

## **How does the court make orders over children?**

When a couple splits up the parties have to decide with whom their children shall live and how much they see of them.

There is no longer any concept of “custody”. All mothers have parental responsibility (PR) which means all the rights, duties, powers, responsibilities and authority a parent has for a child. All dads married to the mother of their children have PR. Unmarried fathers gain PR when they are named on the child’s birth certificate. PR can also be acquired by way of a deed executed with the mother or by an application to the court for a PR order. Each parent can exercise PR independently of the other save in relation to certain limited cases.

Following break up a couple can simply agree arrangements for a child. If they can’t agree then an application can be made to the court for a child arrangements order. Once termed residence and contact orders these are defined as orders:

- “(a) with whom a child is to live, spend time or otherwise have contact, and
- (b) when a child is to live, spend time or otherwise have contact with any person;”

Increasingly, shared “live with” orders are made reflecting modern parenting with the courts recognising fully the role of fathers.

When a court considers making a child arrangements order under the Children Act 1989 the child’s welfare is the court’s paramount consideration. The court also takes into account the welfare checklist having regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

Where a child arrangements order names a person with whom the child is to live, that person may remove the child from the United Kingdom for a period of less than one month.

Our key contacts at DMP for further advice and assistance on children matters are Stephanie Alderwick and Tony Roe:

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