

CORONAVIRUS Q&A

The COVID-19 outbreak has led to some uncertainty across a range of family law issues, below are some answers to common questions around financial and child related family law issues.

I AM REALLY FEELING THE PRESSURE IN MY RELATIONSHIP, WHAT CAN I DO?

Forced isolation is likely to have an impact on many couples. It is important that anyone feeling the strain takes time to speak to someone, whether that be a friend, family member or other professional – couple's therapy, coaching or mediation are just a few of the options available to individuals facing relationship worries. Many of these services are operating virtually and so the lockdown doesn't mean you are stuck with nowhere to turn.

Living in close proximity with any person for a prolonged period, even those you love might be taxing at times, so when coupled with other pressures like financial worries and have the children at home, it is inevitable things might get tough. Be honest with each other about how you are feeling, consider using a separate part of the house if you are working from home, and consider having a rota for taking care of any children so you can still both get work done. Go for a walk or a run to get

some fresh air and try to continue to be patient. Keep in mind that children will be negatively impacted by arguments or passive aggressive behaviour, so whilst everyone is in the same boat – try and agree a strategy for dealing with these unusual times.

If you do decide the relationship is at the end of the road, legally there is no rush to get divorced or have your civil partnership dissolved, so don't rush into anything. Think carefully about the timing of separation – for example if you separate before the end of the tax year you will only have a matter of weeks to transfer assets between you tax free. Try to use the time to work out a strategy for agreeing arrangements for any children, start to collate information about your assets and finances and thinking about your financial requirements and income needs.



MY CHILDREN ONLY LIVE WITH ME SOME OF THE TIME, WHAT DOES THIS MEAN FOR ME?

Clear and helpful guidance was issued on 24th March about the impact of the crisis on children living between two homes. The helpful overview comes from the President of the Family Division, Sir Andrew McFarlane after a period of uncertainty and worried calls from parents.

The message is clear and whilst children can be passed between homes where parents are separated, parents should communicate and apply common sense.

If arrangements for children under a court order cannot be complied with, alternative arrangements should be put in place and parents must try to agree solutions. Whether that is by providing interim indirect contact (like FaceTime) or perhaps agreeing that after the isolation period the time could be made up with the other parent. If they cannot agree, then if a parent stops the child(ren) from visiting the other parent – they will need to show they have behaved reasonably. This should not be seen as an opportunity to frustrate child arrangements or to limit contact with the other parent – it is important to communicate with the other parent and record any revised agreements over text or email. Effective communication is key to any co-parenting arrangement, and even more so in these unusual times.

SHOULD MY CHILD STILL TRAVEL BETWEEN PARENTS AS PER THE COURT ORDER?

The 'lockdown' doesn't prevent children moving between two homes. The Government has clarified that where parents do not live in the same household, children under 18 can be moved between their parents' homes. However this is an exception to the rule where self-isolation guidance applies because a child or parent has been exposed to the virus or symptoms have been displayed.

WHAT HAPPENS IF PARENTS CANNOT AGREE ABOUT THE ARRANGEMENTS?

These are unprecedented times and so it is too early to tell whether parents will face criticism later on for the decisions they make now regarding these issues. The critical point to keep in mind is that the welfare of the children is the most important factor. The government guidance needs to be considered in conjunction with other relevant factors relating to the child's welfare – such as whether the child is likely to suffer any harm and whether a parent has the ability to meet the child's needs.

The usual arrangements should only be disrupted if, for example, they are likely to cause harm to the child, either because they may be placed at greater risk of catching the virus themselves (or passing it to another household member) or because one of the parents is too unwell to properly care for the child. If parents withhold contact with the other parent for no justifiable reason, they may well face criticism later on.

If parents cannot agree about the arrangements during this pandemic period, they may still be able to access mediation services to help them resolve matters. Mediation meetings can be conducted by video or audio conference call. Whilst the family courts are continuing to operate they are prioritising urgent matters. It is however still possible to make applications to the court about child arrangements and many hearings are continuing to go ahead remotely. If you are unable to agree arrangements for your children and it is urgent, it is important to note that the court remains as a resource available.

WILL MY COURT HEARING GO AHEAD?

In light of the Government guidance and to ensure the safety of the public, court staff and the legal representatives, there were originally no further attended hearings until further notice. Some hearings are still going



ahead – but by video link or telephone, others have been cancelled with some courts confirming they will write with a new date after 28 days.

If you have a court hearing scheduled, speak to your lawyer or if you are acting in person, the court about how your hearing is going to be handled. There may be ways that aspects of a financial hearing can be agreed in advance 'on paper' so that your cases still progresses. If your hearing is going ahead, court bundles and documents will need to be filed electronically.

Individuals in financial proceedings are also being encouraged to think about alternative options to reach an agreement. This could involve you using a private financial dispute hearing to save delay in the progress of your case. This is where you and your ex-partner jointly instruct a judge or barrister who will hear your case, and give guidance about the orders they would make. These private hearings can be held remotely, at a time of your choosing and with a choice of the judge listening to your case.

