

# Making an application - children and the family courts

## A – How the court can help you

### Family Mediation

Before you begin proceedings you may want to consider Mediation. In mediation, an impartial, trained mediator, not connected with your case, helps you and your partner to resolve your disputes.

Public funding may be available from the Community Legal Advice (CLA) service. The CLA telephone number is 0845 345 4 345 and their website is [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk). Mediation takes place away from the court.

Her Majesty's Courts Service launched the Family Mediation Helpline (FMH) in May 2006. Trained operators provide information to callers about family mediation in general, whether mediation is suitable for particular cases and the likelihood of eligibility of parties for public funding.

The Helpline database has the details of all the accredited members of the five main mediation organisations in England and Wales. Callers can be provided with the details of their local services or request a direct referral where a mediator will contact the caller to discuss their case in more detail and arrange an appointment for an assessment meeting.

The FMH telephone number is 0845 60 26 627 and the supporting website is [www.FamilyMediationHelpline.co.uk](http://www.FamilyMediationHelpline.co.uk).

### Parenting Plans: Putting children first - A guide for separating parents

'Parenting Plans: Putting children first - A guide for separating parents' is a free booklet for separating parents designed to help parents reach agreement about contact and other arrangements for their children following parental separation or divorce. You can get a copy from your local family court or you can download a copy from [www.tsoshop.co.uk](http://www.tsoshop.co.uk). You can get a copy of a Welsh version from any CAFCASS CYMRU office or any Welsh court.

'Parenting Plans' explore a range of issues you may need to consider in making contact and other arrangements for your children, and includes practical examples of how other parents in a variety of family structures and circumstances have resolved problems. It also provides a list of organisations that can provide further advice and help.

The court makes most decisions about children using a law, called the Children Act 1989. If you want the court to make a decision about a child you need to apply to the court for an 'order'. An order will be made when the judge makes a decision

Some of the orders you may wish to apply for are described below. These are just some of the decisions a court can make under the Children Act 1989.

Type of Order	Description
<b>Contact Order</b>	<p>These are orders that require the person with whom a child lives to allow that child to visit, stay or have contact with a person named in the order.</p> <p><b>For example</b>, if your child lives with your former partner and you wish to see your child at weekends then you might apply for a contact order, if you cannot agree this between yourselves.</p>
<b>Residence Order</b>	<p>These orders decide where and with whom the child is to live.</p> <p><b>For example</b>, if you and your partner have separated and you want your child to live with you, but cannot agree this, then you might apply for a residence order.</p>
<b>Specific Issue Order</b>	<p>These orders give instructions about a specific issue that has arisen about an action normally undertaken by a parent.</p> <p><b>For example</b>, if you and your former partner cannot agree on whether your child should have a major operation, then you might apply for a specific issue order.</p>
<b>Prohibited Steps Order</b>	<p>These orders mean a person must have the court's permission before undertaking actions specified in the order, that would normally be undertaken by a parent.</p> <p><b>For example</b>, to require a parent to seek the court's permission before taking the child to a foreign country.</p>
<b>Parental Responsibility Order</b>	<p>Parental Responsibility means all the rights, duties, powers, responsibility and authority, which by law a parent of a child has in relation to the child and his property.</p> <p><b>For example</b>, if you are father of a child but you were not married to the child's mother, nor named on the birth certificate when the child's birth was registered, but you wish to be recognised legally as the child's father, then you may apply for a Parental Responsibility Order.</p>

<p><b>Financial Provision</b></p>	<p>Where parents can agree about child maintenance, they can choose to make a private arrangement between themselves or obtain a court consent order. Where this is not possible or a private agreement breaks down they can ask the Child Support Agency to assess and collect maintenance. For impartial information on the maintenance choices available to parents ring Child Maintenance Options on 0800 988 0988.</p> <p>Whilst, as a general rule, income for a child where parents cannot agree is calculated by the Child Support Agency, there are occasions where the court will make an order.</p> <p><b>For example</b>, if your child attends a boarding school and there are school fees to be paid then you might apply for an order for financial provision to be made by a parent of the child for payment of these fees.</p>
<p><b>Appointment of a Guardian</b></p>	<p>A guardian appointed under this section will generally take over parental responsibility for the child after the death of a parent.</p> <p><b>For example</b>, if your niece/nephew has lost both their parents you might apply to be a guardian.</p>

## Special Guardianship

The Special Guardian of a child can take most decisions about the child until the child is 18. Unlike adoption the child will retain their ties to their birth family. If you wish to know more you should read ‘CB4: Special Guardianship - A guide for court users’.

