



Contact

The Children's Legal Centre is a unique, independent national charity concerned with law and policy affecting children and young people.



CONTACT IS A RIGHT OF THE CHILD

What is contact?

When a relationship breaks down parents will need to reach an agreement on the arrangements for the children. They will need to decide which parent the child will live with (known as the resident parent) and how often the other parent (the non-resident parent) will see the child. The time the non-resident parent spends with the child is known as 'contact'. Contact between a parent and child can be 'direct', in other words face-to-face contact, or it may be 'indirect', such as telephone conversations, emails and letters. There could be 'supervised' contact, where another person is always present, or 'staying' contact, where the child will stay overnight with the non-resident parent.

Am I entitled to contact with my child?

The law encourages parents who are separated or divorced to maintain contact with their child. Contact should only be restricted where this is necessary to protect the interests of the child. The right to contact is a right of the child and not of the parent. Usually, parents are able to agree on contact arrangements. If this is not possible they may seek help from a mediation service or, as a last resort, seek a court order.

What if I was not married to the other parent?

It is still the child's right to have contact with his or her parents. This does not depend upon whether or not the child's parents were married.



Who is entitled to contact?

It is not just parents who can ask for contact with a child. Grandparents, aunts and uncles, brothers and sisters, and anyone who has had a close relationship with a child may ask a parent for contact with the child. If contact is refused, it is possible that the person wanting contact will apply to the courts for a contact order, but this should be a last resort.

Additionally, social services have a duty to promote and encourage contact between the child and "any other relative or person connected with him". However, it is important to remember that the child's welfare remains paramount.

Contact:	The time a non-resident parent spends with the child.
Non-Resident Parent:	The parent who the child does not live with permanently.
Parental Responsibility:	A term used for the legal duties, responsibilities and rights towards a child.
Place of Residence:	Where the child lives for the majority of his or her time.
Resident Parent:	The parent who the child lives with permanently.

Contact

How much contact can I have?

This is something that both parents should be able to agree on. Contact should be 'reasonable', this will depend on what suits both the parents and the child. Some parents have contact everyday whereas some parents have contact once a year. Reasonable contact will differ from family to family. Some parents share weekends or have the children on alternate weekends so that they both have some extended time with their children. There is no legal definition as to what would amount to reasonable contact; it will depend on the individual family and its circumstances. If there is a court order relating to contact, this will generally state the times that contact should take place.

You will need to reach an agreement with the other parent on contact times. If you keep taking the child without the other parent's agreement this is likely to lead to tension and possibly court proceedings.

What about birthdays, Christmas and holidays?

Parents should reach an agreement on who has contact on these important dates. It is common to take it in turns, one parent has the child for one holiday, and the other parent will have the child for the next holiday. It is best to reach an agreement that suits both the parents and the child.

Can I take my child where I want during contact?

As a general rule, a parent can decide where to take the child and how the time will be spent. However, this must be reasonable.

What is supervised contact?

It is possible to agree that contact should take place at the home of another person, or in the presence of someone else. It is common in these situations for the parents to agree that a grandparent, relative or mutual friend should be present during contact.

It is also possible to agree that contact should take place at a contact centre. For more information about contact centres, contact the National Association of Child Contact Centres on 0845 4500 280 or if you have access to the internet: www.naccc.org.uk



Can I refuse contact?

Contact should only be refused where there is very good reason for doing so. Such as, if there is an issue of safety or violence then contact could be refused. Refusal to allow a parent to have contact is likely to result in an application being made to court. If contact is refused and the non-resident parent takes the case to court, the resident parent will have to explain why contact was refused. If there is already a court order in place for contact, refusal to allow the contact to take place will amount to contempt of court, and possibly further legal action.

Changing pre-arranged contact time.

Unless there is a court order that prevents this, a parent should be able to change contact times by discussion and agreement with the other parent.

There is no law that stops a parent with parental responsibility from taking a child to get a haircut or to get their ears pierced, but these are issues that can cause arguments between parents. It is sensible to mention it to the other parent and seek their consent first. If a parent takes a child to get their haircut or ears pierced without the other parent knowing, this could cause tension between parents.

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School meetings and records

If the non resident parent has parental responsibility, he or she is entitled to attend school meetings and obtain school records. If a father who does not have parental responsibility asks for a school report and the mother objects, it is left to the discretion of the school. A parent can obtain school records under the *Data Protection Act 1998*, regardless as to whether or not they have parental responsibility.

