



Information Sheet: Residence Orders

What is a Residence Order?

This is an Order "setting the arrangements" to be made as to the person with whom a child is to live.

It replaces what used to be called custody.

There can only be one Residence Order at any time in respect of any child, however the Order can be made in favour of more than one person.

It is always better to try and reach an agreement with the person with whom the child lives if this is at all possible. It may be appropriate to consider attending mediation with your former partner to see if an agreement can be reached, however this will only work if you are both willing to attend and negotiate. We can provide details of mediation services if you are considering this.

Who can apply for a Residence Order?

Any person can apply for a Residence Order, even people who are not related to the child. Applicants are divided into two categories:-

- those who can apply automatically and
- those who need the Court's permission to make the application.

Who can apply automatically?

Any parent or guardian. The fact that a father does not have Parental Responsibility does not prevent him from applying.

Any person who is or was a party to a marriage in respect of which the child was a child of the family.

Who can apply with the Court's permission?

Any person, including the child, can ask the Court for permission to apply. The Court will consider the relationship between the Applicant and the child, and whether the application has any merit. If the Applicant is a foster parent they will need the Court's permission unless the child has been living with them for three out of five years before the application. They must have the consent of the Local Authority. The Court will also consider any risk that there may be of the proposed application disrupting the child's life to the extent that he may be harmed by it.



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How do I get a Residence Order?

An application for a Residence Order can be made on its own or together with an application for any other Order under the Children Act such as a Parental Responsibility Order (please ask for our information leaflet in respect of these).

Public Funding is available to bring such an application provided that the Legal Services Commission considers that there are sufficient merits and you are financially eligible, however you may be required to attend mediation before the Legal Services Commission will grant you a Certificate. We will advise you fully about this.

Once the application has been issued, it will be passed to CAFCASS and the application will be dealt with under the “Dispute Resolution” process.

Dispute Resolution

The First Stage:

When there has been an application to the Court about your child(ren), the court arranges for you to meet a CAFCASS Family Court Adviser to discuss your application and what options are open to you and the court.

The meeting (which may last for up to an hour) is aimed at helping you to reach an agreement and will take place at the CAFCASS offices.

First, you will be seen by the CAFCASS Family Court Adviser who will discuss your views and any concerns you have. He or she will need to be made aware of any possible risk to yourself or your children.

A joint meeting may also be arranged with the CAFCASS Family Court Adviser and the other party with the aim of reaching an agreed plan for your child. At this joint meeting you may reach an agreement. The CAFCASS Family Court Adviser may record the details with you or may encourage you to discuss them with your solicitor.

You may feel that some further time is needed to consider ideas to help resolve your differences. You may need to try out a temporary arrangement, which could be reviewed at a future court date.

If at any time, issues arise that concern the CAFCASS Family Court Adviser, and he or she decides it is not in the child’s best interests to continue Dispute Resolution, the court would be advised and Dispute Resolution procedure will cease and will proceed through the Court process and will either proceed to a Hearing or a “Welfare Report”.



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A "Welfare Report" will address "Welfare Issues" such as allegations that one party to the proceedings abuses drugs/alcohol/has a criminal record/is violent etc. A Welfare Report usually take approximately 20 weeks to prepare and the Court will list your case for another short hearing after the report is ready. The parties will be required to see the Welfare Officers at their Offices, and explain their case. This is usually a meeting with both parties, however you can request separate appointments if you feel strongly about this. The Welfare Officer may also wish to see the child, and if appropriate, to ask the child's view.

Will my child be involved?

Your child(ren)'s views are important and, in law, have to be taken into account when official decisions are being made about them.

The CAFCASS Family Court Adviser will discuss with you how your child(ren) should be involved. **Child(ren) should not be brought to court.**

The Welfare Officer may also wish to make home visits to examine the current and proposed homes for the child.

The Welfare Officer will make a recommendation at the end of the report as to how the Court should deal with the application. It may be that during the preparation of the report an agreement will be reached in which case the parties can ask the Court to make an Order at the next hearing.

