

GUIDE

Support for individuals and families during COVID-19

As at 27 April 2020

SHOOSMITHS

03700 86 3000 | www.shoosmiths.co.uk

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Considerations for individuals and families managing their legal affairs during COVID-19

COVID-19 is having a significant impact on individuals, businesses and the economy. This guide outlines our views on some of the practical, legal aspects arising for individuals and their families. Some of the sections are set out in the form of frequently asked questions we have recently come across, with our responses alongside.

For businesses, in separate guides available free of charge from our **COVID-19 support hub** [here](#) we provide:

- A summary of the financial support measures available during the COVID-19 pandemic to help identify which are applicable to businesses, in our Business Support Measures Guide
- A summary of the practical measures taken by the government and other bodies to enable businesses to continue trading during the COVID-19 pandemic, in our Business Continuity Guide

Personal wellbeing and adapting in challenging times

When a crisis hits, how many people have the instinct to look after themselves first, so as to be able then to help others?

| Key aspect | Our view |
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| How do you stay mentally, physically and emotionally charged to handle it all when the world can become a barrage of news, updates, e-mails, calls and general disorganisation. When I say disorganisation... I mean new unfamiliar stakeholders, new teams, patterns of working and of course those late on calls in the evening. | <p>Think about the mental resilience you will need first.</p> <p>Information will be flying at you from many sources and you can't possibly give your full attention to all of it. Think about who you trust the most and why. Do they give you well thought out structured information, new ideas, solutions or a crystal-clear view on reality? Once you've identified these individuals make sure it's a well-balanced team and, if it isn't, flag the weak spot. You may not be able to fill it, but at least knowing about it allows you to keep it front of mind when it comes to decision making. Doing this will help you cut through the noise.</p> <p>It's physically a marathon not a sprint...</p> <p>The trouble with a crisis is that it is often very hard to determine when the end might be in sight, so it is best to consider it a marathon and not a sprint. This is why it is so important to think about your physical needs throughout. It is likely that you won't be able to practice the very best habits but ensuring you keep some routine going is important. A daily gym session might not be possible, so try and fit in a thirty-minute home routine. Calls may come in late at night but try and fix a cut off time, allowing you to unwind and ease into your normal bedtime routine. Sleep is one of the most important aspects when conducting accurate evaluation and decision making and suffers if you have been drinking alcohol and eating too late at night.</p> |

| Key aspect | Our view |
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| Dealing with "Everyone wants a piece of me..." | <p>Emotionally any crisis will take its toll. Resilience is built up over time and experience but there are some short-term tools you can use to help.</p> <ol style="list-style-type: none"> 1. Gaining perspective or reframing: this allows us to think about how the situation could be worse or viewed from a different person's perspective. This can often shed light on positives which couldn't be seen previously. The analogy best known for this is the glass half full. 2. Fear: writing down what you are afraid of is often a release of pressure. This is so powerful because it allows the individual to have a confidential space to go through their fears and work out how best to handle them. Ask yourself: <ul style="list-style-type: none"> • What am I most scared of? • If I was to talk to a friend who had this problem what would I say? • Have I overcome challenges in the past? If I did, how did I do it and could I do the same thing again? 3. People are so negative. There is a sense of reality required in any crisis but there are also those who unnecessarily stoke the flames of anxiety. Here are some techniques to deal with them: <ul style="list-style-type: none"> • Ask them to balance their thought process with a positive angle to the situation • Distance yourself as much as you can without being unsupportive (these people may be your team members and colleagues). Putting dedicated time in means you can limit the amount of exposure you have to the negativity. 4. Find a beacon of light in every day and hold onto it firmly: for some this might be imagery, an experience or a feeling. Remembering the amazing fun you had with your kids and friends on a holiday can conjure up all three and it is a reminder that a crisis will pass and the world will be different again. 5. Time for you is also important: remember to do the things you did before to relax, such as gardening, reading or being with friends (virtually). Don't let that go. |

Shopping essentials

In these uncertain times, when it is tricky enough for the average person to shop for essentials, it proves particularly difficult to source basic essentials for those who are particularly vulnerable. Members of Shoosmiths Court of Protection team who support our professional Deputies for vulnerable clients, have been compiling some shopping key hints and tips to best help those who might be self-isolating, high-risk, have accessibility issues, or a variety of other reasons that means they can't get out to the shops themselves.

All the information that follows was correct as at 15 April 2020. We will look to update on a regular basis.

| Key aspect | Our view |
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| For those able to get out to the shops, please consider doing so and saving your delivery slots for those who need it most. Please also shop sensibly to ensure there is plenty left for everyone. We would also recommend dropping little leaflets into any elderly or vulnerable neighbours and friends around you offering your help if you are able or sign up to volunteer for one of your local mutual aid groups. | |
| For the elderly/vulnerable: | <p>Elderly and vulnerable people as well as carers and NHS workers who can get out may benefit from the following special rules for different stores.</p> <ul style="list-style-type: none">• Co-op: access from 8am-9am on Saturdays and 10am-11am on Sundays – this includes vulnerable customers and those who care for them.• Iceland: the first two hours of shopping every Wednesday morning generally but this is subject to store manager discretion – best to check your local store.• M&S: the first hour of trading every Monday and Thursday.• Sainsbury's: 8am-9am every Monday, Wednesday and Friday.• Tesco: 'prioritised' shopping between 9am and 10am every Monday, Wednesday and Friday.• Waitrose: the first hour of opening every day for the elderly and vulnerable and their carers. |

