

insideinformation – fact sheet

Contact – Estranged Children

Information courtesy of Vicky Walker of Morgans Solicitors Cardiff

The law and how to establish contact with your child

Contact is the legal term used to mean time a child spends with the parent they do not live with. Any situation where you find yourself separated from your child is difficult for you and often for the child. The law recognizes that children have a right to maintain a relationship with both their natural parents, and will try to promote contact between a child and the parent they are separated from. It is therefore always worth taking legal advice on your position if you find yourself not having regular or reasonable contact with your child.

The first step is to try to reach an amicable agreement about contact with the person with whom your child is living, usually the other parent. However it might not always be practical for you to make contact with them yourselves and that is something a family solicitor can help with. If an amicable agreement cannot be achieved for whatever reason then it is possible to ask the family court to make a contact order in your favour which then sets out what contact you should have. Contact proceedings normally take between 6 - 12 months. You will have to make an application to the court setting out information about your circumstances; those of your child and what sort of contact you are looking for. This application is then sent to the other parent, or whoever your child is living with, and they have to attend court to deal with the application. The court will gather evidence to help it reach a decision about what is best for the child and this often means a CAFCASS officer carrying out an investigation. CAFCASS is an independent body of people with expertise in dealing with children. Finally the court will make a decision about whether contact should happen and what that contact should be.

When making any decision concerning a child the courts consider the child's welfare as its paramount consideration. There is a welfare checklist in the Children Act 1989 which a court has to consider before it makes a decision about a child. The checklist includes things like the child's wishes and feelings; their physical, emotional and educational needs and how capable each parent is of meeting those needs. The court will also take into account any risk of harm to a child and may ask for assessments of that risk before coming to a decision about what contact should take place. There might be occasions of course where the court decides that the risk to the child if contact takes place is higher than the risk of emotional harm if contact does not take place, but such cases should be the exception rather than the rule.

Once a court has decided that contact should take place it can make a contact order which sets out the precise arrangements for contact. This contact can take many forms; it can be indirect, which means letters, cards and presents, and sometimes telephone calls. It can be direct, which means face to face contact and this type of contact can be supervised or unsupervised.

In the past many people have complained about situations where parents deliberately frustrate contact by not keeping to the terms of a court order. So even after going through the, often, lengthy court process and getting the order stating that you should have contact, you would find yourself not actually seeing your child. The law recognized that this was unfair and new laws were introduced in December 2008 to make contact orders much more powerful.

When making a contact order now a court has to attach a warning notice to it. This notice explains what can happen if a parent does not keep to the terms of the order. If the order is breached and the court is satisfied that there has been a failure to comply with a contact order without reasonable excuse then it can make an enforcement order. This obliges the person in breach to do unpaid work (community service), or an order can be made for payment of compensation for financial loss, for example if you have booked a holiday or an activity and contact does not take place.

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Another way the courts are now trying to make contact work is to order either or both parent to attend various contact activities. These activities are designed to improve understanding of why contact with both parents is best for the child. The activities can be information meetings about mediation, or parenting information classes or domestic violence prevention programmes. What activities are available will inevitably vary according to geographical location and they are organized through CAFCASS. The court can make it a condition of contact that a parent complies with one or other of the contact activities if it thinks this is the best way of making a contact order work.

It is hoped that through these new laws cases where a child misses out on the opportunity of a meaningful relationship with both its parents are greatly reduced. So it is certainly worth investigating your options to establish contact by seeking advice from a family solicitor.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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