

No area of law has been left unscathed by COVID-19. This article will follow a personal analysis of how family law and HMCTS have responded to the pandemic; also assessing how it has affected the safety of families

Beginning by looking at the logistics and practicalities when it comes to ongoing cases, as a paralegal in a family law firm, I have seen first-hand the backlog of cases due to an increase in online court submissions and remote hearings. Over lockdown many marriages have suffered causing an increase in couples filing divorce petitions, combining ongoing cases with a new surge of applications has caused initial hearing responses to these processes have become even slower. In family courts it is expected that both parties attend the hearing, however as many hearings are now remote there is further delay.

Why? Not everyone has access to the necessary technology - a webcam, laptop, microphone, stable internet connection - or the social circumstances to sit at home and take part in a hearing, causing many cases to be postponed till next year and the few that can be heard in court are consistently subject to change with Coronavirus restrictions.

The pandemic has further worsened the safety of families and reduced the value of contact, which is vital for parents and children, especially during a pandemic. Focusing on parent contact with children during the pandemic, during the first lockdown Cafcass (Children and Family Court Advisory and Support Service) and the Family Division offered two different guidelines for what should be followed. Below is Cafcass' statement regarding parent and child contact

“Unless there are justified medical/self-isolation issues, (or some future nationally issued guidance or expectation associated with leaving the house in your area) children should also maintain their usual routine of spending time with each of their parents. If there is a Child Arrangements Order in place this should be complied with unless to do so would put your child, or others at risk.”¹

However, the President of the Family Division and Head of Family Justice (Rt. Hon. Sir Andrew McFarlane) explains that ‘Parents must abide by the ‘Rules on Staying at Home and Away from Others’ issued by the government... 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.’²

Essentially, Cafcass believe the child(ren) should spend time with both parents (unless of course there are mitigating circumstances), whereas the President believes - somewhat mistakenly - that parents will be able to act sensibly and then that they should not take their children between households. The consequence: many children during the first lockdown spent approximately four months with little to no contact with one of their parents, thus creating inconsistency in the child's routine and further separates children from divorced parents. It has only been in this lockdown that the Prime Minister has allowed children to move between households, perhaps a solution he learnt from the mistake made previously.

¹ <https://www.ramsdens.co.uk/blog/cafcass-guidance>

² <https://classlegal.com/uploads/files/Webinar-Pressdee-notes-2.4.2020-FINAL.pdf>

Finally, the impact of domestic abuse family cases must be considered. There is a review expected in 2021 which 'is part of the government's long-term plan to better protect victims in family courts.'³ Although the commitments they plan to resolve in the review are vital, for example: Integrated Domestic Abuse Courts to allow judges more control in what is investigated and a 'clarification of the law on 'barring orders','⁴ to prevent abusers from forcing the other parent to return to court, they are more necessary now than ever. A prolonged response causes further difficulty for victims when coping with an abuser and complying with a Child Arrangements Order during an already difficult time.

Overall, family law is slowly shifting in the right direction and adapting to the current circumstances, but a more rapid response is needed and has been needed for some time: to better protect parents and children especially in difficult situations, as well as create an easier and more accessible process to decrease the backlog of cases.

³ <https://www.gov.uk/government/news/child-protection-at-heart-of-courts-review>

⁴ https://www.familylaw.co.uk/news_and_comment/child-protection-at-heart-of-courts-review