

# Enforcement of Child Arrangement Orders

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# Making an application & Procedure

- ▶ Enforcement Order must be made in response to an application – it cannot be made by the court of its own volition (s. 11J(5)).
- ▶ Made on Form C79 (committal application made under Part 18 procedure).
  - ▶ Court fee (£125) or 'fee exemption' form;
  - ▶ Copy of original contact order; and
  - ▶ Sufficient copies for service on each respondent and Cafcass
- ▶ Service of the issued application not less than 14 days before the hearing.
- ▶ Respondent to file a response within 14 days of being served and not less than 14 days before the hearing.

# Procedure - Continued

- ▶ The court should list the application within 20 days of issue, before the previously allocated judge if possible. Cases must be concluded without delay.
- ▶ Where the facts relevant to the alleged non-compliance are not agreed, the court will need to establish whether it is necessary to conduct a hearing to establish them
- ▶ The court will also consider:
  - ▶ Reasons for non-compliance
  - ▶ How the wishes and feelings of the child can be ascertained
  - ▶ Whether any advice is required from Cafcass
  - ▶ Assess the risks of making a further CAO or variation of the CAO
  - ▶ (Gatekeepers) whether further safeguarding checks are necessary (if more than 3 months after the order was made further checks will be ordered)

# Is the CAO enforceable?

- ▶ The CAO must have a warning notice attached to it which warns of the failure to comply with it (s. 11K)  
**Child arrangements orders warnings**  
**This order includes a child arrangements order (the part of the order setting out living arrangements for a child and about time to be spent or contact with another person). If you do not do what the child arrangements order says you may be made to do unpaid work or pay financial compensation. You may also be held to be in contempt of court and imprisoned or fined, or your assets may be seized.**
- ▶ The court must attach a warning notice a CAO whenever one is made or varied.
- ▶ If a warning notice has not been attached (pre-December 2008) or is only attached to contact and not residence (pre-April 2014), an application will need to be made for the order to be varied to include a warning notice.
- ▶ Are the terms of the CAO sufficiently clear (e.g. time and how it is calculated)?
- ▶ The respondent must be over 18 and habitually resident in England and Wales (s.11K(2), (4)). The CAO must not be an excepted order (s.11K(3)).

# Can the court make a contact enforcement order?

- ▶ The court must be satisfied that before the failure occurred, the respondent was aware of the terms of the warning notice of the consequences of failing to comply with the order (s.11K(1)).
- ▶ The court must be satisfied beyond all reasonable doubt that the respondent has failed to comply with the order (s.11J(2)).
- ▶ The making of an enforcement order must be necessary to secure a person's compliance (s.11L(1)(a)).
- ▶ The likely effect on the respondent of the enforcement order proposed is proportionate to the seriousness of the breach of the CAO (s.11L(1)(b)).
  - ▶ Cafcass to obtain information about respondent and likely effect of enforcement order on them (s.11L(2)-(5)).
  - ▶ Any provision for unpaid work imposed can be made in the area the respondent resides (s.11L(2)).
- ▶ The court must take into account the welfare of the child, but this is not the paramount consideration (s.11L(7)).

# Does the respondent have a reasonable excuse?

- ▶ The court may not make an enforcement order if it is satisfied, on the balance of probabilities, that the respondent had a reasonable excuse for failing to comply with the CAO (s.11J(3)).
  - ▶ Where a parent is required to do something under the CAO, and they have the power to do what is required, but they have some good reason for not doing so, for example, the child being ill.
- ▶ This is the second stage of a two-stage test – the first is to ascertain whether there has been a breach of a CAO.

# Reasonableness in the Covid-19 climate

- ▶ Guidance on Compliance with Family Court CAOs (24 March 2020):
  - ▶ “Where parents do not live in the same household, children under 18 can be moved between their parents’ homes. [...] it does not mean that children must be moved between homes.”
  - ▶ “The decision [...] 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 of the other.”
  - ▶ “...the best way to deal with these difficult times will be for parents to communicate with one another about their worries, and what they think would be a good, practical solution. [...] Even if some parents think it is safe for contact to take place, it might be entirely reasonable for the other parent to be genuinely worried about this.”
  - ▶ “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.”

# Reasonableness in the Covid-19 climate - continued

- ▶ Guidance on Compliance with Family Court CAOs (24 March 2020) – Continued:
  - ▶ “[I]f one parent is sufficiently concerned that complying with the CAO arrangements would be against PHE/PHW advice, then that parent may exercise their parental responsibility and vary the arrangements to one that they consider to be 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 the light of the official advice and the Stay at Home Rules in place at that time, together with any specific evidence relating to the child or family.”
  - ▶ “Where, either 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 down in the CAO, the courts will expect alternative arrangements to be made to establish and maintain regular contact between the child and the parent within the Stay at Home Rules, for example remotely – by Face-Time, WhatsApp Face-Time, Skype, Zoom or other video connection or, if that is not possible, by telephone.”
- ▶ Need to consider the risks, circumstances and limitations, for example:
  - ▶ If contact is supervised/supported, the impact of restrictions and the closure of contact centers and restrictions on the use of outside space;
  - ▶ Resources available to each parent, for example, travel, devices, internet access.
  - ▶ Vulnerability of a party, including where there are concerns about domestic abuse, there is a Non-Molestation Order in place, or a party is limited due to health considerations.



## Powers available to the court where a breach of CAO is found

- ▶ Referral of the parents to an SPP, or mediation
- ▶ Variation of the CAO (for example to include a more defined order and/or reconsideration of the contact provisions. Reconsideration of residence provisions in very exceptional cases only.)
- ▶ An enforcement order or suspended enforcement order (s.11J)
- ▶ An order for compensation for financial loss (s.11O)
- ▶ Committal for contempt of court
  - ▶ Generally regarded as remedy of last resort.
- ▶ Fine

# Enforcement Order

- ▶ Enforcement order is an order imposing requirement to undertake unpaid work (between 40 and 200 hours).
- ▶ The enforcement order may be suspended for such period as the court thinks fit (s.11J(9)).
- ▶ The court may make more than one enforcement order in relation to the same person on the same occasion (s.11J(10)).
- ▶ Court must attach a warning notice to the enforcement order warning of the consequences of non-compliance to that order (s.11L(7));
- ▶ Court is to ask Cafcass officer to monitor compliance and report to the court (s.11N).

# Order for compensation for financial loss

- ▶ Where the court is satisfied that:
  - ▶ The respondent has failed, without reasonable excuse, to comply with a CAO; and
  - ▶ The applicant has suffered financial loss by reason of the breach, the court may make an order for financial compensation for that financial loss (not punitive) (s.11O).
- ▶ Provision within Form C79 to make an application for compensation for financial loss.

# Costs

- ▶ The court has a discretion under CPR, r.44.3 and there is no presumption against making an order for costs.

# Contact Details

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