

How do I enforce a Child Arrangement order?

This factsheet explains how to enforce a Child Arrangements order when an ex-partner is not following its terms.

Do you have a Child Arrangements Order in place?

The first step is that there must be a Child Arrangements order in place. If there is, you can apply for enforcement action against your ex-partner.

It is not possible to make this application when you have a private agreement with your ex-partner.

Does your Child Arrangements Order have a warning notice?

To enforce a child arrangements order, it must contain a warning notice.

This is an example of a warning notice:

This order includes a child arrangements order (the part of the order setting out living arrangements for a child and about time to be spent or contact with another person). If you do not do what the child arrangements order says you may be made to do unpaid work or pay financial compensation. You may also be held to be in contempt of Court and imprisoned or fined, or your assets may be seized.

It is a criminal offence to take a child out of the United Kingdom without the consent of everybody with parental responsibility unless the Court has given permission.

While a child arrangements order is in force in relation to a child nobody may:

- 1. Cause the child to be known by a new surname*
- 2. Remove the child from the United Kingdom*

Without the written consent of every person with parental responsibility for the child or leave of the Court.

However, this does not prevent the removal the child from the United Kingdom by a person named in the child arrangements order as a person with whom the child is to live for a period of less than one month.

What if I do not have a warning notice attached?

These warning notices are normally attached automatically by the family Court.

It is possible for you to apply to attach a warning notice to these orders. This application can be made using the form C78. The Court will not refuse this application.

There must be a failure to keep the Child Arrangements

If your ex-partner has failed to follow the Child Arrangements order you can make an application for enforcement.

In the application, you have to satisfy the Court beyond a reasonable doubt that your ex-partner failed to comply with the child arrangements order.

If the Court is satisfied that your ex-partner had a reasonable excuse, they may decline to make an order. If your ex-partner seeks to raise this excuse, they have to prove this.

What powers does the Court have?

If you can prove to the family Court beyond a reasonable doubt that your ex-partner has failed to follow a Child Arrangements order.

The family Court has wide-ranging powers including:

- Varying the Child Arrangements order
- Ordering an enforcement order (or suspended order) against your ex-partner
- An order for your ex-partner to pay compensation (financial loss order)
- Ordering your ex-partner to attend a SPIP (Separated Parents Information Programme) or ordering the parties to attend mediation
- Committing your ex-partner to prison (serious cases)
- Ordering your ex-partner to pay a fine.

Enforcement Order – unpaid work requirement?

It is possible to apply for an enforcement order seeking for your ex-partner to complete unpaid work. In family enforcement cases, your ex-partner can be required to complete 40–200 of unpaid work hours.

This is a community sentence (as in criminal proceedings) and is organised by the National Offender Management Service.

What does the Court consider?

If the Court is satisfied beyond reasonable doubt that your ex-partner failed to comply with the Child Arrangements order, it can impose an enforcement order requiring your ex-partner to complete unpaid work.

The Court will primarily consider the welfare of the children. The Court must be satisfied that:

- The order is necessary to secure the compliance
- The likely effect on your ex-partner is proportionate to the seriousness of the breach
- The provision of the unpaid work can be made in your ex-partner's local justice area

The Court will also consider information about the likely effect of the order on your ex-partner (including any conflict with their religious beliefs and any interference to their work/education).

The Court may ask [Cafcass](#) (Children and Family Court Advisory and Support Service) to provide a report regarding some of the above. If your ex-partner is required to complete unpaid work, Cafcass will monitor compliance.

Enforcement Order – compensation for financial loss

It is possible to apply for your ex-partner to pay compensation for financial loss. This is if they failed to comply and you have suffered financial loss because of the breach.

This commonly arises where an ex-partner refuses to make a child available (as per the Child Arrangements order) and you

have suffered a financial loss (i.e. travel costs or a wasted holiday). This does not include compensation (i.e. for your hurt feelings or inconvenience).

If your ex-partner intends to dispute this, they must show they have had a reasonable excuse. If they are unable to do so, the Court may make an order for them to pay the money you have lost.

The family Court will calculate the amount, but it cannot be above the amount you lost. The Court will consider your ex-partner's financial circumstances when deciding the amount.

If you are successful, you can enforce the financial loss order as a civil debt and take recovery action against your ex-partner.

How do I make the application?

The application is made on the form C79.

There is no requirement to attend a MIAM (Mediation Information & Assessment Meeting).

There is normally a Court fee of £215. However, if you have a low income and are on certain benefits you can make an application for a reduction in fees (dependant on your circumstances this could mean no fees).

What will the Court consider?

The Court will consider:

- If the facts about the non-compliance are agreed, or if a hearing will need to be listed to establish them (the 'reasonable excuse hearing')
- The reasons for the non-compliance by your ex-partner
- The management of any risks of making further or alternative Child Arrangements orders
- How to establish the children's wishes and feelings
- If courses such as the SPIP (Separated Parents Information Programme) or a referral to mediation is appropriate
- If an enforcement order is appropriate
- The routine welfare checklist.

The application will normally be served on your ex-partner and they will be given the opportunity to respond.

This resource has been brought to you by Azhar Hussain (Solicitor-Advocate & Experienced Head of Family Dept) and you can find further information at <http://www.azharhussain.co.uk/legal-blog/>