

## C2 Reduction Project Version 2 March 2019

### Guidance Document

This document sets out guidance for all Judges, Legal Advisers, court staff and family law practitioners at Birmingham Family Court, with the approval of Her Honour Judge Thomas.

#### **Background**

The Family Court office in the middle part of 2017 received 300 C2 applications in 22 days. This figure remained at a similar level in subsequent months which is indicative of how much reliance is placed on the C2 process to alert the Court to the fact that there is a problem in a family case.

The consequence of this heavy use is that the court office is inundated with processing these applications; Judge and Legal Adviser time is taken up with considering such applications; and then listing has to deal with those matters which require a court hearing. This, in turn, blocks the court lists with applications, which if approached in a different manner, may have been resolved without a hearing, thus freeing up court time for other more urgent matters.

Such is the in-built delay in this current process that orders are not being sent out by the court in time for hearings to be used effectively, which is resulting in court time and the time of those attending being wasted. Parties are often working on the basis that they believe a draft order has been approved but they have no formal confirmation of this.

This problem has been raised as an issue by Judges, Legal Advisers, court staff and practitioners alike and it is clear that the current system is not working effectively. Parties are incurring significant costs by employing the C2 process, which carries a fee of £155 for each application where there is no consent. The fee for a consent application is £50 but the court office does not receive a large number of these.

Her Honour Judge Thomas approved the C2 reduction process to enable those applications to be dealt with in a timely manner, and without delay.

The scheme has now been operational for nearly two years, and Her Honour Judge Thomas has recently reviewed the process to consider whether amendments will further improve its efficiency, and assist the Court and practitioners.

#### **The four main alterations are as follows:**

1. Where the application is to amend the filing date for evidence, the draft order must set out the date of the order to be amended, and the paragraph number of the direction for which an extension of time is sought, **together with the original filing date**, and then the proposed new filing date.

2. When the alteration of that date means that other evidence due to be filed has less time before it is filed, the draft order must also address **each other direction that is affected**, by setting out the original date, and the new proposed date.
3. Where the parties have been sent the final version of the order from the Court, in respect of which they seek a variation, a scanned copy of that shall be attached to the application.
4. In public law matters, the week that the proceedings have currently reached and the next hearing date must be inserted.

The four draft orders have been amended to create greater clarity as to the situation in which each one is to be used. There is no longer a need to provide the details of the parties at the top, and instead all that is required is the case number and the names of the children.

It is emphasised that unless the Judge has given express permission, applications are **not** to be sent directly to the Judge.

All local practitioners are urged to adapt their current working practices in order to comply and to reap the benefits of a more efficient way of working which this process will bring. If this process is properly followed C2 applications can be dealt with more quickly.

### **Process**

For this process to work it is essential that the parties ensure that discussions have taken place, and that agreement has been reached where possible, before making contact with the Court.

It is noted that this requirement is rarely fulfilled. Practitioners and the local authorities are reminded of the different fee levels that are charged for applications which are by consent, or not. Practitioners are reminded that to enable other parties to give a proper consent they must be given proper notice to enable them to take instructions and then respond.

It is also noted that applications are routinely being made very close to, or even after, the dates for which amendment is sought. That means, in simple terms, that a Court order is often not complied with, which is unacceptable. It also creates a number of obvious difficulties, not least that it runs the risk of the Court being faced with a fait accompli, where the order has not been complied with, and the time has passed. An extension of time is then sought, and the Court has little option but to accept that situation. Practitioners are reminded that that situation should only arise rarely, and that when it does a full explanation must be given.

Practitioners are reminded of the view of the President Sir James Munby in **Re W (A Child); Re H (Children) [2013] EWCA Civ 1177**

*“It is, unhappily, symptomatic of a deeply rooted culture in the family courts which, however long established, will no longer be tolerated. It is something*

of which I complained almost thirteen years ago: see Re S (Ex Parte Orders) [2001] 1 FLR 308. Perhaps what I say as President will carry more weight than what I said when the junior puisne.

51. I refer to the slapdash, lackadaisical and on occasions almost contumelious attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders: see Re W (A Child) [2013] EWCA Civ 1227, para 74.

