



Children's
Rights Alliance
for England

FAQ - Full Answer



“My parents are divorced. I live with my mother, but I have to stay with my father in the country at weekends. This was settled in a court case. I’m involved in a lot of weekend activities, some at my school, and I don’t want to miss them. My mum says I have to go to my father; she’ll get into trouble if I don’t. Is this true?”

Breaching a contact order

When your parents divorced, the court made a “residence order” and a “contact order” under [section 8 of the Children Act 1989](#). The residence order says which parent you live with. The contact order says how you will remain in touch with the other parent, for example by overnight stays (“staying contact”) or the parent visiting or by phone calls and letters. The court order in your case will have set out the weekend visits to your father.

The court expects your mother to ensure you follow the order. If she fails to do it the court could punish her with a fine, by imprisonment or by transferring the residence order to your father – and in recent years courts have actually done this. So it is important that if you can’t settle the matter informally, you get [legal advice](#) on what to do.

Changing a contact order

The first thing to do is for you – and your mother if she’s supportive – to try to persuade your father to agree the changed contact. He isn’t likely to be happy about any proposal that ends all contact with you (nor would the court support this unless you had a very good reason, for example that he was violent). So you should think about alternative ways of seeing him that suit both of you.

If you don’t feel you can talk to him directly or he doesn’t respond as you wish, discuss with your mother about using [mediation](#) (not least because the courts may require you to try this first).



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If your father is opposed to any change and mediation isn't possible or doesn't work, the matter will have to go to the court under [section 10](#) of the Children Act 1989. You or your mother may need to get a [lawyer](#). Your mother has an automatic right to apply for a change in the contact order, but you would have to get permission from the court to do this in your own right ([section 10\(8\) of the Children Act 1989](#)). The court may only grant permission if it is satisfied you have "sufficient understanding" to make the application and this is relatively rare – it would only be likely to happen if your mother didn't support your wishes.

If your parents were in conflict at the time of the divorce, the court may have requested a welfare report from Children and Family Reporter from an organisation called CAFCASS (under [section 7](#) of the 1989 Act). CAFCASS reporters are professional social workers who have to recommend to the court what is in the child's best interests. They also have to report on the child's wishes and feelings. It is likely that the court would appoint a CAFCASS reporter if there is a serious dispute between you and your father over changing the contact arrangements.

Under [section 1](#) of the 1989 Act the court has to give "paramount consideration" to your welfare when making its decision about contact – this means treating your welfare as more important than everything else, including your parents' views. The law also sets out a checklist of the things the court has to take into account:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
- (b) his physical, emotional and educational needs;*
- (c) the likely effect on him of any change in his circumstances;*
- (d) his age, sex, background and any characteristics of his which the court considers relevant;*
- (e) any harm which he has suffered or is at risk of suffering;*
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs...*



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As you can see from the list above, you will need to convince the reporter and the court that you are mature enough to make sensible proposals about what is best for you. Stress the importance to you of having a social life with your friends and of the educational benefits of those school-based activities. Make it clear that these are your wishes - that you aren't saying them on behalf of your mother. Your parents will read the CAFCASS worker's report, so you must be careful about telling the reporter about things you want to keep private. You could write a letter to the judge to go alongside the report, but even this will probably be disclosed to your parents. You can ask to attend the hearing – but that will be the judge's decision. This can either be a request to observe the whole hearing (which judges will only very seldom grant) or to meet the judge (which is less unusual but is still not always allowed).

If there are complications – for example if you don't agree with either parent - the court can also order that you become a party to the case. In these circumstances the reporter will instruct a solicitor (under [rule 16.4](#) of the Family Procedure Rules 2010) to represent you. If you disagree with these instructions you can apply to instruct the solicitor directly ([under rule 16.6 of the Family Procedure Rules 2010](#)).



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Your rights under the [Convention on the Rights of the Child \(CRC\)](#), the [Human Rights Act \(HRA\)](#)

Article 12 of the [UN Convention on the Rights of the Child](#) states that on all matters affecting a child, the child's views must be given "due weight", the weight to be given to them depending on the child's age and maturity. Article 12 also requires that a child must have a right to be heard (directly or through a representative) in all decision-making processes including court hearings. In a 2005 case before the UK Court of Appeal (*Mabon v Mabon*), the court cited Article 12 in support of its decision that it was wrong to prevent three teenage boys from directly participating in a case about contact with their parents.

There have been a number of cases before the Strasbourg European Court of Human Rights (see [European Convention on Human Rights](#)) where the views of the child about residence and contact have been upheld against the wishes of the parent.

However both the UK courts and the European Court of Human Rights always make their decisions based on the child's best interests and this does not necessarily mean that a child's wishes will be followed completely or at all – although they must always be taken properly into account.

Increasingly there is a presumption in the courts that it is in children's best interests to maintain contact with both parents after they separate. This principle appears in the CRC. Article 9 says that it is the child's right to '*maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests*' and article 18 that the state must support the principle '*that both parents have common responsibilities for the upbringing and development of the child*'.