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Residence Orders: information for family and friends carers

References

ACA: Adoption and Children Act 2002

CA: Children Act 1989 (as amended)

CAA: Child Abduction Act 1984

CSA: Child Support Act 1991

Introduction

Sometimes there is a crisis in the family home and it is necessary for children to be looked after by someone other than their parents. This can be for a short or long term period. In these circumstances relatives and friends often come forward and take on the care of the child.

If the local authority is involved in placing the child with you, then you may be entitled to be treated as a foster carer, which has significant implications for eligibility to support including finance.

However, whether the local authority placed the child with you or you made the arrangement directly with the child's parents, you may decide that you want to apply to court for an order confirming that the child will live with you and giving you the right to make decisions about the child's care. This might include a residence order or a special guardianship order.

This advice sheet aims to give an overview of Residence Orders for family and friends carers: what effect they have, how you apply for one and the factors the court will consider when deciding whether or not to grant one. The legal references are set out in the narrow column on the right. If you are interested to find out more about another order which can secure a child's future with a relative or friend caring for them, see FRG advice sheet: [Special Guardianship: what's in it for carers?](#)

The advice sheet is long because there is a lot of relevant information. If you find it hard to follow it may be a good idea to ask a friend to go through it with you.

See Family Rights Group's advice sheet [Family and Friends Care: becoming a foster carer](#)

For further advice you can contact Family Rights Group advice service. Contact details are at the end of this advice sheet.

What is a Residence Order?

It settles where a child will live:

A Residence Order is a court order which decides with whom a child will live. That person does not need to be biologically related to the child. The order may have directions and conditions attached to it such as the time the child will spend with one carer or another.

s 8(1)CA
s11(7)CA

It can be held jointly with another person:

A Residence Order can be made in favour of more than one person. This is often known as a joint residence order. This might arise:

- where grandparents or a parent and his/her new partner are looking after the child together at the same address
- where a child is to spend large amounts of time with two people in their different homes (for example part of the week with mother and part of the week with father or grandmother).

It gives the carer parental responsibility:

- A Residence Order gives 'parental responsibility' to the person or people named on the order, for as long as the order is in force. This includes being responsible for the care and well-being of the child and also being able to make important decisions about the child's life including consenting to medical or dental treatment, and school trips.
- Parents who have 'parental responsibility' will also retain it alongside the person with the residence order.
- The person with the Residence Order can normally make decisions about the child's care and upbringing without having to consult with the parents. However, it is a good idea to discuss important matters with the parents even though you don't have to, as the child will benefit from everyone concerned with his/her upbringing being in agreement. It is also open to either of the parents (or any other person with parental responsibility) who is not happy about the decisions you are making about the child, to apply to court to challenge your decision on a particular issue.
- A person with a Residence Order may take a child outside

s12(2) CA

For more information about who has parental responsibility and what it means, see FRG advice sheet on 'Parental responsibility'
<http://www.frg.org.uk/pdfs/25.pdf>

*BvB (a minor)
Residence
Order*[1992]2FLR
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the UK for up to a month without the agreement of other people with parental responsibility.

s13(2)CA

However there are also some restrictions on decisions that can be made:

- When there is a Residence Order in force no one may change the child's surname without the written consent of every person who has parental responsibility or an order of the court.
- If a person with a Residence Order wants to take the child outside the UK for longer than one month they need the agreement of everyone else with parental responsibility or the permission of the court.

CA s13(1)

In addition, a person with a Residence Order who is *not* a parent may not:

- appoint a guardian for the child to look after them after their death;
- consent to the child being placed for adoption or being adopted.

s12(3) CA

Note: Residence Order made in favour of a father

If a father is granted a Residence Order and he did not previously have parental responsibility for the child, then the court must also make an order under s4 CA1989 giving him parent responsibility at the same time as making the Residence Order. The parental responsibility under a "section 4 order" will however, not automatically come to an end when the Residence Order ends as it would do with someone who isn't the child's parent.

s12(1) CA

What is the financial impact of a Residence Order?

