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Services

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Mental Health &  
Mental Capacity Law  
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# Family Law



Following a relationship breakdown, it is rarely in anyone's interest to become caught up in litigation in relation to the arrangements regarding the children. However, if one parent is unfairly restricted from seeing their children or even prevented from seeing their children altogether, a Court application might be necessary.

In Family Law the parent who has the day to day care of the children is known as the 'resident parent'. If the resident parent restricts or prevents contact between the "non-resident parent" and the children altogether, and if a resolution cannot be reached through the following than an application to the court may become necessary:

- Direct communication
- Any other method of alternative dispute resolution such as Mediation
- Correspondence with solicitors

The non-resident parent should apply for a contact order. A Contact Order is a Court order requiring a person with whom the child lives, to allow the child to visit or stay with the person named in the order.

A Contact Order can authorise physical contact but can also give contact by letter, email or by telephone (or even by video services such as "Skype").

## Who can apply?

There are only certain categories of people who automatically have the right to apply for a Contact Order in relation to a child. Any parent or guardian of the children can apply for a Contact Order. People who meet any of the following criteria also have the automatic right to apply for contact with your children:

- Any party to a marriage where the children were a part of their family
- If they lived with the children for at least three years within the last five years, and their application to the Court is made within three months of the children no longer living with them
- If there is a Residence Order in force, and they have the consent of the person with whom the children legally reside
- If the children are in Local Authority care and they have the consent of the Local Authority

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- If they have the consent of each person who holds Parental Responsibility for the children

For people who don't meet these criteria, when reaching the decision to grant permission, the Court will consider the merits of their application, their connection with your children and whether granting a Contact Order would cause harm to the children.

## The application process

The Court's approach is that the child has a right to know both parents, and therefore the starting point is that the child should have contact with a non-resident parent. However, the Court will always consider all the circumstances and may decide that based on factors such as the parents' conduct, the emotional welfare stability of a child, or even the attitude and behaviour of a step-parent, that it is in the best interest of a child not to grant a Contact Order.

Upon receipt of the application the court will fix the First Hearing Dispute Resolution (FHDR) appointment.

## FHDR appointment

At the FHDR appointment, a CAFCASS (Children and Family Court Advisory and Support Service) officer will be present to provide 'in court' conciliation.

The parties will attend, and in some courts which have appropriate resources children over 9 years of age will also attend.

The task of the court at the First Appointment is to:

- Investigate the issues
- Inquire into the possibility of settlement
- Give directions in any case which has to proceed

The Court will often order a welfare report to be prepared by the Court's Children and Family reporter (who is an officer of CAFCASS). The reporter will have access to the court file and will interview the parties and the child, as well as anyone else who appears relevant, for example schoolteachers, the family doctor, grandparents. A written welfare report will be prepared, which will often include conclusions and recommendations as to which order should be made.

In some cases, expert evidence is required. The Court must give its leave before any medical or psychiatric examination or other assessment of the child can take place. It is usual for the court to direct parties to file witness statements.

Usually a Final Directions Appointment will be timetabled to take place when any welfare report and all the evidence have been filed. This will consider what evidence can be agreed and what is in dispute, together with final arrangements for a Final Hearing.

The Final Hearing will be held in chambers before the appropriate Judge. Judgment must be delivered as soon as possible after the Final Hearing. Orders must be in writing and a record of any finding of fact and the reasons for the decision will be kept on the file.

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## Enforcement of contact orders

The practical problem with Contact Orders is how to enforce them if the parent with day to day care is determined that contact will not occur. Contact Orders made after 8 December 2008 automatically include what is known as a "Warning Notice".

A Warning Notice sets out the potential penalties and enforcement measures that are available to the courts if the Contact Order is broken. If your Contact Order was made before December 2008 then you must apply to the court to have a Warning Notice attached to the Order.

You must be in a position to prove, beyond all reasonable doubt, that a Contact Order was broken and you should be satisfied that there was not a reasonable excuse for the Contact Order having been broken (e.g. if children were ill).

If it is accepted that the Order was broken and there was not a reasonable excuse to justify the breach the court can:

- Order financial compensation for any financial loss suffered. This means actual financial loss. You cannot claim damages for emotional harm/stress etc. Examples would include travel costs, the costs of a lost session at a Contact Centre or having to cancel a holiday or arrange additional child care.
- The Court can order the party in breach to carry out community service work. This can be for a period between 40 and 200 hours.
- The Court may order that a CAFCASS (the court Welfare Service) monitor and/or assist in contact taking place. This can be done through the court making a Family Assistance Order which can run for up to 12 months.
- The Court may order that the parties attempt mediation to try to resolve their difficulties.
- The Court may order that one or both parties undertake counselling/therapy/anger management counselling or other activities which the judge feels are appropriate and may be of assistance in the prevention or resolution of conflict and to facilitate contact in the future. Such order widely depends upon there being available services locally.

## Other remedies

In addition, contempt proceedings can be used, or at least threatened against the parent with whom the child lives consistently and unreasonably refuses contact. However, in practice these proceedings are often inappropriate if the unfortunate result is the imprisonment of the parent with whom the child lives.

It is also possible in cases of an intractable contact dispute for a guardian to be appointed to represent the children's interests. The Court can also order the Local Authority to investigate the case and consider whether it should apply for a care or supervision order, provide services or assistance for the child or his family, or take any other action with respect to the child.

Ultimately if the resident parent continues to refuse to cooperate with contact provisions the court can order that the children live with the non-resident parent

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## I'm being restricted from seeing my child. What should I do?

If you are restricted or prevented from seeing your children, or if it proves impossible to find a resolution with the resident parent through other methods, then it may become necessary to issue a court application in order to obtain an enforceable Contact Order.

Fisher Meredith has a team of dedicated and sympathetic Family lawyers who can remove the burden of making such an application. Our team will skillfully guide you through the process to ensure that it is handled correctly giving objective advice on how to present your case.

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