

Coronavirus and Family Law: How might the Covid-19 pandemic impact family law matters?

The effect of the current Covid-19 pandemic on people's working and private lives is dominating the news during this clearly unprecedented time. The circumstances call for new levels of cooperation, understanding and community, particularly in the private and family context.

Today is the first day from which schools will close for most children until further notice. This will undoubtedly place greater pressure on families needing to balance increased childcare obligations with the continued need to provide financial support by working from home. No less stress and uncertainty will affect those who are, or have recently been, involved in family court proceedings, whether that be in relation to child arrangements or finances. The question naturally arises: how will the family law system cope?

Guidance (thus far) from the Secretary of State for Justice, Robert Buckland, is that the courts will remain open but that working practices will need to change. Mr Justice Mostyn (a High Court Judge in the Family Division) has advised that physical hearings for financial matters in family courts should only take place where it is absolutely unavoidable. This may well affect the efficiency with which such matters are dealt with, and indeed lead to the possibility of needing to prioritise which matters may be dealt with *at all*. France have closed their courts for all but "essential litigation", something which, if similar closures occur in the UK, may cause family financial matters to be temporarily side-lined. The European Court of Justice is similarly suspended.

For those who are yet to issue proceedings, or are negotiating such financial settlements, the uncertainty surrounding the value of their assets will make the task of fair division problematic. The catastrophic effect on stock markets worldwide will no doubt have depleted the value of many personal share portfolios and pensions, and family businesses are at risk of lower valuations as a result of the global economic uncertainty. Although every case is fact dependent, it seems that one of the few pieces of advice lawyers may be able to give in this respect is to wait until assets have recovered some value and, if proceedings have been started, adjourn any financial claim for the same reason. Courts may be open to interim orders in cases where ongoing maintenance payments are required, however the turbulence as to how long the pandemic will last, not least how long economic recovery will take, makes putting a timeframe on such orders more difficult.

Similarly, cases involving children will surely experience the same, if not more complex hurdles, particularly if there is an international element to the case.

The court's paramount consideration, when assessing what order to make in a private children dispute, is the welfare of the child, and naturally what arrangements will best facilitate said welfare. Deciding which arrangements best promote the child's welfare involves balancing a number of factors, including any harm which a child has suffered or is at risk of suffering if an order is made.

Clearly, a public health crisis of this magnitude is something which a judge would have to consider when making an order in a child's best interests. In saying this, parents themselves have rights which a court will consider and there is an assumption that both parents should be involved in the upbringing of their children. What then for contact arrangements which may already be in place? It is re-emphasised that cooperation between partners is critical.

Necessary preventative measures such as social distancing and self-isolation will no doubt be concerns of a number of parents who have court-ordered child contact arrangements in place. Whether to risk the further spread of the virus against breaching a court order is something which will weigh heavily on parents. The closure of schools, where many handovers of children are ordered/agreed to take place, will make this more worrisome.

However, court orders will usually provide some scope for, and indeed encourage where achievable, agreement between parents. This means that there is scope for compromise and recognises that unforeseen circumstances can change. Subsequently, the first port of call for parents should be to attempt to agree between themselves on any reasonable variations to contact arrangements. Using third-parties or mediators to help with this process may be of assistance to some. Simply refusing to follow the order under the guise of 'Corona' will be unlikely to be looked upon favourably by a court, although only time will tell how much sympathy judges will have with parents who isolate their children for genuine reasons related to the virus. It will inevitably turn on the circumstances, but the availability of technology such as Skype, Google Hangout, Houseparty and Zoom means that, even if children are isolated, that they should be able to speak with both parents with supervision and encouragement. These are surreal times where a significant amount of educated guess work is going into virtually all facets of society. But we should remain optimistic that cooperation, both in and out of the family law sphere, will result in a positive outcome.

