



Shared Residence

Shared Residence, in UK family law, is a legal status recognising that children have two homes.

When separating, some parents agree arrangements for the children without involving the courts. Parental hostility can contribute to parents disagreeing on arrangements, or there may be genuine differences of opinion as to the most suitable arrangements.

Court proceedings can be costly, especially when using solicitors. There is also the emotional cost as most parents are stressed by court proceedings, which take time, and prevent people from being able to move on with their lives. If you are unable to agree with your ex-partner as to the arrangements for the children, it is worth considering mediation before going to court. If that is unsuccessful, it may be necessary to go to court to ask the court to decide what the arrangements will be.

You may wish to apply for sole residence of the children, but it is worth considering applying for a Shared Residence Order, as shared residence is likely to be in your children's best interests (unless there is a history of violence or neglect by the other parent).

Psychological studies record that parents with shared residence are less likely to suffer conflict than those with sole residence. More importantly, research records that children living in shared residence arrangements fare significantly better on all adjustment measures, especially when the parents are prepared to be flexible over arrangements.

An application for a Shared Residence Order (SRO) recognises the importance of the other parent in your children's life and shows your respect for them as a parent. This can reduce the potential for future conflict. It counts in your favour when Judges and Court Welfare Officers see a parent respecting the other parent's strengths. It suggests that you see your children's welfare as important, and for your child, shared residence brings the benefit of encouraging both parents to be involved in their children's upbringing and care which helps assure the children's educational, social and psychological development.

Does Shared Residence require the children to live half of their time with each parent?

No. This is a very common misconception. Shared Residence simply reflects the children's living arrangements in that it is a legal recognition that the children have a home with each parent. It may be that the children stay with one parent midweek and on alternate weekends, and reside with the other parent for the rest of their time. It is quite possible, where children live abroad or their parents live a considerable distance apart, that the children see one parent only during holidays and live with the other during term time. Shared Residence Orders may be appropriate and are made in all of these situations.



Where children spent equal time living with parents, the correct term is 'equal parenting time' and not shared residence.

Shared Residence and Parenting Rights

A further common misconception is that resident parents (parents with a Residence Order in their favour, whether it is for shared or sole residence) have greater legal rights concerning matters related to their children's upbringing. The right to make decisions about your children's education, medical treatment, religion etc comes through having 'Parental Responsibility' (PR).'

While a residence order (shared or sole) does grant PR, all biological mothers already have this, and biological fathers who were married to the mother OR whose children were born after December 2003 and whose names were included on the children's birth certificate will already have legal Parental Responsibility for their child. It is only unmarried fathers whose children were born before December 2003 who do not have PR, unless the court has granted a Parental Responsibility Order in their favour, or the mother has entered into a formal Parental Responsibility Agreement with them (see the factsheet on Parental Responsibility).

The one additional right a parent with residence has, in comparison to a non-resident parent, is the right to take their children abroad for a period of up to one month without first seeking the other parent's agreement (or the court's if this was refused). Before taking a child on holiday abroad, a non-resident parent must obtain this agreement first. It is worth noting that once a residence order has been made, neither parent can take the children abroad for more than a month at a time without the other parent's permission (or the court's).

What is undoubtedly true is that there is often an incorrect perception by teachers and medical professionals that a parent with residence has greater rights to involvement in their children's lives. This is legally incorrect.

Other misconceptions

There are still members of the judiciary who believe that shared residence orders are only appropriate when parents are in agreement. This is incorrect, and there are a number of instances where such judicial opinion has been challenged and overturned by the Court of Appeal.

Are Shared Residence Orders common?

Yes, although we are seeing instances of the court deciding that a residence order is unnecessary. Instead, a Judge simply sets out contact times for either parent, if the parents are unable to agree this themselves.



Why would a court consider granting Shared Residence?

The advantage of Shared Residence Orders are that they are perceived to:

1. promote a continuation of family life;
2. reaffirm the responsibility on both parents to provide care;
3. reaffirm the responsibility on each parent to provide financially for their children;
4. reduce the burden and stress of single parenting;
5. assist the children in maintaining meaningful relationships with both parents;
6. confirm to the children that each parent wishes to, and is able to provide them with a home.

The following points are also worth noting and are taken from the case *A v A* [2004] EWHC 142 Fam (see point 117). A Shared Residence Order:

1. removes any impression that one parent is good and responsible and the other is not;
2. has the benefit of being more realistic in those cases where the child is to spend considerable amounts of time with those parents;
3. brings with it certain other benefits (including the right to remove the children from accommodation provided by a local authority in the event that the child is taken into care - s.20 of the Children Act 1989). If the other parent doesn't have legal parental responsibility for the children, they do not have this automatic right.

