



Guide for separated parents: children and the family courts

Deciding what should happen to your children when you and your partner have split up can be difficult. You might not be able to agree who your children should live with, or who they should see. This guide could help you whether you are thinking about coming to court or are already involved in a court case. We have written this guide for parents.

Going to court should be a last resort. There are many other ways of reaching an agreement on what should happen with your children. The 'sorting out separation' website at www.sortingoutseparation.org.uk has been specifically developed to help you work out what should happen when you and your partner separate. If you do need to come to court this guide is designed to help you. It contains useful information about the court process and provides advice about how you should behave in court and what to expect while you are there.

If you are representing yourself you should watch our range of online videos before you make your application. The videos explain more about the mediation process, making your application, what will happen in court and will help you prepare for the hearing. If you are reading this leaflet on-line and want to watch the videos, please click on this link to our YouTube page.

Help with deciding what should happen with your children

Your children may want to have a say in their future, especially if they are older, so take time to listen to them. The most important thing when discussing things with your children is not to put any pressure on them to give their views, and not to ask them to choose between you and their other parent. Listening to your children's needs, wishes and feelings will help you and the other parent make better decisions about the children's future. Asking your children to write their thoughts down can also be a way of helping them to tell you how they feel without the pressure of talking to you face-to-face. You can download some useful information to help your children write down their feelings from the Cafcass (the Children and Family Courts Advisory and Support Service) and CAF/CASS Cymru websites at www.cafcass.gov.uk or www.wales.gov.uk/cafcasscymru

Sometimes it can help you to know what other parents who split up decided about their children. Cafcass have produced a free booklet called 'Putting your children first - a guide for separating parents' to help you and your ex-partner agree on what might work best for both of you and for your children, without going to court. The booklet gives examples of what has worked for other families in different types of situations and helps you to focus on the important issues. You can get a free copy of the booklet from a family court or a Welsh copy from any CAF/CASS Cymru office or any Welsh court.

Sorting out your arrangements without going to court

Family mediation is one way of settling differences during and after separation or divorce. A trained mediator will help you and your ex-partner to agree arrangements for looking after your children. A mediator is a qualified independent person who will not take sides or try to get you back together. Mediation can help you and your ex-partner together to agree arrangements for your children by talking things through. A mediator will not tell you what to do but can help you and the other parent to make agreements that are best for your children.

Family mediation can be quicker, cheaper and easier than the stress of going to court

The court will require you to either have been to a mediation information and assessment meeting (a MIAM), or to show why you do not have to go to a meeting, before applying for a court order. If you are eligible you can receive legal aid for the MIAM and for any family mediation sessions you decide to take part in. If at least one parent is eligible for legal aid for mediation, the Legal Aid Agency will pay the cost of the MIAM and fund the first session of mediation after the MIAM for both parents. For more information, visit www.gov.uk/looking-after-children-divorce

If you apply for a court order, the court will require you to have attended a mediation information and assessment meeting first to consider with the mediator and the other

parent whether mediation might be a suitable way to settle the dispute. The court will also require your ex-partner to attend that meeting if the mediator has asked them to. You or the other parent can ask to see the mediator separately if you would prefer to do this.

What happens at mediation? A trained mediator helps you and the other person to talk about the things you cannot agree on. The mediator will help you both see if there is any way that you could agree with each other. Not all cases are suitable for mediation, especially where there has been violence in the relationship or there are other serious welfare concerns. The mediator will be able to help you decide if your circumstances are suitable for mediation and will not start mediation if they think it is not appropriate. Anything you talk about during mediation will usually stay private and will not be reported to the court unless issues of child protection or alleged criminal offences are raised.

There is a fee for mediation but you may be able to get legal aid to help pay for it. For more information, visit www.gov.uk/legal-aid

If you decide that you still want to go to court, you will need to fill in the relevant section on Form C100 to confirm that you have attended a MIAM, qualify for a mediator's exemption or that a MIAM exception applies. The mediator will need to either sign the form to confirm your attendance at a MIAM or to certify that you are exempt from attending a MIAM.

To find your nearest family mediator visit the Family Mediation Council website at www.familymediationcouncil.org.uk

If you do go to court

Please read leaflet **CB1** which tells you about the different court orders you can ask for, who can apply, and how to fill in the forms. Depending on the kind of order you want, there could be different forms to fill in. You can get leaflet CB1 from any family court office or from our website at hmctsformfinder.justice.gov.uk

To begin the court process you will normally need to fill in form C100 to ask for one or more of the three types of court order set out in section 8 of the Children Act 1989. The three types of court order are as follows.

