



## Good Divorce Week 2020 Day 3: What about the children?

Service area / [Dispute Resolution and Litigation, Private Client](#)

Legal jurisdiction / [Jersey](#)

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Good Divorce Week, which began on Monday 30 November, is an annual campaign that aims to promote practical and constructive ways for separating parents to put the needs of their children first.

Every year, Resolution, an organisation of family justice professionals, campaigns on a core issue to its membership. This year Resolution is asking members to commit to giving 30 minutes of free legal or professional advice to those who need it during the week.

This is not something new for us at Carey Olsen - we are always happy to have a free 30 minute initial meeting or call with you to see if we can assist with you with matters arising from your relationship breakdown. However, to celebrate the week, we are also going to release a daily LinkedIn post answering some of the common questions we come across.

### Day 3: What about the children?

One of the main worries we see from parents following the breakdown of their marriage is how this will impact on their relationship with their children, as well as practical concerns about the logistics of children spending their time between parents.

As we noted yesterday, it is really important to remember, when considering your approach to divorce and how you discuss matters with your spouse, that, if you have children, you will continue to have some form of ongoing relationship with your spouse, as co-parent, for often many years to come.

This is a really complex and difficult area. Some key points and tips to consider at an early stage following a relationship breakdown are below.

The approach taken in Jersey to arrangements for children on divorce is very similar to the position taken in England, with some technical differences in the law. The welfare of your child is of paramount importance in all children law proceedings. It is important to understand, however, that the family court does not make orders in respect of children unless it is necessary to do so, i.e. only if the parents are unable to reach an agreement between them, with or without the assistance of lawyers. The court, quite rightly, takes the view that it is in a child's best interests to have the best possible relationship with each of their parents, unless there are welfare and/or safeguarding concerns which prevent this. However, even where there are welfare concerns, the court will try to find a way to ensure that there is some form of ongoing relationship between parent and child.

It is also important to highlight that the court's position is that a child has a right to a relationship with their parent, rather than the other way around. The court also expects, and actively encourages, parties to prioritise the needs of their children and endeavour to put aside their own issues in order to resolve matters relating to the children. This means that parties should, in almost all cases, exhaust all available avenues, including negotiation and mediation, before turning to the court for assistance. The court takes a dim view of parents weaponising their children and attempts by one parent to turn the children against the other, known as parental alienation, are considered so serious that such behaviour can result in the court making an order that the children should live with the other parent.

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Broadly speaking, there are typically two types of arrangements for children. The first is that the child/children lives with one parent and has contact with the other parent. In this scenario, we would expect to see a child having frequent contact with the non-resident parent, including overnight contact and extended holiday contact. The second is that the children spend their time in a broadly equal manner between the homes of their parents. This is known as a shared care arrangement and is now the most common arrangement we see following divorce.

Our top tips:

- We (almost) always recommend that parents try to agree child arrangements between themselves, or, if that is not possible, via mediation. Mediation is a form of alternative dispute resolution in which a trained mediator helps the parties try to reach an agreement, without the need to involve lawyers or the court at all. This can really help to develop a channel of effective communication which you are likely to need as you move forward as co-parents. Some parents also find it really helpful to agree a parenting plan, setting out their agreed approach towards things such as family events, after-school activities, discipline, bedtime routine etc.
- We recommend that, where at all possible, parents try to present a unified position to the children: the most preferable option is for parents to agree what they will tell the children about the breakdown of the relationship and about how the children will spend their time with each of their parents (and, ideally, telling the children this together).
- Although it can be very difficult, particularly in the early stages of the breakdown of a relationship, when parties can be understandably emotional, it is important that you do not speak negatively about the other parent to, or in the presence of, your children. This can be significantly damaging for children, and may actually end up causing problems in your own relationship with your child/children.
- If parents cannot agree arrangements for the children and court is the only option, it is important to understand, particularly where there are welfare and/or safeguarding concerns raised by one or both parents, that other professionals may need to become involved with your family. In particular, the Jersey Family Court Advisory Service (JFCAS) officers – trained social workers who prepare reports in relation to your family for the benefit of the court and make recommendations to the court about what is in the best interests of the children. If serious safeguarding concerns are raised, there may also be a need to involve additional professionals, such as psychologists and psychiatrists, who act as expert witnesses and provide evidence of their views and findings to the court.
- One of the questions we are often asked (when there are court proceedings), is whether the children will be asked what they want and if they will be listened to. The answer, in most cases, is yes. This is particularly the case where a JFCAS officer is involved. However, the court must assess to what extent the child is able to understand what it is that they want and what is in their best interests (which are two different things!). Clearly, the court is likely to give more weight to the views of an older, more mature child than the views of a young pre-schooler.
- Try to bear in mind that parenting does not end when your child/children reach the age of majority. There will, hopefully, be many occasions in their adult lives that your child/children will hope to share with both of their parents. The more amicable an approach that parents take from the outset, the better chance you have of successfully co-parenting your child/children into their future.



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