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The Coronavirus and Family Law

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Spotlight



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The World Health Authority is on the verge of declaring the coronavirus a pandemic, a disease found significantly on more than one continent and being spread frequently between people. How should family lawyers take this into account in the work they are undertaking for their clients, particularly international clients or those with assets abroad? This summary note is intended for England and Wales but has relevance for all family lawyers around the world.

The IMF has recently said that the virus threatens global economic recovery. The FTSE has seen the biggest fall in four years. The Dow Jones, NASDAQ and Nikkei along with other markets have fallen. China has said its economy will recover but no one can forecast duration. Family law deals with the assets and businesses in the commercial environment and has to take account of the global economy. At a personal level, there are clearly health risks in some countries and parts of some countries with fast developing outbreaks. For those either in quarantine or in parts of the world effectively in quarantine curfew, it is a grim situation. Family law has particular concern for children in these situations.

Of course, there must be no panic nor disproportionate responses. Nevertheless, in some cases it would be very unwise for a family lawyer not to bring into account. Where might it be relevant?

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1. It may be wise to review, before any settlement, the value of assets including real property held by parties in China, particularly the primary affected areas, and in some other particularly affected countries. It has badly affected the economies of some countries and therefore will have affected values of assets held by parties involved in negotiating family law financial settlements.
2. Certain national and international businesses have been particularly affected including but not limited to airlines, cruise ships, tourism, import and export with China, reliance on Chinese products. Where these businesses have

been valued for family court purposes, it might be wise to consider a review of the valuation before any settlement.

3. Some pension, superannuation, funds may be particularly geared to investments in Far East or South East Asia or other countries significantly affected. Where this is the case, it might be wise to consider reviewing any valuations already obtained before a settlement occurs.
4. In contrast, if a settlement has already occurred and the value of business interests have fallen significantly as a consequence of the impact of the virus, it may be very difficult in England and Wales to set aside the settlement. In England the leading authority is probably a case of *Myerson* [2009] EWCA 282 whereas a consequence of the GFC, the husband's shareholding fell by 90% between the settlement and implementation yet he failed to overturn the original order. It was a clear public policy decision by the Court of Appeal to discourage reopening settlements after the event even if the change, through external market forces and outside the control of either party, is so significant. At the moment, late February 2020, it's difficult to see any difference. The law in other countries may allow easier opportunities to reopen settlements.
5. In any application for a parent to take a child on holiday to any area of the world particularly affected, a family court is likely strongly to take into account.
6. In any application for permanent relocation of a child to an area of the world particularly affected, the situation on the ground and the consequential protections for the child should be carefully set out for the other parent and for the court, alternatively there might be some wisdom in putting over the application until the situation becomes clearer.
7. In a child abduction case for the summary return of a child to a part of the world particularly affected, again the situation on the ground and consequential protections for the child should be carefully set out. It might even be that the so-called war zone series of cases might be used as an analogy to review the wisdom of the return which might otherwise have been granted.
8. At many hearings, the family court requires attendance of the parties including if abroad. Some may be unable to travel because of travel bans. Some may be reluctant to travel because of perceived greater risk in travelling. Arguably family courts should be more sympathetic at this time in not requiring personal attendance but using other digital opportunities. Where personal attendance is essential for the giving of oral evidence and cross-examination, there should be a review at the earliest opportunity of whether a personal attendance can proportionately be justified in the circumstances, whether an adjournment is necessary or other review.

There will be undoubtedly other elements for consideration. Family lawyers in other countries may have other issues and concerns because of their own distinctive laws. It would be good for these to be shared within the international family law community.

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