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Fact sheet

What should I do if my child's other parent does not want me to home educate him?

Please note that this is not legal advice and should you have any concerns, you should consult a legal professional for advice.

The use of the terms 'his', 'he' and 'him' are for ease of explanation and should be read to include all adults and children as relevant.

If you are in a situation where you want to home educate (HE) your child, but the child's other parent does not agree with you doing so there are facts of which you need to be aware.

The father does not have parental responsibility (PR) so I can decide without him.

It is absolutely correct that if the other parent does not have PR you can make decisions legally without their input, but in practice this rarely turns out well.

A parent without PR can apply to the Court to obtain it, at the same time as applying to force you to send the child to school. An application for PR rarely fails, so you can never rely on lack of PR to act without the other parent's agreement

I have a 'live with' order (often referred to as a residence order) so it is up to me.

This is incorrect. Even with a court order that a child lives with you; the other parent retains the right to consultation in order to make joint decisions over important issues. These include medical interventions, changes of name, changes of religion, moves away from the normal place of residence and education.

If you act on your own and without the other parent's agreement by removing your child to HE, you can be taken to court by the other parent to force the child to school and if you are, you start on the back foot.

My ex is abusive so it is up to me

Whilst domestic abuse can influence the court if you do end up in court over education, it does not remove PR and consequently, makes no legal difference to right to consultation. However, if abuse is serious it can and does influence a court when making decisions, if the application to the court is viewed as part of the abusive behaviour.

The other parent has not seen the child for a long time so it is up to me.

Again, legally this makes no difference, although if the other parent has no contact whatsoever with the child, it is unlikely that they would know if you commenced HE without consulting them. This factor may also influence a court should an application be made, be aware however, that lack of interest in the child will not exclude a court from considering the other parent's point of view, as the court will take the application as demonstration of interest in the child to some degree.

The other parent agreed HE before so a court will support me

In general terms a court will weigh the factors involved and previous agreement is one such factor, however, it will not be a guarantee of success in court. It might well, however, support your case.

What do I do if the other parent does not agree to HE?

There are three ways in which parents often approach this situation:

- 1) The parent with care will seek to persuade the other parent to agree to HE. This is by far the most sensible route to take, as court proceedings can be extremely stressful. It is a good idea to suggest a trial period and to offer positive inclusion to the other parent, as this fulfils your⁵ obligation to consult with the other parent over education decisions.

If you are separated, it may help if you explain the advantages for the other parent in terms of their contact with the child during 'school term time'.

Some parents find statistics helpful, others want reassurance that the child will not be isolated, or fail academically. These are reasonable concerns which are well worth helping to resolve by providing information, examples and most of all by listening to the other parent's concerns; the more conflicted the relationship, the less fruitful any discussion will be.

Please do not assume that the other parent is being unpleasant by disagreeing, but respect their view, as HE is a minority choice which gets a bad press, they will have read that bad press. They will also possibly have relatives and friends influencing them negatively.

- 2) Legally, if the other parent does not agree to HE you should make an application to the court for permission to HE. Sadly, this is rarely successful.

Lack of success is down to several reasons: the court prefers to maintain the status quo; the parent wishing to HE does not 'sell' their case well, or it is badly conceived; the CAFCASS officer does not support HE, or the child himself states that they prefer school.

Regardless of the low rate of success, this is the correct and legal way to proceed if the child's other parent does not agree to HE.

- 3) Some parents decide to go ahead with HE against the wishes of the other parent, or without consulting with the other parent. In some cases this is unavoidable, for example, where you do not hold contact details for the other parent, but in most cases it is not a wise thing to do. Such a decision would not be looked on favourably by the Court, if the other parent makes an application to send your child to school.

If you do go ahead and HE against the wishes of the other parent, or you have started HE and did not consult the other parent, he may decide to apply for a specific issue order from the Court. That is an application to the Court to ask the Court to make you send your child to school.

A Court will not make that sort of order against you without an application by the other parent (or someone else with parental responsibility) but if an application is made, the Court will always consider that application.