Child Support:

Parents remain technically liable for the child's maintenance and the person with the Residence Order does not become liable in law although they may do so in practice. A person granted a Residence Order may therefore want to negotiate with the parents about any child support they propose to pay. Alternatively they may wish to contact the Child Maintenance Enforcement Agency, which has replaced the Child Support Agency. <http://www.csa.gov.uk/>

s.1 CSA

Support from the local authority

Residence order allowance:

If the person with the Residence Order is not a parent of (or married to a parent of) the child, the local authority has the power to give financial support although they don't have to. Any payments they agree to make will be means tested and are usually reviewed on a regular basis.

CA Sch 1 para 15(1)

Therefore, in cases where a local authority asks a relative or friend to apply for a Residence Order (usually as an alternative to the child being looked after in the care system) it is worth asking the local authority to carry out an assessment for a Residence Order allowance. It is significantly more likely you will successfully negotiate such an allowance if you request such an assessment **before** the Residence Order is made. However, a local authority cannot refuse support simply because you applied after the Residence Order was made.

For further information see Family Rights Group Advice Sheet: Support for Relatives and Friends.
R (H) v Essex County Council [2009] EWHC 353 (Admin)

If you have been caring for a child who was looked after in the care system you should be aware that the making of a Residence Order will bring any period of the child being 'looked after' to an end. This means that any fostering allowance you have been receiving will end.

Support for children in need

The local authority is also under a duty to provide support services for children who are in need in their area. This support can include help with day care and financial help in exceptional circumstances. This could include help with legal fees (discussed further on page 7).

s.17(1) CA
s.17(6) CA

You can ask the local authority to carry out an assessment of the needs of the child you are caring for to see if they are eligible for additional support – see FRG advice sheet no 4 for further information about this.

For further information, see FRG advice sheet on complaints.

If you have any problems getting support from the local authority you can make a complaint.

Financial orders from the court

A court may order a parent to pay maintenance for the child when it has been asked to make, vary or discharge a Residence Order.

Sch 1 para 1 CA

Benefits and tax credits

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For information about benefits and tax credits you are entitled to, see FRG advice sheet entitled 'Financial impact of having a child come to live with you'.

*FRG contact details
at the end of this
advice sheet*

Inheritance

The making of a Residence Order does not alter inheritance rights.

How long does a Residence Order last?

- 1) An interim Residence Order lasts as long as a court directs it. For example, when there is a dispute about where a child will live, a court may grant an interim Residence Order until a hearing decides finally which person a child will live with.
- 2) A final Residence Order lasts until a child is 18 years old unless the order is revoked by the court before then.
- 3) A residence order will end if an interim care order or care order is made in respect of the child. (These orders would give the local authority parental responsibility).
- 4) A Residence Order will end if the parents (one of whom was granted a Residence Order) live together for more than 6 months.

s12(5)CA

s91(2)CA

S11(5)CA

How do I apply for a Residence Order?

Preliminary questions to consider:

- Is a Residence Order the right order for me? What other orders might I consider?
- Do I need a solicitor? Will I have to pay legal fees?
- Can I apply without a solicitor if I cannot afford to pay legal fees?
- Will I have to pay court fees?
- Do I have a right to apply for a Residence Order?

Is a Residence Order the right order for me? What other orders might I consider?

Often carers find themselves having to decide whether to apply for a residence order or a special guardianship order. Both orders give the carer parental responsibility but under a special guardianship order the carer has more authority to make decisions than under a residence order. Also it is harder for a parent to apply to revoke a special guardianship order than a residence order so it is usually considered to be a more permanent order.

s.14A CA

*For further
information see
FRG advice sheet:
Special
guardianship:
What's in it for
carers?*

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The key features of the different orders and other relevant legal statuses are set out in Appendix 1 on the last page. You may want to read before deciding which order to apply for.

Do I need a solicitor?

Although many people prefer to instruct a solicitor to help them make an application to court, you do not have to as it is possible to apply on your own as a 'litigant in person' (see page 7 for further information).

The following sections of this advice sheet are intended to help you understand the different stages of the application whether or not you have a solicitor.

If I instruct a solicitor, will I have to pay legal fees?

