



## CO-PARENTING IN LIGHT OF THE CURRENT COVID-19 PANDEMIC

### ADVICE AND GUIDANCE FOR SEPARATED PARENTS

For separated parents the current lockdown is understandably problematic and the government guidance on staying at home raises questions for children who spend time across more than one home. Over the last few weeks the government has helpfully clarified its advice on this area. Subsequently the Children and Family Court Advisory Support Service (referred to as 'CAFCASS') and the most senior family law Judge in England and Wales, the President of the Family Division, have produced guidance notes to further assist parents.

The government have clearly stated that where children share their time between their parents, travel between homes for that purpose will be considered essential journeys and will not therefore be prevented or limited by the restrictions on leaving your home. Parents should therefore not rely upon the current restrictions as a reason for preventing a child from seeing their other parent/carer. The CAFCASS guidance stresses that "*unless there are justified medical/self-isolation issues ... children should also maintain their usual routine of spending time with each of their parents*".

There are reasonable exceptions to this presumption, most significantly where the child resides in a home that is self-isolating or where the child, or someone in their household, may be considered at increased risk of contracting the virus and should therefore be self-isolating.

To reflect these possible exceptions, the guidance from the family courts is that the "*exception to the mandatory 'stay at home' requirement ... does not, however, mean that children must be moved between homes*".

The decision as to whether a child should travel between homes is for the parents to make. The courts have been clear in reinforcing the autonomy of parents to exercise their rights of parental responsibility by acting in a way that they consider to be in the best interests of their children. The court's guidance is that "*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*."

If parents can agree upon a continuation of the current arrangements then this is to be encouraged. If it is agreed that arrangements must be varied, or if parents cannot agree, then the position can broadly be separated into two scenarios;

### **FOR SEPARATED PARENTS WHOSE CHILDREN ARE NOT THE SUBJECT OF A COURT ORDER**

The key consideration will always be acting in the best interests of the child. At present the benefit to the child of seeing both parents must be balanced against the risk to them and the people within their household/s.

If it is not possible for the child to see the other person face to face then parents are encouraged to support indirect contact by way of video and telephone calling.

There is no firm suggestion that time missed with a parent should be compensated in any way once restrictions are lifted, but this may be something that parents could consider, for example by way of more time over the summer holidays.

If parents are unable to agree then they may want to seek the assistance of a third party. This third party could range from a mutual friend to a professional mediator or an independent social worker. There is currently a lot of support available to parents to help them manage at this difficult time.

As a last resort the courts **may** be able to assist in determining the time a child should spend with each parent. However, as reflected in the current guidance, and as is being experienced on a practical level by solicitors and those already involved in court applications, this may not be a viable way forward. The operation of the courts is currently severely restricted and further guidance from the court service suggests that new cases are unlikely to be dealt with for some time. Parents who choose to begin court proceedings now may find that the stay at home restrictions are lifted before the court is actually in a position to assist. Consequently, if at all possible, agreements should be reached by other means.

### **FOR SEPARATED PARENTS WHOSE CHILDREN ARE THE SUBJECT OF AN EXISTING CHILD ARRANGEMENTS ORDER**

The courts have offered commentary to assist parents where an existing order setting out the time a child is to spend with each parent needs to be altered or suspended. Where this is by agreement, it is advised that *“it would be sensible for each parent to record such an agreement in a note, email or text message sent to each other”*.

Where parents do not agree to vary the terms of the order, but one parent is sufficiently concerned that complying with the order would be against current advice, then that parent may exercise their parental responsibility and vary the arrangement to one that they consider to be safe, and in the best interests of the child.

If, after the event, such actions 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 the light of the official advice in place at that time. Practically this means that the court are unlikely to review such decisions until after the current restrictions are lifted, and we can assume there will be a backlog of such cases to work through. It is unclear what will be considered as ‘sensible’ or ‘reasonable’, but parents should expect to have to explain and justify their actions to some extent.

Where a child does not get to spend time with the other parent as set down in an existing order, it is expected that alternative arrangements should be made to establish and maintain regular contact between the child and the other parent for example by Zoom, FaceTime, Skype and/or telephone.

The CAFCASS guidance states that where any court directed contact is missed, parents should think about how they can “make up” this time after the restrictions are lifted. The court’s guidance note is silent on this point so it is unclear how this issue will be treated.

The court guidance is that “*The key message should be that, where Coronavirus restrictions cause the letter of a court order to be varied, the spirit of the order should nevertheless be delivered by making safe alternative arrangements for the child.*”

## GENERAL ADVICE TO PARENTS TO SUPPORT THEIR CHILDREN

Communication between parents is key. Speak honestly about what is in the best interests of the child. For example, it may be better for a child to move less frequently between homes, but spend longer periods than normal with the other parent.

To avoid any confusion it would be best for any agreed changes to the usual pattern in writing by email or text.

Where the parents are being asked to support the child with home learning, any materials that are needed should be made available to both parents.

The impact of this situation on children and their mental health cannot be underestimated. The World Health Organisation advises that when speaking to their children about COVID-19, parents should “*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*”.

It is likely that a child will want to have more indirect contact with their parents in these uncertain times. Both parents should encourage the child to feel able to ask to speak to their other parent. It may be that parents will need to work together to ensure they both have suitable IT facilities and internet access.

Maintaining a routine can help your child feel safe. It may be helpful to stick to the usual pattern of meals and bedtimes, and parents should communicate to ensure they are giving their children a consistent message.

If there is conflict between parents then it is essential that the children are shielded from this. Parents should look for external support in overcoming their conflict and ensuring child focussed decisions are made.

If you would like further advice on the above please do not hesitate to contact the Family Team who will be happy to discuss this with you.

The CAFCASS guidance note referred to above can be found on their website in the 'Parents and Carers' section. The note from the President of the Family Division can be accessed here; <https://www.judiciary.uk/announcements/coronavirus-crisis-guidance-on-compliance-with-family-court-child-arrangement-orders/>

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## KEY CONTACT

For further information about any of the issues raised in this guide, please contact:

### Nicola Harries

Partner

**T:** +44 (0)1483 401262

**M:** +44 (0)7917 166357

**E:** [nicola.harries@stevens-bolton.com](mailto:nicola.harries@stevens-bolton.com)

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## STEVENS&BOLTON

Wey House, Farnham Road  
Guildford, Surrey, GU1 4YD  
Tel: +44 (0)1483 302264  
Fax: +44 (0)1483 302254  
DX 2423 Guildford 1  
[www.stevens-bolton.com](http://www.stevens-bolton.com)

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