Shared Residence can help alleviate the grounds for parental hostility and reduce the potential for future conflict and a return to court. Such was the view in the case *A Father and a Mother v Their Two Children (B and C)* (2004) EWHC 142 (FAM)

In the case *D v D (Shared Residence Order)* (2001) 1 FLR 495 the Court of Appeal found that a Shared Residence Order may be made where:

1. one parent is hostile to the idea; and
2. it is not necessary for there to be exceptional circumstances before a shared residence order is made.

Shared Residence can encourage the parents to support one another in their parenting, this principle being set out in the case *Re F (Shared Residence Order)* [2003] EWCA Civ 592.



Shared Residence related research

Child Adjustment in Joint-Custody versus Sole-Custody Arrangement: A Meta Analytic Review.
Robert Bauserman, Journal of Family Psychology 2002; 16: 91-102

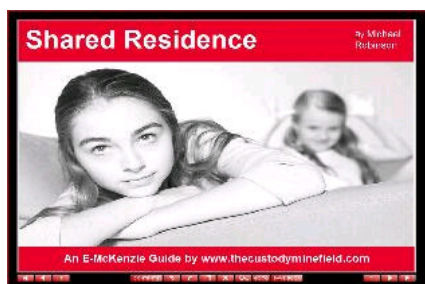
Children in joint custody arrangements fare significantly better on all adjustment measures than children who live in sole custody arrangements.

The fact that joint custody couples also reported less current conflict is important because of the concern that joint custody can be harmful by exposing children to ongoing parental conflict. In fact, it was the sole-custody parents who reported higher levels of current conflict.



Other research is sometimes cited in the UK concerning shared residence, and one study commonly referred to is 'Drifting Towards Shared Residence' by Professor Carol Smart, Dr Bren Neale and Dr Jennifer Flowerdew - Centre for Research on Family, Kinship & Childhood - University of Leeds. Be aware that that study looked at the experiences of only 30 children who were subject to equal parenting time arrangements (a 50/50 division of time which is often mistakenly confused with shared residence). Due to the limited sample size and the confusion over terminology, we recommend reference to the more detailed study by Bauserman and the further research set out within our report 'Research Supporting the Importance of Shared Care' which can be downloaded from the Custody Minefield website.

Shared Residence – Our e-Guide



Our 93 page digital book on shared residence and shared parenting, including definitions, case law, court forms, MSWord templates, shared parenting research findings, checklists, legal arguments, a guide on making an application for shared residence and checklists for case management. Available to purchase from The Custody Minefield website.



Shared Residence Case Law

Please bear in mind that there is little certainty in family law, and that case law is provided to assist you in supporting your arguments. An outcome cannot be guaranteed. In some circumstances, the courts will say that case law is binding, while in others will hold that each case must be judged on its own merits. There will also be instances where case law conflicts and the law continues to evolve. While bearing these points in mind, referring a judge to existing case law may assist in supporting an argument to the court.

CASE LAW	Brief Summary of Key Points
<p>Re H (Shared Residence: Parental Responsibility) [1995] 2 FLR 883</p>	<p>"This is a case where a shared residence order is not artificial but of important practical therapeutic importance. This is a case where its making does reflect the reality of the father's involvement and reflect the need for him to be given some status with the school to continue to play his part as both parties wish to do."</p> <p>"Shared residence has a different psychological impact from residence with one, contact to another because, as contact is defined, it requires that the parent with whom the child lives, must allow the child to visit or stay with the other parent. Here it was necessary for the boys to know they lived with the respondent and that they did not just visit him."</p>
<p>D v D (Shared Residence Order) [2001] 1 FLR 495</p>	<p><i>"I am not certain that one does have to demonstrate a positive benefit [to the child] to make a shared residence order. One does have to demonstrate that a shared residence order is in the interest of a child in accordance with the requirements of section 1 f the Children Act 1989"</i></p> <p><i>Shared residence orders could be considered even when one parent was hostile to the idea.</i></p>
<p>Re A (Children) (Shared Residence) [2002] EWCA Civ 1343</p>	<p>A shared residence order need not only be made in exceptional circumstances, confirmed the authority and competence of both parents and should be considered where there was a relatively smooth passage of children between the parent's homes, and the homes were in close proximity.</p>
<p>Re F (Children) [2003] EWCA Civ 592</p>	<p>A shared residence order may be made, even when parents live considerable distance apart (in this case, England and Scotland) so long as the children divide their time between two homes (this does not mean the equal division of time). Parents living in separate countries does not prevent the granting of a shared residence order.</p>
<p>A v A [2004] EWHC 142 (Fam)</p>	<p>The court found that a shared residence order 'removes any impression that one parent is good and responsible and the other is not, and has the benefit of being more realistic in those cases where the child is to spend considerable amounts of time with those parents'.</p> <p>Lord Justice Wall further confirmed that shared residence orders may be made even when one parent is hostile to the idea (and otherwise the 'no-order principle' would apply). 'If these parents were capable of working in harmony, and there were no difficulties about the exercise of shared parental responsibility, I would have made no order as to residence.'</p>