If you instruct a solicitor to apply for a Residence Order on your behalf, you will be responsible for paying their costs, unless you are eligible for legal aid (see next section). This can be extremely expensive. The fees payable to a solicitor cover the cost of preparing your case, filing forms at court, representing you in court and associated costs. The costs can quickly run into thousands so you need to discuss with the solicitor at the first meeting what the costs are likely to be and then consider whether you can afford to instruct a solicitor.

However, even if it is expensive, you may feel you need a solicitor at least for part of the process, maybe because you fear the case may be contested or is particularly complex. If your funds are tight, we strongly suggest that from the outset you explain your financial situation to your solicitor and discuss with them how work can be divided between them and you, so that you are only using them when it is necessary and you are not running up avoidable costs. This is important, since we have seen cases where carers have run out of money and have had to dispense with their solicitor just when they most required legal representation.

If you cannot afford these costs yourself you have four options:

a) You may be eligible for legal aid

You will be eligible for financial assistance if you satisfy the LSC requirements which are:

- Merits Test: by showing that you have a reasonable chance of succeeding in your application; and

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- **Means Test:** either because you or your partner are receiving benefits, such as Income Support or income related Jobseeker's Allowance, or your disposable income is below the set threshold and your capital is less than £8000. To find out more details about whether you are entitled to financial assistance to cover all or part of the costs of the application you need to speak to your solicitor or consult Community Legal Services Direct website www.clsdirect.org.uk, which includes a legal aid calculator.

Remember, if you are in receipt of a variety of social security benefits such as Jobseeker's Allowance or Income Support you will not be assessed on income, only on capital. Your solicitor will be able to provide you with more advice on this matter. You can also look on the legal services commission website www.legalservices.gov.uk for downloadable leaflets relating to the various services they provide, and financial eligibility criteria.

b) The local authority Children Services' Department may help you with legal costs

If the local authority Children's Services Department has asked you to care for a child that is not your own then they may offer practical or financial help towards your legal costs if you decide to apply for a Residence Order with their support. In these circumstances you should ask Children's Services whether they will fund your application to the court. They have the power to do this if the child you are caring for is in need, but are not obliged to.

s.17(6) CA

c) Other family members may be able to provide financial support.

For example, when there has been an agreement between family members (maybe at a family group conference) that they assist with your solicitor's costs.

d) You can make an application for a Residence Order as a litigant in person (i.e.: without the help of a solicitor)

If you are not able to obtain help with costs and cannot afford to pay for a solicitor yourself (or consider that the costs are too expensive) you can apply for a Residence Order on your own by completing the forms and speaking for yourself in court. If you do this, the only costs you will incur will be the court issue fees.

Going to court on your own might sound daunting, but judges, magistrates and the court staff will often do their best to make the

experience as easy as possible.

If you do not have a solicitor you can ask the judge or magistrate for permission to take a friend or family member into court with you to give you support. The court will ask the other party if they object, but in general someone who does not have a solicitor will usually be allowed to bring a friend with them as long as they are quiet and unobtrusive. This person cannot normally speak for you in court, but can give you advice while in court.

Will I have to pay court fees?

It is normal that you will need to pay a court fee. However, you may be able to apply for a fee concession. For further information you can ask the court staff for **booklet and form EX160 and EX160A- Court fees do I have to pay them?**

How do I make the application for a residence order?

Which court do I apply to?

Two types of court can issue an application for a Residence Order. These are the:

- Family Proceedings Court – where specially trained magistrates will deal with your application.
- County Court- where a family court judge will hear your application.

Different fees apply depending on where you start proceedings. Broadly speaking family proceedings courts are less expensive than county courts. A full list of courts and the type of work that they do is listed on the courts website at www.hmcourts-service.gov.uk or you can check your local telephone directory. Also your local CAB or law centre will have a list of courts. Generally speaking you should apply to the court nearest to where the child lives.

However, if you are making an application about a child where there are existing proceedings about that child, you should apply to the same court which is dealing with that case.

Which forms and leaflets do I need to complete?

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All the forms you need can be obtained from the court office or can be found on the court website at <http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do>. The leaflet CB1 available on the court website gives a lot of information about applying to the court for an order relating to a child. You can also ask the court office to give you copies of the relevant forms.

