

COVID-19 GUIDANCE FOR COURTS
FAMILY PROCEEDINGS (ALL COURT TIERS)
ISSUED 12TH MAY 2020

This guidance revokes and replaces the guidance note for family proceedings issued on 25 March 2020. This guidance must be read in conjunction with the most recent 'Guidance for all Courts' and specific guidance issued by the Office of Care & Protection or Matrimonial Offices of the High Court, published at <https://judiciaryni.uk/coronavirus-covid-19>.

Urgent family business and matters where the parties have lodged the requisite form¹ setting out that they have **agreed a way forward** in their case will continue to be undertaken on the papers or by hearing as determined by the Judge / Master. The court office will advise what steps should then be taken, and issue any interim orders or further directions to the parties involved. As business levels and the volume of emails to each court office increase it will be necessary for the parties to highlight urgent business in the subject of their emails so this is not overlooked.

INTERIM ARRANGEMENTS have been put in place to deal specifically with the following urgent matters:

- **Arrangements for Non-Molestation order applications under Family Homes and Domestic Violence (NI) Order 1998**

Any **interim orders** already in place the Public Health Authority (PHA) guidance issued, or made since, will have been extended to a specific date as directed by the Judge and the case adjourned appropriately to the same date.

The respondent may apply to the court for an earlier inter-parte hearing via their legal representative using Form **FCI**². Unrepresented parties/ Litigants in Person should use Form **LIPCI**³ in conjunction with further guidance for 'Unrepresented parties / Litigants in Person' found at <https://judiciaryni.uk/coronavirus-covid-19>.

¹ Legal representatives should complete FORM FCI1 as directed. Where a party is unrepresented, they should complete FORM LIPCI1 as directed and in line with guidance for Unrepresented parties / Litigants in Person.

² Form FCI1 is available [here](#).

³ Form LIPCI1 is available [here](#).

As a **temporary measure**, during this initial stage of Covid 19 business continuity which will be kept under review, where an affidavit cannot be obtained, courts are content to accept a statement providing the solicitor must firstly **confirm they have read through the statement carefully with the applicant and confirm it is completely accurate**, and secondly, **if the statement is unsigned, provide an undertaking to lodge a signed statement as soon as is practicable**.

Where the Applicant is under 18 years of age the application should be made to the High Court to be dealt with by the Master (Care and Protection) using Form FCI1.

On receipt of the required papers, the judge will determine whether the matter can be dealt with administratively or will require a hearing, and the court office will contact the parties to make any necessary arrangements.

- **Arrangements for INTERIM CARE and SUPERVISION ORDERS**

Article 57 of the Children's (NI) Order 1995 deals with the making of Interim Care Order (ICO) or Interim Supervision Orders (ISO) for specified periods which may not exceed 8 weeks for a first order or 4 weeks for subsequent orders. Where the court is satisfied that Article 57(2) is complied with, all existing interim orders shall be renewed by Administrative Order until further Order.

Orders will be available to legal representatives via ICOS case tracking and will be posted to unrepresented parties / Litigants in Person. Any objections must be received by email submissions before the specified date. The Trust may be required to provide more information to support the renewal of the ICO/ISO if there are any objections.

- **Interim arrangements for CONTACT ORDERS under The Children (Northern Ireland) Order 1995**

It is important that children should maintain their usual routine of spending time with each of their parents⁴ in compliance with a Contact Order unless to do so would put the child, or others at risk with regards to Government and Public Health Authority (PHA) guidance during this period. Where contact can be

⁴ 'Parents' is used throughout this document but applies also to any person with parental responsibility or who has been granted contact with the child under Article 8 of The Children (Northern Ireland) Order 1995

continued, this will help the child to feel a sense of consistency, whilst also reassuring them that the parent they don't always live with is safe and healthy.

The decision whether a child is to move between parental homes is for the child's parents to make after a sensible assessment of the circumstances, including the child's present health, the risk of infection and the presence of any recognised vulnerable individuals in one household or the other.

Where Coronavirus restrictions cause the letter of a court order to be varied, the spirit of the order should nevertheless be delivered by making safe alternative arrangements for the child. If it is not possible to maintain the child's routine due to illness or self-isolation, or non-availability of, or risk to, people who ordinarily support contact, **the courts will expect alternative arrangements to be made to establish and maintain regular contact between the child and the other parent**, for example remotely – by Face-Time, WhatsApp Face-Time, Skype, Zoom or other video connection or, if that is not possible, by telephone.

