

A guide to parental responsibility and issues concerning children



'Parental responsibility' is the legal term for the rights, duties, obligations and responsibilities that a parent has towards a child.

Parental responsibility recognises your legal status as a parent and entitles you to be consulted, informed and involved in the important decisions relating to your child.

Who has parental responsibility?

If you're married to the other parent of your child, both of you have parental responsibility. This won't change if you divorce or separate.

If you're not married to the other parent, the mother has sole parental responsibility from the birth of the child, although, if the father is named on the birth certificate and was present to register the birth, he automatically has parental responsibility from the date of registration.

If the father doesn't participate in the registration, he can only acquire parental registration by way of an agreement or if the court makes an order.

Step parents and non-parents with whom a child lives under a Court Order can also acquire parental responsibility in some circumstances.

Obtaining parental responsibility

If parental responsibility can be agreed, both parents will need to complete a parental responsibility agreement. This needs to be signed and witnessed at the local family or county court before it is sent for registration. We can help you to do this.

If you can't agree that the father should have parental responsibility and the assistance of a family mediator or family lawyer leaves this issue unresolved, he will need to make an application to the court.

In any application, for parental responsibility, the court will try to establish:

- + The nature of the father's relationship with their child

- + The level of the father's commitment to their child
- + The father's motivation for applying for parental responsibility and the mother's reasons for opposing it

It's important to remember that there's a very clear presumption in law that a father should have parental responsibility for his child.

Therefore any application by a father for parental responsibility is very likely to be granted.

Can my child's name be changed?

If both parents have parental responsibility, neither parent can take steps to change the child's name without the written consent of the other, or the permission of the court.

A mother with *sole* parental responsibility is entitled to change her child's surname, however, this is something that we would encourage you to seek advice about beforehand as this could have unexpected consequences. For example, if the father is not named on the birth certificate and the mother decides to change the name, this is likely to cause conflict.

In making a decision, the court will always decide what is in the child's best interests.

The main factor is always how involved the father is in his child's life. If they're in regular contact, it's unlikely that the court will sanction a change of surname.

Arrangements for children after your separation

If you've made arrangements for your children, there's no need to take further action. The court won't make an order unless one is needed.

If you're unable to agree arrangements for your children yourselves, you could consider family mediation to help resolve your matter. You can apply to the court to settle the arrangements however in most cases the court will expect you to have tried mediation first.

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You can make the following applications through the court:

- + A Child Arrangements Order to decide where a child is to live and with whom they should spend time or have other contact.
- + A Prohibited Steps Order which prevents somebody from taking a particular course of action in respect of your children
- + A Specific Issue Order to decide any particular issue concerning the children

When making a decision, the court will consider factors such as the wishes of your child, their emotional and educational needs, your capabilities as a parent, the risk of harm to your child and the effect of any change in their circumstances.

The above factors are referred to as the **welfare checklist**.

Contact with your children

Your child has a right to maintain a relationship with both parents. The court will presume that the involvement of both parents in your child's life is in the child's best interests.

Research demonstrates that children generally perform better if they have such involvement from both parents. Given this, any parent who is opposing the involvement of the other parent must show clear reasons why contact would put the child at risk of suffering harm.

What is the court procedure?

An application is made to the court. Either the court will make initial orders as to how they want the case to progress, or a first appointment is fixed which you must attend to see if an agreement can be reached.

A Children and Family Court Advisory and Support Service (CAFCASS) officer is generally available at the first appointment. CAFCASS is an organisation used by the court to advise it on the welfare of the child.

If you can't reach an agreement, the court will tell you how to proceed. This may include filing statements or requesting a report from a CAFCASS officer. A report can take 12-16 weeks to produce.

If a CAFCASS report is ordered, the case will be listed for a Dispute Resolution (DRA hearing). Whilst many cases are agreed at such a hearing, if matters are not agreed, a final hearing date will be set.

If the case involves allegations of domestic abuse, further hearings may well be required, potentially including a fact-finding hearing if the court has to determine whether or not domestic abuse has been a feature of the parties' relationship. These are complex hearings that can cause delay and see costs increasing quite substantially.

Further information

If you need to speak to a family solicitor about childcare proceedings, call **0117 325 2929** or visit barcankirby.co.uk.

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