

CHILDREN AND THE LAW

contact, residence and parental responsibility

It is often difficult for parents of children who have been sexually abused to get clear information on their rights, their children's rights and the rights of abusive parents. This guide is designed to give an overview of the law, court process and procedure regarding disputes between parents about issues such as contact and residence. For legal information on social services' involvement with children see our guide **Children and the Law: When Social Services are Involved**.

Only people who are parents of a child or who have parental responsibility for a child can normally make applications for contact and residence without the court's permission, except in certain circumstances. Non-parents can also apply for contact and residence in certain circumstances or with permission of the court. For more information see **Rights of Women's Guides to Child Contact and Residence**. This legal guide has been written from the point of view of the non-abusive mother of a child who has been sexually abused by her or his biological father. However, the information in this legal guide can be helpful for anyone who has parental responsibility for a child or who is caring for a child who has alleged sexual abuse (for more information on Parental Responsibility see below.)

If your child makes allegations of sexual abuse you must report this to the police as soon as possible. If there is a contact order in place you should seek urgent legal advice from a solicitor or Rights of Women's legal advice line. If there is no contact order in place you should withhold contact from the abusive parent, and seek urgent legal advice from a solicitor or Rights of Women's legal advice line. If there is a contact order in place you may have to make an emergency application to court to vary or end the contact order (see below).

This guide sets out the law and the procedure which should be followed by the courts and other agencies. If you find that your solicitor, the court or CAFCASS are not acting in accordance with the law and procedures set out in this legal guide you may be able to make a complaint, for advice on this contact Rights of Women's legal advice line or speak to a family law solicitor.

THE LAW

The law relating to children is set out in the **Children Act 1989 (CA 1989)**.

PARENTAL RESPONSIBILITY

Parental responsibility (PR) is the legal term which describes the rights and responsibilities that a parent has for a child rather than the rights she or he has over the child.

PR is the ability to make or be involved in the important decisions necessary in a child's life including education (where a child should go to school and receiving school reports), health and medical treatment (whether a child should receive medical treatment or vaccinations), religion (what religion a child should follow), going abroad permanently or on holiday, as well as the day-to-day care provided to the child.

Mothers

Biological (birth) mothers automatically have PR for their children.

Married fathers

A father who is married to the mother of his child at the time of the birth, or if a mother marries the child's biological father after the birth, the father will automatically have PR for the child. It is presumed that if you are married at the time you give birth to a child your child is the biological child of your husband.

A father who has PR because he is married to the biological mother cannot lose his PR unless a final adoption order is made, even if it is proved that he sexually abused his child. Having PR does not mean that a parent has a 'right to contact', however, a married father who had abused his child

would still have a right to make an application for contact. See **Contact**.

Civil partners of mothers

If the child was conceived by artificial insemination after 6 April 2009 and you were in a civil partnership your civil partner will automatically have parental responsibility for the child. Both names should be added to the birth certificate and your child will have no legal father.

Further information about parental responsibility and the rights of civil partners or other same-sex partners can be found in Rights of Women's **Guide to Lesbian Parenting**.

Unmarried fathers

If you are not married to the father of your child and your child was born before 1 December 2003 he does not automatically have PR for your child. He can gain PR as set out below.

If you are not married to the father of your child and your child was born after 1 December 2003 and the father was named on the birth certificate, the father will automatically have PR. If he is not named on the birth certificate he will not automatically have PR. He can gain PR as set out below.

How can an unmarried father who does not automatically have PR obtain it?

PR can be acquired in one of 3 ways

- By entering into a PR agreement with the birth mother. This is a voluntary agreement between the birth mother and father.
- By the court making a PR order
- By marrying the mother.

In most situations, where there are allegations of sexual abuse the mother will not consent to the father having PR. A biological father has the right to apply to court for a PR order in respect of their biological child.

