



A survival guide to

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# Sorting out arrangements for your children

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**advice**now

Making sense of the law and your rights



## Who is this guide for?

This guide is for parents who do not live together and need to make arrangements for their children. We want to help if you have just split up with your children's other parent and are having to make arrangements for the first time, or if you have been parenting apart for years but have hit a problem or now need to come up with a new plan.

Changes to legal aid mean that most people cannot get free or subsidised help from solicitors unless there has been abuse within the relationship. We know that many people will not be able to afford to get a lot of help from solicitors. This guide aims to help you to find ways to agree arrangements between you and make arrangements that work well for everybody.

If you are just in the process of splitting up this may feel impossible. When you are feeling so hurt and angry, it can be very hard to imagine a future that feels OK. It won't come right overnight, but you will get there.

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## If you are going through a break up

If you are going through a break up, you are going through a very stressful time. It's hard being a parent. You may be feeling that you can't cope or you want it all to go away. Most people have days when they feel like they want to go back to being a child themselves. This makes it hard to make any decisions. Be kind to yourself.

There are a number of organisations who offer support and help for adults and children when they are dealing with family difficulties. See **More help and advice** on page 28.

### Things you can do to help the children

- Keep explaining to the children that this is between the adults. It is not their fault. And that you know that this is hard for them and you are sorry.
- Tell them repeatedly that you both still love them and you will always be their family.
- It's easier said than done, but try not to blame the other parent or talk about them in an unhelpful way in front of your children. Find other ways to blow off steam.
- Give loads of extra cuddles.
- Let the children's schools and anyone else who looks after them know – they are likely to need a bit of extra care and attention from everybody for a bit.

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## Alex's story

Mel and I split up after 8 years. We have two small girls together. We had agreed that I'd pick them up from school one night a week and give them their tea and they would stay with me overnight on Saturdays. It was really hard to start with. When I went to pick them up they would cry, or say they didn't want to come, and when they did get to my flat they said they wanted to go home, they wanted mum. It made me really sad. And I blamed Mel. And when it happened for the third or fourth time, I'm ashamed to say I shouted at them and went home by myself.

My mum pointed out that it didn't sound like I'd helped the situation. And that the girls were probably feeling really sad and confused. I realised I hadn't really thought about how they were feeling. I sent Mel a text saying I was really sorry and that I realised I'd been a bit of an idiot. Mel sent me a reply saying the girls have been crying a lot with her too, and asking for me. We realised we needed to come up with a plan to reassure and comfort them, and to take it slowly at first.

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## If there has been domestic abuse or if the children have been harmed

If there has been violence or other forms of abuse between you, it may not be a good idea for you to try and sort things out between yourselves. It is best to start by getting some help from a good family solicitor. You can find one on the Resolution website: [www.resolution.org.uk/findamember](http://www.resolution.org.uk/findamember)

They will be able to help you work out what the best thing for you to do is, and if you can do it yourself or if you will need legal help. Don't be afraid to phone around and compare prices or see who gives free first appointments.

You may be entitled to free or subsidised legal help – you can check by using the legal aid calculator ([www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid)). If you are, look for a family solicitor who can take legal aid cases.

If you have to take an issue to court, you will not have to show that you have first looked at using a family mediation service.

# What do you need to sort out?

## What do you need to sort out?

There are three major things to sort out.

- 1 Where the children will live.
- 2 When and how you will ensure they have plenty of time with both parents.
- 3 How you will continue to pay for all the things they need.

There are no set answers to these questions. You have to decide between you what will be best for your children and for you both.

Sometimes where the children will live and with who is obvious to you both, but often this is a really hard decision. The most important thing is for you both to be clear that you are making the decision based on what is right for your children at this point in their lives, rather than trying to make things fair between the two of you.

You may be thinking of an arrangement where the children live part of the week with one of you and the rest of the week with the other. This is often called 'shared care' and it can be very successful. Be aware though that if you are thinking that it is only 'fair' if your children live half of the week with each of you, you may accidentally be putting your needs ahead of theirs.

Shared care arrangements seem to be most successful where parents live near each other, both have enough space at home and time (or money) to spend on childcare, and when they can be co-operative and communicate well on day to day issues (for example, whether your child's PE kit/French textbook etc is in the right home when needed). It is also important to have clear agreements about who is responsible for what



(for example, who will be responsible for healthcare appointments, making sure their shoes still fit, etc).

For other families, it may be best for the children to live with one parent most or all of the time, and see their other parent regularly. For most children and young people regularity and reliability is very important.

You may need to think about:

- how much stability your children need at their age and with their personalities,
- who will have the most time for parenting (and on what days),
- where there is enough space,
- how they would get to and from school, their friends' houses, etc.
- If you have more than one child, will it be important to them that they both do the same thing (for example, both go to stay with Dad on a Sunday night), or would they enjoy the opportunity to get one of you to themselves sometimes.

If your children are a bit older, it is usually a good idea to discuss the options with them. Don't ask them to choose where they live though – that is likely to make them feel like they have to choose between you. Making a decision that is genuinely in their best interests takes a great deal of maturity – it's hard enough for the adults.

It's a very good idea to agree what the rules are and make sure they are the same at each house. For example, for teenagers you might agree when bedtime is, how late they can stay out with their friends, how long can they spend on the computer, will homework be checked, how much pocket money will they get (and who will give it to them). This prevents them from playing you off against each other, and means you don't have to worry that it's more fun with their other parent.