Child arrangements order	A child arrangements order decides the arrangements for whom a child is to live with, spend time with or otherwise have contact with and where a child is to live, spend time or otherwise have contact with any person. For example if your child lives with your ex-partner and you want to see your child at weekends, or you cannot agree which parent the child is to live with, you might want to apply for a child arrangements order.
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Specific issue order	A specific issue order relates to something specific that either parent raises about the way the other parent is looking after the children. For example, you and your ex-partner may not be able to agree on where your children should go to school.
Prohibited steps order	A prohibited steps order stops a parent from doing certain things without the court's permission. For example, you (or your ex-partner) might need to get the court's permission before taking the children abroad.

You should fill in a **C100** form if you want to apply for any of these orders.

You can get a C100 form from your court or by using our form finder website.

If you apply for a court order you must also pay a fee. You can read about the different types of application, and how much you will need to pay, in leaflet **EX50**. You can get this from the court or by using our form finder website.

What the court will do

The court will try to help you and the other parent to agree a positive, joint approach to looking after your children. You are still jointly responsible for making decisions about your children and this does not stop just because you have split up with the other parent. It is usually best if you can reach your own agreements (with the help of the court if needs be) rather than the court having to decide for you.

There are many different arrangements that a court can order for families. What the court orders will depend on the details of each case, which can be different for each family and each child. When you are talking about your case in court, it is important to focus on what your children need. **The court will always put your children's best interests first and do what it considers to be best for them, and this might be different from what you want.**

Representing yourself in court

Since April 2013, most people do not qualify for free legal help or representation at court in family disputes unless they can provide written evidence of domestic violence or child abuse concerns. If you do not have this type of evidence and you come to court, you will need to pay for a lawyer to represent you if you decide you want to be legally represented, or will need to represent yourself. There are other support services available (for example, you could contact a citizens advice bureau as they may also be able to offer some help with your dispute).

A law centre, advice agency or citizens advice bureau will be able to tell you whether you qualify. 'Can You Get Legal Aid?' is an online service that will help you check whether you might be eligible for legal aid. The service is free to use and is available 24 hours a day. To

use the service visit www.gov.uk/legal-aid. The online service will give you details of how to contact Civil Legal Advice or where you can get face-to-face advice (if appropriate). If you are not eligible for legal aid, it will tell you where you can get more information or advice to help you.

If you do not have a lawyer, you will have to speak for yourself in court. You will need to decide yourself about how to put your case to the court. Court staff can tell you where to get court forms, leaflets and guidance on children and the family courts and can explain the court process, but they are not allowed to tell you what you should do about your case.

When you reach court, your case may be heard by a judge, a legal adviser or by a panel of magistrates. It may take more than one hearing to settle the dispute or for the court to make an order.

The court understands that many people cannot afford a lawyer will decide to represent themselves in court. The judge, legal adviser or magistrates hearing your case will not think this is unusual and the court will do all that is reasonable to make sure that you have a fair hearing. The court will not expect you to know family law, but you will need to prepare your case as carefully as possible so that the court is clear about what you want and why.

You can get more information on the gov.uk website at www.gov.uk/represent-yourself-in-court

There is a glossary at the end of this leaflet to help you understand terms used by the court.

At court

It is very important that you fill in your form C100 properly before sending it to the court, including your phone number and the other parent's phone number, if you know it. If you do not do this, your case could be delayed because the court will need to ask you for more information.

The court will send to you and the respondent, a 'notice of hearing', which states the date and time of the hearing and the address of where the hearing will take place. The respondent will also receive a copy of your application.

The court will also send your information to Cafcass or CAF/CASS Cymru if you live in Wales. Cafcass will give the court an independent view of your children's best interests. The job of Cafcass and CAF/CASS Cymru is to give advice to the court to protect and promote the welfare of children who are involved in family court cases. They will look carefully at what you and the other parent have said about violence or abuse and carry out safeguarding checks. Cafcass may contact either parent (usually by phone) about what has been said on the court forms. They will only ask you to talk about things which are to do with your children's safety. They will not ask you about the things you cannot agree on – you will be able to talk about these at the first hearing.

Cafcass will tell the court about the results of their checks, which will help the court to decide what will be best for your children. Cafcass will not speak to your children at this stage. This is because the court will decide at the first hearing how to involve your children.

To help you prepare for the first hearing, you may find it useful to make a note of what you would like to say at the court.

Children should not generally come to court unless they are part of the court process, for example if they are a witness, or if you have an appointment for you and your child to meet with the judge. If you have to bring your child for any other reason, please bring an adult friend or family member to look after them while you are in the hearing room, as court staff cannot look after your child.