Exactly which form you need to complete will depend on whether you have a right to apply for a residence order or whether you need the court's leave (permission) first:

a) Those who have a right to apply for a residence order include the following:

- the parent, guardian or special guardian of the child.
a person who holds a Residence Order in respect of that child; s10(4) CA
- a married step parent (including a civil partner) of the child where the child lived with the step parent as a child of the family;
- a local authority foster parent with whom the child has lived for at least one year; s.9(3)(c) CA
- grandparents, aunts, uncles siblings and step parents who have had the child living with them for one year ;
- anyone else with whom the child has lived for at least 3 years; and
- anyone who: s10(5)(c) CA
 - where there is already a Residence Order in place has the consent of everyone who holds that order or
 - who has the consent of the local authority where the child is in their care or
 - has the consent of every one who has parental responsibility for the child.

If you fall into any of the above categories, then

- if there are no ongoing proceedings that relate to the child you need to complete **Form C100**.

- if there are existing proceedings which you want to join to make your application for a Residence Order, (for example, if the local authority had started care proceedings) then you need to complete **Form C2**.

b) Those who require leave from the court

If you do not fall into any of the above categories of people who have a right to apply for a Residence Order then you need the **leave** of the court to be able to make the application. To do this you need to complete **Form C2 and then Form C100**. Forms C100 and C2 can be sent into the court at the same time. In other words, there is no need to wait for the result of your Form C2 application to proceed with Form C100.

When asking the court for leave to apply (in other words when completing Form C2) you need to explain why you are making the application. This should address the factors the court will look at when deciding whether or not to grant leave. These are:

- the kind of order you wish to apply for (for example a Residence Order application would be subjected to higher scrutiny by a court than a Contact Order application)
- your relationship and personal connection to the child (how well you know the child and what sort of connection exists)
- whether making the application for a Residence Order would cause 'disruption to the child to the extent that they were harmed by it'. For example if the court case itself was going to cause such stress in the household where the child lives that s/he would be damaged by the impact of the case being heard.

s10(9) CA

Where the child is 'looked after' by a local authority the court must also consider

- the local authority's plans for the child's future
- the wishes & feelings of the child's parents. This may be difficult if, for example, you are a paternal grandmother and have a poor relationship with the mother, but it could also help your application if, for example, your son or daughter is happy for you to have the children living with you.

If you have any further questions about 'leave to apply' and how to complete Form C2 you can always speak to a CAB advisor, and/or Family Rights Group for additional information.

c) Whether or not you need the court's leave to apply for a Residence Order, you will also need to complete **Form C1A** if there has been any domestic violence or abuse against you or the child concerned caused by the other person involved in the

case or their household or if there is any ongoing risk of harm or abuse. This form can be found at the same web address or is available from the court office together with detailed guidance on how to complete it.

I have completed the court forms- what do I do next?

You need to prepare the papers to be *filed* at court.

Check the form(s)

Sign and date the form(s)

Copy the form(s). You will need to give the court the following;

- The original signed C100 (and C2 and C1A if needed)
- A copy for you to keep once endorsed as issued
- A copy for every respondent (i.e.: every other person involved in the case, such as the parents or others with parental responsibility – the court office will advise you on who should be a respondent)
- A copy for CAFCASS
- 3 extra copies so each magistrate has one in the family proceedings court
- Any fee or exemption form

Take or send the correct forms, copies and fee to court.

What if I think the child needs help urgently?

If you believe that the child needs help urgently you must inform the court of this and you may want to set out your concerns in more detail in a supporting statement to be given to the court.

This might arise, for example, if you are a grandparent and the child has lived with you for some time, possibly with the support of children services, and his/her parent says that they want to remove the child from your home and you would be concerned for the child's safety if s/he were to do so.

The court may agree to grant you an interim Residence Order without notifying the other people involved in the case (known as parties) first. This is called **ex parte** or **without notice**.

Alternatively, the court may set an immediate hearing date, allowing for the other parties to attend but with less notice of the hearing than would normally be given.

What will the court do when they receive my forms?

