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CHILD CONTACT

If the parents of a child separate, it is usual for the child to live with one parent (the resident parent) and to spend regular or occasional time with the other parent.

“Contact” refers to any contact between a child or any other person usually the parent with whom the child does not live.

Contact can be time spent together, telephone calls and letters.

How does the Family Court view contact?

The law views contact on the basis that, except where it would not be in the child’s best interests, it is the right of the child to continue a relationship with the non-resident parent or with any other person important to the child.

The Family Court’s primary consideration when dealing with contact issues is what is in the best interests of the child.

Can contact be denied?

The law places a high value on the parent-child relationship, therefore the Court will only deny contact in a few extreme cases where the welfare of the child is seriously at risk.

In most cases where there is concern for the child’s welfare, the Court prefers to order conditional or limited contact rather than refuse contact altogether. In some cases the Court will order that contact be supervised by a third party.

What about the wishes of the child?

The law views children as individuals with their own rights, not as objects or possessions which belong to their parents.

There is no defined age as to when a child can decide on contact arrangements for themselves. The Court, before taking into account the wishes of the child, also takes into account the emotional and intellectual maturity of the child.

As a general rule, the Court will place little (if any) emphasis on the wishes of a very young child. More importance will be placed on their wishes as they grow older. The Court may, however, look at why a child is expressing a particular opinion.

Except in the case of much older children or depending upon the background of the child, the Court will normally look at the possibility of a child's wishes changing after a period of contact. Therefore it may order contact to occur even if the child has expressed a desire not to have contact.

The resident parent has an obligation to encourage the child to have contact with the other parent and not to say or do anything to disrupt contact.

How much contact?

There are no mandatory amounts of time for contact. This is something which is agreed on between the parties or ordered by the Court according to the circumstances of each case.

By way of general guidelines:

- The Court recognises that for very young children, contact needs to occur regularly but for short periods of time. For example 2-3 hours twice a week.
- Once a child becomes a toddler, contact would normally remain on a regular basis but for longer basis. For example, for the whole day. Later, overnight visits would usually take place.
- For primary school children, contact usually takes place each alternate weekend from Friday evening or Saturday morning until Sunday evening or Monday if the contact falls on a long weekend. Contact would also take place for part of the school holidays.
- For teenage children, orders from the Court would normally be framed on the basis of the child's wishes.

- Contact for children of all ages can also take place during Christmas, Easter, or any other important religious or cultural events, Father's/Mother's Day, and on the parent's and child's birthdays.
- If the child has brothers or sisters in another household, the Court normally prefers to order contact so that the children can be together on contact visits.

Contact arrangements vary depending on your individual circumstances.

It is important to seek legal advice before proceeding to Court.

How to make formal contact agreements?

There is no legal requirement for you to have any contact agreement in writing. However, if you want to have a formal contact arrangement made, there are two ways this can be done.

- By an agreement with the other party which can be translated into Consent Orders and filed at the Family Court on a Form 12A.
- By Court Order, made by the Court when parties cannot reach an agreement.

Negotiating an agreement

There are services to help parents who wish to reach an agreement over contact. Coming to an agreement is certainly easier, cheaper, less stressful and less time consuming for both parties than trying to obtain a Court Order.

Counseling services, such as the one at the Family Court are available to help you and the other party reach an agreement.

There are also many **mediation services** available where a trained person helps disputing parties reach an agreement about arrangements for the child. Mediators have no authority to make decisions and can only assist you to reach your own agreement.

Counseling services differ from mediation services in that counseling allows you to discuss other issues and emotions which are making it difficult to resolve the contact issue in dispute. Mediation does not generally address those issues.

You can also **negotiate your own** with the other party. It is always advisable to put your negotiations in writing and keep a copy of them. Attached is a sample negotiating letter, should you want to start your own negotiations. It can be adapted to suit your own personal circumstances.

Formalising your agreement

Once you have reached an agreement, you can formalise it with the Family Court on a Form 12A. If the Family Court accepts your agreement it will have the same effect as a Court Order and can be enforced. You should seek legal advice on how to complete that form.

You do not have to formalise your agreement with the Family Court and many people prefer to keep their agreement informal.

However, unless it has been registered with the Family Court, your agreement can not be enforced.

Going to Court

If you cannot reach an agreement you may have to apply to the Family Court for an order.

Going to Court can be a time consuming process however the Court can deal with matters quickly if there are urgent reasons for doing so. The Court will encourage you and the other party to reach an agreement without the matter going to trial.

It is important to seek legal advice before applying to the Family Court.

Further advice

It is important to seek legal advice immediately if any of the following situations arise, or have or are occurring:

- Where there is a risk that the child will be abducted and removed from the State or the country;
- Where there is a history of domestic violence;
- Where there is a history of physical or sexual abuse;
- Where there is a risk that the child may be physically or sexually abused.

(Legal content last updated 2002)

(sample negotiating letter)

(Your address)

Date

(Name and address of the other party)

Dear

I am writing to arrange contact with (names of children).

I understand that the Family Court is likely to decide that it is in the best interests of (children's names) to maintain a relationship with me/you. Unless we come to an agreement about the contact, I will begin Court action which would be unpleasant and stressful for both of us.

The proposals I make for contact with (children's names) are as follows:

1. Every second weekend from 6:00 p.m., Friday to 6:00 p.m., Sunday (or 6:00 p.m., Monday where the contact falls on a long weekend).
2. Half of all school holidays - times as agreed between us.
3. Christmas from 5:00 p.m., Christmas Eve to 2:00 p.m., Christmas Day one year commencing in 2000, then 2:00 p.m., Christmas Day to 5:00 p.m., Boxing Day the following year and alternating thereafter.
4. From 9:00 a.m., to 5:00 p.m., on Father's/Mother's Day.
5. From 5:00 p.m., to 8:00 p.m., on children's Birthdays.
6. Other times as agreed between us from time to time.

I also suggest that we share picking up and dropping off of the children. You/I could pick the children up at the start of contact and you/I will bring him/her/them back at the end of contact.

I am happy to discuss these proposals with you. If you wish to discuss the matter and do not want to communicate directly with me, please leave a message with (name and phone number).

Should we be able to agree about contact, I will be happy to arrange the preparation of the documents necessary for filing at the Family Court.

Please advise me in writing within fourteen days whether you agree to my proposals. If you feel it is necessary, counseling can be arranged through the Family Court Counseling Service.

If I do not hear from you within fourteen days, I will have no option but to begin Court proceedings and will provide a copy of this letter to the Court

Yours sincerely

(Your signature)