| Key aspect | Our view |
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| For NHS/Emergency workers: | <ul style="list-style-type: none"> • Aldi: every Sunday, 30 mins prior to store opening (i.e. from 9.30am-10am). They are also generally trying to prioritise entry to NHS workers during other hours – always bring ID. • Asda: NHS workers have 'priority' in larger store between 8am-9am every Monday, Wednesday and Friday. • Co-op: 8am-9am on Saturdays and 10am-11am on Sundays. • Iceland: the last hour of trade everyday (and the first hour from 7am in warehouse stores). • M&S: the first hour of trading every Tuesday and Friday. • Morrisons: from 7am-8am Monday-Saturday. • Sainsbury's: 7.30am-8am (before opening) from Monday to Saturday. • Tesco: the first hour before checkouts open every Sunday. • Waitrose: setting aside hard-to-find and essential items for NHS staff and giving priority checkout service so NHS workers are processed more efficiently. |
| For vulnerable people who can't get out at all | <p>Much of the difficulties we've been experiencing concern vulnerable clients who can't get out at all. This might be for practical reasons, but also many of our clients fall into the category of people who have been advised to isolate for 12 weeks at least. If these people are also isolating with family and carers, it is equally important that those sharing their home limit their exposure to the virus too.</p> <p>For these people, online deliveries would be ideal but trying to find a delivery slot in the next three weeks is nigh on impossible.</p> <p>We have compiled a list of the most recent availability/wait updates for the key online suppliers (please note many of these issues will vary based on your location in the UK). This information correct as at 01 April 2020.</p> <ul style="list-style-type: none"> • Asda: are now only releasing delivery slots 7 days in advance but these are currently completely booked up. It is also worth noting that even when ordered weeks in advance, deliveries are only packed the day they are being sent, so often many fresh essentials (e.g. meat, eggs, bread, milk) have already sold out before orders are packed. • Co-op: has recently started offering home delivery but their delivery section of their website is still completely down. • Iceland: There is regularly a queue to get into the website initially and testing on a few different areas across the UK is showing regular next day availability but nothing in the following days. It is possible Iceland have reduced booking only to next day to manage demand. • M&S: has partnered with Deliveroo and are now offering essentials available to order in this way from local M&S shops in BP garages. It will depend on your location, but you can order things like milk, bread, butter, ready meals and tea/coffee etc. All products are ordered through the Deliveroo app, not M&S directly. • Morrisons: now only booking deliveries 3 days in advance and currently all delivery slots are booked. • Sainsbury's: have stopped offering delivery slots to anyone but those on the government's 'extremely vulnerable' list. If you fall into the 'extremely vulnerable' category, you can still register with the government and Sainsbury's will automatically get in touch with you. See below for more information on this. • Tesco: still letting slots be booked up to three weeks in advance but there are currently no delivery slots available. Tesco are encouraging anyone who can Click & Collect or shop in store to do so to free up delivery slots for the elderly or vulnerable but so far slots are still completely booked. • Waitrose/Ocado: only releasing slots three days in advance and currently setting aside the first quarter of their online delivery slots for the elderly and vulnerable. They are only doing the latter by reference to the information they have on existing customers, however, or by non-customers registering with the government as 'extremely vulnerable'. |

| Key aspect | Our view |
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| Who gets priority? | <p>Those struggling to obtain online deliveries but who meet any of the 'extremely vulnerable' criteria listed should register under the government scheme here. As at 15 April 2020, this list has apparently been circulated to supermarkets and we understand that those people will be contacted directly by the shops to book deliveries.</p> <p>An individual who meets any of the following criteria is considered 'extremely vulnerable' by the government and they can register themselves or someone can register them on their behalf to be contacted for special assistance given their vulnerability. We understand the assistance to include priority booking slots for grocery deliveries and contact from local mutual aid volunteers for those who:</p> <ul style="list-style-type: none"> • Have had a solid organ transplant. • Have any cancer and are getting chemotherapy. • Have lung cancer and are getting radical radiotherapy. • Have cancer of the blood or bone marrow, at any stage of treatment – for example, leukaemia, lymphoma or myeloma. • Have any cancer for which you're getting immunotherapy or other continuing antibody treatments. • Have any cancer for which you're getting a targeted treatment which can affect the immune system – for example, protein kinase inhibitors or PARP inhibitors. • Have had bone marrow or stem cell transplants in the last 6 months, or are still taking immunosuppression drugs. • Have a severe respiratory condition – including cystic fibrosis, severe asthma or severe COPD (Chronic Obstructive Pulmonary Disease). • Have a rare disease or inborn error of metabolism that significantly increases your risk of infection – for example SCID or homozygous sickle cell. • Are getting an immunosuppression therapy that's sufficient to significantly increase your risk of infection. • Are pregnant. • Have a significant congenital or acquired heart disease. <p>Until recently, Sainsbury's was still advertising that you could register with them as a vulnerable customer even if you didn't meet the criteria of the 'extremely vulnerable' government list. We can no longer see this being an option and have not been able to garner any further information from their customer helpline.</p> <p>The best way to source essentials for vulnerable clients is if family and friends or external carers are willing to go and physically shop, depositing items on doorsteps to stick to social distancing rules.</p> <p>Asda have introduced a 'Volunteer Shopping Card' for those helping buy supplies in store for the vulnerable. It is designed to be loaded like a gift card and emailed to the volunteer to avoid the need to exchange cash or provide a card or bank details.</p> |
| Local Authority support | <p>Many local authorities have started to set up Community Support telephone lines. These are aimed at the local authorities' residents who are over 70 or under 70 with underlying health conditions. You can contact them for yourself if you fall in to the criteria or for someone else. Some also have online forms and they can offer community support if the resident has no friends or family nearby due to the coronavirus outbreak.</p> <p>Support can come in the form of help to collect prescriptions, shopping, topping up gas or electricity meters, with dog walking or simply someone to speak to. In some areas, Hubs are being set up to put together emergency supply packages including toilet roll and basic food parcels.</p> <p>Check with the relevant local authority either by phone or their website to see what they are doing to help.</p> |
| Mutual aid groups | <p>For those who do not have anyone able to assist in this way, there are coronavirus mutual aid groups being set up all across the country to help with things like this. You can search groups in your area by clicking here</p> <p>Note – many of these are run through Facebook so family members/friends/carers may be better accessing these for people who don't have Facebook where they feel comfortable.</p> |