The court will consider the following when deciding whether to grant a PR order:

- Whether the father has shown sufficient commitment to the child to justify giving him PR

- What the level of attachment is between the father and the child
- His reasons for applying for PR

The legislation is drafted broadly, with the child's best interests being central. Therefore, although there is no bar to the court granting PR where a father has sexually abused his child, even if the allegations are proved, the court can decide to refuse a PR order where it is alleged that the father has sexually abused the child. The courts must apply the above test to the facts and consider all the circumstances of the case. When making decisions regarding PR the court must consider the welfare checklist and the paramountcy principle (see **Children Act 1989**). You may be able to get a recommendation in writing from social services to show the court that the non-resident parent should not be granted PR. You can argue that your child's father has shown a significant lack of commitment to his child if he has sexually abused the child or where he is serving a prison sentence for sexual abuse of a child. You could also argue that your child's father poses a risk to the child's welfare due to his previous sexual abuse of your child or other children and that as a result he should not have PR (for more details see Court Procedure.)

Can a biological parent lose PR if he has sexually abused my child?

- A biological mother **cannot** lose PR unless her child is adopted,
- A biological father **who is married** to the mother **cannot** lose PR unless his child is adopted.
- A biological father **not married** to the mother who has gained PR by being named on the birth certificate, by a PR agreement or a PR order **can** lose their PR.

PR can be removed from an unmarried father on an application made by the mother or an application made by anyone else with PR. A child can apply for permission from court to make an application for PR to be removed from an unmarried father, the court will only grant permission where it views that the child has sufficient understanding to make the application.

PR will only be removed from the father where the court deems it an appropriate step in the regulation of the child's life and where the circumstances require it. There is a presumption for continuance of PR rather than ending PR and there are very few instances when PR has been removed. If there are proven allegations of sexual abuse of a child the biological mother could apply for PR to be removed, PR would be removed if the court regarded this as a necessary step because, for instance, the father was, or is, a danger to the child. A parent's PR can be diluted by the court making a Care Order (see **Children and the Law: When Social Services are Involved**).

Although it is rare for PR to be removed, it is common for courts to restrict an abusive parent's ability to exercise their PR by withholding the child's address and restricting the abusive parent's ability to access information on the child for example, school reports and medical information. For more information see **Specific Issue Orders**.

Non-parents and parental responsibility

Other people can also acquire PR for your child. These might include step-parents, grandparents or same-sex partners. Non-biological parents can acquire PR for a child if:

- They **adopt** the child
- The court makes a **residence order** in their favour.
- The court makes a **special guardianship order**
- Married step-parents and civil partners can acquire PR for a step child by entering into a PR agreement or by asking the court to make a PR order.
- A local authority social services department can acquire PR for a child if the court makes a care order (including an emergency protection order or interim care order) in respect of that child.
- They are appointed as a **guardian** of the child. A person or persons with PR can appoint another person or persons to be the child's guardian after his or her or their death. The appointment can be made in writing (and must be signed and dated) or in a will. If the person(s) making the

appointment has a residence order or there is no other person(s) with PR the guardian will gain PR.

For further information see **Children and the law: When Social Services are Involved, Guide to Parental Responsibility, Guide to Residence Orders and Guide to Lesbian Parenting.**

CONTACT

There is no automatic right for a parent to have contact with his child. There is a presumption that it is in a child's best interests to have a meaningful relationship with both their parents.

There are no rigid rules about how contact should take place. There are different types of contact: visiting contact, staying contact and indirect contact (for more information see Rights of Women: **A Guide to Child Contact.**)

If the court considers that direct contact would be harmful for a child they should not make an order for direct contact. If sexual abuse is proven it is unlikely that any direct contact will be awarded by the court. In this situation it is likely that the court would view that direct contact with a parent who had sexually abused a child would be harmful and not in the child's best interests.

If your child has made an allegation of sexual abuse against her father you should contact the police, social services and seek legal advice from a solicitor immediately. Parents have a duty to protect children from harm. If there is no contact order in place and you believe your child has or will be sexually abused by her father you should withhold contact from your child's father. You may be able to get a recommendation in writing from social services, to show the court, that the non-resident parent should have contact with the child.

If there is a contact order in place you will need to make an emergency application to court to request that the contact order is suspended or ended (see **Court Procedure**). Even if there is a criminal conviction against the father of your child for sexual abuse of their child they can still apply for contact with that child. It is **unlikely the court would order unsupervised contact** but a decision

would be made on what the court views is in the child's best interests.