## Order related to enforcement of a contact order

If you were involved in proceedings where a contact order was made, and the contact order is not being complied with, then you might be able to apply to the court to have that order enforced. You should read leaflet ‘CB5: Applications related to enforcement of contact’ to learn more about enforcement of contact and how to make an application.

## Adoption

If you wish to make an application to adopt a child you should read leaflet ‘A20: Adoption - A guide to court users’.

You can get a copy from your local court or you can download it from our website [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk).

## B – What a court might decide

A court will only make an order if it thinks that would be best for the child. Sometimes a court may decide that it would be best not to make any order.

A court might:

- make an order
- change an order (called 'varying' the order)
- end an order (called 'discharging' the order).

Once a case has started a court may make other decisions. These include:

- giving instructions that people must follow (these are called 'directions')
- transferring a case to another court.

### The Law

You do not need to know the law to apply but if you want to read more about the law you need:

- Children Act 1989
- Family Proceedings Rules 1991, if you are applying to a county court
- Family Proceedings Courts (Children Act 1989) Rules, if you are applying to a Family Proceedings Court (Magistrates Court).

Your local library may have copies of the Act and Rules.

## C – Who may apply for an order - do I need to apply for permission?

Some people have the right to apply for an order, and some people must first get the permission of the court to make an application.

You have the right to apply without seeking permission from the court if you are listed in the next section 'The orders you can apply for'.

When you read the next section you may find that you need to consider whether you need to have 'Parental Responsibility' in order to make an application. Parental Responsibility is explained in Section E.

### **Do I need to apply for permission?**

If you do not have the right to make an application you may still be able to apply, but you must first have the court's permission. Section F will tell you which form to use to seek permission.

### **The child**

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If you are **the child** and the order you wish to apply for is about you (for example, your contact with a parent), you the order is about you must get the permission of the court before you apply for the following orders:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)
- Specific Issue Order (including to vary or discharge an existing order)
- Prohibited Steps Order (including to vary or discharge an existing order)
- Discharge of the appointment of a guardian
- Discharge of a parental responsibility order or agreement

### **Children and Young People**

If you are a young person whose family is changing you may find the Children and Family Court Advisory Support Service (Cafcass/CAFCASS CYMRU) leaflets helpful. They are available on the Cafcass website if you live in England or the CAFCASS CYMRU website if you live in Wales. Follow the links below:

England: [www.cafcass.gov.uk](http://www.cafcass.gov.uk)

Wales: [www.cymru.gov.uk/gcclbtcymru](http://www.cymru.gov.uk/gcclbtcymru)

### **About the 'parties' in a case**

The parties to a case are those involved in the court proceedings and may include:

- everyone who has the right to apply for an order (see Section D)
- people with parental responsibility (see Section E)
- anyone who the court has made a 'party' to the case.

If someone else has applied for an order you may not be a 'party' to that case, but you may apply 'to be joined as a party' to it. Section F will tell you which form to use.

## D – The orders you can apply for

If you wish to apply for an order related to enforcement of an existing contact order you should read leaflet 'CB5: Applications related to enforcement of contact'.

If you wish to apply for an adoption order you should read leaflet 'A20: Adoption - A guide to court users'.

If you wish to apply for a Special Guardianship order you should read leaflet 'CB4: Special Guardianship - A guide for court users'.

For all other applications, read the paragraph below that applies to you, to find out what orders you can apply for. The first sentence will tell you who the section applies to, for example, if you are the child's mother you need to read paragraph 1.

An application to have an existing order changed is called an application to vary the order.

An application to have an existing order brought to an end is called an application to discharge the order.

### 1. Mother

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If you are the child's **mother** you may apply for the following orders:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)
- Specific Issue Order (including to vary or discharge an existing order)
- Prohibited Steps Order (including to vary or discharge an existing order)
- Financial Provision (including to vary or discharge an existing order)
- Discharge of a parental responsibility order

## 2. Father

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If you are the child's **father** you may apply for the following orders:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)
- Specific Issue Order (including to vary or discharge an existing order)
- Prohibited Steps Order (including to vary or discharge an existing order)
- Financial Provision (including to vary or discharge an existing order)

In addition, if you are the child's father **and you have parental responsibility** you may apply for:

- Discharge of the Appointment of a guardian
- Discharge of a parental responsibility order or agreement

If you are the child's father and **you do not have parental responsibility** you may apply for:

- Appointment of yourself as a guardian if the child has no parent with parental responsibility
- Parental Responsibility Order

### **3. Step-parent**

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A step-parent is not the child's parent but is married to, or a civil partner of, a parent of the child who has parental responsibility for that child and you have treated the child as a child of the family.

