

# Coronavirus Risk Management Series for Law Firms: Family Law

*Published 30 June 2020*

The coronavirus pandemic has created a host of issues for family lawyers. In this article we consider some possible solutions to the risks to firms practising in this area.

## Remote Hearings

Remote hearings have been the new normal since late March. However, following updated guidance from the Family Court issued on 9 June, it is clear that face to face hearings will gradually increase if safe. Hybrid hearings, where some parties attend remotely and some attend Court, may also be possible. Lawyers will need to carefully consider the appropriate forum for a hearing, taking into account the issues and circumstances of the parties.

We have previously discussed some practical issues surrounding remote hearings (see a [prior article](#) in this series, referring to electronic bundles and technology issues). In family law hearings, where emotions can run high, lawyers should ensure that clients know what to expect during a hearing, and have the opportunity to raise queries well in advance. Given the difficulty of speaking with the client during a remote hearing, consideration should be given to using a second secure line of communication, between just lawyer and client (e.g. via Skype or Whatsapp), seeking the Judge's permission to do so as appropriate. Proceeding in this way should enable the solicitor to obtain further instructions during the hearing if necessary.

## Child Arrangement Orders

There is a danger that Child Arrangement Orders may be breached as a result of the coronavirus, for example as a result of advice to isolate, or if a family member contracts Covid 19. The President of the Family Divisions has issued guidance in which he stresses that parents should communicate with a view to working out practical solutions<sup>2</sup>. It may technically be possible to make an application if an Arrangement Order is breached, however, the Court may be reluctant to order that a child be returned in the absence of clear evidence that the parents and children are virus free, and that no Government protocol will be breached. We anticipate that applications to move a child outside the UK would also be closely examined, particularly if the move involves a high risk jurisdiction. Lawyers should be careful to manage their client's expectations when advising on these issues.

## Limited Judicial Resources

The strain on judicial resources is highlighted in the latest Family Court guidance which refers to the need to radically cut down the time available for each hearing<sup>3</sup>. Resources were already stretched and the pandemic has served to exacerbate the problem. Where disputes are brought to Court for determination, parties are likely to be encouraged to limit the issues to those necessary to determine the case. In addition, the Court may well limit oral evidence and submissions with a view to allocating the Court's resources appropriately. This poses obvious challenges for family lawyers who are also under pressure. Care must be taken to comply with the Court's requirements for a particular hearing as Judge's requirements differ and the situation will have to be explained to clients to avoid complaints which could arise from misunderstandings.

## Financial Settlements

Employment prospects, business projections and asset valuations may all be impacted by the economic fallout from the pandemic. Where the financial aspects of a divorce are not resolved, lawyers should carefully review whether existing valuations remain accurate and if offers should be revisited. Some clients may be keen to reach a settlement quickly, before financial prospects worsen, whereas others may now prefer to defer settlement in the hope of a financial recovery. The risks of accepting assets which may be subject to volatility (e.g. shares in businesses) should be considered, especially if more secure resources are available. To achieve settlement in an uncertain environment, it may be possible to negotiate provision for payments to be reviewed in specific circumstances, for example if an individual is made redundant. The facts of each case must be reviewed carefully and clear advice provided and documented. As always, lawyers should protect themselves against future complaints or claims by keeping accurate records of advice given to and instructions received from clients on settlement.

## Mediation

Where settlement is being explored notwithstanding the pandemic, it may be appropriate to consider remote mediation, e.g. via Zoom and a number of mediation providers are now operating remotely. Alternatively, where a face to face

mediation is preferable and safe, it lawyers could consider using a third party conference facility to ensure that social distancing arrangements can be put in place.

---

1 [https://www.judiciary.uk/wp-content/uploads/2020/06/The-Road-Ahead\\_FINAL.pdf](https://www.judiciary.uk/wp-content/uploads/2020/06/The-Road-Ahead_FINAL.pdf)

2 <https://www.judiciary.uk/announcements/coronavirus-crisis-guidance-on-compliance-with-family-court-child-arrangement-orders/>

3 [https://www.judiciary.uk/wp-content/uploads/2020/06/The-Road-Ahead\\_FINAL.pdf](https://www.judiciary.uk/wp-content/uploads/2020/06/The-Road-Ahead_FINAL.pdf)

## Authors



**Clare Hughes-Williams**

*Newport*

+ 44 (0)1633 657685

[chugheswilliams@dacbeachcroft.com](mailto:chugheswilliams@dacbeachcroft.com)



**Naomi Park**

*Leeds*

+44 (0)113 251 4793

[npark@dacbeachcroft.co.uk](mailto:npark@dacbeachcroft.co.uk)

---

  
**DAC BEACHCROFT**