

# Your essential guide



## Divorce: Who gets “custody”?

*For most parents going through a divorce, making sure the children are looked after is the number one priority. The good news is that this is a view shared by the legal system – but when it comes to the question of ‘who gets custody’ the answer is ‘no one’ and this Guide explains why.*

### Child Arrangements Order replace ‘custody

When parents’ divorce or separate, looking at where any children should live, how they will be taken care of and how often they should see or have contact with the other parent is of primary concern. The phrase still most used, particularly in the media and the world of soap opera is “who gets custody”. The reality is that custody no longer exists in legal terms. The court does not award custody to one parent or the other. Children have a right to a meaningful relationship with both parents although how this will work in practice will be different for each family.

Ideally, where the child lives and when and where they see the other parent will be decided amicably by the parents. If this can be agreed there’s no need for lawyers, or the courts, to be involved. If parents cannot agree however they will often call upon the help of specialist family lawyers like Woolley & Co, Solicitors to help negotiate arrangements or to apply through the courts for what is known as a **Child Arrangement Order**. Either parent can apply for an order, used to decide arrangements for the child to live, spend time and have contact with both parents.

### Where will the children live after divorce?

When a couple decide to split, the most common thing to happen is that one party or the other will move out of the family home. This is not always the case and if the property is in joint names, both husband and wife have a right to live there.

Practically speaking, it can sometimes be best for the children to stay in the family home to try and keep their routine as normal as possible. This means that they stay living with whichever parent stays in the house. It is often the mother, though this is not as commonplace as it once was.

It is not always possible to retain the family home for financial reasons and often both mother and father will be moving to new homes. It may be the case that one parent has the children in his or her care for more time and therefore that parent’s housing needs will take priority. Or, the children may move regularly between homes so housing needs will be broadly equal. Whatever the case, ideally, children should have a comfortable enough home with each parent whether it is where they live most of the time, half of the time or to spend weekends or holidays.

Assuming both parents are keen to be involved in the children’s life, logistics allow it and both parties put the needs of the children first, many splitting couples will very quickly decide how best to deal with living and contact arrangements without the need for external help, though a family solicitor can always advise on the options.

### Shared parenting

It is commonplace these days for there to be a presumption of shared parenting. While this is not 100% enshrined in law, it is often the starting point if the courts are asked to sort out issues about living and the contact arrangements for a child. Provided both parties are responsible and involved parents, it is

presumed that the children will benefit from the input of both parents in their upbringing so both should be involved practically and legally. This does not necessarily dictate where they live or how often they are cared for by each parent. Practicalities often make it difficult for it to be a straight 50/50 split of time – or it might just be deemed that that is too disruptive for the child and so contrary to their best interests.

### Reaching agreement

Many parents can reach an agreement about the care of their children without the need for any formal agreements or the help of solicitors. If this is not the case, you have several options:

#### Negotiation

With the help of a third party you may be able to reach an agreement. That third party could be a family lawyer, who you appoint to represent your interests and put your case to the other parent. They would normally provide help in the form of written advice on the legal position and your options. They may contact the other parent on your behalf with your proposals and negotiate an agreement.

#### Mediation

You may be able to reach agreement with the help of a family mediator. They would hold meetings with you both to see if you can agree on arrangements.

If you have already tried mediation and have failed to reach agreement or you do not think mediation is appropriate you may need to appoint a solicitor to help you apply for a **Child Arrangements Order**.

#### Using the courts

If nothing else has worked you can apply to the Court for a **Child Arrangements Order**. Before an application can be made to the Court, you will normally need to demonstrate that you have been unable to reach an agreement in any other way. Once this process has started, and assuming you are unable to reach agreement, you will be expected to attend two, or maybe three court hearings.

##### Stage one

To apply for a **Child Arrangements Order** an application will need to be prepared by your solicitor for the court and served on your partner ahead of a first hearing. Often matters will be resolved at stage one, as the fact that one party has taken such a strong step can prompt the other to back down and reach a workable solution. The court will strongly encourage both parents to reach an agreement at this hearing.

##### Stage two

If an agreement is not reached at the first hearing, stage two will involve filling in evidence forms about your case, circumstances, relationship with your children and the behaviour of the other party. There may also be preparation of a report by an officer from Children and Family Court Advisory and Support Service (CAFCASS). After looking at all the circumstances of both parties and considering what is in the best interests of the children, they will make a recommendation to the court. At this stage, it may be that the parents agree with the recommendation, or else feel it is so far from what they want that that they do finally decide upon a workable solution.

