



Sharing More Than Time: The reality of ‘Lives With’ Orders

A “shared lives with” order is a practical description used in private family law in England and Wales for a type of Child Arrangements Order where a child is to live with more than one person — typically both parents — for identifiable parts of the week, holidays or other times. As with all standard private law orders, the vehicle for such arrangements is an order under Section 8 of the Children Act 1989, but the phrase itself is a label of practice rather than a separate statutory category.

A shared lives with order can take many shapes in everyday life: it might mean week-on/week-off, a midweek/alternate weekend routine, or a bespoke timetable for school terms and holidays. Importantly, the label “shared” does not, and has never legally required, an arithmetical 50:50 split of time: what matters is the child’s welfare and the clarity of arrangements, not equal hours on a clock.

The Court consider the child’s best interests as the paramount consideration and will look at a wide range of factors when deciding whether to make a shared lives with arrangement. Typical considerations include the child’s age and developmental needs, the existing pattern of care, the relationship the child has with each adult, the capacity of each household to meet the child’s needs, schooling and practical logistics, and any safeguarding risks.

Applicable case law

Since the Children Act 1989, the matter of shared care orders (previously referred to as shared residence orders) has been considered at length by the higher courts. As the statute has developed and the case law has evolved, clear principles have been set out on the application of shared lives with orders.

The case law provides important guidance on how shared lives with orders should be interpreted and applied. Courts have consistently emphasised that shared care does not require an equal division of time, but rather a recognition that both parents (or carers) play an active and significant role in a child’s life.

D v D (Shared Residence Order) [2001] 1 FLR 495, Re A (Children) [2002] EWCA Civ 1343 and Re F (Shared Residence Order) [2003] EWCA Civ 592 laid the foundations for modern shared care case law. They all agree that shared care orders are not exceptional and must focus on the child’s reality. Importantly, each case considered that conflict between the parents is not a bar in respect to whether a shared care order should be balanced, it is the impact of that conflict on the child’s welfare interest that must be grappled with.



More recently, in **RD v TJ (Relocation - BIIA - Transitional Provisions) [2021] EWHC 489 (Fam)**, Williams J sets out a helpful summary of the considerations that should be undertaken when reaching a decision on a shared lives with order at paragraphs 16-17.

“However, the courts have made observations which inform the evaluation of paramount welfare. These indicate that shared lives with orders;

i) Emphasise the fact that both parents are equal in the eyes of the law and can have the advantage of conveying a message that neither parent is in control and that the court expects parents to co-operate with each other.

ii) Require circumstances positively indicating that the child's welfare would be served by one.

iii) May be appropriate where it provides legal confirmation of the factual reality of a child's life.

iv) May be appropriate because it is psychologically beneficial in terms of the equality of their position and responsibilities.

v) Do not require exceptional or unusual circumstances.

vi) Do not require the child to be spending their time evenly or more or less evenly in the two homes.

vii) The inability of parents to work in harmony was not a reason for declining to make such an order but nor is such inability by itself a reason for making such an order.

viii) Might be justified by the deliberate and sustained marginalisation of one parent by the other.”

In **AZ v BX [2024] EWHC 1528 (Fam)**, Poole J undertook the most recent analysis of the topic and reaffirmed that shared lives with orders should not be confined to situations of perfect equality. Instead, the focus should remain on the child’s best interests, the pattern of care, and the need for both parents to be recognised as principal carers.

Conclusion

It remains the case that the Court will undertake a balancing exercise and consider what is in the best interests of the children. There is no absolute right for time to be shared equally, and any decisions taken must be grounded in the welfare checklist. The Courts remain clear that a shared lives with order must arise from a child centred analysis, not simply from a parental claim for parity.

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References:

Children Act 1989

D v D (Shared Residence Order) [2001] 1 FLR 495

Re A (Children) [2002] EWCA Civ 1343

Re F (Shared Residence Order) [2003] EWCA Civ 592

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