Shared residence of children in Guernsey: Are we there yet?

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Historically, custody orders for children were almost always granted in favour of the mother. For many years, certainly in a traditional household, the father's role was usually confined to 'breadwinner' and the mother was main carer, chief organiser of the children and all things domestic.

But times have moved on and roles have changed, so to what extent is this reflected in the law? Is there a presumption of shared care between parents and what options are available to you if you are committed to sharing care of your children?

The recent history of child law in Guernsey is ruled by the Children (Guernsey and Alderney) Law 2008 (**the 2008 Law**) which came into force in January 2010. Under this law, the terms 'custody', 'care and control' and 'access' were replaced with 'parental responsibility', 'residence' and 'contact'. The main principles behind the old labels were retained but now we have a clear all-embracing framework with formal definitions and procedures.

Under the 2008 Law, a residence order confirms with whom the children shall live and contact orders confirm the arrangements for a child to stay with the other parent. At paragraph 21 of the 2008 Law, almost as something of an afterthought, the Law says that a residence order can be made in favour of more than one person and here was born the concept of the shared residence order. No fanfares, no glitter, not even formally named as a shared residence order, the concept of shared parenting became law.

So far so good, but still no mention of any presumption of shared care nor when or in what circumstances a shared residence order might be appropriate.

In England in 2010, the Shared Parenting Orders Bill was debated at Westminster. This defined a Shared Parent Order as:

"An order providing that both parents have full involvement in the upbringing of a child, particularly in respect of major long term issues, and requiring that a child must spend a substantial and significant amount of time with both parents."

Most unfortunately, this Bill failed and did not become law. As things stand, a legal presumption of shared care seems as far away as ever with no mention of this in the latest Queen's speech.

So back to Guernsey; how does the law work in practice and where does a shared residence order fit in with all the other available orders?

A shared residence order, although not specifically defined in law, effectively provides that a child shall spend a significant amount of time with each parent in their household. A shared residence order does not mean that the children have to spend an equal amount of time with each parent and many shared residence arrangements reflect this. Living on a small island where distances are short is conducive to shared care arrangements but of course pure logistics often dictate whether such an order is practical. Shared care arrangements do not fit easily into many work schedules including those who work shifts, but with a little give and take, an open line of communication and a commitment to make such arrangements work these can be very successful.

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In practical terms of course, children moving between two households on a regular basis can cause problems. There is tension between, on the one hand regular movement between the two parents and on the other hand wanting the children to have a block of time within each household.

As for the criteria as to when a shared residence order may be appropriate, the 2008 Law provides no specific guidance. Decisions as to residence orders are governed by the "Welfare Principles" which, in short, say that a child's welfare is normally best served by being brought up within their own family. As for the child's views, the Law says that a child is capable of forming a "considered view" from the age of 12. Quite what these words mean is open to debate but is generally interpreted to mean that the Court will listen to an averagely mature child from the age of 12 upwards.

In addition, the Court provides a Welfare Checklist which in summary says that the Court shall have regard to:

1. The child's wishes and feelings in the context of their age and understanding.
2. The age, gender, ethnicity, cultural background, language, religion and any other relevant characteristics of the child.
3. Any harm the child has suffered or is at risk of suffering.
4. The child's physical, emotional and educational needs.
5. How capable each of the parents, or any other person looking after or having parental responsibility for the child, is of meeting the child's need.
6. The importance and likely effect of contact between the child and their parents, siblings, relatives and any other people significant to the child and the effect or likely effect of any change in the child's circumstances.

So as you will see, no specific mention of shared residence but the Law does give a strong indication that a child should spend time with both parents unless there is a very good reason to the contrary.

In terms of local case law there are very few reported decisions. In the UK, a leading case in 1994 said that a shared residence order can be appropriate even in a case where parents are incapable of working together in harmony or where the children do not necessarily divide their time equally between the two households. In 2001 another Court granted a shared residence order to reflect the reality of the arrangements and said it was not necessary to show "exceptional circumstances" before a shared residence order could be granted.

In Guernsey, in the absence of any significant reported cases, we have little more than anecdotal evidence to rely on. The good news is that we seem to be moving towards a shared residence order being the starting point. In other words, the question will be asked at the outset, why *shouldn't* there be a shared residence order rather than why there *should* be one. This seems to be the current direction of travel.

So what happens if you want to agree a shared residence arrangement and how do you start?

The first point to make is that there are endless permutations and of course what works for one family may not work for the next. What needs to be factored into the equation is how the children will cope with regular movement between the two households and the degree of organisation required to ensure that school work, sports kits or other essentials end up with the right parent on the right day (a challenge under one roof, let alone two).

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Set out below are five examples of shared care arrangements. These are based on an equal share of time between the two households and can be adjusted to reflect a different split of time.

1. Week On/Week Off

This is a simple arrangement where the children spend one week with one parent and the next week with the other parent. The benefits of this regime are that it provides an equal division of time for the children in each household and gives each parent a seven day block with all of the children's weekly commitment/activities shared. The downside of such an arrangement is that a week is a very long time for children and parents to have no contact.

2. 4-3/3-4

This plan has the children spend three days with one parent then four days with the other in the first week and then switches round with four days with the first parent and then three with the other.

This rota provides an equal division of time for the children in each household and limits the maximum time away from each parent to four days. At the same time, weekends are alternated. A slight disadvantage of this regime is that it requires five handovers per fortnight but this is not overly burdensome. As shared care arrangements go, this is probably as good as it gets.

3. 2-2/5-5 schedule

This schedule has the children spending two days with each parent then five days with each parent.

The advantage of this programme is that the children move regularly between the two households and weekends are alternated. At the same time five days away from the absent parent is a long time for children.

4. 2-2-3 schedule

Under this routine the children spend two nights with one parent, two nights with the other parent and then three nights with the first parent. In the second week this pattern switches. This provides for regular movement between the two households and weekends are alternated. At the same time there are five handovers per fortnight which for some might be regarded as disruptive.

5. Alternating every two days

The children move between the parents every two days.

This sounds exhausting but can work for some. In every four weeks there are fourteen handovers. There are two weekends per month with each parent, the other two weekends are split which can cause issues. A more extreme version of this sees the children moving house every day which has happened but could be deemed difficult to manage.

Any of the above arrangements can quite easily be incorporated into a Court Order. Some Orders are drafted in great detail and some remain quite vague depending on the level of detail required. Such orders can provide for additional contact on special occasions including birthdays, Christmas, Easter, bank holidays, school holidays and such orders usually include provision for the order to be varied by agreement. For some, a tightly drafted order is appropriate whereas for others it is sufficient simply to recite that there be a shared residence order with the children to spend a more-or-less equal amount of time in each household. Ultimately, the level of detail

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is a question of trust between the parents and any such order has to have a degree of flexibility to take into account the vagaries of family life.

In conclusion, shared residence orders are becoming well established and are definitely here to stay. If both parents are totally committed to sharing care of their children and can put aside the reasons why their relationship failed, there is every reason to believe that such orders will be of clear benefit to the children who can retain meaningful relationships with both parents.

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