McKenzie Friends

You may want a friend or another person to help you prepare your case and be with you at court to support you, or you might want to bring someone who is not a lawyer but knows how the family court works. Anyone who comes to court to help you in any of these ways is called a McKenzie Friend. You can ask to use a McKenzie Friend if you do not have a lawyer, but the court must agree to this.

If the court lets you use a McKenzie Friend they will be able to:

- give you moral support;
- take notes;
- help with the case papers;
- quietly give you advice in court on points of law or procedure, or issues you want to raise; and
- quietly help you with questions you might want to ask any witnesses in court.

A McKenzie Friend is not allowed to act for you in the way that a lawyer would. They cannot speak to the court directly or ask witnesses questions. They are also not allowed to sign documents for you.

You must tell the court and the other parent about your McKenzie Friend. This can be in writing before you go to court or at the hearing itself. If you are at the first hearing on your own, you can tell the court that you plan to use a McKenzie Friend for all other hearings. You will need to give the court some information about your McKenzie Friend, such as their previous experience and any organisations they are a member of. The court can refuse to let a person act as a McKenzie Friend if they think that person could make it difficult for them to hold a fair hearing.

If you bring your McKenzie Friend to court before you have told the court or the other parent that you want to use a McKenzie Friend, you should introduce them to the other parent's lawyer or barrister before the hearing starts. When your hearing starts, you should first ask the court to let your McKenzie Friend be there with you, as family cases are heard in private. If the court agrees you should then introduce them.

What the court will be like

The first hearing will be quite informal and will normally be held in a small room called a 'hearing room' or 'chambers' which are probably different to the large court rooms you might have seen on television. Everyone at the court will treat you with dignity and respect and it is important that you do the same to everyone involved.

The purpose of the first hearing is to establish what the issues are in your case and look at what can be done to settle them.

At the first hearing

The court will have sent you a date for the first hearing on a **C6** notice. The C6 notice will tell you the time of the hearing and how long it should last for. It will also tell you what time you should get there. **You should aim to get there at least 30 minutes early so that you will be calm and not feel rushed.** Please be patient if you are asked to wait for a while before the hearing begins.

When you get to the court, find a member of court staff and tell them you have arrived. They may be at a desk or in the reception area to the court. They will ask if you are the applicant (the person who has asked for the hearing) or the respondent (the other person). You should tell them if you have a lawyer or a McKenzie Friend with you.

Remember that you can still decide with the other parent to see a mediator at any time, even once your case has started. The judge, legal adviser or magistrates can adjourn (postpone) the first hearing so that you and the other parent can try mediation.

Who else will be there?

The court will require, you and the other parent to come to the hearing. The judge, legal adviser or panel of magistrates, someone from Cafcass and a mediator (if one is available) will also be there, as well as the other parent's lawyer, if they have one. You should call the judge, legal adviser or magistrates 'sir' or 'madam'. The court and the Cafcass family court adviser will try to help both of you to reach an agreement. Sometimes, you might be able to agree about your case with the other parent at this stage, so it is very important that you talk to them.

A small number of courts have mediators available at court and if you attend one of these courts, you and the other parent might be offered the chance to discuss your case with a mediator. If you and the other parent agree to try to settle your dispute through mediation, the judge, legal adviser or magistrates can adjourn the case. If you are eligible for legal aid for mediation it will be free, otherwise you will have to pay the costs.

Reaching an agreement in court

If you can agree about your children, the court will decide whether you need a court order to help you make this work. The court will write an order based on what you have agreed. This is called a **consent order**. If you don't agree but the court thinks there should be an order, it will write an order about the decisions it thinks are best for your children. Check the order carefully and make sure it says what the court has decided. It is much better that you take part in working out any agreement about your children, rather than have an order given to you that has been decided by the court on its own. An agreement made between the parents is much more likely to work than an order decided by the court.

If the court thinks that it would be helpful for both of you to talk for longer, it can take a break (called an adjournment) so that you, the other parent and Cafcass can talk about what are best for your children. The court may also direct that you both go to a mediation information and assessment meeting if you haven't already done this and the court thinks that there is no reason why you should not go. You will normally see the judge, magistrates or legal adviser later that day, but sometimes you will have to return on another day.

It is not always possible for everyone to agree. When this happens, the court will decide if there should be another hearing and if so, when that should be. The court will make an order saying what the next hearing will be about and what reports or statements are needed to help them decide about your case. The court will tell you the dates when you should send your papers to them and to the other parent. If the case is fairly straightforward, the court might, at the first hearing, set the timetable for dealing with the whole case.

