

# ACCOMMODATING PARENTS

The Court of Appeal has overturned a decision that a local authority was not obliged to offer priority housing to a father who had been granted a Shared Residence order. **Ian Julian** investigates.

In the case of *Holmes-Moorhouse v Richmond-upon-Thames*, the Court of Appeal decided that, because the Family Court had decided that the children should spend alternate weeks with each of their parents, the council were responsible for ensuring that a suitable home was provided for them, in addition to the marital home.

Firstly, the provision of accommodation for parents with Shared Residence depends on whether the arrangement has been made following a contested hearing (where a court has decided where and when the child(ren) will live), an 'order by consent' (where both parents have agreed and the court has ratified the arrangement) or where there's no court order at all because the parties have agreed between themselves:

- In cases where shared residence is granted following a contested hearing, it is for the court to decide whether the availability of accommodation is a "welfare" matter, which needs consideration. The Local Authority is bound by that order (because it will have been made 'in the best interests of the child/ren' and having had due regard for the child/ren's welfare) to provide such suitable accommodation as is required.
- In cases where the shared residence is granted by consent, the court will not have needed to consider the child's welfare (as this is not contested). The Local Authority is bound by that consent order (equally made 'in the best interests of the child/ren') to provide such suitable accommodation as is required.
- Where there is a shared residence arrangement but no formal order, the Local Authority is also obliged to make suitable accommodation available for both parents. This is because the Housing Act 1996 obliges local authorities to provide priority housing to those who care for children (including where parents have jointly made decisions in the 'best interests of their child/ren') with the

cost or the scarcity of accommodation not accepted as excusing factors. Additionally, there are precedents made by Local Authority decision makers in Norfolk, Suffolk and other areas, where they have provided two homes for the children in such circumstances

However, the local authority must deem that the applicant is a person with whom 'dependent children might reasonably be expected to reside', as laid down by the same Housing Act. In deciding this, they're encouraged to distinguish between staying (occasional) and living (regularly dependant).

**The Local Authority is bound by the order made 'in the best interests of the child/ren' to provide suitable accommodation as is required**

The Local Authority will sometimes claim that the receipt of Child Benefit (which is only paid to one parent) is the indicator for being a resident parent (and therefore only one parent can expect to be accommodated). However, this is not a reliable assumption.

In *Hockenjos v Secretary of State* (2004), the Court of Appeal identified that the lack of receipt of Child Benefit was not sufficient to rule out the entitlement to other family related benefits. This was specifically justified by arguing that each home had to be large enough and would incur the additional maintenance costs (such as heating, etc.) even whilst the children were elsewhere.

**So, what is the difference between (shared) residence and (occasional) staying?**

In practice, this is not something for the Local Authority to decide because they are bound by the law of the land, which has already defined the difference, albeit in vague terms.

The Court of Appeal has determined in rulings (known as Case Law) that where a child spends a considerable proportion of time in the other household, he or she is 'resident' there. The difference between residing and visiting is dependant on the factor known in the Children Act as "living arrangements". Living arrangements might best be proven by some of the following examples:

- Is there is a Shared Residence Order in place (be it by consent or otherwise)?
- How frequently do they stay there?
- Does the child sometimes attend school from this household or is the child registered at the second home by the school, GP or dentist?
- Does the child have a room, bed-clothes, toys and other belongings kept at the home?
- Does the child have other siblings, half-siblings and/or step-siblings who live there?
- Is a parenting plan in place that shows how parenting is shared?
- What is the child's perception of having a second home?

Case Law does not define a minimum amount of staying contact to be applied and the Children Act (which governs those decisions) requires that the child's welfare is considered paramount. Welfare includes the child's wishes and feelings and therefore the emphasis must be on whether the child perceives that s/he lives in both homes. Hence, it would be wrong for the Local Authority to rule against the child's perception of having two homes.

In short, the Richmond ruling makes it clear that, where there is shared residence or significant staying contact, the local authority has an absolute duty to ensure that the children have two suitable homes. This is nothing but good news for children, who can continue to enjoy and benefit from a sustained, loving relationship with both of their parents.