| Key aspect | Our view |
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| Other resources that may prove helpful | <ul style="list-style-type: none"> • Amazon: you can order certain groceries and essentials from Amazon under 'Food & Grocery'. Amazon Prime members also have access to 'Amazon Pantry' which has a wider product range and offers faster delivery. Previously Amazon Pantry could offer delivery within hours in certain parts of the country but, as with everywhere else, delivery times are somewhat erratic in the current climate. • Mindful Chef: one of few recipe box delivery services still taking new orders – currently available from week commencing 4 April – you can choose 2-3 recipes for 1 person, 2 people, or a family (4 adults or 2 adults, 2-3 children). • Eversfield Organic: another one of very few meat/veg delivery boxes still taking new customer orders although only certain products are still available and delivery options are much more limited. Choose from selection boxes or individual fresh and organic meats, fish, veg, fruit and larder options. • Pasta Evangelists: available to delivery week commencing 6 April – you can order fresh pasta and sauce kits delivered to your door. They are also currently teamed up with Age UK on their 'Pasta Care Package' which costs £25.00, includes three meals (pick from veggie, meat, or a mix) and also donates £5.00 to Age UK. This is a little on the pricey side but could be a welcome treat for anyone who has been living on baked beans for a while already! • Parsley Box: still accepting new customers and with delivery available as quickly as 2-3 days, Parsley Box offer pre-made fresh meals that don't require refrigerating or freezing; they keep fresh in the cupboard for up to six months. |

COVID-19: use of DNRs (Do Not Resuscitate) and ACPs (Advance Care Plans)

Sometimes critical decisions are needed to continue, stop or start life-saving treatment. COVID-19 attacks respiratory systems and patients or family members are being asked to express wishes regarding cardiopulmonary resuscitation (CPR). Coronavirus is affecting many people who may not have considered how they would like to be treated or cared for and if they would like to be resuscitated if they suddenly fall seriously ill.

If you have made a decision yourself, it is sensible to let family members and carers know in advance so that it does not come as a surprise to them if the circumstances arise. This is even more timely, since recent press coverage has brought DNR's and Advanced Care Plans to the public's attention, but what exactly are they?

| Key aspect | Our view |
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| Do Not Resuscitate (DNR) | DNR – sometimes also called a DNAR or DNACPR – is commonly used as evidence of a decision specifically not to resuscitate, that is to provide CPR in the event that it would become necessary. A DNR does not affect other treatments a patient could receive. Usually they are used if someone is nearing the end of their life or has a complex medical condition. The paperwork is normally completed by medical professionals together with the patient (providing they have capacity to do so), or where the patient lacks capacity, by their family. Once the decision is made a DNR or DNACPR order is placed on medical records on a form the health professionals will recognise. |

| Key aspect | Our view |
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| DNR and Consent | <p>While there is a duty on medical professionals to consult with patients on any decision that will affect their private life, there is no right to demand that the doctor provides CPR if medical opinion is that it would be unsuccessful, or that the burden of CPR outweighs the benefit to the patient. CPR may restart the heart and breathing but leave the patient with a poor quality of life, therefore it is not in the patient's best interest. It is important to note all decisions should be made on an individual basis and there should be no blanket policies dictating the use of DNRs.</p> <p>Certain care homes and health centres have recently been criticised for contacting groups of patients in certain categories to make plans to prevent them being resuscitated. On 7 April 2020 the Chief Nursing Officer for England and Chief Medical Officer published a letter to all NHS Trusts and other health and care providers confirming the care which must be taken when considering DNACPR orders – a copy of which can be seen here</p> |
| DNR and Capacity | <p>It may be the case that a DNR is required for a family member who lacks capacity to make the decision for themselves. In these circumstances, a Court of Protection Order appointing a Deputy for Welfare would allow the Deputy to make the decision on behalf of the patient. Similarly, a registered Lasting Power of Attorney for Health & Welfare may also authorise the attorney to make the decision.</p> <p>If there is no authority already in place, a DNR decision can be made collectively in the patient's best interests. Families and carers should be involved in the decision-making process and given the opportunity to understand it, explain the patient's wishes if known, and explain their wishes.</p> |
| What if there is a disagreement with the DNR? | <p>If a doctor has made the decision to DNR, good practice dictates the decision is discussed by all involved and a second opinion obtained. If the disagreement remains, it is important to seek legal advice in respect of involving the Court of Protection. It is important to note, the courts will not compel a doctor to give treatment that they consider not to be in the patient's best interests. Further, a DNR decision is often made in time-pressured situation in the final stages of a family members' life. Therefore, a decision to involve the courts and the time this will inevitably take must be considered carefully.</p> |

