



L.E Law Services Ltd  
127 High Road  
Loughton  
Essex IG10 4LT

Telephone: 020 8508 4691  
[www.lelaw.co.uk](http://www.lelaw.co.uk)

## **L.E LAW INFORMATION SHEET NO 16**

### **GUIDE TO CHILD CONTACT**

#### **Introduction**

After separation, parents need to decide what contact their child or children will have with the parent they do not live with (their 'non-resident parent'). This guide has been prepared to provide general information about the law relating to contact between a child and her or his non-resident parent. We acknowledge that grandparents, step-parents, same sex co-parents or others may also want to maintain contact with a child after separation. This can be more complex and you should seek legal advice if this is your situation.

#### **What is Contact?**

Contact can take place in many different ways and it is important to remember that there are no rigid rules about what contact should take place. Contact arrangements that are right for one family may not be right for yours.

You may arrange direct contact between your child and her or his non-resident parent. This can include visiting contact and staying contact. Visiting contact can take place in a contact centre, in someone's home or in a public place. A contact centre may be appropriate where the contact needs to be supervised because the non-resident parent has a history of violence or substance abuse or where a child needs to develop her or his relationship with the non-resident parent. Staying contact means overnight visits and can include weekends and school holidays. Both types of contact can be for short or long periods of time depending on the circumstances of your case

If direct contact is not possible or you are concerned about the safety of your child you may arrange indirect contact. This could include telephone calls, letters, emails or text messages. This could be one-way contact, where the non-resident parent sends letters to the child but the child does not write back, or two-way, where the child also sends letters back.

If you can agree contact arrangements between yourselves, you do not need to ask the court to become involved. It is sometimes helpful to write down arrangements you

have agreed to help prevent future disagreements or misunderstandings. Reaching an agreement now does not prevent you going to court later if arrangements break down.

### **What if We Cannot Agree Contact Arrangements?**

If you cannot agree on when, where or how much contact there should be, you could consider attending mediation. Mediation is a voluntary process which aims to help parents negotiate with the help of a mediator. Mediation is not appropriate if you have experienced domestic violence. It may also not be appropriate if you have a disability or have English as a second language. You may be eligible for free mediation if you are on benefits or a low income.

You could consult a solicitor to negotiate arrangements. A solicitor can write to your former partner setting out your suggestions for contact or the concerns you have and help you reach an agreement.

If you are not able to reach an agreement about contact either you or your child's non-resident parent can make an application to the court for a Child Arrangement Order.

### **The Law**

The law relating to child contact is set out in the Children Act 1989 (CA 89). The CA 89 says that when the court makes any decision about a child, the child's welfare must be the court's "paramount consideration". This means it must consider the child's welfare above everything else. The court generally believes that it is in the interests of the child to have contact with the non-resident parent, unless the child would be at risk of harm when having contact. If the court believes that it is in your child's best interests to have contact with her or his non-resident parent it can make a Child Arrangement Order.

**A child arrangement order** is an order requiring the resident parent to allow the child to visit or stay with the non-resident parent or have any other form of contact provided in the order, for example by telephone. When making the decision the court must consider all your child's circumstances and in particular:

- **your child's wishes and feelings** depending on her or his age and understanding (generally the older your child is the more attention the court will pay to those wishes and feelings)
- **your child's physical, emotional and educational needs** (this includes practical needs such as accommodation and food as well as love and affection)
- **the likely effect on your child of any change in her or his circumstances** (the court will look at the previous or existing arrangements for contact and generally considers that change is disruptive to a child)
- **your child's age, sex, background and any characteristics the court thinks relevant** (this could include any cultural or religious needs or if your child has any special needs or disability that might affect contact arrangements)

- **any harm your child has suffered or is at risk of suffering** (this includes any risk of physical, sexual or emotional abuse and any domestic violence your child has seen or heard)
- **how capable both parents are of meeting your child's needs** (the court can consider whether the nonresident parent has the skills to look after your child and can consider whether these are impaired, for example, by substance misuse)
- **the range of powers available to the court** (the court can choose from a very wide range of different contact arrangements from direct to indirect contact to no contact at all)

### **Domestic Violence and Contact**

When making a decision about contact the court must consider the effect on your child of seeing or hearing domestic violence. If you have experienced domestic violence, whether or not your child was directly involved, you should tell your solicitor or the judge at the earliest opportunity. CAFCASS (the Children and Family Court Advisory and Support Service) recognises that children living with domestic violence are in a situation where their needs cannot be met. CAFCASS should screen for domestic violence in all cases and investigate any risks to you and your children's safety.