Bear in mind whatever arrangements you come to are unlikely to last forever. Most people need to reorganise things a few times as the children get older to accommodate their social lives or new clubs they want to join. Or there may be changes for you the adults, perhaps because of a new job or changes to your home life.

**If your child spends more time with the other parent, it doesn't mean you are less of a parent or have less of a say in important decisions about them.** This is because most parents have something called 'Parental Responsibility'. This is a legal term for all the rights and duties a parent has towards a child. It means you should be consulted about important things like which school they should go to, or decisions concerning your child's health. (It does not give either parent the right to interfere unreasonably or unnecessarily in care arrangements put in place by one parent.)

## Do I have Parental Responsibility?

All mums have Parental Responsibility. All dads who are married to the mum or have been mentioned on a birth certificate issued after 1st December 2003 have Parental Responsibility. If you have adopted your child or have a residence order, you have Parental Responsibility. If you are a Second female parent and your child was conceived on or after 6th April 2009 and you were on the birth certificate you will have Parental Responsibility. Or, you have Parental Responsibility if you have formed a Civil Partnership with the child's biological mother.

If you don't have automatic Parental Responsibility, you can get it by making and signing a parental responsibility agreement or by applying to the court for an order. See the Advicenow website for details – [www.advicenow.org.uk](http://www.advicenow.org.uk)

What do you need to sort out?

The government has created a guide called 'Putting your children first' which aims to help separating parents make arrangements about their children. You can download it at: [www.cafcass.gov.uk/media/199238/cafcass\\_factsheet\\_private\\_law\\_april\\_2014.pdf](http://www.cafcass.gov.uk/media/199238/cafcass_factsheet_private_law_april_2014.pdf)

## How will you both pay for all the stuff they need?

Once you have worked out where the children will be living, you need to work out how you are both going to continue to pay for everything the child needs. All parents have a duty to pay for the things their children need until they are 16, or up until they are 20 if they are still doing their A levels or something equivalent. This is usually called child maintenance or child support.

Again, it's usually best to try and come to an agreement between yourselves. You could agree that the parent who the children won't be living with (or who will have them staying for less time each week), pays the other a certain amount of money each week or month. Or you could agree that they will pay bills or buy particular things the child needs instead. If the child will be living with each of you equally, how will you divide the cost of things like clothes, shoes, school lunches, pocket money, travel, and after school or weekend activities?

If you are struggling to make your own agreement, it might be useful to see how much the government would make you pay. There is a calculator on the Child Maintenance options website: [www.cmoptions.org/en/calculator/calculator.asp](http://www.cmoptions.org/en/calculator/calculator.asp)

## Talking to the children about arrangements

- Make it clear to your children that you want to help them to keep a loving and close relationship with both of you and they will never be asked to choose between you.
- Make it clear that you are the adults and you will make the decisions, but that you want their help to think about how things would feel for them.
- Listen to any suggestions they make. Even if you can immediately think of 10 reasons why it's a bad idea, resist the impulse to say so. Instead let them see you are giving it some serious thought.

If you still cannot agree you could use the Child Maintenance Service. They will contact the other parent and work out what they should pay. If the other parent doesn't pay, Child Maintenance Service can make them pay. However both parents have to pay a charge for this service. Also beware it can take a long time for things to get sorted out using this service.

If you would like some help and advice to work out the best way to arrange it for you – you could call the Child Maintenance Options helpline. Gingerbread's helpline and website can also help you deal with a whole host of child maintenance issues (see **More help and advice** on page 28).

# What the law says

Although it is best to try and reach agreed solutions without needing to go to court if you can, it does sometimes help to know how courts look at these decisions.

The law says that courts should not make court orders about children, unless it is clearly better for the child if they do. This is why courts will encourage parents to work out solutions themselves if it is possible. The law has changed so that now most people have to show that they have looked at using a family mediation service to reach agreements before you can take an issue like this to court. See our guide **Sorting out arrangements after you have split up – Could Family Mediation help you?** for more information.

When the courts are asked to make a decision about the children the first consideration is what is best for the child, rather than what either of the parents want. The starting point is always that it is important for children to have a good relationship with both of their parents (unless that would not be safe). It doesn't matter if one parent does not give any money to support the child.



What the law says

They also consider:

- The child's wishes and feelings (bearing in mind age and understanding). In practice, this means that once children get to their teens, or perhaps a little earlier, their wishes count for a lot. (This doesn't mean that the court automatically does what the child wants. But the court does take their views and wishes into account when deciding what is best for them.)
- Their physical, emotional and educational needs.
- The likely effect on the child of any change of circumstances.
- The child's age, sex, background and any other relevant characteristics.
- Any harm or risk of harm to the child.
- Ability of the parents to give the child what they need.

# How are you going to sort them out?

How are you going to sort them out?

Going to court can often cause relationships to be permanently damaged, and leave the adults involved hurt, stressed, and poorer. The money you would spend on going to court would nearly always be better spent making your children's lives and your own more comfortable. Children can often be upset too, even if you are careful not to involve them directly.

So it is best to come to agreements:

- 1 between yourselves, or
- 2 using a family mediation service, or
- 3 using solicitors to negotiate on your behalf.

Whichever method you use, it is important to remember that you will both need to compromise.

## Option 1 Agreeing it yourselves

If you have recently split up or if you have a lot of history together, you will need to find ways to discuss this without all your emotions getting in the way. This might be to meet to discuss just this, perhaps in neutral territory. Some people manage to do it over email.

