

# Parental Conflict

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## Introduction

Dealing with the fallout from family breakups is an increasing part of the workload for school leaders, particularly those in primary schools.

These situations have the potential to become both time-consuming and messy, particularly if they are not handled well from the outset. The NAHT's team of specialist advisers regularly take calls from school leaders who have inadvertently found themselves embroiled, often as a result of trying to be helpful.

This guidance is intended to help school leaders avoid such problems by being fully aware of legal requirements, best practice, and the experience of others. Ensuring your school has good procedures in place will avert many problems, as will awareness of the right steps to take in certain situations.

It is worth remembering that a large body of research shows that children's education will benefit if both parents remain involved in their learning. So not only is it the legal right of both parents to be kept informed about their child's education, but doing so may ultimately enhance their child's progress.

It is worth remembering, too, that sometimes school is the only normality for children whose parents are splitting up, and that it is important for disputes and warring parents to remain outside the gates.

Finally, never forget the mantra of the NAHT's advice team for head teachers on family breakup: don't take sides.

## 1. What does the law say about parental disputes and what the school has to do?

Given the wide-ranging nature of the head teacher's responsibilities, it is often a surprise to discover that they are legally obliged to do very little in this area.

The only specific duty is that schools are legally obliged to **keep parents informed** about their child's progress.

The wording is specifically about **parents**, rather than those with **parental responsibility** (see box 2 below for an explanation). This means that even if a father does not have parental responsibility, he is legally entitled access to pupil information and educational records. This right also extends to people who have acquired parental responsibility for the child but who are not biological parents, such as grandparents.

### **The law on pupil information:**

There are two ways in which parents are entitled to access their child's records. These are:

- Under the Data Protection Act 1998, when either the child (usually aged over 12) or someone with parental responsibility can ask on their behalf.
- Under the Education (Pupil Information) (England) Regulations 2005 (SI 2005/1437) or the Education (Pupil Information) (Wales) Regulations 2004, which give parents access to information, 'Parent' is defined widely in the 1996 Education Act to include parents who do not have parental responsibility, non-parents who do have parental responsibility and any person who 'has care of (the child)'.

### **What is parental responsibility?:**

The status of parental responsibility was created under the Children Act 1989, and confers rights and responsibilities over a particular child. The details have changed slightly over the years.

- All mothers automatically have parental responsibility for any child born to them.
- Fathers married to the mother at the time of the birth also have parental responsibility.

Unmarried fathers can acquire parental responsibility in several ways, such as being named on the birth certificate of children born after December 1 2003, by subsequently marrying the child's mother, by obtaining order from the court, by agreement in writing with the mother, or by becoming the child's guardian.

### **What other legal pitfalls are there?**

Headteachers should be very careful when dealing with solicitors' letters and anything to do with court orders. It is important to **check any legal information you are given**, see original documents and ask questions until you are satisfied. It is not a good idea to agree to give evidence for one side or the other in a residence hearing unless the court asks you to do so.

### **If a parent tells you the court has ordered that the other parent should have no contact with the child**

Ask to see the relevant document, and make sure it is a court order. However, court orders can take some time to process and for quick clarification in an emergency you could accept written confirmation from a parent's solicitor. In these cases it is important that school staff are informed on a "need to know" basis, as if the banned parent appears action may need to be taken quickly. Reception or office staff would need to have such information, as would the child's teacher and TA. They also need to know what to do under these circumstances.

### **If the court or a Cafcass worker makes contact**

You may be asked to provide information or give evidence about a child's behaviour under specific circumstances. It is important to ensure that you are speaking to a court representative, or someone from Cafcass.

Cafcass is an official organisation which looks after the interests of children involved in family proceedings, working with the children and their families before advising the court on what they believe is in the best interest of the child.

It is also important to ensure that your evidence is limited to fact, rather than opinion. If you were required to give evidence in court, you would be asked to justify it and would be cross-examined, possibly by a parent acting on their own behalf.

### **Case history 1**

#### **Family breakups: the head's view**

As the head of a junior school in Surrey, Gail Larkin says family breakups are becoming both more frequent and more acrimonious. She has learned the hard way that good behaviour is often the first casualty of divorce, with incidents including squabbling parents in school separated by police and child protection officers, and parents far too keen to provide every sordid detail of their partner's alleged infidelities.

Once, as a deputy head, she was asked to hide a child from his father, because there was a court order preventing contact. The child was hidden and the police called, but it turned out that there was no official order in force and the school – given false information – had been in the wrong.

“My advice to anyone is that you are only there to side with the child. One parent is playing you off against the other and that's the hardest thing to deal with. I say I am only interested in what is happening to your child.”

In these situations, school is a safe haven for the child and Mrs Larkin has barred parents who fought in school. “The children are always affected when their parents split up, though their parents never think they are.”

She has her own list of rules for how to handle parental splits, which are:

- Get both sides of the story: you need to know something about what is happening to work with your pupil, but don't just believe one parent. And don't get involved.
- If you are told there is a court order, make sure you see it
- If there is a court order limiting or banning contact with the child, make sure frontline staff such as school receptionists, and the child's teacher and TA know about it.
- Don't respond to lawyers if they are asking you to go to court. If you get a legal phone call always ask for a number and ring the person back, to make sure they are who they say.
- You will need to give evidence if Cafcass or the court asks you to. Make sure what you say is factual and not opinion.
- In the case of a name change, find out if the parents were married and who has parental responsibility. Contact the LA for advice if necessary.
- Make sure both parents get all the information about the child's progress at school and be prepared to organise extra slots at parents evening so that they can have separate appointments on separate days if necessary.
- Be reassuring if a child is moving between two homes during the week and uniform, shoes or homework are in the wrong place.

