

## Misconceptions about children on separation

Children come in all shapes and sizes and they all have different levels of acceptance and coping mechanisms. It is therefore very difficult to predict how any particular child will react to news that their parents are about to/or have separated. With this in mind it is essential that when dealing with this delicate issue the best interests and welfare of children should be carefully considered and planned.

The following are some statements which are commonly made by parents who have separated:

### **Children are not affected by their parents' separation**

The majority of children are affected when they are exposed to parental conflict. Children love both parents and look to them to make decisions for them. Parents should put aside their differences for the sake of their children. This enables parents to co-parent and jointly make important decisions in respect of all areas of their children's lives whilst ensuring their children are protected from emotional harm.

### **Child maintenance and arrangements for child contact go hand-in-hand**

Parents often believe that if they are paying child maintenance this means that they should automatically be seeing their children. Payment of child maintenance is a statutory liability. Having suitable arrangements in place to spend time with your children is a completely different and unrelated matter. Sadly, if agreement with regards to child arrangements cannot be reached, an application to court may be necessary regardless of child maintenance being paid.

### **Children always remain with the mother**

At Alison Fielden & Co we have acted for both mothers and fathers in cases with very different circumstances. We have seen children live with their mother, with their father or indeed with both parents on a shared care basis. On separation parents should try to come to an agreement about the care of their children to include where they will live/how much time they will spend with each parent. If agreement cannot be reached the court may be required to decide making a Child Arrangements Order.

### **Agreements reached directly between parents are legally binding**

Agreements reached between parents are simply that: an agreement. They are not legally binding. Only a Child Arrangements Order made by the court, setting out the arrangements for children, whether agreed or imposed by the court, is legally binding.

### **There are set precedents for child arrangements which the court must adhere to**

When dealing with a children application, the court's paramount consideration is the welfare of the individual child. The court will consider the welfare checklist (set out in the Children Act 1989) taking account of all relevant circumstances. Each case is different and this coupled with the wide discretion of the court means that there is no 'one size fits all' approach.

### **The court will follow what the children want**

In some cases the court will decide that a report from the Children and Family Court Advisory and Support Service' (CAFCASS) is needed. When preparing a report, CAFCASS will consider the ascertainable wishes and feelings of the children concerned and the court will decide what weight to attach to this taking into account their age and understanding.

### **Involving children in decision making is helpful**

Whilst parents may feel that it is important to involve children in decisions made about them, this is more often than not, not the best approach. Children are not adults and should not be made to participate in the decision making process. Children, depending on their age and understanding, are not usually properly equipped to fully consider and then make decisions. Children rely on the adults in their lives to make decisions for them. Children should be left to be children.

### **All fathers have parental responsibility**

This is a very common misconception. Fathers can obtain parental responsibility in the following ways:

- by being married to the mother at the time the child is born
- by being named on the child's birth certificate after 1 December 2003
- by entering into a Parental Responsibility Agreement with the mother, and
- by order of the court.

So, as you can see, some of the most common pieces of information people receive may not actually be correct and as such when dealing with children issues arising out of separation it is essential that legal advice is sought at an early stage. For further information and advice contact Heather Weavill or Steven Barratt at Alison Fielden & Co on 01285 653261.