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# CHILDREN AND SEPARATION

## Does your separation or divorce have to go to court?

Often court is the last place you want to be when you're going through a divorce or separation where there are children involved. That's why your solicitor will explain a range of methods for solving your dispute with your former partner outside of the courtroom. These include:

- mediation
- negotiation
- family dispute resolution
- arbitration
- collaborative law
- child-inclusive processes.

Many of these methods won't be appropriate where there has been domestic violence or there is a severe power imbalance between you and your former partner.

If you do end up in court, the good news is that court hearings in children's matters tend to be less adversarial than other areas of the law. However, because of the emotional strain involved, you should usually see the courts as a last port of call, unless there are extenuating circumstances like domestic violence.

## What are your responsibilities as a parent?

Your obligations to your children don't end with divorce or separation but continue until your child has turned 18.

As a parent you have a duty to make sure your children receive proper parenting, regardless of whether or not you were married. You also have a duty to promote the best interests of your children.

Children generally have the right to live with or spend time with each parent, unless they're at risk of abuse or neglect or it's otherwise not in their best interests. They also have the right to spend time with anyone else who's important to their care, welfare and development, such as their grandparents.

You should always try to agree with your children's other parent on long-term parenting issues. You can make any agreements formal by applying to the court for a legally binding 'consent order'. However, many parents choose to use a less formal parenting plan.

## What kind of orders can a court make?

The courts no longer talk of things like 'custody', 'guardianship', 'access' and 'contact'. Instead, they make formal parenting orders, which deal with things like:

- Who a child should live with
- When a child should spend time with the other parent
- Which parent is responsible for different aspects of a child's upbringing
- When parents need to consult each other over the child
- What parents need to do to change or vary orders.

It's usually best if you reach agreement on these matters with the other parent and the court simply makes them formal. However, if you can't agree you can apply to the court and ask it to make orders for you.

A court will only change orders when it's convinced it is warranted by a significant change in circumstances.

## What are the best interests of the child?

The starting point for any court decision about your children will always be the best interests of the child. Generally, the court presumes that it will be in their best interests for both parents to have equal parenting responsibility. A court usually won't order equal parenting responsibility where there has been abuse or violence.

A court will usually take the view that a child should know both parents. When a court considers what's in the best interests of the child, it also takes into account:

- The child's own views and the weight it should give those views depending on the child's age and maturity
- The child's relationship with both parents
- The willingness of both parents to involve each other in the child's upbringing



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- How any proposed change will affect the child
- Any practical difficulties parents will face in seeing the child
- The capacity of both parents to provide for all the child's needs, including intellectual and emotional needs
- The gender, maturity, lifestyle and cultural background of both the child and parents, including the right to enjoy their cultural background
- The responsibilities both parents have shown to parenthood
- Any history of violence, abuse or neglect.

## What if you've experienced violence?

A court makes an apprehended domestic violence order where there has been violence, threats or verbal abuse in a relationship and there is a reasonable fear it will continue. In serious or urgent cases, a police officer may make an application for an apprehended domestic violence order on someone's behalf.

If you feel under threat or are afraid of a former partner or family member you should tell the police immediately. Your solicitor can advise you on how to obtain an order to protect yourself and your family.

## The best way to resolve family disputes

Separation and divorce are often complicated and always stressful. But they become more complicated and stressful when children are involved.

If you're separating from your partner and you have children, you should always see your solicitor first. That way you will know your rights and obligations up front and you give yourself the best chance of reaching an understanding with your former partner that suits your children as well as you.

## What should you do in the short-term?

Before you go through any formal process it's usually in everyone's interests to reach a short-term agreement about the day-to-day practicalities of living apart. This includes deciding things such as where the children will live until you reach a final agreement, who will occupy the family home, how much time the children will spend with each parent, and who will pay child support.

It is usually easier to reach an agreement if both people accept that the relationship has ended. For this reason, many couples also find separation or reconciliation counselling can help at this time. If you can't reach an agreement your solicitor can help you obtain interim court orders to provide a workable temporary arrangement.

## How can a solicitor help?

If you're going through a divorce or separation which involves children, your solicitor can help in many ways, including:

- Advising you on your legal rights and obligations
- Advising you on the right forum for resolving your dispute
- Helping you negotiate parenting orders
- Reviewing any parenting agreement you've made
- Preparing you for court and arguing your case or briefing a barrister to help
- Helping you enforce or vary parenting orders
- Letting you know if you're entitled to Legal Aid support

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