

Lockdown family breakdown toolkit

April 2020

The Coronavirus crisis is redefining lifestyles and the boundaries of our interactions – a situation that can challenge even the strongest bonds.

For couples who are struggling in their relationship or as co-parents, anxiety levels are likely to be heightened. Meanwhile, it seems there is nowhere to turn, with personal movements restricted and the family courts working remotely and on limited schedules.

Being a family lawyer means being there for all the challenges, not just the day in court. It is more important than ever that family lawyers are available to advise, encourage and support their clients. At RIAA Barker Gillette we're using the latest technology to host face to face meetings with our clients, to keep the doors open, and support families through this crisis.

In China, which was first into lockdown following the discovery of the virus, there have been [reports](#) of a huge surge in divorce petitions as couples emerge from the country's stringent restrictions, with one city official in Hunan province quoted as saying that what may have seemed trivial in normal life had escalated for many couples struggling to deal with these exceptional circumstances.

For those in the UK who were considering, or had already started divorce proceedings, many will still be living together, adding to the pressures of lockdown. For those struggling under the relentless strain of being in each other's company 24/7, it will be hard to find a way to release the pressure to see clearly whether the relationship has run its course, such as through couples counselling or simply taking a break from each other.

While no-fault divorce is likely to become law once the [legislation](#) resumes its progress through Parliament, for

now, couples must continue to deal with one party being 'blamed' for the breakup or wait for the change in the law.

Under the existing [Matrimonial Causes Act 1973](#), one party must prove that their partner is at fault through either adultery or unreasonable behaviour. Alternatively, and only if both sides agree, they can part after two years' separation. If no fault is given, and one party does not consent to the divorce, then the period of separation is extended to living apart for five years.

For those who feel compelled to act now, or as soon as we come out of lockdown, it is likely that we will see unreasonable behaviour cited as the most common ground for such divorces. The most recent [statistics](#) (for opposite sex couples) show 36.8% of all husbands and 51.9% of all wives petitioning for divorce on this ground.

But petitioning is only the start of what may be a long journey, with the process of divorce, negotiating over finances and family arrangements, becoming ever more complex. That's in part because there is more at stake, particularly for middle-aged couples, when couples come to hammer out a fair division after a marriage breakdown. [Wealth statistics](#) show that by 2014 half of all households had a total wealth of £225,100 or more.

The [Children and Families Act 2014](#) requires a separating couple to consider using mediation, or other alternative dispute resolution options, before they can ask a court to resolve their dispute, so it's best to approach things with an open attitude. We always encourage couples, where safe, to talk and to try and come to an agreement. Our family lawyers, [William Roberts-Phelps](#), [Vandana Chitroda](#) and [James McMullan](#), are all members of [Resolution](#), the community of family justice professionals who work with families and individuals to resolve their

issues in a considered and constructive way. This has become even more important in the current situation.

Things to think about, depending on where you are

Deciding whether your relationship has run its course

If you're going through a bad patch, you may have decided to try and reconcile your differences, or else wait until the lockdown ends. Assuming there are no issues over personal safety, the decision is likely to be dictated by financial circumstances. Funding two homes is daunting when job security is under threat and investments have crashed, and that's before considering how to identify and move into alternative accommodation under lockdown.

If the result is that you are going to try and live apart while still in the same house, in anticipation of separation later, it's worth approaching it in a structured way, and tackling the bigger issues, such as agreeing who gets which rooms or areas, how you will share the household expenses and how you will present the situation to any children living with you.

It is a good idea to put such arrangements in writing. You can do this yourselves, or with the help of a mediator or one of our family lawyers. Involving them at an early stage can help avoid the obvious pitfalls, while also giving you some moral support. Such assistance becomes vital where the decision is taken to start divorce proceedings, when legal and financial advice is important from the very beginning.

In terms of administration, the courts have confirmed that online applications will continue, with the divorce petition processed from application through to decree absolute without any need for face-to-face contact.

Similarly, applications for orders relating to children can be made urgently or online (in certain postcodes).

Progressing divorce

The current financial uncertainty is making decision-making difficult. Any financial arrangements made in usual circumstances will have a degree of flex built in, but we are in extraordinary times, where both assets and job security will be uncertain.

The starting point for any settlement is to look at assets in the marriage, with shared financial information for bank accounts, investments and other assets. For those who are part of the way through the process, such figures may

have been collected some time ago and already form the basis for a settlement figure. The impact of the Coronavirus on all aspects of the economy, the stock market and the likely downturn in the property market, make it essential that these are reviewed in the context of any settlement negotiations.