##### Stage three

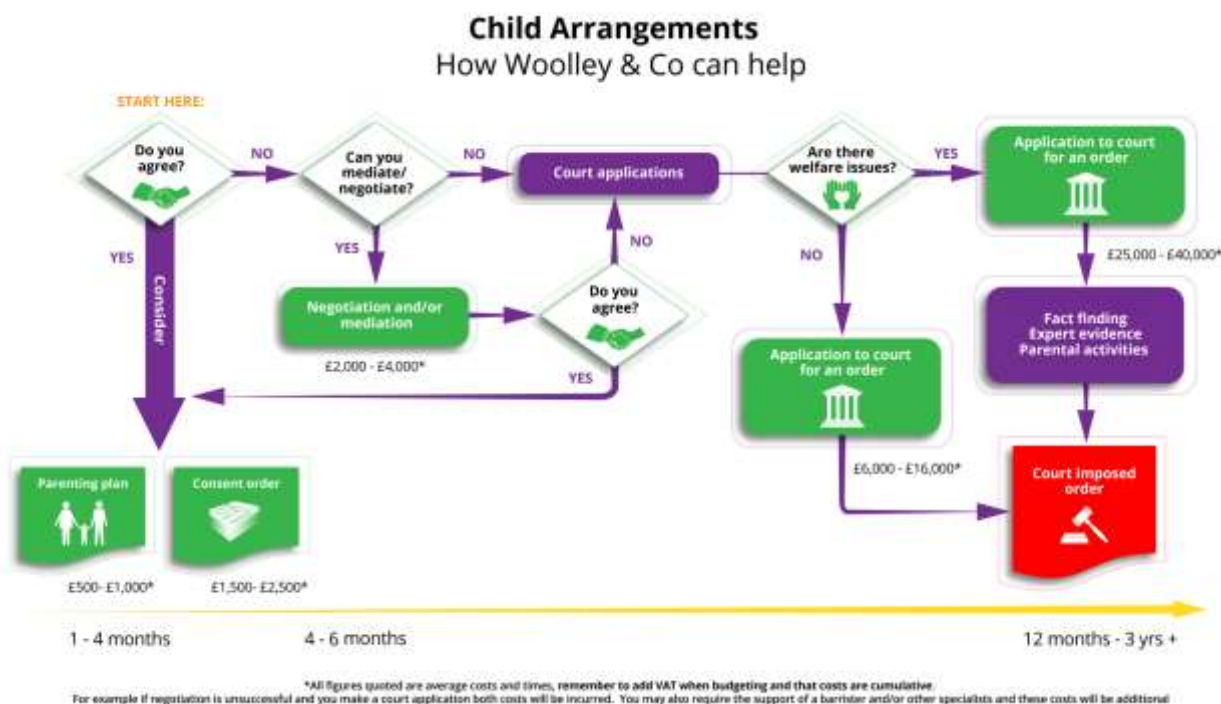
If no workable solution is found stage three will see a final court hearing where the judge will hear all the evidence and make a ruling on what order to make with details on the specific arrangements, such as the frequency of contact and so on.

Maintaining good communication and a 'working' relationship with your ex (rather than relying solely on the Courts) can be invaluable where children are involved.

It is most common for parents to reach agreement on where a child should live without involving the courts and again, we would advise this is the best course of action wherever possible.

## How much will it cost?

The diagram below (and [video on our website](#)) illustrates the approaches that can be taken to reach an agreement about the care of your children. When trying to reach an agreement costs can be anywhere from £2,000 and £40,000, but in most cases, they settle at around £5,000 - £7,000. It will largely depend at what stage an agreement is reached.



For advice on these issues speak to one of the fully qualified family lawyers at Woolley & Co, Solicitors on 0800 321 3832.

### Getting the right advice

Every family and relationship is different. It is therefore essential that you receive advice on your particular circumstances before you make any decisions or take any action. Our team of experienced family lawyers can help with divorce, separation, questions surrounding children and all elements of finances when you divorce. Operating throughout England and Wales, we rank amongst the leading family law practices in the UK.

Take advantage of a free 30 minute telephone appointment to discuss your options

Call 0800 321 3832 to speak to a lawyer today

Or visit [www.family-lawfirm.co.uk](http://www.family-lawfirm.co.uk) to request a call back

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