

## Your Legal Questions

Roberta Ferrari  
Partner & Solicitor



**Q: My partner and I have separated. We have two children, ages 4 and 2. She has told me I can't see them unless I pay her maintenance of £100 a week. I want to see them - should I pay her?**

**A:** I assume that you are on the childrens' birth certificate as their father, so you automatically have parental responsibility for them, shared with your former partner. This means you have equal rights over, and duties toward, the children. Contact cannot be withheld without good reason - failure to pay maintenance is not a good reason.

As their father you have a statutory duty to pay maintenance for the children. This is governed by the Child Support Agency (CSA) and, broadly speaking, you will be liable to pay 20% of your net income as child maintenance regardless of whether you are having contact with them or not and regardless of your former partners financial circumstances. The amount can be reduced if the children stay with you more than 52 nights a year.

Contact with a parent is the child's right and not governed by whether that parent is complying with their financial responsibilities. It is rare indeed that a Court will not order contact of some sort should an application be necessary (under section 8 of the Children Act 1989).

My advice is that you should pay maintenance at the appropriate rate, either voluntarily or via the CSA. Should your ex not allow the children to have the amount of contact with you that you feel is right for them then you should see a Solicitor. He or she will advise you to first try mediation, as Court proceedings can have a high cost, both financially and emotionally. Should your ex remain unwilling to discuss contact, then a Court application will be necessary. The Court will make an order which it considers to be in the best interests of the children - not necessarily what you or your ex want.