Can I pick my child up from school?

It is best to agree this with the resident parent or parent who usually picks up the child. A parent is likely to be very unhappy if the other parent takes the child from school without prior agreement. It is quite common in such cases, for the school to be told that only one parent has permission to take the child from school. This is an issue that can often cause the resident parent to seek legal advice. The resident parent may decide to start legal proceedings to prevent the non-resident parent from picking the child up from school.

The law regards the issues of maintenance and contact as being completely separate.

You are not justified in refusing contact just because the non-resident parent is not paying any maintenance for the child.

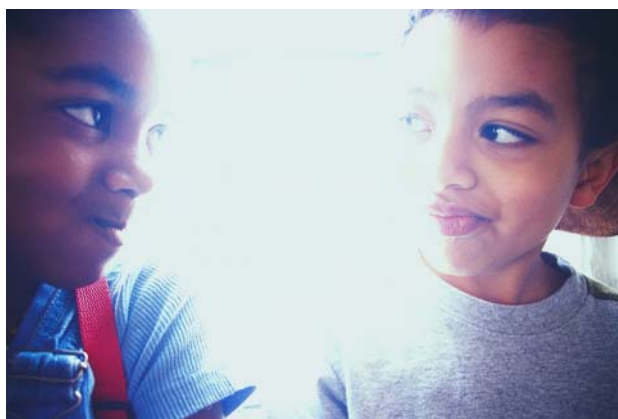
Can I take my child abroad?

This is always a difficult issue. It is sensible to seek the agreement of the other parent before taking a child abroad. Parents should be reasonable about this and provide the other parent with plenty of notice. Remember to always act in the best interests of the child. If the resident parent has a residence order, they are able to take the child abroad for up to a month without the consent of the other parent. If they intend to take the child for longer than a month, they will need written consent of every person with parental responsibility.

A parent will need parental responsibility to obtain a passport for a child. The application for a passport must be signed by one parental responsibility holder. In the case of unmarried fathers who have obtained parental responsibility through a parental responsibility order or a parental responsibility agreement, the original order or agreement must be sent with the application to prove the father has parental responsibility.

What should I do if my child refuses contact?

A parent should not react by simply stopping contact. They should try and find out why the child does not want contact anymore. It may be that the timing of contact does not suit the child, or there is a concern about the way the child spends time with the non-resident parent. It may also be a reflection of the resident parent's concerns. A child will often say what they think the parent will want to hear. Children's wishes and feelings are very important and should be taken into account in light of their age and understanding. However, generally their wishes and feelings will not ultimately determine what happens. In most cases the courts view contact as being in the best interests of the child and will only make an order for no contact in exceptional circumstances.



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What if I cannot make a contact session?

If a parent is unable to make a contact session they should inform the other parent in good time. It is generally disappointing for the child if contact is cancelled at the last moment by either parent. If there is a special family occasion, which the non-resident parent would like the child to attend, the resident parent should try to be flexible so the child can attend. Just because contact times have been agreed, does not mean that there cannot be extra contact by agreement. If a contact order has been granted through the courts, it will often say 'such other contact as may be agreed between the parties'.

Equally, if the child has been invited to a party during contact time, and the child wishes to go, the non-resident parent should try to be flexible.

What if my child is not picked up or brought back on time?

The parents should reach an agreement on who should pick up or drop off the child for contact. Most parents tend to share this. The parents should try to stick to the agreed times as closely as possible, but allowances should be made for public transport, and traffic jams. If there is a contact order, the order will generally contain the arrangements for picking the child up and dropping them home.

If parents cannot decide between themselves on contact arrangements, they should try family mediation.

The aim of family mediation is to lessen conflict and to try to resolve disputes amicably.

Most parents who apply to court for a contact order try mediation first. The courts generally like to see that the parents have attempted to resolve the problems themselves.

In many instances, legal aid will only be granted where mediation has been tried.

Mediation takes place in the presence of a neutral third party.

The role of the mediator is to assist the parents to communicate with each other and to reach decisions about their child.

The process of mediation differs throughout the country, in some mediation services parents are seen separately and then they are brought together to see if they can reach a compromise. In other mediation services the parents are seen together, sometimes with their solicitor or a representative present.

