

Contact and Child Arrangements Orders

Enforcement and Warning Notices

www.thecustodyminefield.com



With the introduction of the Children and Adoption Act 2006 came new ways of handling matters where contact orders are not being complied with. In April 2014, contact orders were replaced by child arrangements orders. These new orders encompass both historic contact and residence orders meaning the enforcement powers now extend to what were shared residence orders.

Any contact or residence order pre-dating 22nd April 2014 will now be treated as a child arrangements order.

Contact orders made after 8th December 2008 automatically include a warning notice (as do child arrangements orders made after 22nd April 2014). The warning notice sets out clearly the potential penalties and enforcement measures that are available to the Court if the contact /child arrangements order is broken.

If your historic contact order does not include a warning notice, before you make an application to the Court to have contact enforced, you must first have had a warning notice attached to the existing contact order (e.g. if the order was made before 8th December 2008).

If you have informal arrangements regarding contact and these have failed, before applying for enforcement you should apply for a child arrangements order.

Will the Court agree to a warning notice being attached?

Yes. Her Majesty's Court Services' guidance on the attachment of warning notices states that a Judge does not have discretion in this area. Technically, he/she must.

Be aware that in practice, we are experiencing Judges first choosing to consider whether the existing contact arrangements contained in the existing contact order are viable and whether they need amendment. If the contact order is amended via the new child arrangements order, the new order would automatically have a warning notice attached. Be aware that the other party (normally the other parent) may choose to use your application to the court as an opportunity to seek the court's agreement to vary the existing order.

What do I need to do to apply for a warning notice to be attached?

Before applying, we recommend you attempt to resolve matters without involving the court. If this proves to be impossible, then check to see if there is a warning notice attached to your contact order (all contact orders made after December 2008 should automatically include one)... if not:

- complete Court Form C78;
- provide a copy of the existing contact order (if available);

Contact and Child Arrangements Orders

Enforcement and Warning Notices

www.thecustodyminefield.com



- take these to your local family court administration department.

Will I have to pay a fee?

In most cases, yes, unless:

- You are in receipt of a specified means tested benefit; or
- Your gross annual income does not exceed a specified limit; or
- You would suffer undue financial hardship if you had to pay the court fee.

Further information can be found within HM Court Service's leaflet EX160A.

How much is the fee?

The fee for enforcement orders is £215 at the time this guide was published.

Must a warning notice be attached to a contact order before I can apply to have the order enforced?

Yes.

Who can apply for a contact order or child arrangements order to be enforced?

- You can apply if the children live with you.
- If you are the person named in the child arrangements order or a historic contact

order as the person with whom contact should take place.

- Any individual subject to a condition or contact activity condition imposed by the contact order or child arrangements order.
- The child named in the contact or child arrangements order. If you are the child, you will need to complete a form C2 asking the court's permission to make an application.

What must I do to apply to have a contact order enforced?

- A warning notice must first have been applied for (unless your contact order was made after 8th December 2008);
- You must be in a position to prove that the contact order or child arrangements order was broken;
- You should be satisfied that there was not a reasonable excuse for the order having been broken (e.g. the children were ill);
- You must complete form C79 and hand this into the court administration department;
- You will need to pay a fee, unless you qualify for an exemption (see above).

Contact and Child Arrangements Orders

Enforcement and Warning Notices

www.thecustodyminefield.com



If it is accepted that the order was broken, and there was not a reasonable excuse to justify the breach, what can the court do?

- If, as a result of contact being broken, you suffered financial loss, the court can order financial compensation from the party in breach. You cannot claim damages for emotional harm/stress etc, but only for actual financial loss. Examples would include travel costs having been unnecessarily incurred, the cost of a lost session at a contact centre, or your having had to cancel a holiday or arrange additional childcare.
- The Court can order that the party in breach carries out community service work. This can be for a period between 40 and 200 hours.
- The Court may order that CAFCASS (the Court Welfare Service) monitor and/or assist in contact taking place. This can be done through the Court making a Family Assistance Order which can run for up to 12 months.
- The Court may order that the parties attempt mediation to try to resolve their difficulties.
- The Court may order that one or both parties undertake counselling/therapy/anger management counselling or other activities

which the Judge feels are appropriate and may be of assistance in the prevention or resolution of conflict and to facilitate contact in the future. Such orders will likely be dependent on there being available services locally.

What else might happen?

- The potential exists that the Court could:
- Change the terms of the existing order if the current arrangements are found not to be in the children's best interests and/or are impractical/unworkable.
- In exceptional circumstances, the Court could reverse residence in favour of the current non-resident parent or commit to prison the person in breach. While residence and contact are now encompassed in a single court order (the child arrangements order), the concepts of residence and contact remain (wording is used such as the person with whom the child lives and the person whom the child visits or otherwise has contact).
- There has recently been a new development in cases where contact has been persistently frustrated by the resident parent, the courts have suspended a residence order as a firm warning. It cannot be overstated that this is a new step, and comparatively rare. The court places conditions upon the residence order which, if breached,

Contact and Child Arrangements Orders

Enforcement and Warning Notices

www.thecustodyminefield.com



see residence transfer to the other parent. Case law to cite includes Re A (suspended residence order) 2010 1 FLR 1679 and M (Children) [2012] EWHC 1948 (Fam).