The court will also decide at the first hearing the best way to find out how your children feel about the situation and what they would like to happen. The court may order a Cafcass report (known as a 'section 7 report'). This means an officer from Cafcass will interview you and the other parent separately. They are also very likely to need to meet with your children, alone if your children are old enough, or with either you or the other parent (or both of you). You will also need to send your statements to Cafcass if they are preparing a report. If your children are already receiving services from the local authority children's services, the court may decide to ask the local authority to prepare the report.

If the other parent has a lawyer, the court may ask them to draft any order made. If the other parent's lawyer agrees to do this, you should check the order before it is returned to the judge or legal adviser in case anything has been left out or needs to be changed.

Writing down your case

If the court asks you to prepare and send in a statement, you should be clear about what you want and why, but try to keep it brief. A statement simply gives the court a short background to your case. You should say why you needed to apply for the court's help, what you want the court to do and why you feel this would be the best thing for your children. It is a good idea to say what you and the other parent are agreed on and what you still disagree about. This will save the court and you wasting time.

If you do send a statement to the court, you will also need to send a copy to the other parent (or their lawyer, if they have one). **You should always keep copies of any documents you send.**

The court will be able to understand your statement more clearly if you type it up on A4 paper. It is helpful to set out the events in date order and number each paragraph. Always write the court name and your case number on anything you send to the court. If you know the date of the next hearing, you should write it on your papers too as this will help the court staff to get them on the court file quickly. You should sign and date all your papers. Your papers will normally need to arrive at the court two clear working days before the hearing, but sometimes you might be asked to send papers to the court or the other parent earlier than this.

Take some spare copies of your statement with you to the court so that other people in the court can see it. **Make sure you sign and date the copies and keep one for yourself.**

Allegations of harm

If you have said that the other parent has been violent or abusive, this is known as making 'allegations of harm'. Harm is not just about the way that the other parent has treated you, it is also about whether your children were there at the time and the effect that seeing or hearing violent or abusive behaviour may have had on them.

If you have made allegations of harm against the other parent and you do not feel safe facing them in the court building, you should let the court know as soon as possible before your hearing. The court can make arrangements to help make you feel safe, such as providing separate waiting areas for you and the other parent, or arranging for you to give evidence from another location using a video link. Please note that specific arrangements will be subject to local building constraints and a request would need to be made to the court giving as much notice as possible, but no less than 10 days before the hearing is due to take place (unless it is for a short notice urgent hearing) as permission of the judge may need to be obtained.

If the other parent denies the allegations of harm, the court will decide whether a 'finding of fact hearing' is needed. A finding of fact hearing is when the court decides whether the things that you have said the other parent has done are true. The court will then decide whether your children or any other person might be at risk if they agree to make the order

you have asked for. It is important to remember that a finding of fact hearing will decide whether something is true, based on whether the evidence shows it is more likely to have happened than not.

At the final hearing

The final hearing is quite different from the other hearings you will have been at and will probably take place in a larger court room to allow room for any witnesses or experts that need to attend. A final hearing can be stressful for everyone involved in the case. This is your opportunity to convince the court that you are doing your best to protect your children's best interests.

If the other parent has been using a lawyer, you will probably have met them at the earlier hearings. For the final hearing they may have a barrister who you won't have met before. If there is anything that you think it would be helpful to talk to the barrister about outside of the court room, you should feel free to speak to them. You may find that the barrister comes to speak to you for the same reasons. **Anything that you can settle in this way can often help the court to reach a decision faster.**

Even if you don't want to talk about your case, it is worth introducing yourself to the other parent's barrister. If you have papers to give them, you should do so before the hearing starts. Court staff can help you if you are unable to find them or don't want to talk to them or the other parent direct. There is no need to feel put off by the other parent's barrister. The court expects everyone to treat each other politely and with respect.

How to behave in the hearings

Try to keep calm and don't interrupt the person who is speaking. Don't forget, you will have a chance to say what you think. It may help you to have a pen and paper and any court papers with you. You can also bring your laptop, if you have one. If you disagree with anything that is said, make a note of it so that you remember to mention it when it is your turn to speak. If you have a McKenzie Friend, they can help take notes of what is being said.

You will have a chance to give your side of the story but you must let the other person finish speaking to the court first.

