

# A GUIDE TO RESIDENCE ORDERS



After separation, parents need to decide where their child or children should live.

This information sheet provides general information about the law relating to residence orders and the factors the court considers when making a decision about which parent a child should live with. We acknowledge that grandparents, step-parents, same-sex co-parents or others may also want to be involved in caring for a child after separation. This can be more complex and you should seek legal advice if this is your situation. For information about lesbian parenting see our *Guide to Lesbian Parenting*.

## What is residence?

Residence means where, or more precisely, with whom a child will live after separation. This used to be called custody. A **residence order** states which parent a child should live with on a permanent basis and who should be the child's primary carer. A residence order is about the person a child lives with and not the address.

If you can agree where your child should live between yourselves, you will not need to ask the court to become involved. Reaching an agreement now does not prevent you going to court later if arrangements break down or if one of you changes their mind.

## What if we cannot agree residence?

If you cannot agree on arrangements for where your child should live you could consider attending **mediation**. Mediation is a voluntary process which aims to help parents negotiate with the help of a mediator. Mediation is not appropriate if you have experienced domestic violence. It may also not be appropriate if you have a disability or have English as a second language. You may be eligible for free mediation if you are on benefits or a low income. For further details about legal aid for mediation contact Community Legal Service Direct (see Other useful telephone numbers).

You could **consult a solicitor** to try and negotiate arrangements. A solicitor can write to your former partner setting out your suggestions for where your child should live and help you reach an agreement. You may be eligible for free legal advice if you are on benefits or a low income. For further details about legal aid contact Community Legal Service Direct.

If you are not able to reach an agreement about residence either you or your child's father can make an application to the court for a residence order. Even if your child's father does not have **parental responsibility** for your child he still has the right to apply to the court for a residence order. (For more information about parental responsibility see our *Guide to Parental Responsibility*.)

## The law

The law relating to child contact is set out in the **Children Act 1989** (CA 89). The CA 89 says that when the court makes any decision about a child, the child's welfare must be the court's "paramount consideration". This means it must consider the child's welfare above everything else. When making a decision the court must consider all your child's circumstances and in particular the following factors:

- **your child's wishes and feelings** depending on her or his age and understanding (generally the older your child is the more attention the court will pay to those wishes and feelings)
- **your child's physical, emotional and educational needs** (this includes practical needs such as accommodation and food as well as love and affection)

- **the likely effect on your child of any change in her or his circumstances** (this is particularly important in relation to residence as the court will want to make a decision that disrupts your child's life as little as possible. So far as possible the court will want arrangements for your child to remain the same)
- **your child's age, sex, background and any characteristics the court thinks relevant** (this could include any cultural or religious needs your child has or any special needs or disability that might affect residence arrangements)
- **any harm your child has suffered or is at risk of suffering** (this includes risk of physical, sexual or emotional abuse and now also includes any domestic violence your child has seen or heard)
- **how capable both parents are of meeting your child's needs** (the court can consider whether the non-resident parent has the skills to look after your child and can consider whether these are impaired, for example, by substance misuse)
- **the range of powers available to the court** (the court can choose from a very wide range of different orders to make and sometimes decides that it is not necessary to make an order at all. See "What type of residence order?" below.

## Residence and domestic violence

When making a decision about residence the court must consider the effect on your child of seeing or hearing domestic

violence. If you have experienced domestic violence, whether or not your child was directly involved, you should tell your solicitor or the judge at the earliest opportunity. **CAFCASS** (the **Children and Family Court Advisory and Support Service**) should screen for domestic violence in **all** cases and **investigate any risks** to you and your child's safety.

At the beginning of court proceedings the court may arrange a **conciliation appointment** to assist both parents to reach an agreement about residence. Make it clear that conciliation is not appropriate for you because of the domestic violence you have experienced. If a **joint meeting** is suggested you have the right to be seen on your own, especially if you are afraid of the other parent.

The Court may order CAFCASS to prepare a **welfare report** (see below) which should consider:

- the domestic violence you and / or your child have experienced
- the harm which your child has suffered or is at risk of suffering if contact is ordered
- whether the safety of you and your child can be secured before, during and after contact
- your child's wishes.

It is also important to tell the **CAFCASS officer** writing the report if you have informed any other organisation about the abuse, like the police, Women's Aid or your GP.

## What happens at court?

The court proceedings can take place in the **Family Proceedings Court** (part of the Magistrates Court) or in the **County Court**. In some courts the first hearing is a **conciliation appointment** where both parents speak (together or separately) to a **CAFCASS officer** from the Children and Family Court Advisory and Support Services. In some courts, a child over the age of nine will also be expected to attend court to speak to the CAFCASS officer. Ask your solicitor or the court whether your child should attend. If you are able to reach agreement with the help of the CAFCASS officer, the judge can make a residence order if necessary.

