

## Residence order

A residence order settles with whom the child is to live. In some ways this is similar to the old custody orders, which no longer exist.

But there are important differences too, and the courts have made a number of decisions that influence how these cases will be looked at in the future.

Here are some frequently asked questions about residence.

### **Is the mother always in a stronger position?**

The application of the welfare checklist points towards pragmatism.

- Who is best able to meet the child's day to day needs?
- What has the domestic routine been in the child's life to date?

Even if there is little to choose between the two parents in terms of their actual parenting skills, are the work commitments of one more realistic and practical to having primary care of the children? This last consideration can be fundamental and traditionally has often worked in favour of mothers, but increasingly this need not necessarily be the case.

Even where one parent does have a residence order in his or her favour, that does not alter the fact that the other parent retains parental responsibility and has an important role to play in the child's life. In theory at least, a residence order is not a passport to make important decisions about the child's upbringing on a unilateral basis.

Where the parents are unmarried, the position is different. Before 1 December 2003, only the mother had automatic parental responsibility. The father had to acquire it by way of an agreement, subsequent marriage to the mother or a court order. For children born after 1 December 2003, if the father is named on the birth certificate he will have automatic parental responsibility.

### **What happens if there is more than one child – are they kept together?**

It is important to look at each child as an individual and to apply the welfare checklist in respect of each of them. It will however normally be in their best interests to keep siblings together if that is what has happened so far in their lives.

### **How long does a residence order last?**

The residence order lasts until the child is 16 years old unless there are very exceptional circumstances that justify the order extending beyond the child's 16th birthday.

### **At what age can a child make his or her own mind up?**

In the vast majority of cases, a residence order and most other orders available under the Children Act will expire when the child reaches the age of 16.

The ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding) are one part of the criteria that the court is specifically asked to address under the welfare checklist.

There is no set age from which any significant weight is attached to a child's views. They are taken into account in the light of his or her age and understanding. In reality, the older the child the more weight should be given to their views.

In practical terms, this will usually mean that an official appointed by the court – a CAFCASS Officer – will spend time with the child and then report back to the parents and the court on how clearly the child's views were expressed and the basis upon which they are formed.

The officer will also raise any concerns there may be about a child's views being expressed under the unreasonable influence of one or other of the parents.