

## Guide to “Child Custody” in the UK

Sadly not all marriages or relationships last forever. If you separate from your partner after having children, then you will need to consider as a priority what arrangements need to be agreed in respect of the children and which reflect the children’s best interests.

One of the most important considerations for parents who are separating is which parent the children will live with and how much time the children will spend with the “non resident” parent.

This was previously referred to as custody of the children and access. However these terms were changed by the Children Act 1989 when the terms Parental Responsibility, Residence and Contact were introduced replacing the fairly old fashioned view that one parent would be awarded custody of the children whilst the other would be granted access. It could be said that this encouraged parents to view children like possessions rather than people.

If you’re facing the prospect of having to consider the arrangements for children following a separation then the expert legal team at Wilson Browne are here to explain everything you need to know.

### What was Child Custody?

The term child custody was the phrase commonly used in the UK to describe the living arrangements of a child or children in the wake of their parents’ separation or divorce.

In the Family Court the term custody is no longer used as it has been replaced by the term “to live with “

**The children will either live with their** mother or with their father and quite often the children’s care will be shared between the mother and the father. If the children live with their mother this means that the child primarily resides with them.

If a mother and father have a shared care arrangement then this means that the child may split their time evenly (or unevenly) between both parents, living with one or the other at certain times of the week through the year.

**Child custody in the UK** only referred to residency arrangements and never removed the need for a non resident parent to contribute financially towards their children.

If a parent was granted custody of a child, then it was assumed that they would take over day-to-day decisions relating to them as they grow up. These however often precluded the

other parent from having a say in their children's upbringing. However with the implementation of the Children Act in 1989 Parental Responsibility was introduced which gave married parents or parents whose name was on the child's birth certificate an equal say in the major decisions that frequently have to be made in the children's upbringing such as schooling, health issues and religion. No longer did the parent with custody have the only say in their child's upbringing

### Which Parent would get Custody of a Child in the UK or these days who will the children more often than not live with?

So how was child custody in the UK decided, and which parent would get custody of the child?

Custody did not automatically fall to one parent or the other. Rather it was a decision that was, and remains today based on the best interests of the children, rather than the wants of the parents.

This is where arrangements for the children can become difficult as divorced or separating parents may have competing aims and desires for their children and different views on what constitutes their wellbeing. The first step is always to attempt to arrive at an amicable agreement between the two parents.

In certain circumstances, this might be easy. It may be obvious which parent the children should live with. This could be the case if one parent has decided to move away and the parents don't want the child to change schools, for example.

The parents may also decide that a shared care arrangement is feasible, particularly if they are both going to be living nearby. If the child is older and has a good understanding then they may have their own say on matters, and this can sway parents to make a particular decision or not.

In all these examples, arrangements for the children can be made based on the wishes of the parents and the best interests of the child. But it helps if the parents remain amicable and are able to put their children's interests first.

Things get trickier if there is resentment or if parents' interests can't be reconciled. If this is the case, you should contact a [family law expert](#) to find out where you stand and what the next step is.

### What Factors do the Court take into account when considering arrangements for the children?

If decisions can't be made amicably, then it would be sensible to consult a family lawyer for further advice.

If you're struggling to agree on arrangements, the next stage would be to attempt mediation. This can be done through the assistance of solicitors and legal experts, but again both parents need to be willing participants in the process for it to work.

If there's too much enmity or if differences between the parents simply can't be reconciled, then the issue of child arrangements will have to be decided in a family court. This should only be a last resort, as the process is likely to be stressful, intrusive and potentially damaging to already fragile relationships between the parents and their children.

The court will expect that all parties involved have attempted other means to resolve the matter privately, and the family courts only expect to make decisions if there's no other option remaining.

If the only way to resolve the issues surrounding the children is through the courts, there are several main factors that will be considered when making a decision. Those factors together with others will all be considered to determine which parent the children should live with.

- Who is the primary caregiver?
- The ability of a parent to provide
- The parent-child bond
- The parent-parent relationship
- The personality and history of each parent
- The best interests of the child and if appropriate the wishes and feelings of the child.

Let's take a look at these factors in more detail, to break down how the Court might determine which parent the children should live with.

### Who Is the Primary Caregiver?

One of the first considerations of a judge will be deciding who the primary caregiver has been so far in the child's life. The primary caregiver is best defined as the parent or person who has spent the most time with the child on a day-to-day basis.

