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Hot Topic – Family Law

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One-third of children lose touch with a parent after divorce

A recent study commissioned to mark the twentieth anniversary of the Children Act 1989 has concluded that one-third of children lose touch with one of their parents, usually their father, following divorce. Many commentators argue that this contributes towards a fundamental weakening of our society, leading to a generation that grows up without the benefit of two parents.

The law encourages parents to reach agreement directly between themselves in relation to arrangements about where children live and how often they see their parents. The vast majority of parents manage to do this with little or no involvement by solicitors. If divorce proceedings are issued, the Petitioner has to file a statement setting out the proposed arrangements for the children, but this very rarely delays the divorce.

If parents are unable to agree arrangements between them, many will instruct a solicitor. Many cases are resolved at that stage, as a result of negotiations between the solicitors. Most solicitors who specialise in family cases are members of Resolution, an organisation whose Code of Conduct obliges members to try to resolve disputes in a constructive manner. Wherever possible, solicitors will try to encourage their clients to reach an agreement and to adopt an approach that is in the children's best interests. However, inevitably there will be cases where a parent takes the view that it is not in the best interests of the children to see the other parent. Sometimes there are good justifiable reasons for this, and unfortunately, sometimes there are not.

There are two ways to make progress if you find yourself in this position. Often the best option is to issue an application at the County Court for a Contact Order. Every year, 15,000 to 20,000 couples end up in court trying to resolve disputes about their children. Many parents are reluctant to do this as they fear that the children will be dragged through court, although it is extremely rare for children to have to enter a court room. The Courts are keen for these disputes to be resolved as soon as possible, and therefore at a very early stage there will usually be some kind of conciliation appointment. These vary from Court to Court, but usually provide an opportunity for negotiations to take place with the assistance of a Children and Family Reporter (formerly known as a Court Welfare Officer) employed by the Child and Family Consultation Advisory and Support Service (CAFCASS). The vast majority of disputes about children, especially contact disputes, end in agreement at this stage.

Sometimes, one party may make allegations of domestic violence against the other. Before a Conciliation Appointment can take place, CAFCASS must undertake a Risk Assessment to ensure that a Conciliation Appointment is appropriate. If concerns remain, the Court may have to order that a fact finding hearing takes place before the application can proceed.

When an application cannot be agreed at a Conciliation Appointment, the Court may have to order that CAFCASS prepare a report making recommendations about what should happen. At this stage, the Children and Family Reporter will meet both parties and the children. For older children, the Report may be limited to ascertaining the children's wishes and feelings. In more complicated cases, the Reporter may have to investigate further, including talking to the children's schools, Social Services, the police and other professionals. This is a lengthy process and the demand for Reports can lead to a delay of several months.

Once the Report has been completed, most cases are settled by agreement. If agreement cannot be reached, there has to be a trial during which the Court hears evidence and then imposes an arrangement that it considers to be in the children's best interests.

Sadly, a very small number of parents refuse to comply with Orders made by the Court. In contact cases, the Court has the power to order them to attend contact activities (i.e. counselling and guidance sessions), or impose a community service order, or even order compensation to be paid by the parent who is not allowing contact to take place. In extreme cases, the Court can even order that the children move to live with the other parent, or even impose a sentence of imprisonment, although the latter is very rare.

Therefore, if most contact disputes are resolved by agreement sooner or later, apart from the very small number of cases where contact orders have to be enforced, how is it that one-third of children lose touch with their parents after a divorce? Perhaps one explanation might be that many parents never obtain legal advice about these problems or cannot find a solicitor who undertakes legal aid work.

Seeking legal advice at an early stage can be worth the modest expense involved. Ellisons Solicitors offers initial consultations with experienced solicitors who specialise in family law for an initial consultation fee of £100 including VAT. To make an appointment, please contact us by calling one of the numbers below.

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