Giving evidence is where you tell the story of your case. You may be questioned about the information that you have provided to the court. You will probably be asked to take an oath or affirm (make a formal declaration) to promise that what you say to the court is true. The court may also allow you to ask questions about what the other person has said to the court – this is known as 'cross-examination'. If you give evidence first, talk about the history of your case clearly. When it is your turn, you can ask the other person questions about their case. If the other parent gives evidence first, make sure your questions are about what they have just said and not about your own case. You will have a chance to talk about the things you want to say later.

If you accuse the other parent of something serious, the court will probably want you to provide evidence that what you have said is true. You should not say anything about the other parent which is not true.

Glossary of terms

In this section we explain some of the terms you may hear if you go to court.

Abduction	When one parent takes the child to a place outside the legal authority of England and Wales without the permission of the other parent and the court.
Applicant	The person making the application for the court's help.
Cafcass or CAFCASS Cymru	Children and Family Court Advisory and Support Service.
Case law	Published cases from the High Court or Court of Appeal which are used to interpret the way the law works.
Chambers	A private room or court in which a judge may hold certain, usually informal, hearings. Members of the public are not allowed into chambers. 'Chambers' may also be used to refer to a barrister's office away from the court.
Child arrangements order	A child arrangements order decides who a child should live with and where, and decides who a child should have contact and spend time with.
Contact centre	A place for a parent to have contact with a child in a neutral and 'safe' environment. 'Supervised' contact centres provide a safe and neutral place for contact. 'Supported' contact centres, which are often run by volunteers, offer a neutral place for contact in cases where no safety concerns exist.
Contested hearing	A hearing where evidence is put before the court and is disputed by one of the people involved.
Directions hearing	Where the judge decides how the case should be handled. He may give instructions on filing statements, or may order a welfare or experts report.
Domestic violence or abuse	Any situation where one parent feels harassed or intimidated by the other. The violence or abuse may be emotional, physical, sexual or financial.
Ex parte	Also called a 'without notice' hearing, this is when only one of the parents is at the hearing.
Family court	Where family law cases are heard by a family judge, legal adviser or magistrate.

Family assistance order (FAO)	An order of the court which allows Cafcass or local authorities to provide social-work support to help parents establish child arrangements that might otherwise fail.
Filing papers or documents	Sending papers to the court (for example, your statement to be placed on the court file).
Final hearing	The hearing where the judge hears evidence and makes a final decision about the future arrangements for your children.
Indirect contact	Any contact which is not face-to-face (for example, letters, birthday cards, phone calls).
Interim contact	Contact that takes place between the first court hearing and the final hearing.
Litigant in person (LiP)	A party to a case who goes to court without a lawyer.
Litigation	When someone makes an application to the court and the court proceedings that follow this.
McKenzie Friend	A person who can go to court with you to give you support and take notes.
Mediation	A process of discussion and negotiation between you and the other parent and another independent person who is not involved in your case (a trained mediator). The mediator will help manage the discussion and try to help you and the other parent come to an agreement. This is a confidential process. The mediator is not allowed to take sides.
Non-resident parent (NRP)	The parent the children do not usually live with.
Parental responsibility	All the legal rights and responsibilities normally associated with being a parent.
Parties	Each person involved in the court proceedings (see also 'applicant' and 'respondent'). In family proceedings this is usually the parents.
Pre-action protocol	A process you are required to go through before making your application to the court to consider, with a professional mediator, whether family mediation may be appropriate as a way to settle your dispute. You will need to fill in a form confirming that you have attended a mediation information and assessment meeting (a MIAM). The action of filling in and returning the form is known as a pre-action protocol.

Primary carer	The person who has provided most of the care for the children. The primary carer may also be known as the 'parent with care'.
Resident parent (RP)	The parent the children live with. There can be more than one parent who is a resident parent at any one time.
Residence	Where the child lives.
Respondent	The person who 'responds' to the application is known as a respondent. There may be more than one respondent.
Review hearing	If the court makes an order, the judge, legal adviser, magistrates or a Cafcass officer may suggest reviewing the matter at a later date to see how things are working. The review hearing is the meeting held for this purpose.
Section 7 report	A report for the court usually carried out by Cafcass, but occasionally carried out by the local authority's children's services.
Section 8 order	An order made under section 8 of the Children Act 1989. Section 8 orders can be a child arrangements order, prohibited steps, or specific issue orders.
Serving papers or documents	Delivering your court papers to the respondent, or Cafcass and the court. You can do this either by hand or by post.
Shared child arrangements order	'Shared arrangements' is a term used to describe a situation where a child spends time living with each parent and not just with one parent. The amount of time a child spends with each parent will depend on what is best for the child. It is quite unusual for a court to decide that a child should spend equal time with each parent.
Welfare report	Another name for a section 7 report.