The court will check you have filed the forms correctly. It will give you a date and time for the first hearing (usually called a “directions hearing”) unless a ‘leave hearing’ is to take place first. In either case the court will return the forms along with other forms for you to serve on (give to) the respondents. It will also send you specific forms to serve on others to whom notice is to be given.

How do I serve the application forms and other papers on the other people (respondents) involved in the case?

After the court has sent you the documents and other forms to serve you must then by law send the appropriate documents to the respondents and the others to whom notice is to be given. The court office will advise you about who this is.

The court will also send you a leaflet “**CB3-Serving the forms-Children Act 1989**”. This explains how to serve the forms. It can also be accessed at http://www.hmcourts-service.gov.uk/courtfinder/forms/cb3_e.pdf.

It is particularly important to ensure that any interim order made in an emergency which the other party does not know about, is properly served on (i.e. delivered to) that person with evidence of how that took place. You will need further advice from court staff if this applies.

Please note that once you have started court proceedings concerning a child, the law places restrictions on the information about the case that you can share with other people. See leaflet ***EX710 “Guidance on disclosing information about family proceedings involving children which are heard in private”***.

What happens next?

Every respondent in the case must send their acknowledgement of service (form C7) to the court within 14 days of being served with your application.

Other people who are entitled to be notified of the proceedings (but are not respondents) do not have to acknowledge receiving form C6A (notification of proceedings). However, they may decide to file their own form C2 and ask to become formally involved to the case.

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What will happen at the court hearing?

In this advice sheet we do not provide much information about court hearings as these can and do vary from case to case. However the following gives an outline of what you can expect:

Preliminary 'leave' hearing

The court will either:

- grant the application for leave and let you know, sending a copy of the order to you with a date for a directions hearing on the application for residence, or
- let you know that it has listed your application for leave for a short hearing to allow the other party to attend to make any objections if they have any. What will happen at that hearing will depend on your case, whether the other party attends, whether they want or have obtained legal representation and whether they agree to leave being granted (even if opposing the making of a residence order). If leave is granted the Court may also want to go on to look at whether some initial directions about the application for residence can be agreed or decided.

Directions Hearing

Once any 'leave' required has been granted, your application for a Residence Order will usually be set down for a 30 minute hearing called a "Directions Hearing". This hearing is used to decide what procedural steps need to be taken for the case to progress, including:

- Whether there are any areas of agreement between you and the respondent and what issues remain.
- Whether statements should be filed by or on behalf of any party. You will need to prepare a statement. In it you will need to explain why you think the order you are asking for would be in the child's best interests. ***It is your chance to tell the judge your story and convince him/her why a residence order in your favour would be the best option for the child.*** So when you prepare this statement it is important to address the factors listed in the welfare checklist on pages 17-18.

You could also think about whether there is ***anyone else who could come to court to support your case***, such as other relatives or friends who may help you out with baby-

sitting or who can confirm that you have a good relationship with the child. If you want to call others to support you they will need to prepare statements too.

- A CAFCASS (or court) officer) will normally be available to discuss the issues with you. They may suggest that you go to **mediation** or a **family group conference**. You can find out more about this below under Alternative Dispute Resolution on page 15.
- Where there is ongoing disagreement about what is best for the child, the court will usually order that a Welfare Report be prepared.
- The court is required to avoid delay in deciding the case where this would be harmful to the child. Therefore it will draw up a timetable for the case, setting deadlines for things to be done such as the filing statements of evidence, preparation of a Welfare Report, submission of expert's reports, joining interested people as parties to the case, etc.
- The court will set a date for the next hearing.
- An interim (temporary) Residence Order may be granted. This would state, for example that the child will live with you until the court considers the case again at a later hearing. It will also give you the power to make decisions about his/her care during that period because it gives you parental responsibility for the period of the order.

s 7 CA

Welfare Reports:

Where there is a dispute about what is right for the child, the court will normally order that a Welfare Report is prepared that reports to the court on the child's views and what is considered to be in the child's best interests including where the child should live and who s/he should have contact with.

s 7 CA

This report is usually prepared by a CAFCASS officer, or, where a local authority has been involved with the child or the judge is concerned that the child may be at risk of harm, it will be prepared by a social worker from that local authority.

s.37 CA

The person preparing the report will normally observe your interactions with the child and interview you, the Respondents and the child if they are old enough to put their opinions across. They will also be able to seek information from social workers, teachers, health visitors or any other person whom they feel has

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an important contribution to make.