If you are the child's **step-parent** you may apply for the following orders:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)

In addition, if you are the child's **step-parent** and **you have parental responsibility** you may also apply for:

- Specific Issue Order (including to vary or discharge an existing order)
- Prohibited Steps Order (including to vary or discharge an existing order)
- Discharge of a parental responsibility order, if it is your parental responsibility you wish to discharge
- Discharge of a parental responsibility order of an unmarried father
- Discharge of the appointment of a guardian

If you are the child's **step-parent** and **do not have parental responsibility** you may also apply for:

- Appointment of yourself as a guardian, if the child has no parent with parental responsibility
- Parental Responsibility Order

### **4. Grandparent**

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If you are the child's **grandparent** you may apply for the following order:

- Appointment of a guardian

### **5. Guardian**

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If you have been appointed as the child's **guardian** you may apply for the following orders:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)
- Specific Issue Order (including to vary or discharge an existing order)
- Prohibited Steps Order (including to vary or discharge an existing order)
- Financial Provision (including to vary or discharge an existing order)



## 6. People with a residence order

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If you have a residence order that is in force:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)
- Specific Issue Order (including to vary or discharge an existing order)
- Prohibited Steps Order (including to vary or discharge an existing order)
- Financial Provision (including to vary or discharge an existing order)
- Discharge of the appointment of a guardian
- Discharge of a parental responsibility order

**Remember:** If you do not have the right to make an application you may still be able to apply, but you must first have the courts permission. Section F will tell you which form to use.

## 7. Other people

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If you are **not a parent or guardian** as above you may still be able to apply for an order as follows:

If you have an interest in the child's welfare:

- Appointment of a guardian

If the child has been living with you for at least 3 years during the last 5 years, and within the last 3 months:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)

If the local authority caring for the child has agreed that you may apply for an order:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)

If you are married or in a Civil Partnership, or have been married or in a Civil Partnership and the child is or was regarded as a child of the family:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)

If you have the consent of everyone who has parental responsibility for the child and there is no residence order in force and the child is not in the care of the local authority:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)

If you have the consent of everyone who has a residence order for the child:

- Contact Order (including to vary or discharge an existing order)
- Residence Order (including to vary or discharge an existing order)

## E – About Parental Responsibility

### What is ‘parental responsibility’?

If you have ‘parental responsibility’ you have all the duties, rights and authority, which, by law, a mother or father has for their child. This is described in full in the Children Act 1989.

A child’s mother always has parental responsibility for the child, however, sometimes a child’s father does not have parental responsibility.

The list below will help you decide if you have parental responsibility. The list also shows that sometimes a person who is not a parent may have parental responsibility.

You have parental responsibility if:

- you are the child’s mother
- you are the child’s father and you were married to the child’s mother when the child was born
- you are the child’s father and you were not married to the child’s mother when the child was born but:
  - you now have a Parental Responsibility Order

**or** you have made a Parental Responsibility Agreement with the child’s mother

**or** you have since married the child’s mother

**or** you have, since 1st December 2003, been registered as the child’s father under paragraphs (a), (b) or (c) of sections 10(1) or 10A of the Births and Deaths Registration Act 1953 or the corresponding law in Scotland or Northern Ireland.

- you are the child’s step-parent (married to or a civil partner of a parent with parental responsibility) and you have made a Parental Responsibility Agreement with the child’s mother (and father if he also has parental responsibility) or you have a Parental Responsibility order
- you hold a residence order for the child
- you hold an emergency protection order for the child
- you are a guardian of the child
- you have adopted the child
- you are the child’s Special Guardian

## **What is a Parental Responsibility Agreement?**

A Parental Responsibility Agreement is a legal document in which a child's mother and father agree that the father has parental responsibility for the child or in which a child's mother and father (if he already has parental responsibility) agree that the child's step-parent has parental responsibility for the child. (A step-parent is someone who is not a parent but is married to or civil partner of one of the parents with parental responsibility).

A Parental Responsibility Agreement must be made on form C (PRA1) for a father or form C (PRA2) for a step-parent. Both of these forms come with notes that will tell you more about how to make a Parental Responsibility Agreement. You can get these forms from your local family court or they can be downloaded from [www.hmccourts-service.gov.uk](http://www.hmccourts-service.gov.uk).



























