



Preston Goldburn

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SOLICITORS

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If you are contemplating divorce or separation from your partner, your first concern will probably be about where your children will live and how they will retain contact with both parents.

When you separate from each other, you will both continue to be parents. Therefore, it is important to make sure that the process of unravelling your marriage or relationship doesn't stop you being able to co-operate on what is best for your children. A constructive approach through the divorce or separation will lay the best foundations for the children to feel settled with the new family relationships.

You know your children best, so you will be best able to consider the effects of your break-up on them and together devise the most suitable living arrangements. Negotiation is important as agreements reached together are more likely to work in the long term and be respected by the wider family. We together with mediators can help you achieve this.

If you can't agree on the arrangements, you can ask the courts to decide the matter. We can advise you on the best way of doing this, without letting matters relating to children get tangled up in any financial disputes.

Rather than considering the 'rights' of parents, family law talks of 'parental responsibility' for a child. If a child's parents were married when the child was born, both will have parental responsibility for the child. A father who was not married to the child's mother when the child was born, will not automatically have parental responsibility but can acquire it by agreement with the child's mother or by applying to a court unless the child was born after 1<sup>st</sup> December 2003 when parental responsibility became acquired by an unmarried father who jointly registered the child's birth with the mother.

The Children Act 1989 is the main piece of legislation dealing with family disputes about children. In family law, what used to be called 'custody' and 'access' are now known as 'residence' and 'contact'. The Children Act says that the child's welfare is the paramount consideration when the courts consider any question in relation to the upbringing of a child. Therefore, the court will apply what is known as the 'welfare checklist' to help make its decision.

The welfare checklist looks at the following:

- The wishes and feelings of the child (considered in the light of his/her age and understanding)
- His/her physical, emotional and educational needs
- The likely effect of any change in his/her circumstances
- His/her age, sex, background and any characteristics which the court considers relevant
- Any harm which he/she has suffered or is at risk of suffering
- How capable each of parent is of meeting his/her needs.

An independent Child and Family Reporter may be asked to help you resolve the dispute or to help the court decide (they are known as a CAFCASS officer). The court will not make any order relating to a child unless it is satisfied that making an order would be **better** for the child than not making an order.

Most family disputes can, however, be resolved without using the courts and we can help you to make suitable arrangements whilst ensuring that the welfare of the children comes first.

Preston Goldburn  
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