If an application is made against you it will be very stressful for everyone involved, including your child, so it is always better to avoid this possibility if you can do so.

Legal fees for advice and court attendance are very expensive and unmanageable for most ordinary families, so it is really important that you consider your decision carefully and try to avoid this situation.

Some parents may be able to get legal aid. This may apply to you if you are on means tested benefits, or a very low income and you have evidence of domestic abuse. Some parents can get legal aid if they are not competent to represent themselves, but it would be highly unusual for a parent who was not competent, to be able to successfully HE their child. If you are in that situation you should think very carefully indeed about whether HE is right for your family.

If the other parent does take you to court the hurdles you face increase. The court will weigh up the facts and they will not start off on the basis that HE is an equal legal choice to school. Judges and magistrates are no different to other members of the public, despite their training; they bring their own ideas and prejudices to the table. HE is a minority choice which has received negative media attention and Courts are not immune to that sort of story.

If you are unfortunate enough to find yourself in court over HE, the following points are examples of things which will weigh against you:

- Unschooling or low level of formal input to the education.
- Previous, or current social services involvement.
- Previous, or current drug addiction, or alcohol addiction
- Previous proceedings for school attendance (although sometimes courts do recognise that persistent truanting is a positive reason to HE)
- The school write a report saying that the children were happy at school and thriving.
- Contact difficulties with other parent. Courts very often deny HE where the parent with care is inflexible over contact. Of course, where there is evidence of domestic abuse which is serious enough for the Court to accept that contact is not in your child's best interests, this will not go against you.
- Short time since HE commenced as a status quo has not been established.
- Child with behavioural problems you are not coping with well.

It would be advisable to try to reduce these problems as soon as possible, to show the Court that you are acting in your child's best interests.

Factors which will weigh in your favour:

- Excellent court statement with good quality evidence.
- Your own academic qualifications
- Demonstrable commitment and well thought out plans.
- A timetable with formal lessons for a significant period.
- Using recognised bought in programmes, or recognised materials which are respected.
- Demonstrable and varied social opportunity
- Using at least one weekly outside agency such as scouts, brownies, or local authority provided class.
- Good quality contact arrangements with other parent.
- A good report from the local authority HE department.
- Mature child who can express their preference for HE in a well reasoned way

Help! I am being taken to court, what can I do?

If you are unable to obtain legal aid, or afford a solicitor, you will have to represent yourself. That is called being a 'Litigant in Person' (LIP). Courts are well used to LIPs and will not penalise you for this.

Alternatively, if you have limited funds and can only afford representation for the court hearing, you might consider instructing an experienced direct access barrister. If you do use a barrister, you remain a LIP and pay direct up front, to the barrister's chambers. Barristers very rarely accept instalments and legal aid is not available.

Please remember that the barrister will only act for you in the Court hearing and cannot act as your legal representative outside the Court.

Very often, a barrister can help you to agree a consent order (both parents agree) at the first, or an early hearing. That is the best possible outcome if you do find yourself in court, as both parents feel as if they have been listened to and had input into the decision. .

Whatever route you take, you must ensure that you present your evidence clearly, in a logical and considered way. Emotive language, rudeness, or bad behaviour will not help your case and must be avoided. Please remember that everything you do must be child centred, as the Court will prioritise the best interests of your child and not what you or the other parent wishes to do.

It is always preferable to avoid decisions over HE coming to Court and both parents should recognise that and work together where possible to act in the best interests of their child.

Please also remember that every case is individual and just someone you know had a particular experience with a court, that does not mean that you will do so. No matter how close, you will not know the circumstances of their case; at most you will know their own view of it, not the case as a whole. Other people will not know the facts, or be necessarily able to understand the legal situation, so be wary of following advice without checking it carefully with a qualified legal professional

Last word

A decision to HE is a big decision for your child and both of his parents, it will always be better if that decision can be made jointly. Your child will benefit more from their HE with two parents who support the decision. Where it cannot be, it is always better to act wholly legally and ask the court for help.