

Applications related to enforcement of a contact order

A Introduction

This leaflet is to provide information about making an application for an enforcement order or an order for financial compensation.

If a person has failed to comply with a contact order you may wish to ask the court to use its powers to enforce the contact order. Where a contact order has been breached without reasonable excuse, you may apply to the court to:

- Impose a community-based order requiring a person to undertake unpaid work (this is known as an 'enforcement order').
- Award financial compensation from one person to another. For example, if the cost of a holiday has been lost as a result of a breach of a contact order, the person who has suffered actual financial loss can apply to the court for a financial compensation order in respect of that loss.

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.

The provisions for enforcement of contact orders described in this leaflet are in addition to the court's existing powers to deal with failure to comply with the order as a contempt of court, which can be punished by a fine or imprisonment.

B The contact order

In order to make an application for an enforcement order or for financial compensation there must first be:

- A contact order containing a warning notice
- A failure to comply with the contact order

There must be a Contact order

You can only apply to the court for an order related to enforcement of a contact order where there has been a contact order made. If you want the court's help with contact arrangements where the court has not previously made a contact order, for example, because you have privately agreed contact arrangements, then 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 contact order. You should read leaflet 'CB1: Making an Application – Children and the Family Courts'. You can get a copy from your local court or it can be downloaded from our website at www.hmcourts-service.gov.uk.

The contact order must contain a warning notice

If your contact order was issued on or **after** the **8 December 2008** it will contain a warning notice about the consequences if anyone subject to the contact order fails to comply with the requirements of the order.

If the contact order was made **before** the **8 December 2008** it will not contain a warning notice explaining what may happen if the contact order, is not complied with. Before you can make an application related to enforcement of such a contact order you must first make an application for a warning notice to be attached to the order, and you must have informed those who are subject to that order of the warning notice.

The court has no discretion to refuse an application to add a warning notice to such an existing contact order. Attaching a warning notice to a contact order does not imply any finding of a failure to comply with the contact order.

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 comply with the contact order before any failure referred to in the enforcement application took place.

Applying for a warning notice

If you wish to make an application for a warning notice to be attached to a contact order you should use Form 'C78: Application for attachment of a warning notice to a contact order' to do this. You can get a copy from your local court or it can be downloaded from our website at www.hmcourts-service.gov.uk.

When a court applies a warning notice to a contact order it does not mean that the court has decided that the contact order has not been complied with. This will be considered if there are any further applications to enforce the contact order.

There must be a failure to comply with the contact order.

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

C What order(s) are you applying for?

An enforcement order (unpaid work)

Where a person has failed to comply with a contact order, the court can consider whether to make an enforcement order. The enforcement order will place a requirement on the person to undertake between 40 and 200 hours of unpaid work. This will be monitored by the probation service.

You can make an application for an enforcement order in relation to the contact if you are -

- the person with whom the child named in the contact order lives or is to live with;
- the person whose contact with the child is provided for in the contact order;
- any individual subject to a condition or a contact activity condition imposed by the contact order;
- the child concerned – if you are the child concerned you must obtain the leave of the court before making such an application. You should use form C2 to ask the court for permission. You can get a copy from your local court or it can be downloaded from our website at www.hmcourts-service.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 leaflets helpful. They are available on the Cafcass website if you live in England or the CAF/CASS CYMRU website if you live in Wales. Follow the links below:

England: www.cafcass.gov.uk

Wales: www.new.wales.gov.uk

For the court to take action following breach of an enforcement order

If an enforcement order was made, but you know it is not being complied with, then you may wish to make an application for the court to consider taking action. If the court is satisfied beyond reasonable doubt that the person has failed without a reasonable excuse to comply with the unpaid work requirement imposed by the first order, then the court may -

- amend the first order so as to make the unpaid work requirement more onerous, or
- make an enforcement order ('the second order') and, if the first order is still in force, provide for the second order to have effect either in addition to or in place of the first order.

The court will need to be sure that the enforcement order has been breached. If the unpaid work has not been completed as required by the enforcement order the Cafcass/CAFCASS CYMRU officer monitoring the order will produce a report about this and will provide you with a copy of that report. If you receive such a report you may wish 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 comply with a contact order, and this has caused you to lose money, then the court may make an order for the person who has not complied with the order 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 (bring to an end) an existing enforcement order

If you received an enforcement order because you failed to comply with a contact order then 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 into account—

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

In such a case the court will consider:

- the extent to which the person subject to the enforcement order has complied with it, and
- the likelihood that the person will comply with the contact order or any contact order in the absence of an enforcement order.

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

3) whether there has been satisfactory compliance with the contact order since the enforcement order was made (in such a case the court will take into account the likelihood that the person will comply with the contact order in the absence of an enforcement order).

For example, since an enforcement order was made, you have been complying with the contact 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 comply with the contact order in the future. Therefore, you would like the court to consider ending the enforcement order.

To amend the enforcement order by reason of a change of address (about local justice areas)

If you have moved house, or are planning to move house, and as a result you wish to change the area where you undertake 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 then 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 are required to inform the member of probation service staff responsible for your enforcement order, if you propose to change your address. They will be able to tell you if it is necessary for you 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 specified in an existing enforcement order

If you are undertaking unpaid work as required by the enforcement order and your circumstances have changed you may want to ask the court to reduce the outstanding hours not yet completed. You can make an application to ask the court to consider this.

