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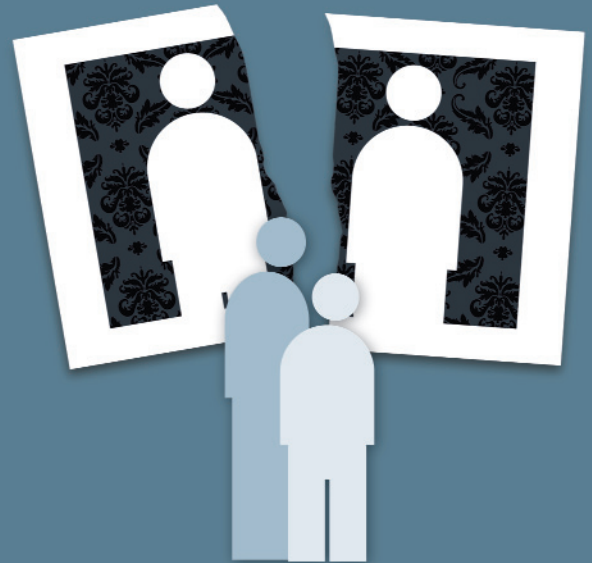
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## A guide to Child issues upon Separation

A Needham & James Family Law publication

## Welcome to Needham & James

One of the main concerns for any parent going through the trauma of relationship breakdown is the continued wellbeing of their children.

Our team of highly qualified family lawyers has extensive experience dealing with matters relating to disputes over children, both inside and outside the Court. We can help you reach a legally binding agreement about how arrangements for the care of your offspring will work in the future.



**Catherine Walker:** Needham & James' partner and head of department, Catherine has more than 20 years' experience in all aspects of family and child law. She is a member of the Law Society's Family Law Panel.

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**Carla Hull:** As a solicitor-advocate, Carla can represent clients in the higher courts. She is also one of the few people in the UK fully qualified in collaborative law. A partner at Needham & James, she advises on family law disputes, including cases with an international dimension, and is a member of Birmingham Law Society's International Committee.

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**Kate Brooks:** A former marketer for a blue chip company, Kate is now a solicitor with Needham & James. She specialises in all aspects of family law, including pre-nuptial agreements and cohabitation agreements.

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**Roger Austin:** A founding partner of Needham & James, Roger has built his reputation over 30 years as litigator and advocate. In terms of matrimonial law, he regularly prepares divorce cases and ancillary relief applications, including children's applications and represents clients in the courts.

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## Our approach

Child welfare lies at the heart of the UK's family legal framework, and the Children Act 1989 provides for the continuation of parental responsibility for divorcing and separating parents until a child reaches 18.

The same law also requires the Court to make only those orders that work in childrens' best interests.

Needham & James adheres to this ethos. Whilst recognising that this can be one of the toughest times to be a parent, we are keenly aware that the interests of the children should be considered paramount.

We, therefore, actively encourage parents in dispute to adopt a constructive and conciliatory approach in this respect.

Where appropriate, we can make referrals to mediation services so that partners can discuss any issues with an independent person with a view to reaching a mutually satisfactory agreement, and thus avoid Court proceedings.

Where there are fundamental differences in the parents' views, there is always the option of recourse to the Court for judgment.

Either way, we can help you to understand your parental rights and responsibilities, to make decisions and come to a final agreement.

We will also help debunk some of the myths around child maintenance and child custody, about how property and the family home might be dealt with as well as providing advice and support in dealing with finances.

Finally, as required, we will represent your interests at every stage of the Court process, making your case using our powerful advocacy skills.

## The Legal Process

Where parents are married at the time of the child's birth, in law, they are both automatically assumed to have parental responsibility.

Where parents are not married, the mother is always deemed to have parental responsibility. Following a change in the law unmarried fathers who have children born after 1 December 2003 and whose names are entered onto the birth certificate also have automatic parental responsibility.

Following separation or divorce, the Court usually leaves parents to agree their own domestic arrangements for the care of their children. In the case of divorce, however, the Court must be satisfied in writing that appropriate arrangements are in place before the divorce is granted.

When a separating couple cannot agree on any aspect of care provision, application can be made to the Court which has the power of intervention to resolve the dispute.

## The Principle of Paramountcy

When the Court is considering an application relating to the upbringing of a child, they have a duty to consider the welfare of the child as paramount.