- Agree in advance with the other parent how and when you will try to come to agreements. For example, will you find a date to meet on neutral territory, do it over email, or will you use a family mediation service? Nobody likes to feel ambushed and you have a much better chance of agreeing something if you both arrive at it feeling that you have chosen this approach and you want it to succeed.

- If you have a lot to discuss try and agree what is urgent and deal with that first. You may have different priorities, but dealing first with the things that are most worrying for each of you can make things go much more smoothly. If you have to discuss arrangements for the children and finances consider dealing with them separately – maybe at separate meetings. Do not feel that everything needs to be resolved immediately.
- Before you discuss it, think about what you want to agree. What is best for the children? And then work out what you would like and where you can be flexible. If you know what their other parent might feel about that, think if there's anything you can do to make it more appealing for them.
- Try to stick to the point as much as you can. If you are meeting in person, having the main points written down on a piece of paper can be helpful and can give you something to focus on if you feel yourself starting to get upset or angry, or if your ex-partner strays from the point. If you try to do it over email, do bear in mind that it is even easier to take offence when you can't see expressions or hear tone of voice, so keeping yourself calm and sticking to the point is even more important.

## Option 2

### Using Family Mediation

This is where you meet together with the other parent and a mediator, who has been properly trained to help you put your feelings aside and focus on the issues that need to be sorted out. The mediator won't take sides or decide what is fair for you – they are simply there to help your discussions.

Many people say that a positive side-effect of mediation is that it helps them to communicate again, which – given that you are going to continue to be your children's parents forever – can only be a really good thing.

Legal aid is still available for mediation so ask if you qualify. If you do not qualify you will have to pay for family mediation. Prices start at around £80 each for each session and most people come to the agreements they need for their children in 1–2 sessions. (If you are splitting up, you could use family mediation to sort out all your issues, in which case expect it to take 2–4 sessions). When you are looking for a mediator, don't be afraid to phone around and compare prices. (Whilst the fees are usually charged per person, it is open to you and the other parent to decide who will actually pay or how the cost will be shared – for example where one of you has a higher income.)

If you are entitled to legal aid (that is help from the government to pay for legal advice) you can get mediation for free. You can check if you are by using the legal aid calculator – [www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid)

For more information about Family Mediation and how to find a good mediator, see **Sorting out arrangements after you have split up – Could Family Mediation help you?**

## Option 3

### Using Solicitors to negotiate for you

Your other option is to use a solicitor to negotiate on your behalf. This is likely to be quite a bit more expensive than mediation. It can still be relatively quick and can avoid all the expense and stress of going to court. If you have to sort out issues around money or property, it can feel a lot safer to have an expert on your side, making your case for you. You can find a good family solicitor who believes in a constructive, non-confrontational approach on Resolution's website: [www.resolution.org.uk/findamember](http://www.resolution.org.uk/findamember). Don't be afraid to phone around and compare prices.

If you are entitled to legal aid (that is help from the government to pay for legal advice) it will be much cheaper. You can check if you can get legal aid here: [www.gov.uk/check-legal-aid](http://www.gov.uk/check-legal-aid)



How are you going to sort them out?

# What to do when you have reached an agreement

If you have managed to come to an agreement, well done! You don't have to put it in writing (unless you are divorcing or ending a civil partnership) but it is a good idea as it will help you avoid confusion or disagreement later on. Consider including in your agreement an agreement about how you might address issues that may arise in the future – for example, by talking to each other and if that doesn't resolve the issue, by using mediation.

What to do when you have reached an agreement



# What if we can't agree...?

There are only really five reasons to take arrangements for children to court. They are:

- 1 If you have real worries about your child's safety or welfare with the other parent.
- 2 If one of you feels unsafe or intimidated.
- 3 If one of you has been preventing the other parent from seeing the child. Courts now have powers to enforce court orders about this.
- 4 Maybe you haven't been able to get a suitable response from your partner. Sometimes a court application can help to get a discussion going. Often the court process will stop after the first appointment, as an agreement can be reached.
- 5 The parent with care of the children has moved and cannot be located. The court can assist in finding and then contacting the other parent if they are within England & Wales. If you are concerned that they may be moving outside of the country you need to consider seeking urgent legal advice.

If your situation isn't this bad, it is probably best to consider trying again – perhaps using another method like family mediation or solicitors to negotiate on your behalf.

Sometimes people think they want to go to court for the wrong reasons. Maybe you don't want to compromise and think the court will give you everything you want. But this is very unlikely – courts don't side with one person or another but try to find a solution that everyone can work with. Often, deep down, people hope the court will 'reward' them or 'punish' the other parent for their past behaviour. If this is what you want, you will be disappointed.

Parents also sometimes want to take their dispute to court because they think fighting every step of the way will show the children how much they love them. But going to court really isn't the best way of doing that. Making compromises to ensure the new situation will give the children what they need, even where that is painful for you, is much more likely to be effective.

Before you think of taking it any further – now is the time to get some legal advice. They will be able to help you work out if going to court is a good idea. Some of the organisations on the **More help and advice** page can give you advice or you can find a good family solicitor on Resolution's website: [www.resolution.org.uk/findamember](http://www.resolution.org.uk/findamember).

What if we can't agree...?

Another option is to speak to a barrister who is qualified to represent members of the public directly. There are some limits on what a barrister can do outside of representation at court but it is often a cheaper option if you just want to get some advice or are comfortable dealing with some stuff yourself. The details of appropriately qualified barristers and an explanation of the way the system works can be found on the Bar Council's website: [www.barcouncil.org.uk/instructing-a-barrister/public-access](http://www.barcouncil.org.uk/instructing-a-barrister/public-access). Don't be afraid to phone around to compare prices or see if you can find someone who will give you the first appointment for free.