Temporary variations to contact orders WITHOUT REFERENCE TO THE COURT can be made by one of the following means:

- Where parents agree to temporarily vary the arrangements of a contact order they are free to do so, and each should record such an agreement in a note, email or text message sent to each other and to their legal representative (if they have one);
- Where parents do not agree to vary the arrangements of a contact order, because one parent is sufficiently concerned that complying with the arrangements would be against current PHA advice, then that parent may exercise their parental responsibility and vary the arrangement to one that they consider to be safe. If, after the event, the actions of a parent acting on their own in this way are questioned by the other parent in the Family Court, the court will consider whether each parent acted reasonably and sensibly in the light of the official advice and any Stay at Home Rules in place at that time, together with any specific evidence relating to the child or family.

If any court directed contact arrangements are missed or found to be unreasonable, the court may take this into consideration when making further orders, and separated parents may be able to 'make up' time with the child after the restrictions are lifted. It is vital that child's needs are put to the fore by both parents, and the child should not be used as a source of tension or conflict –

especially at a time when the child is likely to be feeling anxious about the effects of the pandemic.

Where a party to the proceedings feels a **matter of contact is urgent** they may request a hearing by lodging the requisite Form (**FCI1** where represented, or **LIPCI1** if unrepresented / Litigant in Person). On receipt of the form the judge will determine whether the matter is urgent or necessary and if it can be dealt with administratively or will require a hearing. Where the judge determines a hearing is required the parties will be notified of the arrangements, date and time. It must be noted that new emergency legislation makes it an offence to record or transmit an image or sound which is being transmitted via audio or video live link.

These arrangements will be kept under review and will be revisited as circumstances develop.

ADDITIONAL FAMILY BUSINESS TO BE UNDERTAKEN

Children Order, Wardship, Family Law Act, & Non Molestation cases:

Hearings that require the involvement of key frontline staff, such as the medical profession, social workers, or their support staff are unlikely to be progressed at this time. However, where feasible, additional business during this phase should include the following:

- **adoptions** – applications such as the appointment of a guardian ad litem (GAL), hearings where there are no issues and the GAL is in agreement, and **Hague Convention** applications;
- children order cases where the parties agree proposed terms of an **interim or final disposal** for the courts approval can be dealt with **via live link** for oral submissions and/or written submissions; or
- children order cases where the parties have significantly narrowed the issues, but **require direction** on a **net interim issue** that can be appropriately dealt with by way of **live link** for oral submissions and/or written submissions.

Matrimonial:

- **Undefended divorces** (to include applications to make an agreement a rule of court where relevant) ;
- Applications for **Decree Absolute** - highlighting any urgency

Ancillary Relief:

- **Financial Dispute Resolution (FDR) Hearings before the Master by telephone/videolink** (provided suitable arrangements can be in place to allow Solicitors and clients to engage appropriately);
- **Consent Orders/ Summons to have an agreement made a rule of court.**

Office of Care & Protection (Patients):

- **Non-contested** applications in Patient's Cases to include Controller and Controller ad Interim applications;
- **Declaratory applications;** and
- **Registration of Enduring Power of Attorney** applications and **Form EP3** applications

Subject to express directions in any particular case, parties may present evidence by way of a signed and dated Statement rather than a sworn Affidavit.

Work that we are unlikely to be able to deal with at this stage includes:

Contested children order or patient's applications, or those involving staff diverted to frontline pandemic duties; Defended Divorce, or new divorce applications; contested ancillary relief applications, etc unless the issues are straightforward. These cases will be brigaded into 'lists' and adjourned into future dates.

CASE MANAGEMENT PROPOSALS

In general, it is proposed that Judges and Masters (depending on allocation) will undertake administrative reviews of family cases by court tier and business type in a gradual and incremental approach.

Parties will be given advance notice of the cases to be reviewed which will normally be notified by email via the Law Society and Bar Library. When requested to do so, representatives should complete Form **FCI1 collaboratively**, and lodge it by email with the relevant⁵ Court Office by the specified date, and no later than 5 working days in advance of the **date listed where no return by date is indicated**. Unrepresented parties / Litigants in Person will be notified by the court office, and may be requested to complete Form LIPCI1. Where a hearing is requested, the

⁵ See high level Guidance for all Courts for details of court offices dealing with consolidated business

parties will suggest the means by which they will engage with the court, to inform the judge's determination.

The Judge or Master will consider the requisite form and any papers lodged. Where the Judge or Master determines a hearing is required the parties will be notified of the date and time. **Where a hearing is to be arranged they will generally take place remotely** either by Sightlink, telephone, email or BTMeetme etc. All other matters will be determined by a Judge / Master administratively without a hearing.