| Key aspect | Our view |
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| <p>Advanced Decisions</p> | <p>An Advance Decision – sometimes called Advance Decision to Refuse Treatment (ADRT), Living Will, or Advance Directive – is a decision that can be made now to refuse a specific type of treatment(s) at some point in the future. The advantage of this is that it allows health professionals and your family to have clear instructions regarding your wishes about refusing treatment. An advance decision will only be used if, in the future, you're not able to make your own decisions about your treatment. It is possible to refuse a certain treatment in some circumstances, but not others therefore it is important to explain clearly all the circumstances in which you want to refuse the treatment.</p> <p>An Advanced Decision is legally binding under the Mental Capacity Act 2005 (England and Wales), and healthcare professionals must follow it if it meets the following requirements:</p> <ul style="list-style-type: none"> • You must be over 18 and have mental capacity. • It clearly states what treatments you want to refuse. • It clearly sets out the circumstances when this treatment should not be used (e.g. if you have a stroke or heart attack). • If you want to refuse life-sustaining treatment you must also make sure: <ul style="list-style-type: none"> - The form is in writing. - The form is signed and witnessed. - You include a statement that says this is your choice even if your life is at risk or shortened as a result. <p>It only applies if the treatment you have stated you do not want to receive is the treatment being considered, otherwise the treating healthcare professional will decide whether to use the treatment based on whether it is in your best interests.</p> <p>There is no obligation for anyone to see your Advanced Decision, but it is sensible that your medical professionals and your family know about it and where to find it, particularly in the case of an emergency. It is possible to have a copy of your advanced decision placed on your medical records.</p> <p>Advance Statement</p> <p>This is a general statement about the things that are important to you when it comes to your health, care and wellbeing. This can relate to any part of your life, health or care. It does not have to be written and can be in video or audio format. An Advance Statement is not legally binding, so if you have set out instructions in one, the treating healthcare professional does not have to follow them, but can take them into account when making any decisions about your care or what is in your best interests.</p> <p>Advance Care Plan (ACP)</p> <p>An ACP is normally made when you are nearing the end of life. It is different to any of the above which can be made at any time. An ACP is used to record your treatment and care wishes. It should be attached to your medical notes so that anyone who is caring for you has access to it. If you have made an Advance Decision, Advance Statement or an LPA it should be noted in your ACP.</p> <p>An ACP is not legally binding, but it will help your healthcare team know what is important to you, and they can try to follow your wishes. They must take the document into account when deciding what is in your best interests. The NHS has published a COVID-19 Advance Care plan form with guidance to help complete it. Usually an ACP is created together with your healthcare team but if you fall ill and need urgent attention there may not be time for this. The form and guidance can be found here.</p> |
| <p>Lasting Power of Attorney</p> | <p>When considering future decision making and capacity it is sensible to consider writing a Lasting Power of Attorney (LPA). This allows you (the donor) to give one or more people that you trust (attorneys) the legal power to make decisions on your behalf should you become unable to make decisions yourself.</p> <p>There are two different types of LPA, one for property and financial affairs which covers decisions about money and property, and one for health and welfare which covers decisions affecting health and personal welfare. Only attorneys named in a Health & Welfare LPA will have authority to make decisions regarding your health.</p> <p>Whilst LPAs are certainly useful when planning for the future, the process to enact them requires documents to be registered with the Office of the Public Guardian to bring them into effect. Registration takes between 8-10 weeks, therefore they should be considered at an early stage so that they are effective when required.</p> |

Buying and selling property

While there is no need to pull out of transactions, the government's guidance on social distancing does need to be followed. A more flexible approach by all involved in the home moving process is required to adapt to the conditions.

| Key aspect | Our view |
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| Movement restrictions and self-isolation affecting viewings by potential buyers | <p>With no visitors allowed into properties while the 'stay-at-home' measures are in force, estate agents could give general advice about the local property market and handle certain matters over the phone, but they will not be able to start actively marketing a property in the usual manner other than with virtual viewings.</p> <p>Similarly, surveyors will be unable to conduct valuation and homebuyer surveys and support from businesses such as removal companies is, for the time being, unavailable.</p> |
| Delay to completion dates and mortgage offers based on the government's advice. | <p>Full details of the government advice can be seen here. The government's advice to delay the completion date (when parties typically move) beyond the current indeterminate distancing period, anticipated next due for review in early May therefore seems sensible.</p> <p>Meanwhile UK mortgage lenders and building societies have also given their commitment to extend existing mortgage offers for three months from their current expiry dates where clients have committed to exchange of contracts.</p> |
| Purchasing a vacant property. | <p>Good news for buyers who invested in a mortgage application, survey and legal expenses prior to the 'lockdown' of normal life and contracted to purchase a vacant property with a fixed completion date falling within the distancing period. There may be no need to delay such a transaction from legal completion.</p> <p>Parties in this case are only advised to follow guidelines on staying away from others. It may be prudent to delay actually moving into the property to allow time for any risk of residual virus to die. If moving in more swiftly is unavoidable, then best advice is to thoroughly and carefully clean all surfaces within the property, wearing suitable protective clothing, and following advice on good hygiene, regularly washing hands and avoid touching your face.</p> |
| Parties already committed to a completion date. | <p>Where parties have already committed to a completion date falling within the distancing period requiring one party to move out of their home, the advice is to delay the completion date with all parties required to work together to achieve this. Anyone showing symptoms, self-isolating, or shielding is advised not to move home for the time being.</p> |
| Parties on the brink of exchange of contracts. | <p>The situation becomes more complex where parties are negotiating towards an exchange of contracts (when the transaction becomes legally binding and a completion date is typically fixed). Again, the government's advice is to delay the completion date beyond the current indeterminate distancing period.</p> <p>Prior to exchange of contracts, if any party has a change of heart, they are able to withdraw from the transaction without financial penalty. However, once contracts are exchanged then the completion date is usually agreed and fixed. The exception is newly constructed homes which may exchange with a later completion date, depending upon the progress of construction of the new home, although most construction is presently suspended.</p> <p>Ordinarily, once contracts are exchanged, then it is assumed that the parties progress to the completion date agreed. If completion cannot take place on the date agreed, then the usual position is that the suffering party should be able to serve a notice requiring completion within 10 further working days with a contract penalty rate of 4% over base per annum for the delay. If completion is not achieved, then after the 10 working days the contract is rescinded with the deposit being returned or forfeit – depending upon who is liable for the delay.</p> |