What if we can't agree...?

### Reasons to avoid going to court if you can

- It will cost you a fortune. You can quite quickly run up a bill of several thousand pounds.
- It will probably make it harder to have a relationship as parents afterwards. To make your case both of you will emphasise and even exaggerate your positions. After that, it can be hard to get back to a co-operative relationship as parents.
- It will be very stressful and the children may feel stressed too.
- The process will probably feel out of your control. Once a case has got going people often feel a bit powerless.

# If you have to go to court

The family court can decide who the children live with and how and when they see the other adults. These orders are called child arrangements orders. The court can also make orders about specific issues (for example, if you cannot agree about where they are going to go to school or whether the child should have an operation) and things that parents may not do, like take the child abroad (a 'prohibited steps' order).

We have produced a separate guide – **How to apply for a court order about the arrangements for your children without the help of a lawyer.**

Before you can go to court you will need to show that you have been to a Mediation Information and Assessment Meeting to explore whether you could come to an agreement through mediation instead. This is because the court will only make orders where you can't sort the matter yourselves, either on your own or using a mediation service. For more information see **Sorting out arrangements after you have split up – Could Family Mediation help you?** on Advicenow website.

If you have not been able to reach an agreement yourself or with the help of the mediator, then the next step is to issue a court application. This can be done by completing C100 form outlining what order you are asking the court to make and why. There is a fee of £240.



Once you have applied to the court, it will generally fix a first hearing (you may hear this called a First Hearing Dispute Resolution Appointment). Prior to the hearing you and the other parent should be contacted by Cafcass so that they can check if there are any particular issues that the court may need to be aware of. This will include checks with social services and criminal records. The first hearing is used by the judge to explore the issues and find out whether there is some scope for agreement. The judge may ask a Cafcass Officer (also known as a family court advisor) to help with this. A large number of cases get sorted out at this stage, and often there is no need for an actual order, though the judge will generally record the agreement.

If you can't agree at this stage, the judge will set out the timetable for what will happen next. The Judge may refer both of you to consider mediation, if this has not been fully explored previously. He or she could order that a different Cafcass

**If you have to go to court**

Officer investigates and writes a report. If the family has been known to social services it may be that the Local Authority is asked to undertake the investigation. The Cafcass Officer will then arrange to see all the adults and the children involved; sometimes he or she will also speak to teachers and other adults who know the children. The preparation of this report could take between 12–15 weeks and therefore the case would be adjourned and another hearing date be given. The judge will use the report to help him/her make a decision on what is best for the children at the next hearing.

### What can I do if the other person doesn't obey a contact order?

Contact orders made since December 2008 now include a 'warning notice'. If the other person disobeys an order with a warning notice (for example, by unreasonably preventing contact) you can apply to the court for an 'enforcement order'. The enforcement order allows the court to impose penalties. They could make the person who has prevented contact do community service or pay compensation if they have caused you to lose money. You can find more information about this in leaflet CB5 'Applications related to enforcement of a contact order' from HM Courts and Tribunals Service (see **More help and advice** on page 28).

If you have an old contact order made before December 8th 2008 and the order is disobeyed, you can go back to the court and ask for a 'warning notice' to be added.

If you have  
to go to  
court

# Making your new arrangements work for you

We asked people who had sorted out arrangements for their children what advice they would give to other people.

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I think it's best not to show the kids how angry you are with your ex. The best advice I was given was to write it down when I was angry or frustrated with him so I didn't dump it on the kids and they didn't have to see me banging pots and pans or stamping round the house after he'd called.

**Jane**

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“ You've both got to be flexible; you won't generally know about things like their friends' birthday parties a long way in advance. To start with I felt like seeing me should come above everything else – but then I realised it wasn't fair for them to miss out. So we both try and be flexible and swap things about. Some weeks I don't see them as much as I'd like to, but there's always next week.

**Paul**

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“ When we were working out when we'd each see the children, we also agreed what the routine and rules were, and made sure they were the same at both homes. It meant neither of us got paranoid that they liked it more at one place or another. It was particularly helpful when our daughter started trying to play us off against each other.

**Flic**

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I realised how confused I would be if I never knew where I was going after school. We made a chart for both our flats to show what was happening each day and discussed it at breakfast each morning.

**Dev**

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Making your new arrangements work for you

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The handovers are really hard at first. We could barely look at each other. But I tried hard to be nice about it. And it helped Amy, my daughter, that we could speak to each other, and I could come to the door.

**Sarah**



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“ I used to ask my boys what they’d done when they came home from seeing their dad but they always seemed really defensive – like I’d be hurt if they’d had fun. So I changed tack. I asked their Dad what they’d done and showed great enthusiasm at his replies. Very soon they were proudly bringing home stories, pictures, even some biscuits they’d made.

**Theresa**

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I do a share of the ferrying the girls around even when it’s not ‘my time’ to see them. It makes things easier for everyone and it’s nice to see them even if it’s only for 15 minutes in the car. They tell me all about what’s going on at school or what happened at swimming that they never mention at the weekend.

**Ciro**

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Making your new arrangements work for you

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I made the mistake at first of always trying to take the children out for a treat. I wanted it to be special. But actually it was a bit much for them and for me. They like being at home or in the park too – just us being together.

