

Frequently Asked Questions

Children

Will CAFCASS talk to the children?

In many cases, the CAFCASS officer will speak to the children about their wishes and feelings. If a CAFCASS report is ordered CAFCASS will usually invite one parent to bring the children to the local CAFCASS office to speak to them or in some cases, will arrange to visit the children at school. The parent with whom the child/ren live will be contacted to make the necessary arrangements. CAFCASS work with the children completing assessment forms which are child friendly and provide information without direct questions being asked.

Why can I not go straight to court?

It is usual and considered right for the other party to be warned of any proposed Court application before it is issued. This is to allow time for negotiations and for solutions to be found. It is also a requirement of the Family Procedure Rules that mediation is considered as another means of resolving any dispute as Court action should always be a last resort. Judges always prefer both parties to reach an agreement or find a compromise rather than have an order imposed upon them.

Will I have to go to court?

If an application is made to the Court, you will have to attend. Other ways to resolve the dispute are available and are encouraged such as instructing a solicitor to negotiate for you, or mediation or other dispute resolution.

What happens at the court hearing?

Most first Court appointments are procedural hearings to ensure that the Court has all the information available to make a decision at a later date. It is often possible for the parties or their legal representatives to put forward proposals to see if an agreement can be reached. If an agreement can be reached a Judge can approve that agreement and it can become a Court order by Consent. If it is not possible to agree, the court will list your case for another hearing and then make a decision if an agreement is reached before then.

Who will be there?

All parties and, if appointed, any legal representatives. The case will be considered by a judge if it is a County Court case or the Magistrates in family proceedings courts.

Will the Judge ask me questions?

If you have a legal representative it is usual for them to speak on your behalf but sometimes the Judge may ask questions. If you are Court on your own, you will have to put forward your case but the Judges will help as much as they can. If there is a hearing for the court to make a decision usually you will have to speak to confirm your evidence for the Court and to answer questions put by the other party (cross-examination).

Will I get custody?

Custody no longer exists, both parents have Parental Responsibility; if the decision is about where children live it is now known as "Live With" and that is a decision about where and with who the children live. The Court will only make such order where there is a dispute and only then when it is in the children's best interests to do so. "Live With" Orders are not made automatically when parents separate as the Court hope that parents can make arrangements for their children without the Court being involved. If an application is made, the Court will always do what is best for the child/ren, not for the adults. "Live With" Orders remain in place until the child reaches the age of 18. The Court also has the power to make temporary "Live With" Orders known as "interim" or longer-term final orders depending on each case and orders can change if circumstances change.

How long will it take?

Applications under the Children Act vary in length depending upon the nature of the case. Generally, proceedings take 6-9 months but might take longer if there are concerns about risk or safety, or if the dispute is complex and with many matters for the Court to consider.

Can she / he keep the children away from me?

Contact to a parent is the child's right. Contact may be restricted in some circumstances if it is not safe or a child may be at risk. Generally, children's relationships with their parents should be promoted as it is in their best interests. If for example advice has been given by Social Services, that the children may be at risk from contact, then legal advice should be sought. If necessary, an application can be made to the Court for contact to be reinstated and the Court will need to consider all the circumstances but can take a dim view if contact is being withheld maliciously.

Do I have to change my name following Divorce?

No, but if you wish to change your name you will need to prepare a Change of Name Deed.

Can I change my children's name?

The general rule is no unless you have the other parent's permission. In most cases, both parents have what is known as Parental Responsibility and both should be involved in important decisions about their child. If one parent does not hold Parental Responsibility, it is possible to allow a child to be known by another name without the consent of the other

parent but the other parent still has a right to ask the court to stop you changing the child's name. Generally, the Court are reluctant to agree to a change of name. The Court considers the name to be a link with the parent with whom they do not live and often insist that there is no change, sometimes when the child wants to change.

My husband / wife wants to take the children abroad on holiday - do I have to let him?

No, but they could apply to the Court for permission if the refusal is unreasonable. The Court will consider whether it is in the child's best interests to have a holiday with their parent and in most cases, the answer will be yes. It is usual; for the other parent to be given full details of the holiday, including dates, transport arrangements and details of where the children will be staying.

If he / she doesn't pay maintenance, why should he get to see the children?

The Court view contact and maintenance are two separate issues. It is the child's right to have contact with the parent with whom they no longer live with irrespective of financial arrangements. Both parents have a financial responsibility towards their child. The arrangements for maintenance can be via the CSA/CMEC or arrangements can be made direct between the parents. The Court may be critical of a parent who restricts contact as a means of demanding maintenance payments or as a way of punishing a parent for failing to pay.

For further information, or to arrange an initial consultation, please email lawyer@wbw.co.uk or complete our [get in touch form](#) and we will be delighted to help you.