| Key aspect | Our view |
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| <p>Common sense and good faith rather than COVID-19 riders to contracts.</p> | <p>The Law Society of England and Wales has to date advised solicitors and conveyancers not to attempt to add “COVID-19 specific” untried or untested clauses to property contracts, due to the wide range of circumstances that could arise in the coming weeks.</p> <p>The expectation is that in the event that a chain cannot complete on an agreed date due to any coronavirus related issue, wherever possible the parties should apply ‘common sense’ and work together “in good faith” to overcome the challenge. Conveyancers will be expected to support the government’s advice and act with integrity to all parties to reach a compromise should be capable of agreement.</p> <p>The government’s latest guidance would seem to support this position and endorse the need for good sense and pragmatism to prevail. The commitment by mortgage lenders to extend offers post contract by three months should now enable parties already committed at exchange of contracts to negotiate a delay to the previously agreed completion date.</p> |

Protection from eviction

The government announced a “complete ban on evictions” for renters during COVID-19. The new provisions restrict residential landlords taking action to evict tenants during the period 26 March 2020 to 30 September 2020. The provisions apply only in England and Wales.

| Key aspect | Our view |
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| Before possession proceedings can be commenced, landlords must have given three months’ notice to tenants requiring possession to be given (rather than the usual two months). The provisions do not prevent action being taken to evict residential tenants. | <p>... on existing notices and possession proceedings / orders</p> <p>All court proceedings for evictions are on hold until at least 25 June 2020, regardless of when the relevant notice was served or when proceedings were issued.</p> <p>During this period of uncertainty, these protections to renters will certainly provide some relief. There is also help in place for landlords who are unable to pay their mortgage because of tenants being unable to pay their rent.</p> <p>... on rent payment obligations</p> <p>Unfortunately during the pandemic period rent does still need to be paid, however speak to your landlord if you are struggling to pay rent. You may be able to claim benefit or statutory sick pay if you lose your job, are sick or self-isolating, or your income goes down because of the outbreak.</p> <p>The Universal Credit Hotline is available still on 0800 328 5644 although due to the high demand it is recommended that you apply online on gov.uk. Universal credit is not always your best or only option, and you can get further advice from Citizens Advice.</p> <p>... on help with gas and electric payments</p> <p>Depending on your energy supplier, help may be available. If you have a pre-payment meter the supplier may even be able to arrange someone to top up your meter or send you a top up card if you are self-isolating or unable to leave the house.</p> |

Mortgage payment holidays

Mortgage Lenders supported by the Building Society's Association and UK Finance have announced that they won't apply to court to repossess home owners for three months starting 19 March. They will also allow a three month payment holiday for those struggling to cover mortgage payments due to coronavirus.

| Key aspect | Our view |
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| How do I apply? | <p>Speak to your lender to see what support they offer, you can usually apply for the three month payment holiday online via your lenders website. Please do not cancel your direct debit- you must apply officially for the payment holiday or it may register as a missed payment.</p> <p>Please be aware that this is not a mortgage free period, the payments are just paused for up to three months. Mortgage payments will still have to be made in the future, either by increasing mortgage payments or extending the length of your mortgage. This option also may mean that your monthly mortgage payment goes up after the payment holiday ends. The Lender will agree with you a manageable way to make up the deferred payments depending on your circumstances.</p> |
| Do I qualify for a payment holiday? | <p>A three month payment holiday for homeowners is available if you are up to date with your mortgage payments. If you are in arrears with your mortgage you should contact your lender, who will discuss your options.</p> <p>You don't need to have the virus to be eligible. Any homeowner who is concerned about their ability to meet their monthly mortgage payment, due to a change in work or other circumstances, can apply. Landlords of rented property whose tenants have been financially affected are also eligible.</p> <p>Payment holidays are only one option that your lender can offer. We suggest you contact your lender for advice.</p> |
| Will this affect my credit score? | <p>Credit reference agencies Experian, Equifax and TransUnion confirmed on 31 March that homeowners will have their credit score protected if they take out a mortgage payment holiday, known as an emergency payment freeze. This means your credit score will be maintained at its current level for the duration of the payment holiday.</p> |
| Can I get help with gas and electric payments? | <p>Depending on your energy supplier, help may be available. If you have a pre-payment meter the supplier may even be able to arrange someone to top up your meter or send you a top up card if you are self-isolating or unable to leave the house.</p> |

Preparing and executing a will during COVID-19

Given the government's instructions to stay indoors and reduce social contact, lawyers and those wishing to make a will are in a difficult position to comply with requirements in order to ensure that a will is legally correct.

