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Coronavirus Updates

Guidance on Compliance with Family Court Child Arrangement Orders

Provided by Melissa Vaughan (Family Barrister)

During the current Coronavirus crisis, some parents whose children are the subject of Child Arrangements Orders made by the Family Court have been understandably concerned about their ability to meet the requirements of these court orders safely in the wholly unforeseeable circumstances that now apply across the world.

This document is intended to offer advice, but, as the circumstances of each child and family differ, any advice can only be given in the most general form. The country is in the middle of a public health crisis on an unprecedented scale. The expectation must be that parents will care for children by acting sensibly and safely when making decisions regarding the arrangements for their child and deciding where and with whom their child spends time. Parents must follow the national guidelines 'Stay at Home and Away from Others'. The Stay at Home Rules have made the general position clear: it is no longer permitted for a person, and this does include children, to be outside their home for any purpose other than essential shopping, daily exercise, medical needs or attending essential work. Alongside this the Government guidance has stated '**where parents do not live in the same household, children under 18 can be moved between their parent's homes**'.

This establishes an exception to the mandatory 'stay at home' requirement. However, it does not mean that the child MUST be moved between the homes. The decision of whether a child is to move between the parental homes is for the child's parents to make after a sensible assessment of the circumstances, including the child's present health, the risk of infection and the presence of any recognised vulnerable individuals in one household or the other.

Where parents, acting in agreement, exercise their parental responsibility to conclude that the arrangements set out in the Child Arrangements Order should be temporarily varied they are free to do so. It would be sensible for the parents to record the agreement in writing i.e. in a note, an email or a text message to each other.

Where parents do not agree to vary the arrangements set out in a Child Arrangements Order, but one parent is sufficiently concerned that complying with the Child Arrangement Order arrangements would be against the current Public Health England/ Public Health Wales advice then that parent may exercise their parental responsibility and vary the arrangement to one that they consider is safe. If, after the event, the actions of a parent acting on their own in this way are questioned by the other parent in the Family Court, the court is likely to look to see whether each parent acted reasonably and sensibly in light of the official advice and the Stay at Home Rules in place at that time, together with any evidence relating to the child or family.

If as a result of parental agreement or as a result of one parent on their own varying the arrangements, a child does not get to spend time with the other parent, as set out in a Child



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Arrangements Order, the court will expect alternative arrangements to be taking place to establish and maintain regular contact between the child and the other parent. This would include remote ways of contact such as FaceTime, Skype, Zoom or other video connection. If video connection is not available, telephone contact must take place.

KEY MESSAGE FROM THE FAMILY DIVISION AND HEAD OF FAMILY JUSTICE:

'Where Coronavirus restrictions cause the letter of the court order to be varied, the spirit of the order should nevertheless be delivered by making safe alternative arrangements for the child.'

Oriel Chambers continues to work remotely during these unprecedented times. A conference with a family barrister can be arranged remotely should any parent wish to discuss their child arrangements. Please contact Clerks@orielchambers.co.uk.

Guidance from Cafcass during the global pandemic

Cafcass have provided some helpful guidance when considering child contact during these uncertain times. This is outlined below:

1. In these uncertain times, maintaining a sense of routine will help your child to feel safe and secure. Whilst your child's school may be closed, consider sticking to a normal routine including regular meal times, bedtimes and any other family rituals your child takes comfort in- for example, movie night, reading a book together before bed etc.
2. Unless there are justified medical/self isolation issues- or some future nationally issued guidance or expectation associated with leaving the house in your area- children should also maintain their usual routine of spending time with each of their parents. If there is a Child Arrangements Order in place this should be complied with unless to do so would put your child, or others at risk. This will help your child to feel a sense of consistency, whilst also reassuring them that the parent they don't always live with is safe and healthy.
3. If you are not able to maintain your child's routine due to illness or self-isolation, or non-availability of people who ordinarily support your child's contact, then communicate clearly and honestly with your co-parent. If it is not safe for you to communicate directly (for example, if there has been a history of domestic abuse) then consider using a trusted third party to help you.
4. Think creatively about how you can support your child to stay in touch with their other parent and extended family members during any period of self-isolation. Skype and FaceTime can be great ways to catch up and can be used to read stories, sing and play together. With older children, you could also consider a watch party- where you gather online to watch a movie or video, commenting and 'reacting' in real time.
5. If any court directed spending time arrangements are missed, think about how you and your co-parent may be able to 'make up' your child's time after the restrictions are lifted.



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Remember, any rearranged spending time arrangements should always be for your child's benefit and should not be used as a source of tension or conflict- especially at a time when your child is likely to be feeling anxious about the effects of the pandemic.

Further useful information and websites

- The Family Procedure Rules 2010 allow for remote court hearings in appropriate cases. This means that hearings are currently taking place via email, video calling, telephone and Skype.
- World Health Organisation, March 2020 'How to talk to your children about Covid-19? Provide facts about what has happened, explain what is going on now and give them clear information about how to reduce their risk of being infected by the disease in words that they can understand depending on their age.'
- Information on supported contact centres <https://www.naccc.org.uk>
- New service from National Family Mediation <https://www.nfm.org.uk/new-service-co-parenting-through-the-coronavirus-crisis/>
- Advice and tips for keeping relationships healthy during self-isolation and social distancing www.relate.org.uk
- Oriel Chambers are open. We are here to help. Our barristers are able to attend court hearings and they all have the facilities in place to conduct remote court hearings inline with the most recent guidance from the courts. Should you wish to speak with one of our experienced family barristers please contact clerks@orielchambers.co.uk and we will make the appropriate arrangements.