Caught in the crossfire

MILITARY marriages are more likely to end in conflict than couplings forged on civvy street, according to recent research from across the Pond.

The study, conducted by job website Zippia, found 30 per cent of those following the flag in the US – where tours can last up to 18 months – were destined for divorce.

While no single factor determines the fate of a relationship, readers of *Army&You* will know only too well the additional strain deployments, frequent moves and integrating a returning partner into daily family life can bring.

And in the event that such pressures do become too much for a relationship to bear, confrontation and cross words are often common characteristics of a split.

However, putting aside differences in a bid to protect any children involved from the crossfire is paramount – if not always easy, explained Lin Cumberlin, a chartered legal executive at Batt Broadbent Solicitors in Wiltshire.

"A relationship break-up is hard for everyone involved, not least children who are likely to experience a wide range of emotions," she said. "The break-up of a family unit can cause a significant sense of grief to parents and children who will be affected by the change in their lives and the feeling of loss.

"It can be a very difficult time for the grieving parent to cope with their own emotions, never mind those of their children."

Fortunately, the majority of couples going their separate ways are able to decide on domestic arrangements for their children without seeking legal support.

"In most cases the court does not need to be involved as the parents are able to agree themselves what will happen when they separate," said Allen Bailey of Scotts Wright Solicitors in Catterick Garrison. "They may, for example, agree that the children live with one of them and spend time with the other on a frequent basis or that the children split the time with each of them more equally.

"Parents do need to remember that any arrangements they may agree on need to be flexible and may alter over time such as a change in working hours or the children moving schools."

> *"A relationship break-up is hard for everyone involved, not least children who are likely to experience a wide range of emotions."*
>
> *Lin Cumberlin, Batt Broadbent*

Even when things are amicable, Allen suggests such arrangements are put in writing in the form of a parenting plan [templates of which are readily available online] – a course of action which is also endorsed by Belinda Hunter of Surrey and Hampshire-based firm Wills Chandler Solicitors.

"If you have agreed the arrangements in relation to the children you should consider completing a parenting plan," the chartered legal executive added. "It helps you to put the best interests of your children first and to set out a shared commitment to your children.

"Your plan will help you work out the practical decisions about children's care in areas such as communication, living arrangements, money, religion, education, healthcare and emotional wellbeing.

"Negotiating your own agreement can be the cheapest and easiest way to reach a settlement following separation.

"Where one parent is a member of Her Majesty's Forces, often greater consideration needs to be given to the practicality of caring for a child."

Suzanne Foster, Parker Bullen

This option isn't suitable for everybody but it can work if you have mutually agreed to separate, remain on good terms and generally agree on issues relating to the children."

Court action, however, is not the only option for those who don't see eye-to-eye in regards what arrangements are in the best interests of their children.

Gail Salway, who heads up the family department at Everys Solicitors, which has offices across Devon and Somerset, said: "Parties that find themselves in this situation are now encouraged to attend mediation and a mediation information assessment meeting.

"If you and your former partner are willing to attend and wish to avoid contentious court proceedings, then mediation can be used to resolve the issues concerning where the children will live, how often they will see the other parent and how holidays will work etc."

Tamsyn Windle, a senior solicitor at Howell Jones LLP, agrees that legal intervention is not always a necessity. She told *Army&You*: "Family mediation services can often be of assistance in exploring and assisting the parents in deciding arrangements and as such can be, but do not necessarily have to be, formalised by way of written agreement or court order.

"There is no obligation to obtain a court order and in general the court will not get involved unless application is made to it in the event of dispute or because the parents would like an Order by Consent."

Engaging with a solicitor can also often help steer couples from the courtroom, according to Laura Clay-Harris of Howes Percival.

"If they find it difficult to speak directly or there are areas they cannot agree on, they should consider mediation or collaborative law, which will allow them to manage the situation between them but with the assistance of their solicitor," she said.

"A solicitor can be instructed who can give guidance and can enter into communication with the other parent or their solicitor. Correspondence between solicitors can resolve matters."

However, should parents ultimately find themselves calling on the courts they will discover a legal system that firmly favours finding middle ground, stressed Antonia Mee, a partner at London-based Burgess Mee Family Law.