**Steve**



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“It really bugged me when their dad didn't bring them back on time. Or when he was late turning up and they were all ready in their coats. But now he just texts me if he's running late, and it's okay.”

**Neelam**

“Children have their own lives too. It took us a while to strike the right balance between ensuring we have enough time together and making sure the children still get to do the things they want to – like going to football and seeing their friends.”

**Jon**

“I think the boys used to be too scared to mention their Dad to me or me to him. I realised this was stressful and weird for them so started to find ways to mention their Dad and his new partner without asking them anything. It felt weird at first but it did the job. They don't feel they can't talk about stuff anymore.”

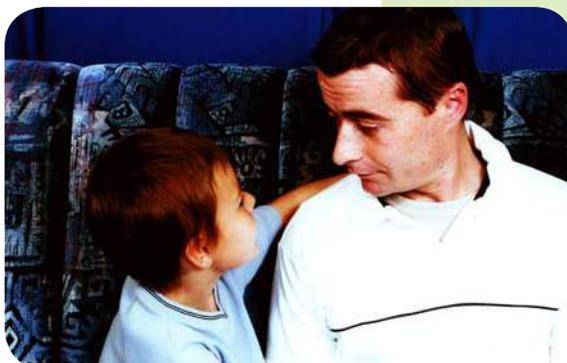
**Kas**

“The children used to come back from weekends with Mark all hyper and tearful. I was really worried about it. But my sister said her kids were like that anyway if they'd been out for the day, and I realised she was right. I talked to Mark about it and he agreed to try to get them to chill a bit for the last hour or so.”

**Kath**

“Children know when you're trying to buy their love. And they exploit it! We found that they were playing us off against each other a bit, and we fell for it and started to buy bigger and bigger presents for them. Now we email each other to agree what we'll each do for xmas and birthdays.”

**Tim**



**Making your new arrangements work for you**

# Common problems

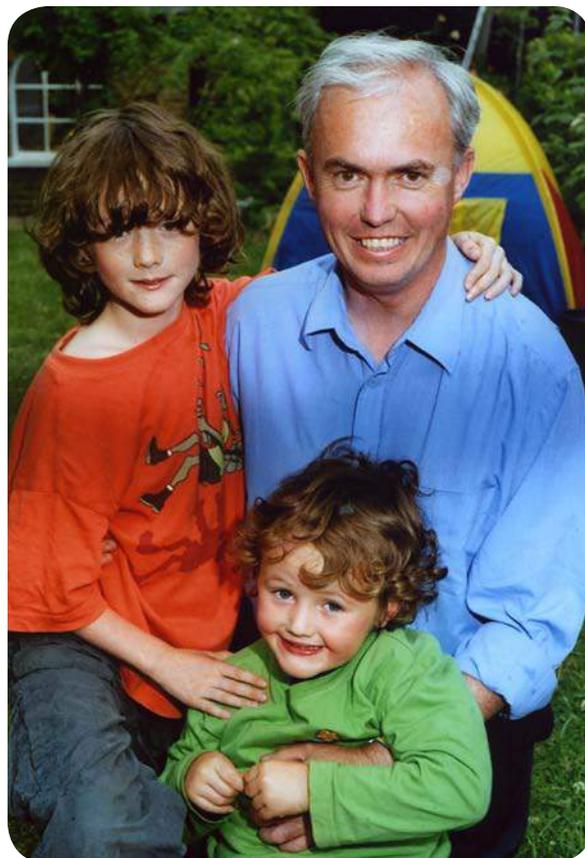
## Your child says they want to live with their other parent

This is very hard to deal with. If you are the parent that has been looking after them up to now, this will usually feel horrible. The first thing you need to do is try to deal with your feelings about it. Remember this happens at some stage in lots of families. It's human nature to wonder if the grass is greener. It isn't a reflection of any failing on your part. In fact, it's more likely to be a reflection of your success in enabling your child to maintain a good relationship with their other parent.

Once you've got your feelings a bit under control, you need to deal with two things: your child's feelings and wishes about it and then whether it's actually a good idea.

Your child may already feel guilty for wanting it and that's probably not helpful. If you can, it will be helpful to tell them you understand, and that wanting to live with their other parent is a reasonable thing to want. You might think there are lots of reasons why it's a bad idea, but it's important to show your child that you are listening to them and considering it. Discussing it calmly will also help you work out if this is just a whim or something they have been thinking about more seriously.

If they can manage it, try and have a grown up chat with them, and make a list of the reasons they want to move. Then, together, you could look at all the possible solutions. This might include increasing the amount of time they spend with their other parent, or changing how things work with you, as well as going to live with their other parent.



If you have a good relationship with their other parent you could do this all together. If you don't, it might be best for one of you to have this conversation with the child and then contact the other to discuss it. In this case, be careful not to agree anything with the child until you have discussed it with the other parent – instead just explore possibilities. One way to do it is to approach it again as if you are making the decision for the first time. Just like then, your priority is to make sure your child gets appropriate care. If you are struggling to come to a new agreement a family mediation service may be able to help.

If you do decide that the child will be properly cared for by their other parent and the move won't be too disruptive, consider making a sort of contract between both parents and the child. Many people in this situation have found this helpful. This might say that the child will live with the other parent for a trial period (say 6 months or a year), when they would visit or stay overnight with you, what will happen in the holidays, and when they'll speak on the phone etc. It can also be helpful to include that the important rules for the child will remain the same and specify what they are. You should also agree what would happen if they change their mind and make it clear that it is ok for them to do that.