The courts will generally place great weight on the recommendations of a Welfare Report. You should normally be sent a copy of it in good time before the court hearing. If you disagree with any point made in the Report you should initially discuss this with the officer concerned. If you cannot resolve the issue then you will have a chance to question the officer in front of the judge at the final hearing.

Occasionally it may be appropriate for other expert evidence to be obtained in addition to a Welfare Report such as a report from a psychiatrist or psychologist. Any party may ask the court about this.

What about alternative dispute resolution?

It can often be better for the child concerned if the people involved in the case can work out an agreed solution themselves, rather than the issues being decided by the court. In cases involving children there are two key services which can help those involved to reach such a consensus:

Family Mediation

Mediation involves a mediator helping those who are involved in a dispute about a child to negotiate by keeping the discussion very focussed on the issues in dispute and what the parties perceive as the child's needs rather than their own. Sometimes this involves the mediator seeing the child to ask his/her views on particular issues to inform the discussions. The mediator is neutral and therefore does not take sides. It is the parties rather than the mediator who make plans for the child.

In many cases, mediation can be very successful in helping the parties find solutions that work for the child and the adults involved. However no agreement reached at mediation is legally enforceable so if you are caring, or want to care, for someone else's child, and you want the arrangement to be legally secure and/or you want to have parental responsibility for the child, you will still need to go back to court to ask the court to make an order to confirm the agreement you have reached.

Details of how to find a mediator can be found at the end of this advice sheet.

Family Group Conferences

A Family Group Conference (FGC) is a family-led decision-making process in which the whole family comes together to make plans and decisions for a child who needs a plan that will

keep them safe and promote their welfare. Professionals (for example social workers) are involved in setting out the key concerns at the initial stage of the meeting that must be addressed in the plan and in the last stage of the meeting in agreeing the plan including any local authority resources.

If you think a family group conference would be useful in your case you can ask the child's social worker (if there is one) or the CAF/CASS officer how you may be able to find, and be referred to, a Family Group Conference service in your area.

*For more information
see FRG advice
sheet on Family
Group Conferences*

Key points about representing yourself in court (if you don't have a solicitor)

- Residence Order cases are held in private. The law has recently changed to allow accredited journalists to attend family courts but at present they cannot report anything which would identify the child or family during the proceedings. The court has discretion to refuse them access in certain circumstances.
- Generally, the proceedings are fairly informal and the lawyers will not wear wigs and gowns. Hearings may take place in small rooms ('in chambers') rather than in a court.
- It is extremely unlikely that the court will deal with your case in one hearing. You may need to go back on several occasions, may be ordered to file 'statements of evidence' by a particular date. In addition, at some hearings you may need to give oral evidence.
- As the Applicant you will be expected to make the opening statement to the court. This does not need to be long, but should be a simple, clear explanation of why you are applying for an order. You might simply want to read out the short statement you made in the Form C100 or C2 (your reasons for applying and any plans for the child(ren)).
- Since family cases are fairly informal, then, as long as you are polite and respectful to all of the parties, you do not need to be too worried about legal matters. You can usually ask the judge for assistance if you do not understand what you are being asked to do, and indeed the solicitor or barrister representing any other party in the case will usually be expected to explain matters clearly to you.
- Once you have made your statement, the solicitor or barrister representing the other party will be invited to respond to your application and statement and the judge or magistrates will ask questions to clarify anything which seems unclear. If you are at a hearing where a Welfare

Report has been prepared, and the CAFCASS officer is present in court, you will be able to ask him/her questions or make comments about the Report.