If the allegations of sexual abuse are not proven, for example, the perpetrator has not been convicted of the offence in the criminal court, then the family court will have to investigate the allegations and have a **finding of fact** hearing to decide whether they believe it is more likely than not that the alleged sexual abuse occurred (see **Fact finding hearings** below).

Ending or varying a contact order

Usually the contact order will last until your child reaches 16. If your child's needs or circumstances subsequently change either you or your child's father can apply to the court to **vary** the contact order.

If a contact order is in place and an allegation of sexual abuse is made against the person the contact order is made in favour of, or it is alleged to have happened during contact by someone other than a parent, you should seek legal advice immediately. You should withhold contact and apply to court for an emergency hearing to vary or end the contact order.

If it is not an emergency situation, you must apply to court, the court will then contact you and the child's father with the date of a hearing. The judge will normally make **directions** about what evidence she requires to make a decision. This may include ordering a new CAFCASS report or a social services investigation. The court will not make a new order if nothing has changed since the original order was made.

Breaches of a contact order

If you wish to stop contact and there is a contact order in place you may not do so unless you have a reasonable excuse. Warning notices outlining the consequences of breach of a contact order are now attached to all contact orders. If the court is satisfied that either you or your child's father has breached a contact order without having a reasonable excuse it can:

- Impose an unpaid work restriction
- Impose a fine

- Order payment of compensation to the other parent (for travel expenses where contact has not occurred)
- Impose a sentence of imprisonment or a suspended sentence
- Transfer residence

If your child alleges sexual abuse you should apply to court to vary or end the contact order, contact the police and seek urgent legal advice from a solicitor (see Other **Useful Contacts**).

For more information on contact see Rights of Women: **A Guide to Child Contact**.

RESIDENCE ORDERS

Residence means where, or more precisely, with whom a child should live when parents no longer live together. This used to be called custody. A residence order states which parent a child should live with on a permanent basis and who should be the child's primary carer. A residence order is about the person a child lives with and not the address.

If there is a dispute about with whom a child should live, either parent can apply for a residence order. If your child alleges that her father has sexually abused her, it might be useful for you to apply for a residence order.

If social services become involved they may suggest that you apply for a residence order; and support your application for a residence order. An application for a residence order may be able to stop social services from having to apply to protect your child through care or supervision proceedings, as your child may no longer be at risk (see **A Guide to Children and the Law: When Social Services are Involved**).

Although there may not be a dispute between you and your child's father about where your child should live, it may be important that you have a legal document stating your child lives with you. Particularly if you are concerned the child's father might abduct the child or attempt to remove the child from school. Once you have a residence order, you should give a copy of it to your child's school and advise them that the order means that your child should not be handed over to her

father without permission from you. If you have a residence order and your child is taken away by their father without your consent, you can call the police and advise them you have a residence order and the police must return your child to you. If you do not have a residence order, this can be more difficult and the police are not obliged to return your child to you. If this happens seek urgent legal advice from a specialist family law solicitor.

If a residence order is made in favour of someone who does not have PR the order will give that person PR and everyone with PR will retain it. If a residence order is made in favour of a parent everyone else with PR retains it.

If you have residence for your child you are not allowed to change your child's surname. You can take your child out of the United Kingdom temporarily (for example, on holiday) for a period of up to one month without consent of anyone else with PR.

A residence order lasts until your child is 16 or in exceptional circumstances 18.

Please see Rights of Women: **A Guide to Residence** for more information on residence orders.

PROHIBITED STEPS ORDERS

A **prohibited steps order** (PSO) is an order the court can make to forbid a person who has PR for a child from taking certain action in relation to that child. The most common use is to prevent your child being abducted (in or outside of the UK) or removed from school. You can ask the court to make a PSO forbidding anyone with PR from:

- removing your child from your care;
- removing your child from school;
- taking your child abroad (see also **Child abduction** below); or,
- bringing your child into contact with certain people. For example, if your child has alleged sexual abuse against a friend or relative, for example, the paternal grandfather, you may wish to apply for a specific issue order to forbid the paternal grandfather from coming into contact with your child during her visitation with her father.

