

Is contact working?

For separating parents, the issue surrounding the arrangements for both parties to spend time with their children is often the most pressing matter to address. Children can be the silent victims of divorce, and the manner in which their parents seek to care for them both during and after the period of separation can impact upon them in many different ways.

Disputes over where children should live, and with whom, are also highly emotionally charged, which adds to the difficulty in reaching an agreement.

Many couples when separating will agree the practicalities of childcare between the two of them. There are a limited number of cases that actually have to go to court to be decided, although invariably these are the ones that make the headlines. For the majority of families, if the parents are able to resolve matters between themselves, the impact of the separation upon the children is less harsh.

There can be a number of reasons why contact does not work as well as it might. These include:

- interference from other family members;
- children seeking to set one parent off against the other;
- failure to make collection and return arrangements practical, particularly regarding location;
- intimidation, or perceived intimidation, of one parent by the other;
- a lack of substantive communication between the parents; and
- a significant lack of trust on one or both sides (present in most cases of failed contact).

What can be done to resolve these tensions?

Whatever the source of the difficulty, a failure by the parents to talk about the issues and agree a way forward, will undermine any significant chance of long term stability in contact arrangements. Attending mediation sessions can be very effective in helping separating couples build a relationship as co-parents which is distinct from their previous role as spouses and in re-establishing trust. Counselling can also help, as can the collaborative process, which is referred to in more detail elsewhere on this site.

Involving the court should generally be a last resort, although there are clearly some cases in which court intervention is essential and needs to be called upon quickly. Court proceedings do, however, tend to distance parents further from each other and this can have a significant affect on their ability to work together for their children over the longer term.

In the majority of cases children will benefit from spending substantial periods of time with each parent. The courts have a presumption towards contact with both parents when they apply the law. Family judges seek to support contact between the parent with whom the child does not live as a matter of importance for both the child individually and for the family as a whole.

Where contact stops – what can be done?

This has become a well-debated issue over the last few years, not least as a consequence of the lobbying of Parliament by some well-known pressure groups.

Informal arrangements

If there is no court order in place but arrangements for contact are being frustrated, the first thing to do is to suggest mediation and contact a mediator. If the suggestion is not welcomed, or mediation does not work, you can apply to the court for a contact order.

Formal arrangements – where there is already a court order

The Government has enacted new laws that toughen up the sanctions for people who do not obey court orders in relation to contact. They include scope for the courts to make “unpaid work” directions against those who have breached contact orders, to order monitoring of contact by CAFCASS and to order that the party in breach should pay financial compensation to the party whose contact has been frustrated. These provisions are not yet in force, but their introduction has heralded an era of the courts being more robust about dealing with frustrated contact.

At present, the courts have the option to send the parent who frustrates contact to prison for contempt of court. In practice, this is rare. In extreme cases the court has ordered that the child should move to live with the other parent on a permanent basis.

The number of orders made for residence of children to be shared between both parents is increasing. The law does not discriminate between mothers and fathers, and judges are keen to emphasise that it is the responsibility of the parents towards their children to ensure that contact arrangements work.