If the matter is to be listed for the Court to make a decision, the parties and any witnesses they wish to call will be required to prepare a statement of their evidence for the Court. These statements must be sent to the Court and to the other parties by a certain date fixed by the Court.

At the final hearing, you will be represented by a Solicitor from this Firm, or by a Barrister. The Court will hear evidence on oath from the parties and their witnesses who will be cross examined by the representatives for the other parties. The hearing will be in a closed Court where the public are not allowed to watch.

Either party can require the Welfare Officer to attend the hearing and give evidence if they do not agree with the report or its conclusions.

The Court must then make a decision as to what if any Order should be made. The Court will base its decision on the "Welfare Checklist". This is a list of factors set down by the Law that the Court **MUST** consider in all contested proceedings. These factors are:-



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- The ascertainable wishes and feelings of the child, considered in the light of his age and understanding
- The child's physical, emotional and educational needs
- The likely effect on the child of any change in the child's circumstances
- The child's age, sex, background and any characteristics that the Court considers relevant
- Any harm suffered or likely to be suffered by the child
- How capable each parent, and any other person in relation to whom the Court considered the question to be relevant, is of meeting the child's needs
- The range of powers available to the Court in the proceedings in question.

The Court will consider the above in the light of the evidence it has heard and read and also the recommendation of the Welfare Officer. The Court will always start from the presumption that there should be contact for natural parents, and the welfare of the child is the Court's paramount consideration.

If the Family Proceedings Court makes an Order it must give its reasons in writing stating why they have made that Order.

What is the "No Order" principle?

The Court **MUST** consider whether it is in the best interests of the child to make a No Order where there is an agreement as to where the child should live. We will advise you as to whether it would be better in the circumstances for an Order to be made.

What does having a Residence Order mean?

The Order specifies who the child shall live with.

A person who is granted a Residence Order will automatically be granted Parental Responsibility at the same time, unless they already have it. If the Residence Order is brought to an end, the Parental Responsibility will end also. Please see our leaflet on Parental Responsibility.

Where a Residence Order is in force no one can change the child's surname or remove the child from the UK (except the person who has the Residence Order who can take the child for a holiday of up to one month) without the written permission of everyone who has Parental Responsibility for the child, or the permission of the Court.

In reality if both parties have Parental Responsibility it will be the party with whom the child lives who will exercise day to day care and control and will make the everyday decisions that affect the child.



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If you have a Residence Order and your former partner does not return your child after a contact visit you must produce the Order to the Police as evidence that child should be returned to you.

What if I am not happy with the Order made?

In some circumstances you can appeal against an Order if the Court has made a mistake in Law or has not attached sufficient importance to evidence it has heard. We can advise you as to whether you have grounds for an appeal.

What emergency Orders can be made?

The Court will make emergency Orders, but only in exceptional circumstances. This is because the Court usually requires the situation to be investigated by the Welfare Officer (see above) before it makes a decision.

However, if you believe that the child is at risk where it is currently living or there has been an incident that causes you to believe that the child is likely to be at risk you may be able to make an emergency application. We will advise you if the circumstances are such that you may be able to persuade the Court that an emergency application is required.

There are two ways of dealing with emergency applications. The first is to make an ex parte application. This means that the other person is not told about the hearing and the Court will only hear from you.

An application for emergency Public Funding must be made if you are financially eligible. If this is granted, you will prepare a statement of your case for the Court to read. The Court may also wish to hear evidence from you in person.

If an ex parte Order is made it must be served personally on the person with whom the child is living and also on any other person who has Parental Responsibility. The Order will be limited as to a length of time after which there will be a further hearing when all the parties should be present.

If the person with whom the child lives will not hand the child over you can ask the Police to become involved - you must show them a copy of the Order.

If the Police will not or cannot help you may need to apply for further Orders - we will advise you about this if necessary.



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How long does a Residence Order last?

A Residence Order will cease to have effect when:-

- The child reaches the age of 16 (or 18 in exceptional circumstances)
- If the parents live together with the child for a continuous period of six months or more
- It is discharged by the Court
- A Care Order is made in respect of the child
- A fresh Residence Order is made.

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If you need any further information about matters in this information sheet, please do not hesitate to contact us.