The court can make these orders in an emergency and without the other person being given notice of the hearing. The court may make a temporary or interim PSO and arrange another hearing when the other person can attend and put his or her side of the story. A PSO could also be made to last indefinitely.

SPECIFIC ISSUE ORDERS

A **specific issue order** (SIO) is an order the court can make when two people who have parental responsibility (PR) for a child (see our **Guide to Parental Responsibility**) cannot agree about an important decision in a child's upbringing.

Anyone with PR can ask the court to make a SIO if you cannot agree about:

- your child's education – for example what school she or he should go to;
- your child's religion – for example whether your child should be brought up in one faith or another;
- your child's health – for example what medical treatment your child should have; and,
- your child's surname.

The court is unlikely to become involved in less important decisions about the way in which you bring up your children, such as the day-to-day decisions you make. For example, your child's other parent is unlikely to be able to ask the court to interfere in decisions about the clothes you dress your child in or the food you give your child.

If your child's father has sexually abused the child you could make an application for a specific issue order to operate to restrict his parental responsibility. For example you could apply to restrict his access to information on your child's education and medical information.

MOVING WITHIN ENGLAND AND WALES

Generally you are free to move within England and Wales. If you wish to move and the child's father has contact with the child, you may have to change contact arrangements.

TAKING YOUR CHILD FOR A HOLIDAY

Before your child is taken abroad on a holiday you must seek permission to remove your child from everyone who has PR for your child. A residence order allows you to take your child abroad for up to one month (see **Residence Order** above).

CHILD ABDUCTION OUT OF THE UK

It is a criminal offence for a parent of a child under 16 to take or send a child out of the UK without getting the permission of either, anyone else with PR for the child or the court.

If you are concerned that your child's father intends to take your child out of the UK you should contact the police and seek urgent legal advice.

If your child has already been taken out of the country seek urgent legal advice and contact Reunite (see **Useful Contacts**.)

LEGAL AID

If you receive an application for any of the above orders or wish to make an application under the Children Act 1989, you should contact a solicitor or seek legal advice from Rights of Women's legal advice line. The rules on legal aid changed on 1st April 2013. You will most likely be eligible for legal aid if social services are involved with your child regardless of your financial means, for more information on this see our legal guide in this series

Children and the Law: When Social Services are Involved. For children matters, such as disputes between parents on contact and residence, legal aid is being removed, but you may still be eligible if you are on benefits or a low income and your child has experienced sexual abuse and/or you are a victim of domestic violence.

Parents of children who have experienced sexual abuse will be able to access legal aid if they can provide one of the following pieces of evidence to show that the child's father has been abusive:

- An unspent criminal conviction for a child abuse offence;

- A police caution for child abuse within the last 24 months
- A protective injunction (e.g. non-molestation order) to protect you and/or your child from the child's father in the last 24 months
- A finding of fact by a court of sexual abuse of your child within the last 24 months
- A letter from social services confirming that in the last 24 months the child was assessed as being, or at risk of being, a victim of child abuse or a child protection plan was put in place to protect the child from abuse
- Ongoing proceedings for a protective injunction (e.g. non-molestation order) and a prohibited steps order

Survivors of domestic violence who are financially eligible will be able to access legal aid if they can produce certain types of evidence to show that the child's father has been abusive including:

- An unspent conviction for a domestic violence offence in respect of the father
- A police caution for a domestic violence offence in respect of the father within the last 24 months
- Evidence of relevant ongoing criminal proceedings for domestic violence by the father
- A protective injunction (e.g. non-molestation order) within the last 24 months
- An undertaking in place of an injunction given in the last 24 months
- A letter from a MARAC confirming that in the last 24 months you have been put on a plan to protect you from your child's father
- A copy of a finding of fact made at court that you experienced domestic violence perpetrated by the father in the last 24 months
- A letter from a health professional confirming that you have sustained injuries through domestic violence in the last 24 months

THE CHILDREN ACT 1989

The law relating to children is set out in the **Children Act 1989** (CA 89). The law 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 when making decisions on contact / residence / PSO / SIO. The court must consider all your child's circumstances and in particular the **welfare checklist**:

