

Children disputes - Residence and Contact

Upon the breakdown of a relationship, important decisions have to be made by the couple such as where the children of the family should reside, how and when they will see the other parent, how birthdays, holidays and special occasions are managed etc? These are difficult decisions to make and where an agreement can not be reached by the couple, assistance may be required.

At Hatten Wyatt, we have specialist family solicitors who appreciate the emotional strain parties face when dealing with disputes regarding children. We can offer expert legal advice on issues regarding children whilst maintaining a friendly approach to ensure that our clients are made to feel comfortable and able to put their trust into our team.

What will Hatten Wyatt do for you?

Upon taking initial instructions from you, we will start to assess the merits of your case and discuss the various options available to you to resolve the dispute. We always offer the option of mediation with a third party supplier, (unless due to particular circumstances of the case mediation would not be appropriate), and we also attempt to enter into discussions with the other party, (either directly or via their legal representative), to attempt to reach an agreement in respect of issues regarding residence and contact.

In the event that mediation and negotiations are unsuccessful we will then discuss with you the option of issuing an application at court so that the dispute can be resolved by way of a Court Order.

When faced with disputes regarding children there are a number of principles that must be taken into consideration; these include:

- ‘The Welfare Principle’ which provides that the child’s welfare is the court’s paramount consideration.
- ‘The No Order Presumption’ which requires the Court to consider whether it would be in the best interests of the child(ren) to make no order at all.
- ‘No delay Principle’ which requires the Court to consider the effects on the child(ren) of any delays in proceedings.

The above Principles must be borne in mind at all times when the courts are faced with any applications regarding children. These Principles are combined with the following 7 factors which are then relied upon in order for an Order to be made in respect of issues regarding the residence and or contact arrangements for the child(ren):

- The ascertainable wishes and feelings of the child(ren)
- The child(ren)’s physical, emotional and education needs



Article author:
Gail Brooks
Assistant Solicitor
Family Department

Email:
gail.brooks@hatten-wyatt.com

If you wish to discuss these matters further, please do not hesitate to contact Gail Brooks on:

01474 351199 or alternatively
gail.brooks@hatten-wyatt.com

Telephone: (01474) 351 199 www.hatten-wyatt.com

18/21 Wrotham Road, Gravesend, Kent, DA11 0PF

51/54 Windmill Street, Gravesend, Kent, DA12 1BD



- The likely effect of the child(ren) of any change in circumstances
- The child(ren)'s age, sex and background
- Any harm the child(ren) has suffered or is at risk of suffering
- The capability of the parent (and other relevant people) to care for the child(ren)
- The range of powers available to the court

The Courts can make a range of Orders including:

- Residence Orders which determine who the child(ren) should live with
- Shared Residence Orders which specify a shared care arrangement for the child(ren)
- Contact Orders which dictate who the child(ren) have contact with together with details of when, where and how the contact should take place. This can include direct and indirect contact.

Family Assistance Orders which are short term orders that the Court can make when the parties are having difficulties adjusting to a recent separation. The Family Assistance Order is usually for a period of 3 – 6 months

and the aim of it is for a CAFCASS officer to advise, assist and befriend any person named in the Order. This is a Voluntary Order which the Court can make without the consent of all of the Parties and these Orders are usually made when there is a view that there are elements of the child(ren)'s welfare that need to be addressed and the parents would benefit from professional help in dealing with these issues.

The Courts can also make Specific Issue Orders and Prohibited Steps Orders. A Specific Issue Order allows the court to decide any particular issue about a child, (e.g. disputes regarding holidays, change of name, change of address etc.) A Prohibited Steps Order allows the Court to make an Order which will prevent a parent from doing something, (e.g. changing the child's name, removing the child(ren) from the care of the other parent, removing the child(ren) from the country etc).

If an unmarried couple have separated there may also be issues regarding the parental responsibility of the child. A mother automatically has parental responsibility for their child but the same cannot be said for the father. A father will only have parental responsibility for his child if he is married to the mother when the child was born. If the father was not married to the mother when the child is born

then the father may acquire parental responsibility by either:

- Jointly registering the birth of the child with the mother, (this only applies from 1st December 2003).
- Entering into a Parental Responsibility agreement with the mother
- Obtaining a Parental Responsibility Order from the court.

At Hatten Wyatt we can prepare Parental Responsibility agreements and/or assist in making the necessary application and representations at court to obtain a Parental Responsibility Order.

In every individual case concerning children disputes we at Hatten Wyatt offer a first class service and regularly collaborate with leading Barristers in this field to ensure that our clients are provided with the expert advice and representation they require. We also have solicitors who specialise in Public Law children matters and we can represent either the Mother, Father or the Children via their appointed Guardian in any Public Law matter. We will also assess your eligibility for Legal Aid to establish whether we can advise and represent you under the Legal Aid System.