



Applications related to enforcement of a child arrangements order

A. Introduction

This leaflet is about making an application for an enforcement order or an order for financial compensation. **Please note:** From 22nd April 2014 a contact order will be treated as a child arrangements order if it is brought before the court. The court can add a warning to the order and enforce the order if necessary.

If someone has failed to keep to a child arrangements order you may want to ask the family court to enforce the order. If a child arrangements order has been broken without a reasonable excuse, you may apply to the family court:

- for a community-based order requiring a person to carry out unpaid work (this is known as an 'enforcement order'); or
- to award financial compensation from one person to another. For example, if the cost of a holiday has been lost as a result of a contact order being broken, the person who has lost the money can apply to the court for a financial compensation order.

This leaflet also covers applications to amend or end an enforcement order.

Section C will tell you if you can apply for an order. You may be able to apply for more than one order.

If anyone fails to keep to a child arrangements order they may be 'in contempt of court' and could be fined or sent to prison.

B. The child arrangements order

To apply for an enforcement order or for financial compensation there must first be:

- a child arrangements order containing a warning notice; and
- a failure to keep to the child arrangements order.

There must be a child arrangements order

You can only apply to the court for an order related to enforcing a child arrangements order if a child arrangements order has been made. If you want the court's help with a child arrangements order where the court has not previously made a child arrangements order, for example because you have privately agreed contact arrangements, you cannot make an application for an enforcement order. The court may still be able to help you, for example in recommending mediation, or you may apply for a child arrangements order. You should read leaflet '*CB1 Making an Application – Children and the Family Courts*'. This leaflet is available from any family court office, or from our website at hmctsformfinder.justice.gov.uk

The child arrangements order must contain a warning notice

If your child arrangements order (or the original contact order) was issued on or after **8 December 2008** it will contain a warning notice about the consequences if anyone the order applies to fails to keep to the order.

The court cannot refuse an application to add a warning notice to an existing child arrangements order. Attaching a warning notice to a child arrangements order does not mean there has been a failure to keep to the child arrangements order.

If the child arrangements order was made **before 8 December 2008** it will not contain a warning notice. Before you can apply to enforce a child arrangements order you must apply for a warning notice to be attached to the order. You must have told those people who the order applies to about the warning notice.

The court cannot make an enforcement order or an order for financial compensation unless it is satisfied that the person had been warned about the consequences of failing to keep to the child arrangements order before any failure referred to in the enforcement application took place.

Applying for a warning notice

If you want to make an application for a warning notice to be attached to a child arrangements order you should use form '*C78 Application for attachment of a warning notice to a child arrangements order*'. This leaflet is available from any family court office, or from our website at hmctsformfinder.justice.gov.uk

When a court applies a warning notice to a child arrangements order it does not mean that the court has decided that the child arrangements order has not been kept to. The court will consider this if there are any further applications to enforce the child arrangements order.

There must be a failure to keep to the child arrangements order

The court can only make an enforcement order if it is satisfied beyond reasonable doubt that a person has failed to keep to the child arrangements order. The court **cannot** make an enforcement order if it is satisfied that the person had a reasonable excuse for failing to keep to the child arrangements order.

C. Orders you can apply for

An enforcement order (unpaid work)

If a person has failed to keep to a child arrangements order, the court can consider whether to make an enforcement order. The enforcement order will mean the person has to do between 40 and 200 hours of unpaid work. This will be monitored by the probation service.

You can apply for an enforcement order if you are:

- the person who the child named in the child arrangements order lives with or is going to live with;
- the person whose contact with the child is provided for in the child arrangements order;
- any person a condition in the child arrangements order applies to; or
- the child concerned. If you are the child concerned you must get the court's permission before making an application. You should use form C2 to ask the court for permission. This form is available from any family court office, or from our website at hmctsformfinder.justice.gov.uk

Children and young people

If you are a young person whose family is changing you may find the Children and Family Court Advisory Support Service (Cafcass) leaflets helpful. They are available on the Cafcass website if you live in England or the CAFCASS Cymru website if you live in Wales. Follow the links below.