If a court date has already been set, the hearing may be moved and will be held remotely. Where cases are complex, the courts are expected to use video links for hearings, although in-person hearings may still be held subject to individual circumstances and the demands of the case.

It is usual in any divorce settlement to balance risk with absolute value and we work to ensure no individual ends up with all the riskier or illiquid assets, but there may be those who have already reached a settlement which no longer seems fair. It is important to seek legal advice and guidance as soon as possible, as speed of action is one of the factors considered by the courts. There is no guarantee that orders may be amended, even in the current circumstances. The capital elements of any settlement will be amended only where an unforeseen event invalidates the assumption on which the order was based, and following the 2008 market crash, the Court of Appeal ruled the financial disruption was not an unforeseen event.

Maintenance arrangements

Unlike the capital element, if you are earning less money during the crisis, or have lost your job, it may be possible to ask the court for a variation on payments under a maintenance order. Going back to court can be a costly procedure and the best starting point would be to see if you can reach an agreement yourselves, while exploring other sources of income and benefits.

It's worth appreciating that a fall in income may not justify a change in arrangements, as maintenance is needs-based, and the needs of both parties and any dependent children will be evaluated.

If you are the one receiving maintenance payments and you lose other sources of income during the current crisis, such as your job, then you can ask for a variation due to changed circumstances, but the court will first expect you to take reasonable steps to secure other sources of income, such as applying for relevant Government Coronavirus schemes. If it's likely to be just a temporary

situation, then try to have a conversation and put everything in writing.

Whether you are paying or receiving, take legal advice, and avoid getting into a situation where you are in breach of a court order without having tried to resolve the problem.

Co-parenting

Where parents are living in different households, the Government has clarified the advice on how to approach co-parenting.

Children under 18 whose parents are living apart can move between the homes of their parents, in an exception to the mandatory stay-at-home rule for us all. But this does not mean children should move around without weighing up what is best - such as the health of all concerned, the risk of infection and how and where any handover takes place. If one parent is a key worker, then it may be sensible for the other parent to look after the children, to reduce infection risks.

If, for any reason, a child will not spend their scheduled time with one parent, the courts expect regular contact to be maintained through other means, such as FaceTime or Skype.

Importantly, any variation to current arrangements should be agreed between you and put in writing wherever possible. Guidance says that:

"...the court is likely to look to see whether each parent acted reasonably and sensibly in the light of the official advice and the stay-at-home rules in place at that time, together with any specific evidence relating to the child or family."

Where there is a disagreement on arrangements, seek legal advice. Whether for enforcement or to apply for a change to the contact arrangements, court hearings are continuing, although the default is via phone or video link.

The most important thing for children is that parents avoid conflict. Movie stars Bruce Willis and Demi Moore may have divorced 20 years ago, but they are exemplary co-parents – even sharing lockdown time together with their adult children in California.

In her recent autobiography Moore wrote that it wasn't easy at first *"but we managed to move the heart of our relationship, the heart of what created our family, into something new that gave the girls a loving, supportive*

environment with both parents. We felt more connected than we did before the divorce."

That's a great position to be in, but for those who struggle to emulate such an example while going through the breakdown of a relationship, it's important that you do all you can to avoid heated disputes and that you keep arguments away from any children.

For more information, read family lawyer, William Roberts-Phelps' article "[Co-parenting during COVID-19](#)".

Domestic abuse

China experienced a surge in reported domestic abuse during the lockdown, a factor unfortunately being replicated in the UK according to early reports, so while it may be a hard call to make, in the current situation, it's more important than ever that you seek legal advice and/or contact the police if abuse is taking place.

For those where there is no physical risk, it's still important to act if you need help. Reaching out to a family lawyer and receiving some impartial support may be just enough to keep things on a more even keel during lockdown.

If things have gone too far to be resolved, then receiving legal advice on what is feasible and how to approach conflict could make all the difference. You may not be able to speak on the phone or video conference if you are in lockdown with your partner but having an email exchange with a lawyer can bridge the gap during the current crisis. Our family lawyers are making themselves available in whatever way they can to help with the current crisis.

To take advantage of our [Free 30-Minute Family Law Consultation](#), call family lawyer, [William Roberts-Phelps](#) today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