"The court wants parents to reach an agreement between themselves," said the specialist family lawyer. "Even if the parties are unable to reach an agreement with the assistance of their solicitors or a mediator, the court still wants them to try to negotiate at court and the first two hearings in proceedings are dedicated to this.

"If the case goes to a final hearing where there are major issues to be adjudicated upon, the court will still want the parties to try to resolve the smaller issues which remain in dispute by negotiating outside the court in breaks from the proceedings."

When a court is required to decide the key elements of access, custody, residence and contact – now referred to as a Child Arrangement Order (*see page 63*), its primary concern will be the welfare of the child rather than the preferences of warring parents.

Holly Mullen of Hawkins Family Law explained: "In order to make this decision, the judge has several factors to weigh up which include but are not limited to: the child's wishes and feelings; their physical, educational and emotional needs; the likely effect of any change in their circumstances; their relevant circumstances such as age, sex and background; any harm suffered or likely to be suffered by them; and the capability of the parents of meeting their needs.

"This can be a difficult balancing exercise but usually the starting point is a 50-50 division of care."

Suzanne Foster – a partner in the family department of Salisbury and Andover law firm Parker Bullen – pointed to parents' professions as an example of one of the many factors deliberated by a judge, stating: "Where one parent is a member of Her Majesty's Forces, often greater consideration needs to be given to the practicality of caring for a child – especially where the serving parent may need to undertake deployment and tours of duty."

Suzanne was also quick to highlight that, in addition to directing where a child lives and with whom, Child Arrangement Orders can be used to govern which school a child attends, what surname they should use and within which religion they are brought up.

Andrew Woo, a partner at Brewer Harding & Rowe, echoed the view that family matters were rarely straightforward affairs.

"There is nothing contained within the law that says that a child should live specifically with mum or with dad," he said. "The welfare of the child and their best interests are what the court will consider first and foremost »

Lin Cumberlin, Batt Broadbent
battbroadbent.co.uk

Allen Bailey, Scotts Wright Solicitors
scottswright.com

Belinda Hunter, Wills Chandler
wills-chandler.co.uk

Gail Salway, Everys Solicitors
everys.co.uk

> ***"It is not expected that a child should make a choice between parents. Children do not always fully appreciate what is in their best interests."***
>
> *Sophie Key, Howes Percival*

when determining any decision regarding child arrangements. There is no right or wrong answer as each case is different.

"Both parents should try to agree together on where they will live. A court can be asked to decide, but this can be a painful process and the court will only make a legal order if it feels there is a need to and all other options have been exhausted."

Children are, of course, not without their own voice and can have a say in where and with whom they reside. Whether this voice is heard, however, depends upon the child's age and maturity, explained Lin.

"In 2014, the Government made a commitment that, from the age of 10, children and young people involved in all family court hearings in England and Wales would have access to judges to make their views and feelings known," she continued. "Giving children a voice either in a court room, via a Children and Family Court Advisory and Support Service report or via mediation can help influence the outcome of their futures and should enable separating parents to focus on what their children want."

Although acknowledging that some youngsters welcome the chance to share their view, Sophie Key of Howes Percival cautioned that doing so can place them in a difficult position and cause anxiety.

"Greater weight is given to the child's view the older they are, but each child is different and some are more mature in their approach than others of the same age. It very much depends upon the level of understanding that a child has and how able they are to see the bigger picture.

"It is not, however, expected that a child should decide and effectively make a choice between parents. Children do not always fully appreciate what is in their best interests."

Regardless of how good relations are between you and your partner post break-up, Suzanne insists that seeking legal advice is always a sensible option.

"There is never a disadvantage to taking legal advice to ensure you fully understand your legal rights and obligations," she concluded. "It may not be necessary for the solicitor to take any further action and the other side need not know that legal advice has been taken.

"Taking advice from friends and family, whilst well meaning, should be discouraged. Your solicitor will have no emotional involvement in the situation and can often give advice about aspects you may not have even considered. Forewarned is forearmed.