- If you are called to give evidence you will need to talk about any supporting statement you have made and may be cross-examined (under oath) by the other party's solicitor or barrister. The judge may also ask you questions directly.
- All of this may sound intimidating, but the judge or magistrate will not allow the lawyer to harass you, and some judges say that they gain a far better picture of the family situation and dynamics from listening to relatives give evidence rather than simply reading statements and welfare reports.
- You will be expected to attend all court hearings unless the court tells you that you are not required to attend on a particular date.
- You can take along a friend or relative to give you support but they will only be allowed in court with you if the court gives permissions for this. However if your supporter is also someone who you want to call as a witness who can support your case, they will not usually be able to remain in the court until after they have been called to give evidence.
- Finally, if for some reason you decide to withdraw your application for an order it is only possible to do so with the permission of the court. Do think very carefully before you decide to withdraw an application as you may be reacting to a stressful experience or understandable anxiety or depression if the case appears to be taking a long time to be resolved. You can always call the FRG advice line to discuss your concerns before taking any major step which you might later regret.

How will the court decide whether or not to make a Residence Order?

When deciding whether or not to make a Residence Order, the court is required to follow the 'welfare principle' which means that the child's welfare is the most important consideration, taking account of factors including the following:

a) The welfare checklist includes:

i) The wishes and feelings of the child depending on his/her age and maturity. Then court will either know this from what each

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person says about the child's views, or from the Welfare Report which will include the child's views and which may be particularly important where a child is finding it difficult to tell a parent or grandparent directly who they want to live with.

ii) The child's physical, emotional and/or educational needs

The court will consider your and the other party's proposals for and how these can best be met in the future. So if, for example, the child will have to change schools in order to live with you, you will need to show that this is necessary to meet his or her other needs, such as being able to live with a relative rather than go into care, or to protect him/her from neglect.

iii) The likely effect on the child of any change in circumstances for example the disruption of the child moving home will be outweighed by the benefits of the care he will receive living with you.

iv) The child's age, sex, and background including things like your child's religion, ethnic background and language(s) spoken, and any disability s/he may be suffering from. The court will consider and how the child's needs arising from these things could be met by you in the future.

v) Any harm which the child has suffered or is at risk of suffering The court will need to be reassured that you can protect the child from harm, including keeping the child safe during contact visits.

vi) How capable each of the child's parents (or other relevant person) is of meeting his/her needs This means the court will consider your proposals to care for the child alongside any proposals from his/her parents and others who have a significant relationship with the child.

vii) The power of the court to make other orders In some circumstances the court can make different order(s) from the one(s) applied for if it considers this would be in the best interests of the child - for example you might have applied for a Residence Order but the court may consider that a Special Guardianship Order is more appropriate. It may also decide to make a Contact Order alongside a Residence Order if it considers that the arrangements for contact with other people, for example the parents, need to be specified.

b) Presumption that the court will not make an order unless

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it will benefit the child

The court is required by law not to make any order unless having an order will be better for the child than not having an order. Therefore, although it would be quite unusual, the court could decide that, although you have applied for a Residence Order, there is no need for an order, for example where you and the parents are fully in agreement about the arrangement and are able to communicate and cooperate well together.

Where can I get more information?

Citizens Advice Bureau is an independent organisation providing free, confidential and impartial advice on all subjects to anyone. The address and telephone number of your local CAB can be found in the telephone directory. There is also advice on line on their website.

Website www.citizensadvice.org.uk

Advice on line Website www.adviceguide.org.uk

Children's Legal Centre provides free independent legal advice to children, parents, carers and professionals. Their Child Law Advice Line provides free legal advice and information covering all aspects of law and policy affecting children. An advisor can be contacted on **08088 020 008**. The advice line is open from 9.00am to 5.00pm Monday to Friday.

Community Legal Services Direct is part of the Legal Services Commission. They provide free information direct to the public on a range of common legal issues and makes it easier to find quality legal help and information.

- Telephone 0845 345 4345. Staffed during office hours, with voice mail and a call back service available out of hours.
- Website www.clsdirect.org.uk.

Family Right Group: is an organisation which provides free telephone and email advice to family members who are involved with the local authority about the care and protection of their children.

- Contact FRG's advice line for further advice, on 0808 801 0366. It is open Monday-Friday 10am-3.30pm. You can also email to advice@frg.org.uk.
- You can also visit www.frg.org.uk/advice_sheets.html

where you can download other relevant advice sheet.