- a) your child's wishes and feelings, depending on her or his age and understanding (generally the older the child is, the more attention the court will pay to those wishes and feelings),
- b) your child's particular needs – physical, emotional and educational needs (this includes practical needs such as accommodation and food, as well as love and affection),
- c) the likely effect on your child of a change of circumstances,
- d) your child's age, sex, background and any of the other characteristics which are considered relevant (this includes your child's religious and cultural needs as well as your child's age),
- e) any harm, abuse, or neglect your child has suffered or is at risk of suffering,
- f) how capable you and anyone else with parental responsibility are of meeting your child's needs.
- g) the court must consider the range of different orders it can make and decide which is most appropriate (if an application is made for any of these orders the court has the power to grant another order, for example, if an application for a prohibited steps order is made the court might decide to make a residence order).

MEDIATION

If your child has alleged sexual abuse against her father then mediation will not be appropriate.

There is now a requirement to attend a Family Mediation Information and Assessment Meeting (FMIAM) prior to making any application for contact. You are required to complete a form FM1 confirming your attendance at an FMIAM or explain why you did not attend.

If social services are currently involved with your child you should not attend an FMIAM. Complete the form FM1 ticking the appropriate box to confirm this.

If the police or social services are no longer involved with your child you should advise your solicitor attending an FMIAM to discuss arrangements regarding your child is not appropriate.

If you do not have a solicitor and you have been contacted by a mediator regarding a FMIAM, you should explain to the mediator that your child has made allegations of sexual abuse against their father and therefore you do not wish to mediate or attend an FMIAM. Ask the mediator to fill in the FM1 form and return it to you. You must then sign it and hand it in to the court. Alternatively, if you do not wish to contact a mediator you can complete Part 3 of the FM1 and explain why you have not attended the FMIAM. It is important that you complete the FM1 as the court can order costs against you if you do not comply with the FMIAM requirement and you do not have an appropriate explanation.

DOMESTIC VIOLENCE AND CHILD 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.

If you have experienced domestic violence and you need protection you can call the police. There are also domestic violence injunctions such as non-molestation or occupation orders that can protect you and your children from abuse, for more information see Rights of Women's **Guide to Domestic Violence Injunctions**.

COURT PROCEDURE

If you are applying for a contact / residence / PSO / SIO and there are no existing children proceedings, you should complete a **Form C100**

which you can download from the court service or you can get from your local county court. To find your local court and to download court forms visit **www.hmcourts-service.gov.uk**

If you are making an application for one of the above orders and there is already a children case in existence at court then you must complete a **Form C2**. The court proceedings can take place in the **Family Proceedings Court** (part of the Magistrates Court) or in the **County Court**.

You should tick the 'Yes' box in **Section 5** on the **Form C100** to indicate that your child may be at risk of harm and indicate that your child has experienced sexual abuse and/or they have seen or heard domestic violence. You must complete and submit a **Form C1A** to briefly describe any harm your child has suffered including allegations of sexual abuse that have been made by your child as well as any domestic violence you have experienced.

You should bring your application to your local county court or family proceedings court and pay a fee of £200. If you are unemployed or on a low income you may be exempt from paying court fees and should complete an **EX160A** and hand this into the court along with proof of your income.

If an application for a contact or other order relating to your child is made to the family court by the parent who has allegedly abused your child then you must complete an **Acknowledgement of Service form** and a **Form C1A**.

When completing the **Form C1A** you will only be able to record the key points in terms of the abuse experienced and you should not enclose any original documents with this form unless specifically requested to by the court. This form is the first opportunity for you to raise the allegations of sexual abuse during the private law children proceedings.

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**. The initial court appointment will be a **First Hearing Dispute Resolution Appointment (FHDRA)**. At this hearing a

judge or magistrates, accompanied by a CAFCASS officer, will discuss with you and the non-resident parent the nature of the dispute and whether it could be resolved by mediation or other alternative means. **If sexual abuse has been alleged by your child against their father, alternative dispute resolution will not be appropriate.**

At the first hearing the judge will decide what evidence she or he needs to make a decision about contact and make **judicial directions**.

An example for a judicial direction a judge might make is for you and your child's father to produce witness statements setting out your views on contact.