<p>Re C (A Child) (Shared Residence Order) [2006] EWCA Civ 235</p>	<p><i>'...the whole tenor of recent authority has been to liberate trial judges to elect for a regime of shared residence, if the circumstances and the reality of the case support that conclusion and if that conclusion is consistent with the paramount welfare consideration.'</i></p> <p>Lord Justice Thorpe identified the following factors which, he considered, supported the making of a shared residence order:</p> <ul style="list-style-type: none"> • the child has a strong attachment to both parents, happy and confident in both homes; • there was real proximity between the two homes; • there was real proximity of the homes to the school; • there was real familiarity with both homes and sense of belonging; • the child expressed a perception of two homes; • there was relatively fluid passage between the two homes; • there was relatively fluid passage from school to the two homes; • there was some post-separation history of shared care.
<p>Re P (Children Shared Residence Order) [2006] 1 FLR 309 as repeated in Re K (Shared Residence Order) [2008] 2 FLR 280</p>	<p><i>"Such an order emphasises the fact that both parents are equal in the eyes of the law and that they have equal duties and responsibilities as parents. The order can have the additional advantage of conveying the court's message that neither parent is in control and that the court expects parents to co-operate with each other for the benefit of their children."</i></p>
<p>Re W (Shared Residence Order) [2009] EWCA Civ 370</p>	<p><i>The judgment in Re W reaffirmed that unusual circumstances are not required before a shared residence order can be made, although there was the implicit suggestion that where the time the child spends in the two households is close to being equal, a shared residence order should be made. Also, that a shared residence order can be made as a consequence of one parent's deliberate and sustained marginalisation of the other. The judgment further confirmed that it was a contradiction to grant a contact order to a person who has a shared residence order.</i></p>
<p>AR (A Child: Relocation) [2010] EWHC 1346 (Fam)</p>	<p><i>In this case, and with regard to the granting of shared residence orders, the Honourable Mr Justice Mostyn comments "Indeed such an order <u>is nowadays the rule rather than the exception even where the quantum of care undertaken by each parent is decidedly unequal</u>. There is very good reason why such orders should be normative for they avoid the psychological baggage of right, power and control that attends a sole residence order, which was the one of the reasons that we were ridden of the notions of custody and care and control by the Act of 1989." (The Children Act 1989)</i></p> <p>TCM Comment: While undoubtedly true in some regions, in some courts shared residence orders continue to be rarely made. With regard to the granting of shared residence, <u>the approach of courts and individual judges is not consistent</u>, and each judge has a 'wide ambit of discretion' in deciding what arrangements to make for children. It may be useful to refer both CAFCASS and the court to the judgment in AR (A Child: Relocation), which was made in the High Court, should they be leaning toward granting a sole residence order.</p>



The Custody Minefield – Our opinion

The best outcome for children is one where parents act collaboratively in their upbringing, where tension is minimised and children don't witness parental conflict.

At the time of separation or divorce it is understandable that emotions run high. How long feelings of anger and hurt persist can be helped or hindered by the framework which the parents and court decide upon. Common sense dictates that when one parent is granted more rights and the other is marginalised, resentment is a common outcome.

Sole residence, in some instances, grants the resident parent the impression that they can control the other via the children. This can lead them to restrict contact or deny permission to holiday abroad with the children as a means to punish their ex-partner. Such actions rarely have anything to do with the children's best interests. All parties suffer, especially the children.

I'm aware of both mothers and fathers with sole residence who have acted in this way. The problem isn't one of gender, but one of fairness and human nature.

The best interests of children must always be paramount and this takes precedence over individual parental rights. An outcome which helps maintain a strong bond with both parents promotes an environment for parental collaboration and helps build a positive environment for the children. This is surely in the best interests of children which is why I favour shared residence as an outcome when parents separate. As importantly, scientific studies conclude that children are less likely to suffer mental health problems in adulthood and will achieve more academically when both parents are involved.

An exception exists where either parent has experienced domestic violence, the children have suffered abuse, or where there are concerns about parental incapacity or child neglect. In such instances child and parental safety must always be the first consideration.

Worth noting is the 2007 UNICEF Report into Child Wellbeing. The UK scored poorly while countries such as the Netherlands, Finland and Sweden were ranked at the top. These countries have moved to Shared Residence as the standard outcome following parental separation.

Perhaps, one day, the concepts of residence and contact and granting parental responsibility will be abolished, and once parents separate, the only matter to be determined will be the division of parenting time, and the practical arrangements for the children.