At the beginning of court proceedings the court may arrange a conciliation appointment to assist both parents to reach an agreement about contact. Make it clear that conciliation is not appropriate for you because of the domestic violence you have experienced. If a joint meeting is suggested you have the right to be seen on your own, especially if you are afraid of the other parent.

The Court may order CAFCASS to prepare a welfare report (see below) which should consider:

- the domestic violence you and / or your child have experienced
- the harm which your child has suffered or is at risk of suffering if contact is ordered
- whether the safety of you and your child can be secured before, during and after contact
- your child's wishes.

It is also important to tell the CAFCASS officer writing the report if you have informed any other organisation about the abuse, for example, the police, Women's Aid or your GP.

### **What Happens at Court?**

The court proceedings can take place in the Family Proceedings Court (part of the Magistrates Court) or in the County Court. In some courts the first hearing is a

conciliation appointment where both parents speak (together or separately). In some courts, a child over the age of nine will also be expected to attend court to speak to the CAFCASS officer. Ask your solicitor or the court whether your child should attend. If you are able to reach agreement with the help of the CAFCASS officer, the judge can make a child arrangement order.

If you cannot reach agreement the judge will decide what evidence she or he needs to make a decision about contact and make directions. This could include both parents writing statements setting out their views on contact. The court may also order a CAFCASS officer to prepare a report and make a recommendation about contact. The CAFCASS officer will see the court file, read your statements, will meet both parents and the child individually, and any other professionals involved with the child as necessary. It is important to cooperate with the CAFCASS officer as their recommendation is very influential in the court's decision making. You may also want the judge to consider the views of experts such as social services or a child psychologist in making the decision. If that is the case you need to ask the judge to make a direction for them to write a report for the court.

If you have experienced domestic violence the court will decide whether domestic violence occurred at a finding of fact hearing where you may be required to give evidence. The judge will decide whether there has been violence and if so what effect this has on contact arrangements. It is important to remember that even if the court decides the non-resident parent has been violent the judge can still order contact to take place.

At the final hearing each parent and anyone else who has done a report for the court, such as the CAFCASS officer, may have to give evidence. The judge will then make a decision about what contact should take place.

### **Varying a Child Arrangement Order**

Usually the child arrangement order will last until your child reaches 16. However, if your child's needs or circumstances subsequently change either you or your child's non-resident parent can apply to the court to vary the contact order by filling in the appropriate application form. The court will then contact you and your child's non-resident parent with the date of a hearing. At the hearing you may be able to reach an agreement about the new contact arrangements with the child's non-resident parent. If you are not able to, the judge will make directions about what evidence she requires to make a decision. This may include ordering a new CAFCASS report. The court will not make a new order if nothing has changed since the original order was made.

### **Breaches of a Child Arrangement Order**

If a court is satisfied that either you or the child's non-resident parent has breached a child arrangement order without having a reasonable excuse it can:

- attach a warning notice to the order about the consequences of breaching it in the future
- impose a fine

- impose a sentence of imprisonment or suspended sentence
- transfer residence

The Children and Adoption Act 2006 (CAA 06) contains a number of measures that aim to facilitate contact. It also increases the number of penalties that can be imposed on a person who has breached the order including ordering a parent to do unpaid work in the community or pay the other parent compensation (for example, for travel expenses where contact has not occurred).

The issues relating to contact can be complex and we have provided a very basic overview of terminology, law and court practice and procedure.

### **Disclaimer**

This information sheet is for guidance only and does not avoid the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

### ***Contact Details***

For further help please contact:-

**Tara Deslandes**  
**Head of Family Department**  
**Solicitor & Accredited Family Mediator**  
**Member of the Law Society Family Panel & Resolution**

**L.E Law Solicitors**  
**127 High Road**  
**Loughton**  
**Essex IG10 4LT**

**Tele: 0208 508 4691**  
**Email: [tara@lelaw.co.uk](mailto:tara@lelaw.co.uk)**

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