For more information about family mediation, contact National Family Mediation on 01392 271610 or if you have access to the internet: www.nfm.u-net.com



If parents cannot agree on contact arrangements there are three options:

First: they can consider family mediation to help them reach agreement.

Second: they can ask solicitors to help make an agreement.

Third: they can apply to the court for a contact order.

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Making an Application to Court for a Contact Order

What is a contact order?

A contact order is an order made by the court under s.8 *Children Act 1989*. The order makes clear who shall have contact with the child, how often this will be and how long the contact will be for.

The court must **only** make an order where they consider it would be better for the child to do so rather than making no order at all.

How do I make an application for a contact order?

If leave from the courts is not required an application can be made by filling out a C1 form and sending it to the court. If leave is required, an application can be made by filling out a C2 form, and if permission is granted then the applicant can proceed onto the C1 form. If there have already been previous legal proceedings, an application should be made on a C2 form. If a person is required to send both a C1 and a C2 form, they can send them at the same time. These forms can be obtained at county courts, family proceedings courts or at www.hmcourts-service.gov.uk

How will the court decide whether to give me leave?

The purpose of leave is to act as a filter to protect the child and the family from applications that are not likely to succeed and are nothing more than an interference with the family. In deciding whether or not to grant leave, the court will consider:

- the nature of the application for contact;
- the applicant's connection with the child; and
- the risk that the application poses of disrupting the child's life and causing harm.

The closer the connection of the person seeking leave, the more likely an application will succeed.

Before making an application to court for contact, parents should attempt family mediation or explore alternative methods of resolving contact disputes.

Going to court can be a stressful and expensive experience. It is a 'last resort'. Before making an application for an order, parents should seek legal advice.

It is possible for a parent to make an application themselves, but there are advantages to being represented by a solicitor. A solicitor will know and understand the process and procedures and can help reach agreements.

Who can make an application to court for a contact order?

The following people can make an application to court:

- a parent;
- a person who has a residence order in relation to the child;
- a guardian;
- a step-parent who has treated the child as 'a child of the family';
- a person with whom the child has lived for at least three years; and
- any other person who has obtained the consent of all those with parental responsibility.

If you are not any of these people then you will have to obtain leave (permission) from the court.



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What happens once an application is made?

The parties involved will receive a date on which to attend court. This is known as Directions Hearing. It is a hearing to decide what the issues are between the parties and what procedural action needs to be taken before there is a full hearing on the issues of contact.

Can a child make an application for leave to make a contact application?

A child can make an application for leave to make a contact application, but only if the court is satisfied that the child has sufficient understanding to make such an application. A child who wishes to apply for leave will probably require the assistance of a 'next friend' and their application for leave will have to be made to the High Court. Sometimes a child will want to see the non-resident parent, but that parent does not want to have contact. Sadly for the child, the court cannot force a parent to have contact.

On what basis will the court reach a decision?

In making any decision on contact, the welfare of the child is the court's paramount consideration.

The court will also consider the 'welfare checklist' contained in s.1(3) *Children Act 1989*. In reaching its decision, the court must consider:

- the wishes and feelings of the child,
- the child's physical, emotional and educational needs,
- the likely effect on the child of any change in circumstances,
- the child's age, sex, background and any other of his or her characteristics which the court considers relevant,
- any harm which the child has suffered or is at risk of suffering, and
- how capable each parent (and any other relevant person) is of meeting the child's needs.



CAFCASS (Children and Family Court Advisory and Support Service):

When an application is made to court for a contact order, and the parents are not able to reach agreement, the court will usually ask a Children and Family Reporter from CAFCASS to make a report to the court.

The Children and Family Reporter will see both parents - sometimes at home, but sometimes at their office, and will also see and talk to the child, normally on their own if they are considered competent enough. The purpose of this is to find out what the child's wishes and feelings are. Depending on the circumstances, the Court and Family Reporter may also speak to the child's school, doctor, social worker (if there is one involved) or relatives.

The purpose is to advise the court on what is in the best interests of the child. The Reporter will consider all the information and make a recommendation firstly about whether there should be contact, and then a recommendation about the amount of contact.

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Will the Child and Family Reporter attend court?

If the parties have not settled the issues between themselves, then the Reporter will normally give evidence to the court. He or she will give evidence based on the report they have written and should be looking at the best interests of the child.

What if I am unhappy about my visit with the Child and Family Reporter?