England: www.cafcass.gov.uk

Wales: www.wales.gov.uk/cafcasscymru

Action by the court if an enforcement order is broken

If the court makes an enforcement order but you know it is not being kept to, you may want to make an application for the court to consider taking action. If the court is satisfied beyond reasonable doubt that the person has failed to keep to the order, without having a reasonable excuse, the court may:

- amend the first order by adding extra hours to the unpaid work requirement; or
- make another enforcement order, known as the 'second order'. If the first order is still in force, it may still apply as well as the second order, or the second order may replace it.

The court will need to be sure that the enforcement order has been broken. If the unpaid work has not been done as required by the enforcement order, the Cafcass or CAFCASS Cymru officer monitoring the order will produce a report about this and give you a copy. If you receive a report you may want to make an application to ask the court to take action.

An order for compensation for financial loss

If a person has failed, without a reasonable excuse, to keep to a child arrangements order and you have lost money as a result, the court may make an order for that person to pay you compensation for the money you lost.

An order for compensation for financial loss will only be made for actual financial loss. You cannot claim compensation for hurt feelings or inconvenience caused.

To revoke (end) an existing enforcement order

If you received an enforcement order because you failed to keep to a child arrangements order, you can apply to the court for the enforcement order to be brought to an end or 'revoked'. In deciding whether to revoke the enforcement order the court will take the following into account.

- 1) What new circumstances have arisen since the enforcement order was made.

The court will consider:

- how far you have kept to the enforcement order; and
- how likely you will be to keep to the child arrangements order (or any child arrangements order if there is no enforcement order).

- 2) Whether, in all the circumstances, the enforcement order should have been made.

- 3) Whether you have kept to the child arrangements order since the enforcement order was made. In cases like this, the court will take into account how likely you will be to keep to the child arrangements order if there is no enforcement order.

For example, since an enforcement order was made, you have been keeping to the child arrangements order and you know that the person having contact with the child is happy with the current situation. You fully appreciate the importance of continuing to keep to the child arrangements order in the future. So, you would like the court to consider ending the enforcement order.

To amend the enforcement order because of a change of address

If you have moved house, or are planning to move house and you want to change the area where you do the unpaid work, you can ask the court to amend the order to show the new location. If you have moved within the same justice area (see below) you do not need to apply. You should only apply to the court if you have moved to a new justice area.

Justice areas

The National Offender Management Service operates on an 'area' basis throughout England and Wales. You must tell the member of probation service staff responsible for your enforcement order if you are planning to change your address. They will be able to tell you if you need to ask the court to change the local justice area in which your order is supervised.

To amend the number of hours of unpaid work in an existing enforcement order

If you are doing unpaid work as part of your enforcement order and your circumstances have changed, you can apply to the court to reduce the number of hours you have not yet completed.

For example, you had to spend some time in hospital and were unable to do any unpaid work during this time. As you had completed most of the hours of your order, you would like the court to consider reducing the number of hours remaining.

The court cannot reduce the total number of hours below 40.

To extend the period of 12 months set for completing the unpaid work

If you are doing unpaid work as part of your enforcement order and your circumstances have changed (for example, you have not been able to do the work for a time) you can ask the court to give you longer to complete the unpaid work.

D.The forms you need (including form 'C8 Confidential contact details')

The table below shows which forms you must use to make your application for an order relating to enforcing a child arrangements order. You can get all the forms and leaflets from any family court office, or from our website at hmctsformfinder.justice.gov.uk

<ul style="list-style-type: none">• Application for attachment of a warning notice to a child arrangement order (if the child arrangement order was made before 8 December 2008)	C78
<ul style="list-style-type: none">• Application for an enforcement order<ul style="list-style-type: none">• Application for the court to take action following the breaking of an enforcement order• Application for an order for compensation for financial loss• Application to revoke (bring to an end) an existing enforcement order• Application to amend an existing enforcement order because of a change of address• Application for amending the hours of unpaid work in an existing enforcement order• Application to extend the period of 12 months for completing the unpaid work	C79

Form 'C8 Confidential contact details'

We need your address to contact you. We will also provide your address to other people so that they can give you a copy of their response to your application.