## 2. Common flashpoints and how to avoid them

### **Name changes**

A child's surname can become a major part of the battle between estranged parents, and it is not uncommon for the school to be told it has changed.

This can be a grey area if the parents were unmarried, or those with parental responsibility cannot agree.

If everyone with parental responsibility agrees, this is fine – but note that unless there is a residence order in respect of the child, there is no requirement for consent to be in writing and so it may be hard for a school to know whether or not the change is lawful.

If one parent unilaterally changes the name and the other does nothing, consent may eventually be assumed to have been given.

If there is a dispute over the name between parents, and none of the legal provisions apply (see box 3) the school should in the first instance ask the parents to sort out the problem and return with a solution. The school might wish to stress the importance of not involving their child in a distressing dispute.

If this proves impossible, the school should make a record of both names and could ask to see the birth certificate.

The school could ask the child by which name they would prefer to be known, but this is an option for older children rather than younger ones.

### **Name Changes – what the law says:**

Where a residence order is in force, the child cannot be known by a new surname without the written consent of everyone with parental authority, or permission from the court.

Where there is no residence order, the consent of those with parental responsibility is still required but need not be in writing. A parent, anyone with parental responsibility, or the child him or herself, can apply to the court for a Specific Issue Order to change the child's surname.

The name could also be protected with a Prohibited Steps Order.

### **School pickups**

These can be a problem if one parent does not want the other to collect the child from school. The situation is clear if there is a **court order** preventing one parent from contact with the child.

However, if there is no such restriction, and no issue about safeguarding, then it would be difficult for the school to prevent a child going home with one or the other parent.

**Good protocols** are helpful in this situation. At the beginning of each school year, parents should be asked to complete a form giving the names of those who may collect their children, and should also be asked to contact the school if this changes for any reason. The forms should be sent to both parents. As always, if there is a dispute the parents should be asked to sort it out themselves and inform the school of their decision.

### **Information and Parents' Evenings**

Birth parents and people with parental responsibility are legally entitled to request information relating to school and a child's progress. It is good practice in any case to ensure the information goes to both birth parents in order to encourage both to remain as involved as possible in their child's education. It is worth persevering if one parent seems hard to contact: young fathers, for instance, may be moving home frequently and find dealing with schools intimidating. Making the effort early may pay dividends later.

Remember that keeping parents informed is not just about annual reports but decision-making such as GCSE choices and even school trips.

Parents' evenings can be particularly difficult as warring parents may not only require separate appointments, but may wish to avoid seeing each other altogether. It may be necessary to arrange more appointment slots than there are pupils to accommodate this.

This can be a particular issue in secondary schools where pupils see their teachers to book appointment times for their parents. Schools may wish to consider how to accommodate this difficulty.

### **Being asked to take sides**

#### **One word: don't.**

Head teachers have ended up with complaints made against them for expressing opinions in these situations. No matter what you feel about where your pupil would be better off living, it is important to keep it to yourself – unless, of course, you are so concerned that it becomes a safeguarding issue.

Warring parents will often try to tell you all the details of their former partner's transgressions. You may wish to ask them to stop if the information strays beyond what you need to know to best help your pupil.

If you agree to go to court to support the residence application of one parent, you will be cross-examined, quite possibly by the other parent in person. This will not be good for your relationship with this parent of your pupil.

### **Legal correspondence**

It is also not uncommon for the solicitor for one side or the other to contact you for information which will be used in court. It is very common for heads to think they must respond to these requests.

Be aware that parents, or people with parental responsibility, may make a lawful request for information, for example under the Pupil Information Regulations, through a solicitor. If you get a phone call or a letter, check very carefully exactly who it is from. It is a good idea to ring people back to make sure they are who they say. Check the wording of letters very carefully. Take advice from the NAHT, your LA or your school's lawyer if you are unsure.

### **Case history 2**

#### **Don't take sides: the key message from NAHT advisers**

For NAHT solicitor Simon Thomas and specialist adviser Jan Myles taking calls from heads embroiled in parental disputes is a regular part of their workload.

"Getting involved is a no-win situation. The trouble with getting coerced into supporting mum or dad, perhaps because the child gets very upset after staying with one or the other, is that the head thinks they are helping but get embroiled and get a complaint against them," says

Mr Thomas.

Another common pitfall is to misunderstand or be intimidated by a lawyer's letter. "They say I have been ordered to provide this information. Ordered by who? It is usually a letter from one party's solicitors," says Mr Thomas.

The fundamental message for schools from Mrs Myles is to forestall as many potential problems as possible by making sure all procedures and protocols are in place. Make sure pupils' admission information has all the relevant information, including the identity of the primary carer, and insist that new forms are completed each year clarifying who can collect children.

Don't be drawn by either side into giving an opinion on the child's wellbeing with either parent, but if there appear to be real problems it might be necessary to make a safeguarding referral.

Mrs Myles concludes: "Encourage the parents to sort these things out at home and tell you the outcome. Be firm: sorting these things out is not the role of the school. The school is here to educate children and provide a safe haven. It's a question of getting the balance right. Safeguard, but don't get drawn into parental disputes."

### **3. Be prepared – protocols and procedures**

Many problems can be avoided altogether by having clear procedures. You should:

- Make sure children's school admission forms include contact details and addresses of both parents, information if possible on parental status and the name by which the child is to be known. It can be a good idea to get these updated each year. You could even suggest that parents update the forms if they tell you that they are separating.
- Make sure you have a copy of any court order preventing a parent from approaching or having contact with the child. Make sure the relevant staff know about it, and know what to do in an emergency.
- In primary schools, get parents to complete a form on who may pick up the child from school. Where parents have separate addresses, ensure the form goes to both. Get the information updated each year.

Author: Susan Young

Lead Advisors: Jan Myles, Simon Thomas