If your child is over 11 or 12 their wishes would be taken into account if it was taken to court (although that doesn't mean they would automatically get what they say they want). Where there are already settled arrangements for children the Court will be reluctant to change them if there are no concerns about the care they are receiving. Look again at **page 9**.

## Your child lives with the other parent and now says they want to come to live with you

When this happens it can feel really nice. It's very flattering to think they would prefer to live with you. But try not to see this as winning or a reason to start having another epic battle with your ex. You need to think about whether this is really the right thing for both you and the child.

The first thing is to ask them why they would like to live with you. Before you take it seriously you need to be sure that it is for good reasons. If they mainly see you on weekends or holidays, they may think it will always be like it is at weekends if they live with you. But they will still have to go to school, and do

their homework, and go to bed at a reasonable time if they lived with you during the week. You will sometimes get tired and cross with them or have to lay down the law just like their other parent. Or it may be that there are issues in the other parent's home that the child wants addressed and this is their way of bringing them up.

If the child has good reasons, you need to work out if and how you can provide all the things that your son/daughter needs as well as the parent they are living with now. Would they be able to stay at the same school and clubs? If no, would they be willing to move? Children do not always think through all of the consequences of what they wish for.

You also need to work out if you really want to take this step – if it is not right for you, perhaps because of other factors in your life, then it may fail and cause more harm than good. If you do want to take this forward, it is best to approach it as delicately and co-operatively as you can. Contact the other parent and see if you can work together to come to a solution.

It may be that the best option is just to change things a bit as that would avoid the disruption of the child having to get used to a new home and family life.

If your child would just like to spend more time with you, would it be better to change the arrangements so they see you more often, or stay over for longer? While a shared care arrangement might not have been best to start with, are they big enough for it to work better now (**see page 6**)? Or would it really be best if they moved to live with you?

### Common problems

Many families who have been through this have found it useful to draw up a sort of contract between the two parents and the child. This might say that the child will live with the other parent for a trial period (say 6 months or a year), when they would visit or stay overnight with the parent they won't be living with, what will happen in the holidays, and when they will speak on the phone etc. It can also be really helpful if it includes that the rules for the child/teenager will remain the same and specifies what they are. You should also agree what would happen if they change their mind.

If you can come to an agreement, you don't need to go to court, even if you had a residence order that said the child should live with the other parent. You only need to involve the courts when you cannot agree.

If it isn't going to be possible to work together to come to a decision on this, even with help like family mediation, then you need to think about whether you should apply to court for a child arrangements order. If your child is under 12 or 13 years old then the court is unlikely to decide that they should live with you just based on what your child says they want, if there are no reasons to be concerned about the care they are receiving from their other parent.

### **Your child doesn't want to see their other parent**

It can be tempting to take children's unwillingness to see their other parent at face value. They may be upset or distressed at the idea and your instinct as a loving parent is often to support them in their decision and help them solve their problem. But children's feelings about seeing the parent they don't live with are rarely simple. They are often complicated by feelings of loyalty to you, or feelings of sadness and hurt at the end of your relationship that they can't move through. Children often use



avoidance of the other parent to avoid dealing with difficult emotions so if you can, you need to try to help them address these feelings.

Find out what the problem is: maybe it's something that can be solved. Sometimes it is something as simple as not being allowed to take possessions from one home to the other, having different rules, or (for small children) there being something in the other home that for some reason frightens them. Or sometimes, particularly if you have recently split up, it's because the arrangements are asking them to get used to a lot at once. Maybe they don't want to stay the night yet – to start with you could just do short visits, or maybe there's someone else they're not ready to see (a new partner, or other family member for example). Or maybe, they are finding the awkwardness between you and their other parent as you hand them over just too painful.

If the only answer you are getting is along the lines of “I just don’t want to” then you may have to leave it for now, but continue to be aware it may be that they are trying to please you. You should aim to make it as easy as possible for your child to change their mind.

Discuss it with their other parent. Make sure that they understand that you are trying to help the situation. If you can, agree a plan to try to deal with it. That could include things like:

- Reminding the child that you split up because your relationship had stopped being happy – it wasn’t that either of you stopped loving them or being a good parent.
- Both of you trying to make sure you don’t talk disparagingly about each other, in fact try to consciously talk each other up.
- Find other ways for their other parent to stay in touch in the mean time – emails, texts, phone calls, short visits or perhaps things like giving them a lift to football/ballet/Brownies etc.
- Look out for a problem that their other parent might be able to help them with – perhaps homework, mending their bike or a broken toy – anything that might give their other parent a useful role.
- Maybe it would help them to speak to someone else – another member of the family, a family friend or a professional.

## Your child doesn’t want to come to see you

This is usually really painful and to make matters worse it feels completely out of your control. It’s often tempting to blame their other parent – particularly if you had an acrimonious break up. But this isn’t a helpful road to go down. It’s possible that your children are saying they don’t want to come out of loyalty to their other parent, but that doesn’t mean that their other parent planned it, caused it, or had any conscious role in it. Even if their other parent may not have been blameless, you are unlikely to help the situation by berating him or her and may only end up upsetting the children and making it harder for them to change their mind.

Is it possible that the child is feeling hurt and angry with you? Sometimes children may have witnessed unappealing or even frightening scenes during a break up which may have made them uncomfortable and confused. If it is possible, apologise for them. Remind them that everybody does silly things when they are angry or feeling really sad.

Or it might be a much simpler problem – for example, maybe they want to do something else on that day.