If you do not want someone to know your address or your child's address, you do not have to put it on the form. But you will still have to give the address to the court and there is a form for you to do this.

You should fill in and return form '*C8 Confidential contact details*' with your application. This form is available from any family court office or from our website at hmctsformfinder.justice.gov.uk

E. Who are the respondents and other people I must tell?

Later you will have to tell people that you have made an application. These people are **the respondents** and the **other people you must tell**.

You will have to give respondents a copy of your application form. They will be given an opportunity to fill in their own form in response to your application.

You must enter the details of the following people in your application form at sections 5 and 6.

If you are applying for:

- an enforcement order (unpaid work) or an order for compensation following financial loss (or both);

the respondent is the person who you say has failed to keep to the child arrangements order.

The other people you have to tell are:

- (1) the Cafcass or CAFCASS Cymru officer if the court has ordered one to monitor the child arrangements order; and
- (2) if the child took part in the original child arrangements case, the children's guardian, guardian ad litem (someone who is appointed by the court to represent the child in legal proceedings), litigation friend (a person, often a relative, who voluntarily helps a child in legal matters) or a legal representative who represented a child in those proceedings.

If you are applying:

- for the court to take action because an enforcement order has been broken;

the respondent is the person you believe to have broken the child arrangements order and any child who took part in the enforcement order proceedings.

The other people you have to tell are the Cafcass or CAFCASS Cymru officer ordered by the court to monitor the enforcement order, and the officer from the National Offender Management Service who is supervising the enforcement order.

If you are applying:

- to amend the enforcement order because of a change of address;
- to amend (reduce) the hours of unpaid work set out in an existing enforcement order; or
- to extend the period of 12 months set for completing the unpaid work;

the respondent is the person who applied for the original enforcement order.

The other people you have to tell are the Cafcass or Cafcass Cymru officer ordered by the court to monitor the child arrangements order, and the officer from the National Offender Management Service who is supervising the enforcement order.

If you are applying:

- to revoke (end) an existing enforcement order;

the respondent is the person who applied for the original enforcement order and any child who was part of the enforcement order proceedings.

The other people you have to tell are the Cafcass or CAFCASS Cymru officer ordered by the court to monitor the child arrangements order, and the officer from the National Offender Management Service who is supervising the enforcement order.

F. The family court you apply to

You may want to make your application to the court where the child arrangements order was made, or you can apply to any family court. You can find a full list of courts, and information about what type of work that they do, online at hmctscourtfinder.justice.gov.uk

G. Fees and costs

You may have to pay a court fee. For more information on court fees, please refer to booklet *EX50 - Civil and Family Court fees*.

This booklet is available from any family court office, or from our website at hmctscourtfinder.justice.gov.uk

There may be other costs but that depends on your case and what you decide to do. For instance, you may have to pay expenses to a witness who goes to court to give evidence for you.

You may not have to pay a fee

If you cannot afford to pay a court fee, you may be eligible for a fee remission in full or part. The booklet *EX160A - Court and Tribunal fees - Do I have to pay them?* gives all the information you need. You can get a copy from any family court office or from our website at hmctscourtfinder.justice.gov.uk

H. What to do now

When you have filled in the forms

1. Check the form.

Check that you have said everything you want to say. When you have given the forms to the court office you will need the court's permission if you want to change anything on the forms.

2. Copy the forms.

Make a copy of each form for yourself and for **each respondent** whose name you have put in section 5.

If you need to tell a former representative of the child (as described in section E), you will need to make a copy of the application for that person too. Make the same number of copies of any other papers that you will give to the court with your forms.

These papers may include:

- a court order; and
- receipts or other documents to support an application for compensation for financial loss.

