

Enforcing child contact arrangements

Most parents can reach an agreement amicably regarding the arrangements for children following the breakdown of a relationship. Ensuring practical working arrangements requires both parents to behave sensibly and in the best interests of each child. Unfortunately, as any family lawyer will tell you, that does not always happen.

If a court had to decide your child's living arrangements, then this will have been determined under a contact or residence order (prior to 2014) or a child arrangement order (post 2014).

Where a court order is made the majority of parents follow its terms. However, when a court order is breached, there are a number of options. The circumstances surrounding the breach will dictate how to proceed.

Where you are abiding by the court order, but the other parent is not

The first step should be to try and discuss the breach with your former partner. There may be a valid explanation, such as an emergency or a car breaking down. It is wise to keep a note of the dates of any breaches and details of the reasons your former partner has given. Anything that is not permitted in the court order is technically considered a breach, however it is important to take a practical approach. If your former partner is a few minutes late every so often, while annoying, it is perhaps to be expected that this will occur. If, however, your former partner regularly does not turn up without warning or excuse, then this could be disappointing and even emotionally damaging to your child.

The courts will not take any enforcement action in relation to minor breaches of the order, and they will expect both parents to adopt an element of flexibility so that the welfare interests of their child are met. If you reach an alternative arrangement with your former partner, then it is wise to have this recorded in writing. This will help avoid future disputes over what you both intended to happen.

If your former partner is regularly refusing to take your child for the length of time that is stipulated in the court order, then you need to weigh up if this is worth seeking to enforce. It may be detrimental to your child to be spending time with a parent who

has been forced to do so. In these situations, looking at reducing the level of time may be best. This way your child will benefit from consistent time with their parent, at a level your former partner can commit to. This will hopefully improve the quality of the contact as well.

If your attempts to resolve matters directly have failed, then you should contact your solicitor who will be able to advise you. They will seek to reach an amicable resolution with your former partner by writing to them. If this is also unsuccessful then you may need to consider bringing the matter back to court for enforcement.

Court enforcement

Any breach of a court order is considered a contempt of court. If your order was made after 8 December 2008 then it will automatically contain a warning setting out the consequences of breaching the order. If your order was made prior to December 2008, then an initial application to the court to attach a warning to the order will be made. This amended order will then be sent to your former partner so that they are put on notice of the consequences of their breach.

You can make an application to the court to enforce the terms of the court order. Enforcement proceedings are normally listed within 20 days of the application. The court will consider the full circumstances of a case, including the reason for any alleged breaches. If the court is satisfied that a breach has occurred, then it has a range of powers available. It must always do what is in the welfare interests of the child. The court's powers include:

- referring both parents to mediation;
- requiring unpaid work for the breaching parent of between 40 and 200 hours;
- a fine or compensation to be paid by the breaching parent; or
- in rare cases, the parent in breach of the order may even be imprisoned.

If you are the parent breaching the court order

It is not uncommon for parents to breach the terms of a court order as they believe they are acting in the best welfare interests of their child. This may be the case, but it is important to be aware that court orders cannot be changed by one parent. If both parents agree to a change, then it is important that you have this recorded in writing. If both parents do not agree to the change, then you must apply back to court to seek a variation of the order.

If you have concerns over your child's welfare while they are in your former partner's care, then it is important to raise these concerns as soon as possible. Ideally you should do so verbally with your former partner and then follow up any conversation with a text or email so a record is kept that can be used as proof in court if needed. If you have immediate welfare concerns for your child, such as your former partner being incapacitated through drink or drugs, your paramount concern will be to ensure your child's safety in stopping your child seeing their parent in that state. In these circumstances you should contact your solicitor immediately so urgent action can be taken to ensure you are not deemed to be in contempt of the court order.

Regular breaches of the order, or breaches that are found to be unwarranted, risk a finding of hostility being made. Ultimately, in cases of implacable hostility, the court has the power to transfer where the child primarily resides. It is important that you seek legal advice if you have breached or are contemplating breaching a court order as the consequences to you can be significant.

Our key contacts at DMP for further advice and assistance on child arrangements are Stephanie Alderwick and Tony Roe:

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