

Residence Orders

A Residence Order is “an Order settling the arrangements to be made as to the person with whom a child is to live”. The law in this area is governed by the Children Act 1989 which sets out the rules concerning applications for a Residence Order. The aim of this information leaflet is to give you details of how the Court deals with disputes over where a child lives. It used to be known as “custody”.

A parent of a child can apply to the Court at any time for an Order that a child should reside with that parent. Other people connected to the child, such as grandparents, aunts, uncles or older brothers or sisters of the child would need to apply to the Court for the Court’s permission to issue an application in the first instance.

Court Procedure

There is a procedure for applying for a Residence Order which is as follows:-

1. A written Application is made to the Court with the appropriate fee.
2. The Court arranges a preliminary appointment, usually within 21 days of receiving the application. The papers are then sent to the other party. At this preliminary appointment, known as a “Directions Appointment”, an Officer of the Children and Family Court Advisory and Support Service (CAFCASS) is usually present and the parties are given the opportunity to see him or her to discuss the case to see if any agreement can be reached. If no agreement is reached the Judge will set a timetable for how the case is to proceed.
3. Another CAFCASS officer will be asked to prepare a report on the case. This currently takes up to seven months to conclude. The Court relies heavily on the recommendations of the CAFCASS Officer (formerly called the Court Welfare Officer) in reaching its final decision. The CAFCASS Officer is a very experienced person, usually with a social work background. He or she will see both parties in a case, and usually interviews the child too to see what the child wants. The CAFCASS Officer reports the wishes of the child to the Court to avoid the need for the child to have to go to Court.
4. The parties may also have to file statements setting out their version of the case. Although the filing of Statements is usually deferred until after it is apparent that an agreed settlement cannot be reached, to avoid the hardening of attitudes and prejudice to the possibility of settlement, the filing of Statements might be ordered at the preliminary hearing in a case in which it is clear that it is unlikely that an amicable settlement will be agreed and it is desirable to reach the final hearing without unnecessary delay.
5. A review hearing is fixed for a couple of weeks after the CAFCASS Report is due to be completed.
6. If the matter still cannot be resolved, a final hearing is arranged so that a Judge can hear evidence about the case and make a final Order.

The Court has to give “paramount consideration” to the **welfare of the child** when deciding with whom the child should reside. The Court also has to pay specific attention to the following criteria:-

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- (a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).
- (b) His physical, emotional and educational needs.
- (c) The likely effect on him of any change in his circumstances.
- (d) His age, sex, background and any characteristics of his which the Court considers relevant.
- (e) Any harm which he has suffered or is at risk of suffering.
- (f) How capable each of his parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting his needs.
- (g) The range of powers available to the Court.

Generally, Courts do not like children to have to move homes, and it is relatively rare for the Court to make an Order which will result in a child having to change his or her main home. Thus the Court may wish to preserve the “status quo”.

It is important that serious thought is given to a case before an application is made for a Residence Order. The reason for this is that it is an inherently stressful type of case, and will have an unsettling effect on the entire family and especially the children. The outcome of a case will have important consequences in terms of maintenance payments, state benefits and the division of any joint property.

At the same time as being asked to look at where a child should reside, the Court can look at the contact arrangements (previously known as “access”) and indeed any other issue which relates to the upbringing of a child.

As an alternative to applying to the Court for a Residence Order, a referral could be made for mediation. This is where the parties with the dispute visit a trained mediator who can listen to both sides of the argument and then help the parties to see each other’s point of view. Sometimes this can be a very effective way of resolving a problem. If you would like further information about the mediation services that are available locally, please let us know.

Please note that this information sheet is designed to cover a wide number of circumstances and cases. You will be given additional information about your own particular case.

Please speak to one of our specialist family solicitors for further advice on 01992 558 411.