Where allegations of sexual abuse against a child are made the court should order a fact finding hearing and give directions on what evidence is required, for example, disclosure of police and social services records; the judge may order a **Section 37** report and a **CAFCASS** officer should be appointed.

The court is likely to consider appointing a **children's guardian** during the proceedings. A children's guardian is appointed to represent a child in court and must provide the court with an assessment of what is in the child's best interests. The court may also appoint a solicitor to represent the child. The guardian will draft a report considering the welfare checklist and the child's wishes and feelings.

The judge should also consider whether the views of experts such as social services or a child psychologist would be useful in making the decision. You or your legal representative can request that certain professionals, witnesses or experts can give evidence. If you would like an expert to give evidence then you will need to ask the judge to make a direction for them to write a report for the court.

CAFCASS

The Children and Family Court Advisory and Support Service (CAFCASS) supports the interests of children involved in family court proceedings, its role is to advise the courts on what it considers to be the children's best interests. The court should

order a CAFCASS officer to prepare a report and make a recommendation about contact. The CAFCASS officer will see the court file, read your witness 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 significant in the court's decision making.

Section 7 report

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

- the sexual abuse your child has 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.

Section 37 reports

If the court is considering an application for contact or residence and decides further to a disclosure by the child or for some other reasons, that a child has suffered or is at risk of suffering significant harm, the court has the power to direct the social services department of your local authority to undertake an investigation of your child's circumstances. The court may only do this where they believe your child has suffered or is likely to suffer significant harm and a care or supervision order might have to be put in place (see **A Guide to Children and the law: When Social Services are Involved**.) The social services department of the local authority will then conduct an investigation into the allegations of harm. The court is likely to make interim (short-term) orders regarding where the child should live and could for example make an interim care order in favour of the local authority or an interim residence order in your favour.

Fact finding hearing

If your child has alleged sexual abuse and the court considers that this will affect the court's decision regarding contact between your child and their father, then the court must decide whether the sexual abuse has occurred at a **finding of fact hearing**. You may be required to give evidence and in limited circumstances your child may be required to give evidence. It is likely that where sexual abuse has been alleged this will affect the court's decision on contact or residence and, therefore, there should be a fact finding hearing.

It is important to remember that even if the court decides the non-resident parent sexually abused your child, the judge can still order contact to take place.

If there has been a police investigation about the allegations, then evidence from the criminal case should be disclosed to the fact finding hearing. If this has not happened, you should ask the court to make a direction that the police have to disclose any evidence they have relevant to the allegations of sexual abuse.

What is the role of the court in fact finding hearings?

Where an allegation of sexual abuse is made this will be central to court proceedings and this means that the court will have to listen to evidence and decide whether acts of sexual abuse occurred and who was the perpetrator. The purpose of the family court in child abuse cases is different to the criminal court. The family court is not concerned with the detection of crime. The focus in the proceedings is the child and protecting that child.

Evidence that may not have been allowed in the criminal trial against your child's father, for example, information given by a support worker or a GP about your child's behaviour or that your child had disclosed sexual abuse is likely to be allowed to be used in the family court. In fact ALL relevant information must be brought to the attention of the court and then the judge or magistrate will decide whether this information can be used in the hearing and how much weight it should be given.

Generally where a child is 12 or under, the view is that it is usually in the child's best interests not to give oral evidence. It is very rare for a child of any age who is alleging sexual abuse to be required to give evidence in the family court and an application would need to be made to the judge before the court will consider the child giving evidence. This is because the court has to consider the potential harm to the child of reliving the experience and being cross examined on her evidence. Evidence other than oral evidence, from your child can be considered by the court, for example a letter, a picture or a note from the guardian of what the child has said. The court can also rely on police and social worker interviews of your child as evidence.