M (Children) [2012] EWHC 1948 (Fam)

Of particular interest will be the order made within the judgment M (Children) [2012] EWHC 1948 (Fam) which starts at paragraph 80:

1. *The mother shall make the children available for staying contact with the father as follows (and subject to the following directions and conditions):*
 - a. *For ten days and nights from 23 July to 2 August 2012;*
 - b. *For ten days and nights from 22 August to 1 September 2012;*
 - c. *For five days and five nights every alternate school half-term holiday, commencing October 2012;*
 - d. *For one week in the school Christmas holidays, including New Year but not Christmas in even numbered years (beginning in 2012) and Christmas but not New Year in odd-numbered years (beginning in 2013);*
 - e. *For one week at Easter (to include Easter weekend in alternate years beginning with 2013);*
 - f. *For three weeks in the summer holiday, beginning in 2013. The three weeks shall be divided into two periods of two weeks and one week unless the parents agree in*

advance that it should be a single holiday;

- g. *The mother shall deliver the children to the father at [midway venue] at the beginning of contact and the father shall return the children to the mother at that location at the end of contact.*

2. *The mother shall allow reasonable indirect contact by telephone and in writing.*
3. *In the event that the children do not go to stay with the father for the periods referred to at paragraphs 1(a) and 1(b) above, the following orders shall apply:*
 - a. *There shall be a Residence Order providing that the children shall live with the father from the first date of the period in question.*
 - b. *The mother shall give up the children to the father on that date.*
 - c. *If the mother fails to give up the children, an application for the recovery of the children should immediately be made under s.34 Family Law Act 1986.*
 - d. *There shall be such contact between the children and the mother as may be agreed by the parents in consultation with the Children's Guardian or determined by the Court at the hearing currently fixed on 1 October 2012, with liberty to apply in the meantime.*

Contact and Child Arrangements Orders

Enforcement and Warning Notices

www.thecustodyminefield.com



- e. *There shall be no face to face contact within three weeks of the children moving to live with the father unless the Guardian otherwise advises.*
4. *In the event that paragraph 3 above does not apply but the children do not go to stay with the father on any other occasion referred to at paragraphs 1(c) to 1(f) above, the father is at liberty to restore his application for a residence order. If this does not arise before the end of 2013, the father's application for a residence order shall stand dismissed as at 31 December 2013.*
5. *The mother is prohibited until further order from:*
 - a. *Removing the children from England without the written consent of the father;*
 - b. *Causing or allowing the children to be known by any surname other than M for any purpose;*
 - c. *Applying of any passport or international travel document of the children without the written consent of the father;*
 - d. *While the children reside with her or have contact with her, changing the children's address from [address];*
 - e. *While the children live with her, changing the children's school from [school], except when they move to secondary school in the normal way.*
6. *If the children move to live with the father, the Children's Guardian shall inform the local CAFCASS team and the social services department of Blackpool City Council so that consideration is given to how support for the father and children can be accessed.*
7. *The Tipstaff shall retain the children's passports until further order.*
8. *The judgment given by the Court today may be discussed or disclosed by the Children's Guardian to the children's schools and to any other professional person who should be aware of its contents.*
9. *This Order replaces previous Orders in this matter.*
10. *Any future applications are reserved in the first instance to Mr Justice Peter Jackson, if available*
11. *No order for costs save detailed assessment of each party's publicly funded costs.*

Other recent developments

In the case A (A Child) [2013] EWCA Civ 1104 (at paragraph 60) Lord Justice McFarlane gave the following guidance concerning contact enforcement and instances where the resident parent refuses to comply:

'If, as part of that strategy, the court makes an express order requiring the parent with care to comply with contact arrangements, and that order is

Contact and Child Arrangements Orders

Enforcement and Warning Notices

www.thecustodyminefield.com



breached then, as part of a consistent strategy, the judge must, in the absence of good reason for any failure, support the order that he or she has made by considering enforcement, either under the enforcement provisions in [CA 1989, ss 11J-11N](#) [sections 11j to 11n of the Children Act 1989 concerning enforcement] or by contempt proceedings. To do otherwise would be to abandon the strategy for the case with the risk that a situation similar to that which has occurred in the present case may develop; to do otherwise is also inconsistent with the rule of law.'

Applying to Court

If you are using a solicitor, they will do this for you. Otherwise, download and complete the appropriate form, depending on whether you are applying for a warning notice (Form C78) or enforcement of the contact order (Form C79). Print and sign three copies of the appropriate form.

Check how much the court fees are, and either take a cheque, postal order or cash for that amount when you go to the court.

It will assist both you and the judge if you write a brief 'Position Statement'. Try to keep the position statement to two to three pages, including details of when the current contact order was made, what contact arrangements were set out in the order, and the problems which have prevented contact. Be factual, and try to be objective in what you write, and the language you use.

A position statement is not essential, but it helps inform the judge, briefly and ideally succinctly, why you are applying for the order, and can assist you in court so you do not forget any points you wish to raise.

Before setting off for the court building, ensure you have with you:

- a] Three completed and signed copies of the forms;
- b] The cash, cheque or postal order to pay the court fee;
- c] Three copies of your Position Statement.

Hand in the court forms, fee and position statement to the court's administration department.