The current circumstances present challenges to everyone making a will. These can be overcome for the majority of people, but care and consideration must be used to ensure that wishes can be carried out without challenges being made in the future.

| Key aspect | Our view |
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| Giving instructions as to what you would like in your will | Face to face meetings with your legal adviser are now difficult since legal advisers are, like everyone else, obliged to stay at home for the period of time required by government and not to travel to a client's home to take instructions. It is possible to overcome this hurdle through the option of meetings via telephone or videoconferencing in order to get the information needed to draft the will. Difficulties could arise from your legal adviser's need to assess mental capacity if the client is elderly or has an illness such as Alzheimer's. Obtaining a doctor's report confirming capacity, given the current pressures on the National Health Service and GP's practices, could prove a lengthy process if that was considered necessary |
| Valid execution of wills – through witnessing Your will is not valid until signed and witnessed. In England and Wales, a will is not valid unless it is signed by the testator (the person making the will if they are male and testatrix if they are female) in front of two witnesses, who must both see the testator sign. Neither of these witnesses (nor their spouses or civil partners) can be a beneficiary under the will and they must be over 18. The witnesses do not need to read or know the contents of the testator's will, but in turn they must sign the document in front of the testator and then print their full names, addresses and occupations below their signatures. Witnesses must both be physically present and sign on paper. | Despite extremely challenging circumstances it seems highly unlikely that the current law will be changed or relaxed in relation to the signing of wills. We are advising clients that in addition to signing their wills in the presence of two independent witnesses that they also complete a separate document confirming the details of all parties, the fact all parties were present and asking all parties to sign the same (for further information see below). Whilst not legally binding, it is evidence that may be useful if there is a challenge in the future. For the duration of COVID-19, legal advisers may have to send wills to clients and ask them to make arrangements for suitable witnesses to visit them while still following social distancing advice. Witnessing a will from the next room or through a window could be challenged as not being formally 'in the testator's presence'. We may have to go back to some very old case law from 1781 suggesting that it might be sufficient to have two witnesses who are in line of sight, although not necessarily in the same room. |

| Key aspect | Our view |
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| <p>A template to provide information on the circumstances surrounding the signing of the will</p> | <p>For the time being and until further specific guidance is issued, as stated above, it may be wise for people wishing to make a will to follow the legal requirements as far as possible and return a separate document along with their will which confirms that:</p> <ul style="list-style-type: none"> • You understand the will fully and that it reflects your instructions and intentions. • You have told your witnesses that you have read and understood the contents of your will and have signed and dated it in front of both witnesses, who both saw you sign. • There are no errors, omissions or spelling mistakes in the will. If there are, that you and your witnesses have put your initials beside any changes in each other's presence. • Both witnesses have signed in front of you and printed their full names, addresses and occupations below their signatures. • Neither of your two witnesses, their spouse or civil partner, are a beneficiary of your will and that they are over 18. <p>This could be shown as evidence if there was a challenge of the validity of the will and would help in establishing the circumstances surrounding it.</p> |

Shared care movement restrictions for separated and divorced parents

| Key aspect | Our view |
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| The official instruction to “stay home” makes social distancing especially difficult for separated or divorced parents with children who spend time between two families or with siblings or other family members who are doing likewise. | <p>A brief pdf which covers the main points of the government instruction to remain indoors can be seen here</p> <p>Mr Gove, the MP for Surrey Heath and Chancellor of the Duchy of Lancaster, clarified the position:</p> <p>“I wasn’t clear enough earlier, apologies. To confirm – while children should not normally be moving between households, we recognise that this may be necessary when children who are under 18 move between separated parents. This is permissible and has been made clear in the guidance”</p> <p>Despite this clarification, divorced or separated parents will still be expected to adhere as far as possible to the restrictions in place and limit their and their children’s exposure to others. Whilst the government ban on gatherings of more than two people will not apply to people who live together, parents will need to consider how they can limit exposure to the virus in their households.</p> <p>This may involve a change to the usual care arrangements. For example, you could look at limiting the amount of time you would usually travel between homes and agree longer periods of time the children spend in each household.</p> <p>If you cannot agree what the care arrangements should be during COVID-19 and you believe a change in the care arrangements are in your children’s best interests, you will need to make an application to the court to either vary an existing order or to ask the court to determine what the care arrangements should be.</p> |
| The impact of school closures and stricter social distancing measures on contact and shared care arrangements. | <p>If you are separated or divorced and have a care plan in place for your children what happens now schools are closed across the UK? Can you just keep the children?</p> <p>For guidance on agreeing child arrangements at this time see our earlier article here</p> |

Can the economic impact of COVID-19 justify the reopening of your divorce settlement?

The COVID-19 lockdown means that the personal finances of many people are now very different to what they were at the time of entering into their divorce settlement. COVID-19 has already had a significant impact on job losses and wage or salary cuts as well as reductions in share prices and pension funds. Pressure on recently divorced couples may also be exacerbated if orders provide for the transfer, re-mortgage or sale of a property.