"Being informed will enable you to make well-considered decisions which could help you to avoid getting into conflict with the other parent." ■

Tamsyn Windle, Howell Jones Solicitors
howell-jones.com

Laura Clay-Harris, Howes Percival
howespercival.com

Antonia Mee, Burgess Mee Solicitors
burgessmee.com

Holly Mullen, Hawkins Family Law
hawkinsfamilylaw.co.uk

CHILD ARRANGEMENT ORDERS

Troubled by the terminology? Sarah Plant, Partner and Head of Family Law at Peter Lynn and Partners – a Swansea-based specialising in child law – provides the lowdown on Child Arrangement Orders...

Child Arrangement Orders replaced Residence and Contact Orders in 2014. The new order sets out who a child should live, spend time or otherwise have contact with.

Is this different to an existing residence or contact order?
No. The only change is a single order will be issued rather than a separate residence and contact order. A Child Arrangement Order talks of parties in terms of "the person with whom the child lives" (i.e. the resident parent by another name) and the person who the child spends time with or otherwise has contact with (the non-resident or contact parent).

When the order states the child lives with both parents (albeit in different places at different times), it's comparable to what was previously known as a Shared Residence Order (as before, times spent at each parent's home can be different).

The same features of the resident parent and non-resident parent exist. For example, a parent with whom the child lives (what was called the resident parent) can take children abroad for up to a month without the non-resident parent's or court's consent, while the non-resident parent (parent who the child spends time with or otherwise has contact) cannot.

Existing residence and contact orders will be treated as Child Arrangement Orders. Bear in mind that if you were a resident parent (including a parent with shared residence), you will be considered a person with whom the child lives. If you have a Contact Order, you will be considered a person with whom the child spends time or otherwise has contact.

Relative success

GRANDPARENTS of "pad brats" could have the right to see their grandchildren after a divorce enshrined within law.

A change to the Children's Act, which would refer to a youngster's right to a relationship with members of their extended family, is being backed by MPs after the issue was debated in the House of Commons.

Highlighting the need for a revision of the regulations, Conservative MP Nigel Huddleston said: "Divorce and family breakdown can take an emotional toll on all involved, but the family dynamic that is all too often overlooked is that between grandparents and their grandchildren.

"When access to grandchildren is blocked, some grandparents call it a kind of living bereavement."

If rubber-stamped, the proposed amendment would include aunts and uncles having access to nieces and nephews and negate the need for relatives to navigate the current legal process of applying to a court for access rights and for a Child Arrangement Order to be put in place.

"Generally, [extended] family members do not have an automatic right to spend time with your children," explained Imran Khodabocus, an Associate Solicitor at The Family Law Company.

"If they are not being allowed contact, they may have to consider making an application to court. Don't forget, before they can apply to court, there is now the prerequisite that they will have attempted mediation with the person with whom your children live in an attempt to reach an agreement. There are some limited exceptions to this requirement.

"If mediation doesn't work out, then they normally need to apply to a court for permission. This is known as 'leave'. There are some family members who do not need 'leave', for example if the child has lived with them for a certain length of time.

"When looking at 'leave', a court will consider the nature of what they are applying for and their connection with the child. Only if they are granted 'leave' will a court consider if it is in the child's best interests to, for example, spend time with extended family members."

Pursuing contact though the courts is an avenue Belinda Hunter of Wills Chandler Solicitors believes puts a lot of strain on family relationships and describes as "costly, time consuming" and "emotionally stressful".

"Taking the matter to court should normally be the last resort for anyone seeking contact with a child or grandchild," said the chartered legal executive.

Allen Bailey of Scotts Wright Solicitors in Catterick agrees: "Following a break up, the most obvious steps a grandparent, aunt or uncle can take to see a child is to communicate and reach an agreement with both parents.

"If the child has had regular contact with extended family members then it is beneficial that this continues. All parties should have the best interests of the child at the forefront of their minds and a child will benefit from stability following a break-up."

Andrew Woo of Brewer Harding & Rowe shared this sentiment: "Whilst the court decides matters on a case-by-case basis, relatives with established relationships are often seen as integral to family life and important to the welfare of children." ■

Suzanne Foster, Parker Bullen Solicitors
parkerbullen.com

Andrew Woo, Brewer Harding & Rowe
brewerhardingrowe.com

Sarah Plant, Peter Lynn and Partners
peterlynnandpartners.co.uk

Imran Khodabocus, Family Law Co
thefamilylawco.co.uk

To read more from our panel of legal experts, visit **armyandyou.co.uk/category/lawadv**