The concept of welfare is not defined in the Children Act 1989 but the following factors which constitute the 'welfare checklist' are used as a basis by the Court to assess how the child's best interests can be served:

- the ascertainable wishes and feelings of the child – in light of his or her age and understanding
- the physical, emotional and educational needs of the child
- the likely effect of any change on the child's circumstances
- the age, sex, background and any other characteristics which the court considers to be relevant
- any harm which the child has suffered or is at risk of suffering;
- how capable the child's parents (and/or any other relevant person) are of meeting the child's needs
- the range of powers available to the court.

## The Court Process

Either or both parents can make an application to the Court for an order dealing with matters such as residence, access and contact, or in relation to a specific issue such as schooling or a name change.

Parents can also apply for a prohibitive steps order preventing a particular action by one parent such as removing a child or children from the other parent's care and control.

As part of the process, both parents are usually required to attend a conciliation appointment which provides an opportunity to confer with a Child and Family Court Advisory and Support Service (CAFCASS) officer.

Current trials running successfully in the Midlands, could lead to conciliation being introduced as the first stage in the process in order to give the parties the maximum opportunity to resolve matters without further recourse to the Court.

If round table discussions prove fruitless, the district judge or magistrate will order a welfare report to be prepared, drawing from the independent observations of CAFCASS on how the best interests of the children will be served.

A date for a final hearing is then set at which the Judge will make an informed decision about future arrangements, to which both parties will be required to adhere.

At all stages of the proceedings, if the couple can agree between themselves, they can halt the court process.

## Your questions answered

**Q.** Who can make Children Act applications to the Court?

**A.** Any interested party with concerns about the welfare of a child may make a Children Act application to the Court, including family members such as grandparents. However, in these special cases they may have to be granted leave of the Court before being allowed to do so.

**Q.** Can children express their own preferences about their future care?

**A.** Children and young people may apply to the Court for a Children Act order with the permission of the Court, provided they can demonstrate sufficient maturity and understanding as to the nature and consequences of making such an application.

Children Act applications often involve the use of a CAFCASS officer to provide the Court with an objective assessment of what is in the child's best interests and to ascertain the child's wishes and feelings.

However, it is concerning that in uncontested cases there is no formal way in which children can express their views even if they wish to do so.

**Q.** Can an unmarried father take on legal parental responsibility?

**A.** Unmarried fathers who are not named on the birth certificate have three options if they wish to be considered as having parental responsibility in the eyes of the law: they can marry the mother, enter a voluntary agreement, or they can apply to the Court for an order.

**Q.** My partner is violent – will the Court still insist that the children visit him?

**A.** The general view is that it is in the best interest of children of all ages to see their absent parent for a reasonable amount of time each week, to stay with them overnight, and to go on holiday with them. The Court will normally uphold this right, even when the other parent strongly disagrees. However, in the event of domestic violence, the Court makes a special case and the potential risk to the child will need to be assessed professionally. In some cases it will be appropriate for social services to be involved. This decision could be considered by the Court, the parties' legal representatives and CAFCASS.

**Q.** What is the process of securing a contribution for the children's upkeep?

**A.** Upon separation, child maintenance can be agreed between the parents. If there is a dispute, or if the parent with whom the children is living is on income support an application may be made to the Child Support Agency (CSA), who follow a formula for calculating what an absent parent should pay, based upon his or her financial circumstances and the number of children. From 2010 or 2011 it is expected that the CSA will be replaced with the Child Maintenance and Enforcement Commission (CMEC) which will have extended powers and use a different formula to assess the level of payments.

## Useful sources of further information:

Advicenow family mediation: [www.advicenow.org.uk](http://www.advicenow.org.uk)

Citizens Advice Bureau: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Collaborative Law: [www.collablaw.org.uk](http://www.collablaw.org.uk)

Coventry & Warwickshire Family Mediation: [www.cwfm.org.uk](http://www.cwfm.org.uk)

Family Mediation Helpline: [www.familymediationhelpline.co.uk](http://www.familymediationhelpline.co.uk)

Her Majesty's Court Service: [www.hmcs.gov.uk](http://www.hmcs.gov.uk)

The Law Society: [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

Parentline: [www.parentlineplus.org.uk](http://www.parentlineplus.org.uk)

Relate: [www.relate.org.uk](http://www.relate.org.uk)

Resolution: [www.resolution.org.uk](http://www.resolution.org.uk)

'This Advisory leaflet has been prepared for general interest and it is important to obtain professional advice on specific issues'