Burden of proof in fact finding hearings

If the alleged perpetrator of sexual abuse has been investigated by the police and this investigation did not result in him being charged (see **Children and the Law: The Criminal Justice System and Child Sex Offences**), or the perpetrator was acquitted at the criminal trial this does not mean that you or your child has not been believed. This is because the jury in a criminal case have to decide whether the defendant is guilty and they can only decide this if they are sure and do not have a reasonable doubt as to the defendant's guilt (see **Children and the Law: The Criminal Justice System and Child Sex Offences**). In the family courts the judge will look at all the evidence and decide whether the alleged abuse has happened based on the balance of probabilities. If the judge is satisfied that the evidence indicates that it is more likely than not that the abuse occurred then this will be sufficient to make a finding that sexual abuse has happened.

Final hearing

At the final hearing the judge will have to decide what contact will happen or what other order(s) she will make.

Role of the court in final hearings

At the **final hearing** the role of the judge is to look at all the evidence and decide where a child should live and who the child should have contact with

and the type and length of contact. The court will usually hear evidence from each parent and anyone else who has done a report for the court, such as the CAFCASS officer, guardian or social worker. The judge will then make a decision about what contact should take place and where the child should live based on the welfare checklist (See **Welfare Checklist**).

EXPERT WITNESSES

You may wish to instruct experts on a variety of different issues. The court can make directions for expert evidence and if you would like an expert to provide evidence, you must first seek the permission of the court. A child should not be examined by an expert for the purpose of preparing expert evidence without permission of the court. If permission is not granted to acquire an expert report and an expert examines the child, the permission of the court will be required before that evidence can be used at court.

Once the report has been received from the expert it must be sent to all the parties and the court.

The role of the expert is to give an informed opinion to the court in an area that they are an expert in (for example child psychology) and / or they may also give evidence on facts that are in dispute which they have witnessed (for example, if a child has disclosed sexual abuse to them.)

The judge will decide how much weight will be given to the expert's evidence. Although it does not often happen, the judge is entitled to reject the opinion of experts but he/she should give clear reasons for doing this and it could be a point of appeal if this is not appropriate.

The court should attempt to limit the number of times a child has to see an expert.

How to choose an expert?

It is important that any expert chosen is an expert in the area in which their opinion is sought. For example, a psychiatrist is a mental health specialist but may not be an expert in the mental health of children who have experienced sexual abuse. It is likely that you will need a psychiatrist or a

psychologist with expertise in children who have experienced sexual abuse. It is important to ensure that your solicitor, or if you are unrepresented that you, check the expertise of any experts that are proposed by the father. You can ask for a copy of their CV and review this to check what their area of specialism is. If it does not seem that the proposed expert is suitable you should raise this and suggest some alternative experts who you believe are suitable and request that the judge orders that an expert is jointly instructed by you and your child's father. Provide reasons in writing to the court and the other parties in the proceedings why you think the proposed expert is not suitable and the reasons for the experts you have proposed.

If, on receipt, of an expert report, you are unhappy with the findings, you can request that further instructions are considered by the expert, cross-examine the expert at the final hearing or request that the judge allows you to instruct another expert.

Applications for permission to instruct experts should be made as early as possible in proceedings and should be made on a **C2 Form**. Expert reports can take many months to be produced.

CONFIDENTIALITY

Any information between you and your solicitor is 'privileged' this means that the court is not allowed to have information regarding conversations you have had with your legal representative. There are however a few exceptions to this rule.

The welfare of children requires that there should be full disclosure. **Full disclosure** means that all relevant documents should be shared between professionals, including police, social services, school and medical professionals, as well as the court and you and the father of your child.

Where there are family court proceedings regarding a child, the social services department of your local authority have a duty to disclose any information relevant to the child's welfare to the court. Parents of children will be parties to proceedings and will be able to see such information. Social services will only be allowed to restrict information being

disclosed to you, where it would be detrimental to the child's welfare for the information to be provided. If social services wished to keep information about your child's case from you, they would have to apply to the court and request this. The court would only grant such an application if there are strong reasons related to the protection of your child's welfare to justify doing this.

WHAT TO EXPECT FROM YOUR SOLICITOR

If you have a solicitor and you are not happy with how they have treated you, you can complain.

Solicitors must abide by certain principles and are bound to follow the Solicitors Regulation Authority's Code of Conduct. One of the cornerstones of this code is that solicitors **must act in their client's best interests at all times**, regardless of whether you are publicly funded or paying privately.