If you cannot reach agreement the judge will decide what evidence she or he needs to make a decision about residence and make **directions**. This could include both parents writing statements setting out their views on residence. The court may also order a CAFCASS officer to prepare a report and make a recommendation about residence. The CAFCASS officer will see the court file, read your statements, will meet both parents and the child individually, and any other professionals involved with the child as necessary. It is important to co-operate with the CAFCASS officer as their recommendation is very influential in the court's decision making. You may also want the judge to consider the views of experts such as social services or a child psychologist in making the decision. If this is the case you need to ask the judge to make a direction for them to write a report for the court.

At the **final hearing** each parent and anyone else who has done a report for the court, such as the CAFCASS officer may have to give evidence. The judge will then make a decision about where your child should live.

### What type of residence order?

There are two basic types of residence orders that the court can make: a **full residence order** and **shared (or joint) residence order**.

A **full residence order** states which parent the child will live with. The court may also make an order for contact between the child and the other parent (see our *Guide to Child Contact*).

A **shared residence order** is an order made in favour of both parents who do not live together. It will specify the period of time that the child will spend with each parent. Shared residence does not necessarily mean that the child will spend half her or his time with one parent and half with the other. The amount of time that a child spends with each parent could be equal or unequal. In a number of recent cases the Court of Appeal has said that it is no longer the case that shared residence orders should only be made in exceptional cases. Instead the courts say that shared residence will be appropriate where children are spending significant amounts of time with both parents. Shared residence has also been ordered in cases where parents lived in different countries and where parents did not communicate well with each other. These orders are made to reflect the fact that both parents had equal roles in their children's lives and equal responsibilities to them. While shared residence orders

have been made more frequently than has been the case the court will not automatically make a shared residence order in every case. Each family's circumstances will be different and it is the court's responsibility to make a decision that reflects the best interests of each individual child.

Whilst making the decision about what order to make the court can make an **interim residence order** which states which parent the child should live with until the court makes the final decision.

### Effects of a residence order

If the court makes a residence order in favour of a father who does not already have **parental responsibility (PR)** the order will automatically give him PR. PR gives him the legal status to be involved in all the important decisions in your child's life including issues such as education, religion, medical treatment and other aspects regarding the upbringing of your child. As your child's mother you automatically have PR for your child (see our *Guide to Parental Responsibility*).

If you have a residence order you can **appoint a guardian** whose appointment will take effect immediately on your death and will have priority over the surviving parent (although this can be challenged by the other parent asking the court to make a residence order in his or her favour).

If you have a residence order you are **not allowed to change your child's surname or remove the child from the United Kingdom** without either the written consent of the other parent with PR for your child, or permission from the court. The only exception is that if you

have a residence order you may take the child out of the United Kingdom temporarily (on holiday for example) for a period of up to one month without consent. For more information about taking your child abroad see our information sheet *When Parents Separate*.

### How long does a residence order last?

A residence order will end when the child reaches the age of 16, unless the court considers that there are exceptional circumstances that require the order to continue until the child reaches 18. A

residence order will also end if the court makes a new residence order in favour of someone else, if the court discharges the order, if the court makes a care order in favour of a local authority or if the parents live together for a period of more than six months after the order is made.

The issues relating to residence can be complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would also strongly advise you to seek legal advice by either telephoning our legal advice line or a solicitor.

**Please note that the law as set out in this information sheet is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.**

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**For free confidential legal advice on family law including divorce and relationship breakdown, children and contact issues, domestic violence and lesbian parenting call the Rights of Women Advice Line on  
020 7251 6577 (telephone) or 020 7490 2562 (textphone).**

**Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm  
Friday 12 noon – 2pm**

**For free confidential legal advice on sexual violence and the criminal law please call our Sexual Violence Advice Line on  
020 7251 8887 (telephone) or 020 7490 2562 (textphone).**

**Mondays 11am – 1pm, Tuesdays 10am – 12 noon**

#### **Other useful telephone numbers**

Community Legal Service Direct (for finding a family solicitor)	0845 3454345	<a href="http://www.clsdirect.org.uk">www.clsdirect.org.uk</a>
National Domestic Violence Helpline	0808 2000 247	<a href="http://www.womensaid.org.uk">www.womensaid.org.uk</a>
National Family Mediation	01392 271610	<a href="http://www.nfm.org.uk">www.nfm.org.uk</a>
One Parent Families	0800 018 5026	<a href="http://www.oneparentfamilies.org.uk">www.oneparentfamilies.org.uk</a>
Relate	0845 130 40 16	<a href="http://www.relate.org.uk">www.relate.org.uk</a>
Reunite (for advice on child abduction)	0116 255 6234	<a href="http://www.reunite.org.uk">www.reunite.org.uk</a>
Resolution (for finding a family solicitor)	01689 820272	<a href="http://www.resolution.org.uk">www.resolution.org.uk</a>
Samaritans	08457 909090	<a href="http://www.samaritans.org.uk">www.samaritans.org.uk</a>

**Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT**

**Office/Admin: 020 7251 6575/6**

**Textphone: 020 7490 2562**

**Fax: 020 7490 5377**

**Email: [info@row.org.uk](mailto:info@row.org.uk)**

**Website: [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)**

**Industrial and Provident Society No: 23221R**

