend an intake appointment locally with Cumbria Family Mediation Service.

This appointment does not mean that you must resolve your problems through mediation but, that there has to be a chance to see whether it would work for your situation. The cost of this initial appointment is free for both parties where one of them qualifies for Legal Aid.

Experience always shows that agreed arrangements tend to succeed better than Orders from a court that have been imposed on one or both of the parties.

Within this Practice we very much take the view that the welfare of your offspring will be best served by agreements rather than litigation.

Unfortunately, there are occasions where agreement can't be reached and it is necessary to issue proceedings. For unmarried couples this is usually in the Family Proceedings Court where specially trained Magistrates deal with the case and for married couples in the County Court where the matter is dealt with by a District Judge.

Generally speaking, whichever Court that proceedings are started in, the practicalities are the same.

You will be asked to complete a special form giving details of the parties and the children and what you are asking the court to do. The Court fixes a date for a Directions Hearing (usually 2-5 weeks later). At that hearing there will be a Court Welfare Officer who will meet the parties and try to resolve the issues. If successful, no further hearings are necessary. If unsuccessful, the Court directs that the Court Welfare Officer visits the parties and prepares a report. The parties generally will be asked to supply written statements to the Court in support of their position. Usually this takes 12 weeks. At the adjourned hearing the parties will be expected to reach agreement broadly in line with the Court Welfare Officer's recommendations. If that proves impossible, then a further date up to 3 months later is fixed for a full hearing when evidence will be heard on oath and a final decision taken. To reach this situation is quite rare and only a very small percentage of cases end up as contested matters.

### Parental Responsibility Agreements or Orders

These are particularly relevant to unmarried couples. As the law stands at present, the unmarried father does not automatically acquire parental rights. Generally this involves a degree of consultation between the parties upon major decisions affecting your child or children.

There are circumstances whereby it may be necessary to have those rights - if the parties agree between them that it is appropriate, then the parties complete a simple document which is signed generally before a Magistrate which makes it legally binding. Often during other proceedings where there has not been any agreement, the Court may deem it appropriate to make an order granting those rights.

#### Change of Name Deed

For many reasons a child may not have the same surname as one or both of its' parents. It is possible to enter into a deed to rectify that. However, if there is a Residence or Contact Order in force it can only be done with the agreement of both parties or by order of the Court.

#### Care and Supervision Proceedings

These are proceedings usually taken by a Local Authority to protect children who they believe are not being cared for appropriately. If you are served with any paperwork of this type it is extremely important you contact a solicitor. You will be entitled to Legal Aid as of right, regardless of your means.