52. The law is clear. As Romer LJ said in Hadkinson v Hadkinson [1952] P 285, 288, in a passage endorsed by the Privy Council in Isaacs v Robertson [1985] AC 97, 101:

*"It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void."*

*For present purposes that principle applies as much to orders by way of interlocutory case management directions as to any other species of order. The court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Non-compliance with orders should be expected to have and will usually have a consequence.*

53. Let me spell it out. An order that something is to be done by 4 pm on Friday, is an order to do that thing by 4 pm on Friday, not by 4.21 pm on Friday let alone by 3.01 pm the following Monday or sometime later the following week. A person who finds himself unable to comply timeously with his obligations under an order should apply for an extension of time before the time for compliance has expired. It is simply not acceptable to put forward as an explanation for non-compliance with an order the burden of other work. If the time allowed for compliance with an order turns out to be inadequate the remedy is either to apply to the court for an extension of time or to pass the task to someone else who has available the time in which to do it.

54. Non-compliance with an order, any order, by anyone is bad enough. It is a particularly serious matter if the defaulter is a public body such as a local authority.

Attached to this guidance document is a new set of template orders which set out what is required in the draft court order and which will make clear what information should be included in correspondence to the court. They have titles which will enable practitioners to choose the most appropriate template.

The following situations have been provided for:

**1. Where the timetable will not be affected but individual directions need amending.**

This order is to be used when one or two directions need amending, which does not impact upon other directions, such that there is less time to comply with a filing date.

**2. Where it is agreed that the timetable will not be affected and that further directions are required, in addition to those ordered at the last hearing**

This order is to be used when an additional direction that had not been sought at the hearing is now sought.

**3. Where the timetable will be affected and an urgent hearing is sought**

This order is to be used when there are such difficulties that it is apparent a hearing is necessary.

**4. Where the timetable will be affected but the case can remain ‘on track’ and the case can be re-timetable with agreement**

This order is to be used when a proposed amendment to an order would mean that other directions will have less time to be complied with, so the case needs to be retimetable, but can still be done such that the next hearing is able to be used for the original purpose it was listed for.

You will see from the templates that some guidance has been included in respect of the level of detail and background information required. In particular, the direction in a previous order which requires variation must be referred to, together with the previously ordered date in the proposed new order.

These orders, although drafted with public law in mind, can be adapted for use in private law and therefore separate private law templates have not been created.

These template orders can also be used if correspondence received from the court is from a litigant in person and the Judge / Legal Adviser can amend them accordingly.

### **Where Agreement between the Parties Cannot be Reached**

For example, you may have a situation where one party has proposed an order to the other parties, but not all of them agree and one (or more) proposes a different order.

In this situation, either the case requires Court time to resolve the outstanding issue, in which case the Judge or Legal Adviser will consider the draft order submitted and will insert a date when the matter can be listed for a hearing, or if the matter is before a Judge, the Judge can consider the competing contentions as to the order which should

be made and, if appropriate, make an order in the absence of the parties or failing that list the matter for a hearing.

### **Naming Convention**

In order for the Court office to be able to identify these orders when sent to the Court the following 'naming convention' needs to be followed.

NOTE: - this has changed from the previously suggested naming convention, and is now in line with the naming convention for the Urgent Family Prep email account.

Please use the following naming convention in the subject line:

**Name of case; date of hearing; what the document is; case number; name of Judge**

For example: BCC v Smith; 12.2.19; C2 application to amend timetable; BM19C00001; HHJ Thomas.

### **Court Fee**

Where an agreed proposed order is sent to the Court via email the fee will be £50.

### **Email Addresses for the Court**

Please ensure that the email includes information about which party is lodging the order and the fee to be taken.

The following email addresses should be used

**Public Law:** [publiclaw.birmingham.countycourt@justice.gov.uk](mailto:publiclaw.birmingham.countycourt@justice.gov.uk)

**Private Law:** [family.birmingham.countycourt@justice.gov.uk](mailto:family.birmingham.countycourt@justice.gov.uk)

### **Court Action**

Upon receipt of the email, together with the proposed draft order as a **word document**, the Court office will ensure that the email is brought to the attention of the relevant Judge / Legal Adviser.

**Emails attaching a proposed order as a PDF will be returned, as will emails which do not following the naming convention, and C2 applications which do not conform to this guidance.**

Upon receipt of the application in a correct form the Judge / Legal Adviser will consider the proposal and make a decision, after which a sealed order will be sent out to all the parties.

### **Judges / Legal Advisers' Action**

The Judge or Legal Advisor will deal with the application, complete the order and respond to the email. It is not necessary for the order when drawn to include the number of weeks that the case has been ongoing, or when the next hearing is.

If a C2 is dealt with by other than the allocated Judge, then the person dealing with it should copy the allocated Judge into the reply to the Court office.