A parent should tell the Reporter that they do not feel happy with the meeting, and ask the Reporter to see them again. Some will agree, some will not, but they should listen to anything extra that a parent has to say. If a parent still feels unhappy about the meeting, a solicitor can write or speak to the Reporter and to the CAFCASS Area Complaints Manager. A parent can make a formal complaint about the Child and Family Reporter to CAFCASS. In court a parent or solicitor, if represented should be able to raise any concerns about the Report.

What if there has been domestic violence?

The courts take allegations of domestic violence very seriously. If there has been domestic violence and a parent feels that it would be unsafe for them and the child to have contact, then they should go and see a solicitor. The solicitor will write a letter to the other party setting out the details of the violence and why contact is being refused.

Where domestic violence is the reason for refusing or limiting contact, the court should consider the allegations at the earliest opportunity. If the parent disputes the allegation but the allegation is serious and if proven likely to affect contact, the court should:

- make directions to ensure that all relevant evidence is obtained so that there can be a speedy hearing to decide what happened;
- consider whether contact should take place before the hearing takes place;
- consider the safety of the child and the parent;
- obtain a report from the Children and Family Reporter unless this is thought not necessary.

If there is already a court order in place for contact, the parent or solicitor will need to make an application to the court for the contact to be varied. The parent or solicitor may also decide to make an application for a non-molestation order.

If domestic violence is alleged, will there be any contact before the final hearing?

It is possible to get contact before the final hearing, but before allowing this, the court must consider:

- the likely risk of harm to the child if contact is ordered or refused,
- how contact should take place, whether it should be supervised and how any risk of harm to the child and/or parent can be minimised,
- whether a non-molestation order should be made,
- whether the parent seeking contact should seek advice and/or treatment as a precondition to contact being ordered.

At the final hearing the court should:

- if practical, make findings of fact as to the nature and degree of the violence and the effect of that on the resident parent,
- consider the harm that the child has suffered as a result of the violence and the risk of harm if a contact order is made,
- only make an order for contact if it can be satisfied that the safety of the parent and the child can be assured both before and during the contact.

In its judgment or reasons, the court should always explain how its finding on the issue of domestic violence have influenced its decision on contact.



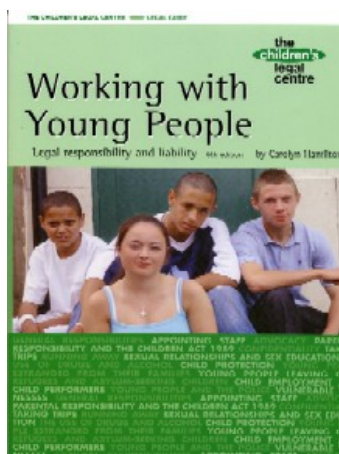
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Appealing the court order:

Any appeal against an order of the family proceedings court, county court or high court must be made within 14 days. The court will only hear an appeal if the judge has made an error of law or the decision is obviously unreasonable. In many cases, it is better to wait for the order to come into effect, and if after a reasonable period of time it appears that the child is unhappy with the order, or the order is unworkable, an application can be made to the court to vary the order.

A contact order is an order from the courts and is therefore legally binding.

The Children's legal Centre produces a number of publications including childRIGHT, a monthly publication and Working with Young People: Legal responsibility and Liability. For further information about our publications please contact us.



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What if my child refuses to have contact even though there is a contact order in place?

If the court has made an order for contact, then the court expects the resident parent to encourage the child to have contact and ensure that it takes place. However, the child may simply refuse to have contact with the non-resident parent. Where this happens, the resident parent is at risk that he or she will be held in contempt of court. It is possible that the non-resident parent will take the case to court. If the child really refuses to have contact, the resident parent should inform their solicitor so that the solicitor can explain in writing to the other parent what is happening. The solicitor may decide to make another application to court for a variation of the order.

What if a parent does not comply with the order?

A court order is legally binding. Failure to comply with the court order amounts to contempt of court and a person can, as a last resort, be committed to prison for contempt. A parent cannot be held in contempt though simply for failing to take up the contact given.

Children's Legal Centre

University of Essex
Wivenhoe Park
Colchester
Essex
CO4 3SQ

Phone: 01206 872466

Fax: 01206 874026

E-mail: clc@essex.ac.uk

Website:

www.childrenslegalcentre.com

Children's Legal Centre

Advice Line:

0845 120 2948