Grandparents Association is an organisation which provides advice and support to grandparents about caring for, or having contact with, their grandchildren. They can be contacted at:
Moot House, The Stow, Harlow, Essex CM20 3AG
Office: 01279 428040
Helpline: 01279 444964
E-mail: info@grandparents-association.org.uk
<http://www.grandparents-association.org.uk/index.php>

Family Mediation

- To find a mediator, you can contact:
 - Your local National Family Mediation (NFM) service in your area. A list of services can be found at the following weblink; <http://www.nfm.org.uk> or you can also call NFM on 01392 271610 - open 9.00am - 5.00pm (Monday - Friday) or email: general@nfm.org.uk; or
 - The Ministry of Justice's Family Mediation Helpline (on 0845 602 6627) who can refer you to a mediator from their joint register. www.familymediationcouncil.org.uk
Email: info@familymediationcouncil.org.uk
Address: Family Mediation Council, PO Box 593, Exeter, EX1 9HG

Specialist solicitor:

If you want a solicitor to advise you or represent you in the case it is best to find one who specialises in child care law
Your local Citizen's Advice Bureau should be able to recommend one, or contact

Solicitors Regulation Authority

Ipsley Court
Redditch
Worcestershire B98 0TD
Phone: 0870 606 2555
<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>
If you are on a low wage or receiving welfare benefits, you should be able to get free advice under the legal aid scheme. Ask your solicitor to advise you about this.

*Last updated
November 09*

Appendix 1: Features of typical legal statuses of a child living in family and friends care¹

	Informal arrangements including private fostering	Children on EPOs and COs	Children accommodated by the local authority	Residence order	Special guardianship order
Who has PR?	Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	LA; Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Person with RO; mothers, fathers/anyone else who has acquired PR by court order or agreement with parents	Person with SGO who can exercise PR to exclusion of anyone else with PR; mothers, fathers/anyone else who has acquired PR by court order or agreement with parents
Who can make decisions on behalf of the child?	Carer can make day to day decisions about the child's care but only those with PR can make important decisions e.g.: consent to medical treatment, leaving the UK etc	Carer can make day to day decisions about the child's care in consultation with LA, but LA makes all important decisions about child in consultation with parents or carers	Carer can make day to day decisions about the child's care in consultation with LA, but only those with PR can consent to medical treatment, leaving the UK etc.	Person with RO can make decisions without having to consult others with PR (although should for important decisions) but some restrictions e.g.: name change, consent to adoption/adoption placement, change of religion)	Person with SGO who has right to exercise PR to exclusion of anyone else with PR, but some restrictions e.g.: name change, consent to adoption or adoption placement, change of religion)
Can the child be removed from my care?	Yes by person with PR	Yes by LA	Yes by person with PR	No unless RO revoked or LA has EPO or CO	No unless SGO revoked or LA has EPO or CO
Can I take the child out of the UK?	Only with consent of all those with PR, or leave of court.	Only with consent of LA for up to one month, unless court gives leave	Only with consent of all those with PR or leave of court	For up to one month, otherwise consent of all those with PR or leave of court required	For up to three months, otherwise consent of all those with PR or leave of court required
Can I appoint a guardian?	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	Parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	No, person with RO cannot appoint guardian but parents with PR/guardians can appoint a guardian – seek further advice on when appointment takes effect	SGO holders can appoint a guardian – seek further advice on when appointment takes effect
Can the order be revoked?	N/A	Yes on application to court	N/A	Yes – parents and others with PR have a right to apply to revoke the order	Yes but parents need leave to apply to revoke the order -only granted if there is significant change of circs
Am I entitled to support?	Discretionary support under s.17, subject to	Fostering allowance payable to LA	Fostering allowance payable to LA	Discretionary support under s.17 and residence order	Discretionary support under SG support services, subject to assessment –

¹ Information about adoption and testamentary guardianship are not included here but can be obtained from FRG advice service – contact details at the end of this advice sheet.

	assessment	approved foster carers	foster carers	allowance, subject to assessment	entitlement to assessment for SG's, child and parents
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