- Try to talk/write to your ex about it calmly. Do not accuse him/her of turning them against you. Ask for his/her help in solving the problem. Make it clear that you are willing to be flexible if it makes things easier for the child. For example, if it’s that the child is anxious about staying the night or missing the other parent, you could start by just seeing them for a few hours until you have all got used to it. If they don’t like something else, it can be changed.

Common problems

- It's probably not a good idea to ask the other parent to force the child to see you. Instead ask them to help you talk to the child about why they don't want to. It's very hard to force even a small child to do anything against their wishes, and it certainly isn't going to make for an enjoyable day.
- Could you ask the other parent to find ways of talking about you positively?
- See if you can find methods of communicating directly with the children that will show them that you love them and are thinking of them, without putting pressure on them to change their mind. Perhaps email, postcards, quick texts, phone calls, computer games you can play together over the internet, anything that might suit your child.
- Remind them that you split up with their father/mother because the adult relationship was unhappy, not because you didn't love them.
- It never hurts to tell them you love them and think they are amazing and you always will.

## The other parent really is blocking you from seeing your children

This is awful. In this situation people tend to feel incredibly frustrated and angry, and rightly so. People tend to want to take the other parent to court, and this does sometimes help but it's far from the magic cure you would hope for. Again, it's best used only as a last resort.

If you haven't already tried it, it might be best to approach the other parent as if you don't think the problem is them. Write or speak to them asking for the help as described above.

Another option is to see if the other parent will consider using a mediation service. Some services specifically work with children so the child can really have a say. A trained mediator can see a child in private and feed back to parents what the child wants to say to them. See **Sorting out arrangements after you have split up – Could Family Mediation help you?** on Advicenow website for details of how to find a good mediator. Many people report that, as well as sorting out particular issues, mediation helped them to find new common ground and work as co-parents again. It is worth remembering that the courts are trying to encourage more mediation and could be critical if you haven't tried this option.

If none of these options help, you could consider going to court. See **If you have to go to court** on page 15.

## The other parent won't see them

This is a sad and tricky situation. Your priority of course is to make sure this hurts the children and their self-image and self-esteem as little as possible. It's going to be hard, but try not to show the children how angry this makes you. Even if you think it's because they don't care or they don't have their priorities right – it is best not to say it. It is best not to say or do anything that may close your child off from the possibility of contact. Instead, make it as clear as you can that it isn't because of the child, it isn't because of anything they have done or because of anything they are. Even adults do silly things sometimes because they are upset, or because they have forgotten what is most important.

If you know where the other parent is, it can be helpful to get in touch with the other parent and ask them (without being aggressive) how they would like you to explain it to the children. You don't need to try to solve the problem, just find a way to explain it.

At the same time you could encourage them to find other ways to show them that they still love them and are thinking of them. Perhaps email, postcards, quick texts, phone calls, etc.

## Vanya's story

My ex wouldn't see the kids after we split up. He just didn't want to know. It made the children really sad and confused, and as a result it made me furious. I resisted the urge to explain to the children it was because he was a selfish idiot. Instead I explained that he loved them but was so sad and angry about the end of our relationship he couldn't manage it just yet. It made it a lot easier for everyone concerned (including me) that they didn't feel like it was their fault or waste their time feeling really hurt or angry. Instead he wasn't really an issue.

Sometimes it helps to get grandparents involved. Contact with a grandparent can maintain the link between the children and that side of their family.

## You are worried that their other parent will take them to live abroad

If you are concerned that their other parent will take them to live abroad, you can apply to the court for a Prohibited Steps Order and you can ask for the children's passports to be taken by the court. If you believe they may be planning to take them abroad very soon you can apply to the court to have the case heard without the other person being warned. If this happens, and an order is granted, it will be on a temporary basis until a hearing that everyone can be present at can be organised. If you

are in this position you should get urgent legal advice – you may be able to get legal aid to pay for this. The court will look at what is in the overall interests of the children. See **If you have to go to court** on **page 15** for more information.

A Prohibited Steps Order can only be used to prevent the child being taken out of England and Wales. You can't use it to prevent the other parent from moving to another part of the country.

## The other parent plans to move further away

This is difficult and often causes a lot of stress for everyone involved. Whether it's the parent the children live with or not, it will have an effect on your arrangements for the children. How you deal with things may depend on whether the move is permanent or short-term. Usually the best thing to do is to try to come to a new agreement about where the children will live and how they will maintain a good relationship with their other parent that works for everyone. It may mean that contact can't be every week but that when it does happen it lasts longer. Many parents agree to share the burden and cost of the extra travelling by meeting half way or taking it in turns to do the journey. At least with things like Skype and Facetime it can be possible to see and talk to your children regularly even if they are at the other end of the country.

If you believe the move will be against the best interests of the children then you could consider taking it to court. The court will usually allow moves within England and Wales as long as some consideration of contact has been made. If you are in this position, it would be wise to get some legal advice.

**You can get advice on dealing with issues like this from Gingerbread's Single Parent Helpline and the Children's Legal Centre – see More help and advice on page 28.**

Common problems

# Jargon buster

## **Applicant**

This is the name given to someone who applies to a court for a court order.

## **Cafcass**

Cafcass stands for The Children and Family Court Advisory and Support Service. Cafcass Officers help the court by mediating at court and writing reports about the children's needs for the court. In some areas, Cafcass Officers also provide support for families going through divorce or separation.

## **Child arrangements order**

An order which sets out the arrangements about who a child is to live, spend time or have contact with and when.

