

## Sharing residence of children

It does not always have to be the case that children live exclusively with one parent or another after separation. Indeed, in most families a pattern of contact develops between the the child and the parent with whom the child does not have their primary home. In some cases this contact is so frequent that the children may really feel that they have two homes rather than one. In some families – often, but not exclusively, where the children are older – the children float between their parents' houses more informally, and their parents share their care.

There have been studies of how this kind of arrangement impacts on children, but the results are inconclusive. Some children thrive on the informality, particularly as informal arrangements tend to indicate that the parents themselves have an amicable relationship. Other children find it stressful to have to base themselves in two different places or feel pressure from their parents to spend equal time with both of them. There is no doubt that for some families it can work very well, but care needs to be taken to ensure that arrangements are right for the individual young people involved and that everyone is able to talk about it without fear of hurt or upset if arrangements need to change.

The courts are now much more inclined to consider making shared residence orders in cases where the parents do not agree on the right way forward for the family.

A shared residence order does not have to mean that the children spend absolutely equal amounts of time with both parents. The court can make the order in the right circumstances to reassure both parents that the law sees them as equals, to show that neither parent is in control or to prevent one from marginalising the other. The court can make a shared residence order even where the parents do not have a particularly friendly relationship. The court will make no order if the parents are agreed.

The Court of Appeal has given some guidelines for what indicates a classic case for a shared residence order. These are:

- where the child has a strong attachment to both parents and is happy and confident in both homes;
- where the homes are close geographically;
- where the homes, and particularly the father's home, are close to the child's school;
- where the child is very familiar with both homes and feels a sense of belonging in each;
- where the child clearly feels he/she has two homes;
- where there is a relatively fluid passage for the child between the homes; and
- where there is some post-separation history of care being shared between the parents.

However, shared residence orders have been made in cases where the parents live hundreds of miles apart. Distance in itself does not prevent the making of an order. An important point is that a shared residence order must reflect the reality of the child's life. There is no presumption of shared care and the court will always consider the child's welfare as the paramount consideration, but in the correct situation it is far more likely than it used to be for the courts to endorse the principle of two homes rather than one.