This is the parent who spends the most time taking the child to school, cooking dinners for them and all the other daily tasks that come with parenting. The primary caregiver will often be given "custody" or in line with current legislation it will be decided that the children will continue to live with the primary care giver, as the Court generally deems this to be in the best interests of a child.

### The Ability of a Parent to Provide

As well as assessing who is the primary caregiver, the Court will also look at which parent has the ability to provide the best for the child. This doesn't mean that the parent with the highest income will receive "custody," as the payment of child maintenance negates this.

Instead, the Court will look at a number of different factors, such as the ability to provide comfortable living arrangements, the ability to provide a loving, caring environment, and the ability of a parent to provide for the child's general wellbeing. The Court will also need to consider the ability of a parent to promote contact with the other parent.

### The Parent-Child Bond

Importantly, a judge will assess the parent-child bond in order to make a decision. They will look at which parent has the strongest bond with the child, and which would cause more disruption to a child if the relationship were broken.

### The Parent-Parent Relationship

The Court will assess the parent-parent relationship. This is important, because if the Court were to find that one parent may attempt to sabotage the other parent's relationship with a child, then this can affect their overall decision. The Court is looking to provide "custody" to a parent who is also willing to help the other parent continue their relationship with the child.

### The Personality and History of Each Parent

The Court takes into account both the personality of each parent and their past history. If there's any history of violence or abuse, this needs to be rigorously investigated by the Court who could then rule one parent out if they are deemed to be a threat to the child.

The Court will also take into account any negative events in the past, such as criminal convictions, addictions, or anything else they could see as questionable. The Court will look at the mental and physical health of each parent, to ensure that they would be suitable to safely look after the child.

### The Best Interests of the Child

Most important of all are the best interests of the child. This is the biggest consideration for a Court to make, and sometimes their decision can go against the beliefs of the parents – after all, every parent believes that they have their child's best interests at heart. If the child has sufficient understanding of the situation to be able to express their own wishes and feelings as to who they would like to live with then the Court must also consider those wishes and feelings.

### Do Mothers Have More Rights than Fathers?

Traditionally, the mother has always been seen to have more rights over a child than the father. This is down to the way our traditional family units worked in the past, and the fact that it would always be more likely for the mother to look after the child while the father was away at work.

This is a common misconception however. In England and Wales the father has equal rights over a child. This is derived from the notion of parental responsibility as discussed above, which in any relationship is always split equally between both parents. Both parents have an equal say in their child's upbringing and if the father has taken on their share of responsibility, as an equal, then they will have equal say when "custody" is decided.

However, the Court has to weigh up which parent has taken responsibility as they should have, and which is the primary caregiver. Even as traditional gender roles switch and fathers take on more of the responsibility than mothers, it is often mothers that are more likely to be considered the primary caregiver by a Court looking into both parents' past.

The decision of the Court to award “custody” of a child to a mother over a father doesn’t mean the father has fewer rights. It often just means that the mother has taken more responsibility for their day-to-day care. However, this is a situation that’s changing, and if a father is considered to be capable of being the children’s primary caregiver, there’s no reason why they should not be awarded “custody” by a Court.

There is however one caveat for us to point out. While both parents have parental responsibility, the mother is automatically awarded this at the birth of a baby, by law. A father, on the other hand, is only given [parental responsibility](#) if they are married to the mother at birth, or they are listed on the birth certificate. An unmarried father may not automatically be conferred parental responsibility, although they can claim it later on.

### Can Either Parent take a Child from the other Parent?

If a father has parental responsibility for their child, they are on an equal footing with the mother. This means that if a Court deems the father to be the primary caregiver and to be in the best position to look after the child’s wellbeing, they can be given “custody” over the child, even if this goes against the mother’s wishes.

A father can take “custody” of the child, but they cannot stop the mother from having contact and they cannot block their role in terms of their parental responsibilities. Again, both mother and father have equal rights under English and Welsh law, and restricting one parent from seeing their child with no due cause is considered harmful.

However if there are extenuating circumstances, such as fear of abuse or a lack of responsibility on the part of the mother, then a father can apply through the courts to have the child taken away. This is always judged on a case-by-case basis and is only ever done as a last resort when the safety of the child is in question.

**Contact Wilson Browne for More Information on Arrangements for your children.**

**What we used to refer to as Child custody but now refer to as arrangements for the children** can be complex and complicated, so it’s important to seek professional assistance from skilled lawyers if you’re facing difficulties.

With decades of legal experience, Wilson Browne’s family law team can provide the advice you need to take custody of your children. [Contact our expert team of lawyers today](#) to find out more.

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