## **Child maintenance**

This is the money a parent pays towards the child's upkeep. It is usually paid by the parent who the child stays with less.

## **Enforcement order**

This allows the court to punish the parent preventing contact. The aim is to persuade them to cooperate with the arrangements for contact. The court could order them to do community service, or pay compensation if they have caused the other parent to lose money.

## **Legal Aid**

This is a government scheme to help people who live on a low income and have few savings and meet specific other criteria, pay for legal help.

## **Parental responsibility**

This is the rights and obligations of a parent for and towards a child. It allows the person concerned to exercise certain decisions concerning a child and to be consulted about important changes or decisions such as those concerning health or education. It does not give the right to interfere unreasonably or unnecessarily in the care arrangements put in place by the child's main carer. Parental Responsibility is automatically held by the mother of the child and by the father if he is married to the mother.

*(continued)*

Since December 2003 Parental Responsibility is also automatically given to any father who is named on the child's birth certificate even if the parents are not married. Second female parents of children conceived on or after 6th April 2009 who are mentioned on the birth certificate have Parental Responsibility. So do civil partners of the child's biological mother. Parents who have adopted or who have a residence order also have Parental Responsibility. If the father or second parent does not have automatic Parental Responsibility it can be obtained by completing a parental responsibility agreement or by applying to the court for an order. See the **Advicenow website** for details.

### **Prohibited Steps Order**

This is an order preventing someone from carrying out an action in relation to a child – an example is forbidding someone from taking a child out of the country or forbidding them from removing a child from the care of the other parent.

### **Respondent**

If the other parent starts court proceedings, you are the respondent.

### **Shared care**

This is an arrangement where the children live part of the week with one parent and the rest of the week with the other.

### **Specific Issue Order**

This is an order the court can make if it has been asked to make a decision on an important issue on which the parents cannot agree (for example, if you cannot agree about where they are going to go to school or whether the child should have an operation).

### **Warning notice**

Since 8th December 2008 a warning notice that sets out the consequences of breaking the order has been attached to every contact order made by the court. If somebody disobeys an order with a warning notice (for example, by unreasonably preventing contact) you can apply to the court for an 'Enforcement order'.

**Jargon  
buster**

# More help and advice

## Cafcass

Cafcass work with children and their families, and then advise the courts on what they consider to be in the best interests of individual children. They have some useful information on their website [www.cafcass.gov.uk](http://www.cafcass.gov.uk)

## Court forms

You can download the court forms and leaflets by using the HM Courts and Tribunal Services' form finder: <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

## Children's Legal Centre

You can get free advice on all areas of English child and family law from the Child Law Advice Line on **0808 802 0008** Monday to Friday 8am–8pm.

## Child maintenance options

This is a free service that can give you information and support to help you make decisions about how to sort out your child maintenance/support. Their website also has a calculator which helps you work out what the Child Maintenance Service would make you/them pay.

Website: [www.cmoptions.org/index.asp](http://www.cmoptions.org/index.asp)

Helpline: **0800 988 0988**  
Monday to Friday 8am–8pm  
Saturday 9am–4pm

## Gingerbread

Gingerbread provide expert advice, practical support and other help for single parents.

Website: [www.gingerbread.org.uk](http://www.gingerbread.org.uk)

Single Parent Helpline: **0808 802 0925**



## National Association of Child Contact Centres

Contact centres are useful when parents are no longer able to communicate. They can provide a neutral place for children to meet the parent who no longer lives at home with them.

Website: [www.naccc.org.uk](http://www.naccc.org.uk)

Helpline: **0845 4500 280**  
Monday to Friday 9.30–4.30pm

## MATCH – Mothers Apart from their Children

MATCH is a charity that offers non-judgemental support and information to mothers apart from their children in a wide variety of circumstances.

Website: [www.matchmothers.org](http://www.matchmothers.org)

E-mail: [enquiries@matchmothers.org](mailto:enquiries@matchmothers.org)

## Family Lives

Family Lives is a national charity providing help and support in all aspects of family life. Their helpline can give information, advice, guidance and support on any aspect of parenting and family life.

Website: <http://familylives.org.uk>

Family Helpline: **0808 800 2222**

Every day, 7am–midnight

## Families Need Fathers

Families Need Fathers is a charity chiefly concerned with the problems of maintaining a child's relationship with both parents during and after family breakdown. They provide information, advice and support services.

Website: [www.fnf.org.uk](http://www.fnf.org.uk)

Helpline: **0300 0300 363**

Every day, 7am–midnight

## Both Parents Matter Cymru

Both Parents Matter Cymru runs monthly support meetings across Wales. Check their website for details:

[www.fnf-bpm.org.uk](http://www.fnf-bpm.org.uk)

Helpline: **08456 004446**

## Resolution

Membership organisation for family lawyers and other professionals committed to the constructive resolution of family disputes. You can find solicitors and mediators near you on their website: [www.resolution.org.uk/findamember](http://www.resolution.org.uk/findamember)

## Find a Family Mediator

Use the search provided by the Family Mediation Council to find one near you: [www.familymediationcouncil.org.uk](http://www.familymediationcouncil.org.uk)

More help  
and advice

The information in this guide applies to England and Wales only. The law may be different if you live in Scotland or Northern Ireland.

The law is complicated. We have simplified things in this guide. Please don't rely on this guide as a complete statement of the law. We recommend you try and get advice from the sources we have suggested.

# advicenow.org.uk

If you would like this guide in another format please email [guides@lawforlife.org.uk](mailto:guides@lawforlife.org.uk)

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