

CCLP

Chester Community
Law Project



University of
Chester

This leaflet has been produced by law
students at the University of Chester.



**What will happen to my
child if I separate from
partner/spouse?**

Information for women



In England and Wales there are no laws that state that a child should live specifically with either mother or father. The best way to resolve this is to reach an agreement between yourselves. However, if you are unable to do so then there are several options available to assist you to reach an agreement.

Before starting negotiations or (as a last resort) making an application to Court, you will need to show you have Parental Responsibility for the child.



Who has parental responsibility?



A mother automatically has Parental Responsibility for her child from birth.

A father usually has Parental Responsibility if he's:





Married to the child's mother.



Jointly adopted a child (in which case both adoptive parents have Parental Responsibility).



Listed on the birth certificate (after a certain date, depending on which part of the UK the child was born in or if the child is born overseas and lives in the UK, the country they're now living in).



If you were not married to the father and they were not listed on the birth certificate, they may still be able to get Parental Responsibility if they wish, so do be aware of this.

What is parental responsibility?

The law does not define parental responsibility, but it does include the following:



Consenting to medical treatment or obtain appropriate treatment for the child



Making sure that if the child is of compulsory school age, they receive an appropriate education



Caring for the child & providing a home



Deciding where the child should live



Naming the child

Taking action



What should we agree on?

You and your former partner can agree whatever child arrangements you want to between yourselves. The Children Act 1989 makes it clear that whatever the chosen arrangements are, these are to be ensured to be in best interest of the child.

Taking action



What if we cannot reach an agreement?

1. Seek Independent legal advice

In limited circumstances, Legal Aid might be available to help with the costs.



You can check if you are eligible here:
<https://www.gov.uk/check-legal-aid>.

2. Attempt Mediation

This is where a trained mediator sits down with you and your former partner and tries to assist you in reaching a resolution. If you do not want to be in the same room as your former partner, you can try shuttle mediation where the mediator goes between you in separate rooms.

You can try mediation without going to a solicitor. Additionally, there are costs involved in mediation.

You can find out more information about mediation here: <https://www.gov.uk/looking-after-children-divorce/mediation> including finding a mediator and help with costs.





3. Apply for a Child Arrangements Order

The absolute last resort is to apply for a Child Arrangements Order in the Family Court. If you do this, you will be interviewed by CAFCASS (Children and Family Court Advisory and Support Service) and will have several hearings before a Judge or Magistrates.

By the end of the process if you have not reached an agreement, the Court will provide you with an order which cannot easily be changed. This is why it is important to try and sort things out between you first.