It is not the solicitor's role to make decisions for you, the solicitor must advise you on the range of options available and the pros and cons of each option and it is for you, the client, to decide what course of action will be taken by the solicitor. You can choose whether or not you wish to proceed on the basis of their advice.

A solicitor has a duty of **confidentiality** to her client; however, this can be breached in certain situations, for example, where the solicitor believes that the mental or physical safety of a child is at risk.

If your solicitor has told you that you should agree contact arrangements with the father of your child, you do not have to do this. Only the court can order that your child must have contact with their father. Solicitors will sometimes advise you to come to an agreement if they believe the court might order something less favourable than what you can agree with your child's father; but they should explain this to you fully and advise on the range of options that you have.

If you are receiving legal aid, and you are having problems with your solicitor, you should explain the problems you are having to your solicitor and consult your solicitor's firm's complaints process as set out in the client care letter, which you should have received after your initial meeting with your solicitor or you can call the firm and ask for a copy of this letter if you cannot find it. If you feel that your complaint has not been dealt with appropriately, you may ask to change legal aid solicitors.

All solicitors are required to act in your best interests. You can complain using the complainant's procedure, query your bill, de-instruct your solicitor and report them to the Solicitors Regulation Authority (see **Useful contacts**).

The issues relating to children and the law are very complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would also strongly urge you to seek legal advice by telephoning our advice line or a solicitor.

Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children: **women living and working in London call 020 7608 1137 on Mondays 11am-1pm, Tuesdays and Wednesdays 2-4pm. All women call 020 7251 6577 on Tuesdays to Thursdays 7-9pm and Fridays 12-2pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence: **women living and working in London call 020 7608 1137 on Thursdays 2-4pm All women call 020 7251 8887 on Tuesdays 11am-1pm.**

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689 on Mondays 2-4pm and Wednesdays 11am-1pm.**

All our lines can be reached by textphone on **020 7490 2562.**



MOSAC is a charity that provides a range of support and information to non-abusing parents and carers of sexually abused children. These services include Advocacy, Child-centred Play Therapy, Counselling, National Helpline, Parent Workshops, Specialist Advice & Information and Support Groups.

Our free helpline can be reached on 0800 980 1958 (also 020 8293 9990) weekdays except bank holidays.

Mosac is at 20 Egerton Drive, London SE10 8JS

info@mosac.org.uk

020 8293 8582

www.facebook.com/mosac.uk

Supporting non-abusive parents and carers of children who have been sexually abused

www.mosac.org.uk

USEFUL CONTACTS

Other useful telephone numbers

- How to find a legal aid solicitor 0845 345 4345,
<http://find-legal-advice.justice.gov.uk/>
To check financial eligibility for legal aid <https://claonlineadvice.justice.gov.uk/>
- **CAFCASS**
www.cafcass.gov.uk
- **National Domestic Violence Helpline** 0808 2000 247
<http://www.womensaid.org.uk> / www.nationaldomesticviolencehelpline.org.uk
- **Child Maintenance Options** 08457 133 133
www.csa.gov.uk
- **Childline** 0800 11 11
www.childline.org.uk
- **NSPCC** 0800 800 500
www.nspcc.org.uk
- **Child Abuse Lawyers**
www.childabuselawyers.com
- **Barnardos**
www.barnardos.org.uk
- **Gingerbread** 0800 802 0925
<http://www.gingerbread.org.uk>
- **Resolution** (for finding a family solicitor) 01689 820272
www.resolution.org.uk
- **Samaritans** 08457 909090
www.samaritans.org.uk
- **Rape Crisis Federation Helpline** 0808 802 9999
- **NAPAC Helpline** 0800 085 3330 / 0808 801 0331
<http://www.napac.org.uk/>
- **One in Four UK**
www.oneinfour.org.uk
- **Respond**
www.respond.org.uk
- **In to the light** sexual abuse – support, info and resources
www.intothelight.org.uk
- **Family Matters UK Helpline** 01474 537 392
www.familymattersuk.org/

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office: 020 7251 6575

Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Charity number: 1147913



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National helpline:

0800 980 1958 (or 020 8293 9990)

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www.mosac.org.uk

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