The court is monitoring the position closely, on a weekly basis and recent guidance indicates that some physical hearings will re-commence with careful measures in place, and a reduction in the number of hearings a court schedules each day.

We are still able to file court applications electronically such as in respect of divorce, dissolution, child arrangements, injunctive relief and financial matters including enforcement.

WE HAVE SEPARATED AND ARE NEGOTIATING HOW TO DIVIDE OUR ASSETS, WHAT DOES THIS MEAN FOR US?

This depends on the type of assets you own – whether that is cash, investments, pensions, property or business assets. The markets are very volatile at present, and the values of assets are likely to have changed.

Some experts are advising that they can still provide valuation reports, but that they may well be unable to be relied upon in the current climate. Think carefully before agreeing to a settlement based on old valuations – consider the current valuation, and whether there is likely to be a spike when the markets return to some normality.

If you have not reached an agreement yet, there is no rush – before agreeing how to divide your assets, it is important you have both disclosed all assets and agreed on the values. You can then start to discuss how to divide these.

If your direct discussions are proving difficult in light of the uncertainty, think about considering mediation so an independent third party can help facilitate your discussions, or alternatively a lawyer about the different options available.

I HAVE REACHED AN AGREEMENT RECENTLY ABOUT OUR MONEY, BUT THIS CRISIS HAS CAUSED THE VALUES TO MASSIVELY DROP – WHAT DOES THIS MEAN FOR ME?

The financial agreement may have been agreed a number of months ago. The volatile markets may well have led to a significant drop in values of assets since then, such as a business or pension. If you have a financial order which has been approved by the court, there are only very limited circumstances where this can be revisited.

Arguably this epidemic was neither foreseen or foreseeable and so there is a strong possibility that in some cases where an order was made fairly recently, that this might give rise to an exceptional reason to look back at the order, if the impact is so fundamental that it undermines the basis upon which the order was made.

This is an unprecedented situation which differs from the financial crisis back in 2008. If you have entered into an agreement in recent months, there may be some limited situations where the courts will be able to consider whether they should be set aside. These are likely to be highly fact specific and careful advice should be sought.

WHAT WILL THIS MEAN FOR MAINTENANCE?

There are two types of maintenance – child periodical payments, and spousal maintenance. Child maintenance is usually payable under the Child Maintenance Service regime, unless the paying parent earns more than £156,000 per year gross. If your income has gone down, you can check on the CMS website the amount you should be paying based on the current circumstances. If you are paying pursuant to a CMS assessment then you should apply to the CMS to consider the amount being paid.

Spousal maintenance is where one ex-partner pays a monthly sum to the other to help meet an income shortfall. Whilst for many it is business as usual with working from home, it is inevitable that some people may lose their jobs, or have a reduction in income. The Government have agreed to back income up to 80% but up to a maximum of £2500 a month but this scheme is not open for anyone who is not already furloughed and with employers set to contribute towards the scheme there is also a risk that unemployment may rise, and many self-employed remain in limbo about what this means for them. It is likely therefore some people paying or relying on spousal maintenance will be impacted.

Spousal maintenance orders are variable –this means that either person can come back to ask the court to look at the amount which is being paid, if there has been a material change in circumstances. If your income has reduced dramatically, this may give rise to the ability to review the amount of money you are paying. If you are paying this

according to a court order, your liability does continue unless the order is varied. Try to discuss this with the other person to see what can be agreed.

I AM IN A NEW RELATIONSHIP BUT WE ARE NOT ALLOWED TO SEE EACH OTHER, SHALL WE JUST MOVE IN TOGETHER?

Moving in together is a big deal whatever the stage of a relationship, but rushing to move in just so you can spend time together might not be the right decision for everyone. There is no such thing as a common law spouse, so simply living together won't give you automatic financial responsibilities to the other – but do think about the financial implications of living together. Will your partner contribute to the outgoings on the property for example, or pay you a monthly sum – how will this be managed. You might like to think about

having a living together agreement drawn up – to reflect your agreement on any such financial responsibilities.

Have early, clear discussions about things like ownership of the home and agree expectations early. If a property is in your sole name, then the fact someone moves in with you will not give them an automatic right to sharing of the property – but think carefully before they make contributions either financially to the mortgage or otherwise. For example, if they are a trades person and they start to invest their time in making improvements to your home whilst in isolation – ask whether they are putting them self at a financial disadvantage and avoid suggesting that their contribution will give rise to some rights in the home. If you are the person making such contributions on the basis that this will be repaid, or that you will share in the property make sure this is recorded in writing and preferably a legal document.

We appreciate that a relationship breakdown is a traumatic event, we treat all issues with sensitivity and provide a tailored service to meet your demands.

All of our family solicitors are members of Resolution, the national organisation of family lawyers committed to non-confrontational divorce, dissolution, separation and other family problems. A number of our team are also collaboratively trained, which means they can help you navigate your family law issues jointly with your partner and their chosen collaborative adviser.

KEY CONTACTS

Our team are committed to helping you navigate your private family law issues in the most cost-effective way and wherever possible, without court proceedings. If you have any queries please contact



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