



Covid-19 - what does it mean for you and your family.

The current pandemic leaves no area of society untouched. The situation is fast moving and no one knows when things will go back to normal. What does this mean for family law, specifically for couples who are sorting out arrangements following separation or have just done so?

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Children

The problem

Children of separated parents frequently move between households, often following an agreed or court-ordered routine. These routines can be delicate and disruption can potentially lead to dispute. Child arrangements for separated parents have been a source of [concern and uncertainty since enhanced social distancing and movement restrictions were announced.](#)

The guidance

There were initial mixed messages from the Government following the announcement, particularly after Michael Gove's uncomfortable appearance on morning television. It was later clarified that [children under 18 can move between households](#) if their parents are separated.

Difficult decisions

However, this general exception does not answer all case-specific questions. Many families face additional challenges such as the presence of relatives in a vulnerable group, other care responsibilities, parents who are NHS staff or where households are in self-isolation.



What the guidance does not do is mandate that contact MUST take place. This is a grey area. From what we have seen this week, enquiries largely fall into two camps:

Camp 1: For parents who do not live with their children, the time that they spend with them is precious and often hard-won. Many such parents are reluctant to accept that anything should be placed in the way of that time. It may be tempting to overlook legitimate concerns about the safety, health and wellbeing of the children and both households in order to protect their contact.

Camp 2: For parents with whom children live most of the time, it may be tempting to take an overly cautious approach and restrict opportunities for contact to take place, without perhaps giving due weight to the importance of contact for a child.

What the court will expect

Those in Camp 1 must recognise that, sometimes, the health and wellbeing of the children and both sides of the family might need to take precedence over the weekly routine for now, depending on each family's unique situation.

Those in Camp 2 must equally recognise the importance of their children keeping in touch with the other parent in this most trying of times. In the event that physical contact cannot safely take place, facilitating frequent indirect contact via Skype, FaceTime or any other platform must be a priority.

These are new and uncharted waters but the [family court has already given guidance to this extent](#). Parents must be communicative, flexible and cooperative about the arrangements. When either parent has acted unreasonably, the court will be looking into that carefully when dealing with cases after the dust settles.

This will not be an easy balancing act but it is one that our specialists are able to help to assess.

Financial orders on divorce

We expect that there will be many people who have recently finalised their financial arrangements by means of a court order who are now wondering whether the current crisis will allow the courts to look again at their situation.

For more detail, see our recent [blog](#).

A financial court order is the gold standard for achieving finality on the financial aspects of a divorce or civil partnership dissolution. Without one, the parties' respective claims against each other remain live indefinitely.

Certain aspects of court orders are always variable and we expect many people to be considering their options, depending on what the pandemic means for them financially.



- **Spousal maintenance orders can be varied up or down in response to changes in either party's income or needs. If either party is employed or self-employed in a sector particularly hard hit, then variations may need to be agreed, or in the absence of agreement, requests made of the court**
- **Payments of lump sums by instalments can be varied if the circumstances justify it. While the court rarely changes the final amount payable, it can alter the timing and size of instalments. Time to pay could be crucial right now**
- **Orders dealing with practical issues such as when and how property will be sold or transferred can be amended, provided the fundamentals are not changed. For example, an order could state that the family home must be marketed for sale and the proceeds divided. Adherence to social distancing could make this practically impossible so extensions of time may be appropriate in some cases**

Some aspects of court orders such as asset transfers and payment of lump sums are usually incapable of variation. However, there is a tiny minority of cases in which an unforeseen, unforeseeable event subsequent to the making of an order undermines it so fundamentally that the court will set it aside and make alternative provision. This is known as a Barder event after a case in which such an issue arose. We know that reported attempts to revisit orders after previous financial crises failed. It is too soon to tell whether COVID-19 or the financial fallout from it will be treated as a Barder event but we think it will be arguable in a small number of cases.

For most people, orders concluded in late 2019 or early 2020 will withstand challenge, subject perhaps to variation of maintenance orders or court directions about practical matters. However, we may soon start to see some affected cases reach the courts.



The family court

We've said quite a lot about what the court will do or what the courts will expect.

The family court itself has been thrown into a brave new world of remote working by the pandemic. The court service was already on a long journey toward greater use of technology and electronic means of proceeding. This last week has seen this process accelerated in a previously unimaginable way.

It isn't an option simply to put family justice on ice. Decisions need to be made, particularly where there are children or vulnerable adults involved. In the financial sphere, the temptation just to adjourn everything until restrictions are lifted is strong but this would itself create an unacceptable backlog, hampering efforts to get back to normal.

Instead, family judges have been proactive in embracing a series of technological workarounds. We have already heard reports of complex multi-party final hearings taking place successfully with each individual at a remote location.

Again, it is too early to tell what family justice will look like even in a month's time. The courts are not standing still but equally no one was anticipating this transition to remote working en masse. It will be more difficult in some quarters than in others. We ourselves are finding our feet but early indications are that the remote family court can work with some creativity and openness to new ways of working.

And finally...

We listened with interest when the deputy chief medical officer advised that non-cohabiting couples should not be moving between households in order to reduce the risk of infection.

She said:

“The alternative might be that, for quite a significant period going forwards, they should test the strength of their relationship and decide whether one wishes to be permanently resident in another household.”

Eyebrows were raised but she makes a serious point. If couples are to observe social distancing, they should not meet unless they are part of the same household.

If a couple's decision to move in together is brought forward in the current climate, thought should be given to the legal implications. Cohabiting couples do not have any special rights and messy legal arguments can arise if their relationship breaks up. We would advise anyone considering moving in together to have a frank and upfront conversation with each other and take a look at our [information on the subject](#).

JMW has responded quickly and creatively to the call for vastly increased remote working. Our family team has already fielded numerous new enquiries about what the pandemic means for individuals in a variety of situations and stands ready to handle whatever COVID-19 can throw at us.

Call us now on 0345 872 6666 or complete our online contact form to find out more.

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