Those recently divorced couples are now asking if the unprecedented times we find ourselves in justifies the reopening of an order?

| Key aspect | Our view |
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| Orders that can be varied or reopened | <ul style="list-style-type: none">• Maintenance pending suit: orders providing for an amount of maintenance to be paid, usually on a monthly basis until the pronouncement of decree absolute.• Periodical payments and secured periodical payments: orders for the payment of maintenance from decree absolute for a specified term or on a joint lives basis.• Lump sums by instalments.• Provision for children: whether maintenance or payment of a lump sum by instalments.• Deferred lump sums: orders that include provision in respect of pension rights.• Settlement orders: for example, an order providing for the settlement of a property for the benefit of a spouse or children of the family.• Sale of property.• Pension sharing order: made before the pronouncement of decree absolute. |

| Key aspect | Our view |
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| What happens if you don't have one of the orders that can be varied or reopened as above? | <p>If new events occur that invalidate the basis or fundamental assumption on which a financial order was made (the Barder principle) an application can be made to have it set aside. The grounds on which a financial order may be set aside are a matter for decisions by judges. Barder -v- Barder [1987] 2 FLR 480 established that a court may allow a challenge to a financial order on the ground of new events, if the following four conditions are satisfied:</p> <ol style="list-style-type: none"> 1. New events have occurred since the order which invalidate the basis or fundamental assumption on which it was made, so that, if leave to appeal out of time were given, the appeal would be certain or very likely to succeed. 2. The new events should have occurred within a relatively short time of the order having been made. In the relevant judgement, Lord Brandon stated "While the length of time cannot be laid down precisely, I should regard it as extremely unlikely that it could be as much as a year, and in most cases, it will be no more than a few months". 3. The application for leave to appeal out of time should be made reasonably promptly in the circumstances of the case. 4. The grant of leave to appeal out of time should not prejudice third parties who have acquired in good faith and for valuable consideration, interests in a property which is the subject matter of the relevant order. |
| Interpretation of the Barder principle | <p>The courts have generally taken a very restrictive approach to interpreting and applying the Barder principle. Case law seems to suggest that the natural process of price fluctuation (however dramatic those fluctuations may be) whether in houses, shares, or any other property does not come within the ambit of the Barder principle. Nor has unemployment been capable of being a Barder event as loss of employment is "something that hundreds of thousands of breadwinners...have to face" [Maskell v Maskell [2001] EWCA Civ 858.</p> <p>Following the global financial crisis of 2008, a number of applications to vary or re-open orders fell short of the Barder test. In Myerson v Myerson (No 2) [2009] EWCA civ 282 the husband sought to appeal an order out of time on the basis of a catastrophic collapse in the value of his shareholding in a company which he had chosen to retain as the bulk of his share of the matrimonial assets. He sought to argue that the financial crisis of 2008 had been an unforeseen event falling with the Barder principle. The court reaffirmed earlier case law that natural processes of price fluctuation do not satisfy the Barder test.</p> <p>The court also refused the husband's application because payment of a lump sum was spread over five instalments (amounting to £2.5 million) which could be varied. Given this potential relief, an appeal would be uncertain to succeed, thereby failing one of the Barder conditions that an appeal should be certain or very likely to succeed. Importantly though this case didn't rule out the possibility that a party who encountered "financial eclipse" could argue that their financial remedy order should be overturned as a result. An order is also more likely to be set aside as a result of a significant change in asset values if the applicant is unable to rehouse as a consequence.</p> |
| So can COVID-19 be considered a Barder event? | <p>The answer here depends to a large extent on whether COVID-19 is more than a natural process of price fluctuation and if it was reasonably foreseeable. The courts are likely to want to restrict the floodgates of potential litigation to preserve the finality of litigation and clean break orders. However, we are in unprecedented times where so many established assumptions, behaviours or ways of doing things are being turned on their head. COVID-19 is a completely unprecedented pandemic and different to the global financial crisis of 2008. Although every case will depend on its own particular facts, there will be financial consequences of the pandemic for some families which may fit squarely within the Barder principles.</p> |
| So where do you stand if you need to resile from a previous agreement? | <p>If one party is not in agreement to varying previously agreed terms of settlement, they can issue an application to ask the court to make an order in the terms of the agreement. This type of application is called "a notice to show cause why the other party should not be held to the terms of the agreement". A change in circumstance is one of the grounds that can be used to defend such an application. Again, the change must be unforeseen and must undermine the basis of the agreement reached.</p> |

Special Education Needs (SEN) provision: questions and answers

Parents of youngsters with disabilities and SEN are naturally worried that the Coronavirus Act could see the erosion of their children's hard-fought-for rights. The Coronavirus Act, which became law on 25 March 2020, allows the Secretary of State to amend certain aspects of SEN law, one example of which is the change from Local Authorities having an absolute legal duty to provide the provision within Section F of an Education, Health and Care Plan (EHCP) to a Local Authority having to use its "reasonable endeavours" to fulfil their duty.