HIGH COURT - FAMILY DIVISION

The focus of the call-over of the **High Court Judge family** cases on 11th May was initially on cases listed between 26 March and 8 May and the practitioners were asked to lodge the required forms by 1 May 2020.

The Masters will undertake an administrative review of **High Court Children Order, Patients and Matrimonial** cases as set out in guidance issued on the same date as this guidance.

COUNTY COURT FAMILY

County Court Judges will carry out reviews on a gradual and incremental basis across the jurisdiction. Lists may be separated by the nature of the business (eg children order, matrimonial, ancillary relief), and details will be notified in advance.

- **Family Care Centre Children Order cases**

The family judge for each **Family Care Centre** will initially undertake an administrative review of **Children Order cases**.

Judges will identify cases which will then be listed for review and the parties will be notified 10 days in advance of the proposed review date to allow them to complete the necessary forms. Unrepresented parties / Litigants in Person will be contacted directly by the Court Office.

Where both parties are represented their legal representatives should collaboratively complete Form FCI1 and lodge it by email with the relevant³ Court Office by the date specified, and no later than 5 working days in advance of the date listed where no date is indicated. Unrepresented parties / Litigants in Person should complete Form LIPCI1 where requested and lodge this with the relevant court office.

On receipt of the FCI1 / LIPCI1 the judge will determine whether the matter can be dealt with administratively or will require a hearing **on the review date**, or listed for a future hearing date. **Where the judge determines a hearing is required the parties will be notified of the arrangements, date and time.**

Where the judge determines a matter cannot be progressed at this stage, the matter will be adjourned to a fixed date determined by the judge for future review.

- **County Court Matrimonial**

Undefended Divorce

Judges will undertake an administrative review of all **Undefended Divorce hearings** which have been adjourned due to the current situation. This process will **commence as a pilot in Belfast** before it is extended to other divisions.

Judges will identify Belfast cases which are ready for hearing and set dates from **26th May 2020**. The parties will be notified by the court office 10 days in advance, if their case is to be included. No forms require to be completed unless requested.

If a respondent wishes to make representations to the court, he/she must do so in writing at least 5 working days before the hearing. The judge will then determine if the respondent should be allowed to participate in the hearing by making oral representations on live link.

The judge will make a direction under Schedule 27 to the Coronavirus Act 2020 so that the hearing can take place by way of live link, and the court office will confirm the arrangements, date and time for the remote hearing with the parties.

Decree Absolute

Applications for a **Decree Absolute** should be made in the normal manner. The applicant must highlight any urgency to the relevant³ court office.

Ancillary Relief

It is unlikely that Courts will be able to deal with contested applications for **Ancillary Relief** in this initial phase unless there is an urgency, but will aim to consider non-contentious matters such as **Consent Orders/ Summons** where parties seek to have an **agreement made a rule of court**. **Representatives should collaboratively complete Form FCI1 and lodge it by email with the relevant³ Court Office no later than 5 working days in advance of any review requested.**

On receipt of the FCI1 the judge will determine whether the matter can be dealt with administratively or will require a hearing.

MAGISTRATES COURTS FAMILY PROCEEDINGS

All Magistrates' court business is currently consolidated into four court hubs (Laganside Courts, Lisburn, Dungannon and Londonderry Courthouses) and urgent matters can be addressed by way of a court hearing. Other matters will be dealt with administratively, or be adjourned to a fixed date. Where a party to the proceedings feels a matter is urgent they may request a hearing by lodging the requisite form (FCI1 where represented, or LIPCI1 if unrepresented / Litigant in Person). On receipt of the form the judge will determine whether the matter is urgent or necessary and if it can be dealt with administratively or will require a hearing. Where the judge determines a hearing is required the parties will be notified of the arrangements, date and time.

- **Ards and Lisburn Pilot**

District Judges will carry out reviews of non-urgent business on a **gradual and incremental** basis, commencing with FPC cases listed in Ards and Lisburn.

The court office will provide details, via the Law Society and Bar Library, for all cases which are to be included in the reviews **10 days in advance of the proposed review date giving a specified date for return of completed forms (eg lists would issue on 26th May for return by 1st June for review of cases commencing 8th and 15th June). The subject line of the email including the completed Form FCI1 should state 'FPC Review'. **Unrepresented parties / Litigants in Person** will be contacted directly by the Court Office. **Where the judge determines a remote hearing is required the court office will notify all parties of the arrangements, date and time specific to their case.** Where the judge determines a matter cannot be progressed at this stage, the matter will be adjourned to a fixed date determined by the judge for future review.**

This review process will continue on a rolling basis. The process during the pilot will be kept under review and be revised as necessary before considering extending to other areas.