3. Take or send your forms to the court.

This is called 'lodging' or 'filing' your application.

Take, or send, to the family court office:

- the forms;
- the copies of those forms;
- the copies of the other papers; and
- the court fee.

I Making an application in an emergency

In an emergency the court may let you make an application without telling other people. This is called making the application 'without notice'. It may also be referred to as 'ex parte'. If the court then makes an order you may have to provide a copy to anyone who is affected by it.

Tell the court office if you want the court to deal with your application 'without notice'.

J. Attending the court – special arrangements

If you will need special help or facilities at court, for example because of a disability, please set out what you will need, in full, on your application form.

The court staff will need to know what you will need, for example documents in alternative formats such as Braille or large print, certain access, a hearing loop or a sign- language interpreter. The court staff will get in touch with you about this. If you do not make the court aware of all your needs, your hearing may be adjourned (postponed).

If you need a foreign-language interpreter you should also contact the court immediately so that they can arrange it.

Bringing children with you to court

Children should not generally come to court unless they are part of the court process, for example if they are a witness, or if you have an appointment for you and your child to meet with the judge. If you have to bring your child for any other reason, please bring an adult friend or family member to look after them while you are in the hearing room, as court staff cannot look after your child.

Security

If for any reason you are worried about security at court please let the court staff know about this in part 10 of your application form. They will consider your needs and how they can help you.

K. What the family court will do next

The court office will check that you have filled in the form correctly and that you have included other papers where necessary. The court office will give you a date for the first hearing.

The court office will keep the forms and return to you:

- copies of the forms;
- copies of any other papers; and
- a notice setting out the date, time and place of your first hearing.

This is called 'issuing' the application. The court may also send you some new papers, for example:

- a notice of proceedings (form C6), for the respondents you have named in your application form; and
- a notice of proceedings (form C6A), for the people you have named in your application form as people you have to tell about the application.

Make a note of the child's number or the case number, which the court office has put on the forms. You will need that number if you write to or phone the court office.

Information about Cafcass and CAFCASS Cymru

Cafcass – Children and Family Court Advisory and Support Service (in England)

CAFCASS Cymru – Children and Family Court Advisory and Support Service Wales

Cafcass and CAFCASS Cymru are responsible for protecting and promoting the welfare of children who are the subject of family court cases. They do this by working with the children and families and by providing advice to the courts. They also carry out checks with other organisations, in particular local authorities and the police, as part of their work to make sure that children are safe.

L. Telling the respondents and other people about your application (called 'serving')

After the court office has issued your application and sent you the documents listed in the previous section, you must then tell the respondents and anyone else you have to tell about your application. This is called 'service'. You must by law serve all these people unless the court has told you not to.

When the court sends you the copies of your application form, and any new forms, it will also send you a leaflet, '*CB3 Serving the forms – Children Act 1989*'. This leaflet gives detailed instructions about what you must do.

M. Where to get help

A court official can give you information about court procedures but cannot give legal advice.

Getting advice in your case

You can get advice from the following.

- A **solicitor** – you can get the names and addresses of solicitors who specialise in Children Act work from:
 - the Law Society’s Children Panel (020 7242 1222); or
 - Yellow Pages, or the Solicitors Regional Directory. (You can find these at a public library.)
- A **citizens advice bureau**.
- A **legal advice centre or law centre**.

You may be able to get free legal information, help and advice. For more information, go online to www.gov.uk/legal-aid

You may have asked a solicitor for some advice. However, the solicitor is only acting for you if you have appointed them to do so.

You may apply for an order on your own

If you decide to apply on your own you may want to get legal advice about the order you want the court to make. A court order can affect your life, or the child’s life, in a way you may not have thought about.

If you do not apply for an order on your own

You may be able to get help from the Legal Help Scheme. A solicitor, a law centre, or a legal advice centre will be able to tell you whether you are eligible for legal help. You must apply for legal help through a solicitor.