| Key aspect | Our view |
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| Are children with SEND vulnerable for the purposes of being able to go to school during the shutdown? | The Guidance, issued by the Department for Education on vulnerable children and young people (updated 1 April 2020) identifies 'vulnerable children' as those who have a social worker and those children/young people with an education, health and care plan ('EHC plan'). Children with SEND but without an EHCP, such as those on SEN support would be expected to stay at home. |
| If a child has SEND but does not have an EHC plan are they considered vulnerable and able to attend school if their parents decide to send them? | Children with SEND who do not have an EHC plan are not considered 'vulnerable' under the current DfE guidance. Unless one parent is a key worker, the expectation is that these children will stay at home and parents do not have a choice to send them into school. If a child is waiting for an EHC plan to be issued, and that process is underway by their Local Authority, the school has discretion to conduct a risk assessment to determine whether that child continues to attend school or if their needs can be met at home. |
| Can children considered 'children in need' for the purposes of the Children's Act 1989 go to school? | Children in need will have a social worker allocated or be under the care of social services and are therefore considered to be 'vulnerable children'. This means that they can go into school, subject to a risk assessment taking place. |
| Are parents of vulnerable children obliged to send their children to school during this period? | No. There will be vulnerable children with underlying health conditions who need to stay at home at present. Children with an EHC plan should be risk-assessed by their school, in conjunction with parents and the Local Authority, to decide whether they should attend school or whether their special educational needs can be met at home. |
| How does the Coronavirus Act impact assessments for EHC plans? | The Act does not alter the timescales or legal process Local Authorities must comply with for EHC needs assessments or issuing EHC plans. All timescales set out in the Children and Families Act 2014 and accompanying regulations and SEND Code of Practice remain in force. However, the guidance on vulnerable children and young people does state: "We are also proposing to amend regulations to provide for flexibility over matters such as the timescales in EHC needs assessments, and the reviews, re-assessments and amendments processes where particular cases are affected by the COVID-19 situation" so changes may be introduced in due course. |

| Key aspect | Our view |
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| How will the new coronavirus legislation change the duty on local authorities to provide SEN support via making provisions in an EHC plan for children in need (s.42 Children and Families Act 2014)? | <p>The Act allows for certain provisions to be temporarily modified or removed. One of these is s.42 Children and Families Act 2014 – the absolute duty on a Local Authority to secure the special educational provision for a child, specified in Section F of their EHC plan. The Secretary of State can change this absolute requirement to simply requiring that the Local Authority uses its ‘reasonable endeavours’ to deliver a child’s special educational provision.</p> <p>This means that Local Authorities will need to look at alternative ways of ensuring children receive their required provision (e.g. if therapies can be offered by video link rather than in person). It is not simply an excuse for a Local Authority to advise that, as schools are closed, a child cannot receive any provision.</p> |
| How will these changes come into force? | <p>The Secretary of State is authorised, by Schedule 17, part 1 to issue a notice temporarily removing, or relaxing certain statutory provisions. Until, and unless such a notice is issued, the current statutory provisions under the Children and Families Act 2014, including s.42 remain legally in force.</p> <p>The notice issued by the Secretary of State must state why such a notice is considered to be “appropriate and proportionate action...relating to the incidence and transmission of coronavirus” (Schedule 17, part 1, paragraph 5 (4)).</p> |
| What sort of notice of any changes will be given? | <p>Any notice issued by the Secretary of State can be for up to a month at a time, but important to note that repeated notices can be issued. The Secretary of State must publish the notice and do anything else considered reasonable to bring it to the attention of people likely to be affected by the notice. Whilst the Coronavirus Act does not specify the requirements around publication, it is likely that this will be done on the DfE website.</p> |
| What provision can children with existing EHC plans expect at the moment? | <p>Whilst children are still entitled to the provision detailed in their EHC plans, parents should be reasonable and manage their expectations. Understandably as the situation develops, it’s likely that an increasing amount of school staff and therapists will be self-isolating or become unwell. Therefore, efforts need to be made to consider other ways of children receiving provision (e.g. video link).</p> |
| What is happening with EHC plan annual reviews – are they continuing? | <p>The Coronavirus Act 2020 allows for the Secretary of State to temporarily disapply s.44 (1) Children and Families Act 2014 – the requirement for an annual review of an EHC plan to be held. The Secretary of State can only take this action, and issue a notice confirming this where it is considered to be ‘appropriate’ and ‘proportionate’.</p> <p>Therefore, annual reviews are likely to be delayed until further notice.</p> <p>Some Local Authorities and schools are continuing to carry out the review meetings remotely/by video link where possible, to ensure they do not have a significant backlog. For the time being SEND Tribunal appeals will also be conducted ‘remotely’ for at least the next three weeks, when the position will be reviewed. Arrangements for these hearings will be confirmed to interested parties two days in advance of the proposed hearing date.</p> |

Contacts:



Karen Stewart
Partner
Residential Property
+44370 086 2080
karen.stewart@shoosmiths.co.uk



Melissa Maple
Partner
Wealth Protection
+44370 086 8991
melissa.maple@shoosmiths.co.uk



Caroline Watson
Partner
Family
+44370 086 8314
caroline.watson@shoosmiths.co.uk



Kashmir Uppal
Partner
Medical Negligence
+44370 086 4375
kashmir.uppal@shoosmiths.co.uk



Phil Barnes
Partner
Medical Negligence
+44370 086 4076
phil.barnes@shoosmiths.co.uk



Lucy Taylor
Senior Associate
Wealth Protection
+44370 086 4043
lucy.taylor@shoosmiths.co.uk



Victoria Federico
Solicitor
Education
+44370 086 8469
victoria.federico@shoosmiths.co.uk



Caroline White-Robinson
Head of Knowledge Management and Learning & Development
+44370 086 3685
caroline.white-robinson@shoosmiths.co.uk

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