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

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

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

If you are undertaking unpaid work as required by the enforcement order and your circumstances have changed you can ask the court to extend the period of time in which you have to complete the unpaid work.

For example, if you have been unable to do unpaid work for a period of time you may need to ask the court to extend the period of 12 months to complete the hours of unpaid work you have been ordered to do.

D The forms you need (including 'Form C8: Keeping your address confidential')

The below table shows which forms you must use to make your application for an order relating to an enforcement of a contact order. All forms and leaflets can be found at your local family court, or can be downloaded from www.hmcourts-service.gov.uk.

<ul style="list-style-type: none">• Application for attachment of a warning notice to a contact order (if the contact order was made before 8 December 2008)	C78
<ul style="list-style-type: none">• Application for an enforcement order• Application for the court to take action following breach 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 by reason of a change of address• Application for amendment of the hours of unpaid work in an existing enforcement order• Application to extend the period of 12 months for completion of the unpaid work	C79

Form C8 - Keeping your address secret

We need your address to contact you. We will also provide your address to other parties so that they can provide you with 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 complete and return form 'C8: Confidential Address' with your application.

E Who are the respondents and other people to be notified

Later you will have to tell people that you have made an application, these people are **the respondents** and the **other persons to be notified**.

You will have to provide respondents with a copy of your application form and they will be provided with an opportunity to submit their own form in response to your application.

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

If you are applying for:

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

The respondents are the person who you say has failed to comply with the contact order.

The other persons to be notified are:

(1) the Cafcass or CAFCASS CYMRU officer if the court has ordered one to monitor the contact order.

(2) where the child was a party to the original contact case, the children's guardian, guardian ad litem, next friend or legal representative who represented a child in those contact proceedings.

If you are applying:

- for the court to take action following breach of an enforcement order

The respondents are the person you believe to be in breach of the contact order and any child who was a party to the enforcement order proceedings.

The other persons to be notified 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.

- to amend the enforcement order by reason of a change of address
- to amend (reduce) the hours of unpaid work specified in an existing enforcement order
- to extend the period of 12 months set for completion of the unpaid work

The respondents are the person who applied for the original enforcement order.

The other persons to be notified are the Cafcass or CAFCASS CYMRU officer ordered by the court to monitor the contact order, and the officer from the National Offender Management Service who is supervising the enforcement order.

If you are applying:

- to revoke (bring to an end) an existing enforcement order

The respondent is the person who applied for the original enforcement order and any child who was a party to the enforcement order proceedings.

The other persons to be notified are the Cafcass or CAFCASS CYMRU officer ordered by the court to monitor the contact order, and the officer from the National Offender Management Service who is supervising the enforcement order.

F The court you apply to

You may wish to make your application to the court where the contact 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, on our website www.hmcourts-service.gov.uk, or you can check your local telephone directory.

G Fees and costs

You may have to pay a court fee. The leaflet EX50 County Court Fees will tell you how much the fee is for county courts or you can ask at your local court.

To find out about fees at magistrates courts you should also ask your local court.

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

You may not have to pay a court fee if:

- You are in receipt of a specified means-tested benefit; or
- Your gross annual income does not exceed a specified limit; or
- You would suffer undue financial hardship if you had to pay a court fee

For further information, or to apply for a fee concession, ask a member of court staff for a copy of the combined booklet and form **EX160A - Court fees - Do I have to pay them?**

This booklet and form is available from any county court office, family proceedings centre or can be downloaded from the internet at www.hmcourts-service.gov.uk

You will have to make a separate application for each fee that is payable.

H What to do now

When you have filled in the forms:

- 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.

- 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 notify 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
- receipts or other documentation to support an application for compensation for financial loss

Then you must take or send your forms to the court.

- Take or send your forms to the court

(This is called 'lodging' or 'filing' your application)

Take, or send, to the court office:

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

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 will 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'.

I Attending the court – special arrangements

If you need special assistance or facilities for a disability or impairment please set out your requirements in full in your application form.

The court staff will need to know your specific requirements, for example; documents in alternative formats such as Braille or large print and/or access provisions; 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, this may result in the hearing being adjourned.

If you require a foreign language interpreter you should also contact the court immediately so that one can be arranged.

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.

J What the 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
- 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
- a Notice of Proceedings, form C6A, for the people you have named in your application form as having to be notified of 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 telephone the court office.

Information about Cafcass/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/CAFCASS CYMRU are responsible for safeguarding 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.

K 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 ‘other people to be notified’ 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.

L Where to get help

You may ask a court official for general information but court staff are not allowed to advise you about what to do in your case.

Getting advice in your case

You can get advice from:

- A **solicitor** – there are solicitors who specialise in Children Act work and you can get the name and address of a solicitor from:
 - The Law Society’s Children Panel (020 7242 1222): or
 - “Yellow Pages”, or the Solicitors Regional Directory. You may find these books at a public library.
- A **Citizens Advice Bureau**
- A **legal advice centre or law centre**.

For free legal information, help and advice contact Community Legal Service Direct on 0845 345 4345 or www.clsdirect.org.uk.

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 wish 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 assistance 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.