

# SETTING ASIDE A BINDING CHILD SUPPORT AGREEMENT

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We've all heard the words "exceptional circumstances" and "unprecedented times" this year, but do any of them apply to setting aside a binding child support agreement?

Courts recognise only very limited grounds for setting aside any kind of child support, particularly a binding child support agreement.

In the past, some "exceptional circumstances" recognised by the courts have been:

- A radical change in child care arrangements. For example, the child going from 80 per cent of time spent with one parent, to 20 per cent of the time.
- One parent moving to another country – although during the current COVID-19 pandemic, with travel restricted, this is rarely going to be an option.
- One parent being made redundant from a long-term job and being unable to secure new employment

There are a number of options for parents to arrange child support to be paid.

One is that some parents, if they have an amicable relationship, have an informal agreement and one parent pays the other privately.

Alternatively, parents can apply for child support through the Department of Human Services (Child Support), commonly called the Child Support Agency.

The agency uses a formula to calculate how much a parent should pay, based on the age and number of children, the income of both parents and how many nights the children spend with each parent.

The assessed amount can be paid directly to the parent, or can be paid through the agency. The agency also has powers to garnish a person's salary and bank accounts in some circumstances.

Private agreements between parents can also be registered with the child support agency, although both parents must obtain independent legal advice before signing such an agreement.

A binding child support agreement will often include details of which parent pays school fees, health insurance or other additional costs.

It's no easy task to set aside a binding child support agreement.

The court [recently considered](#) an application by a mother (the receiving parent) to enforce the terms of the binding child support agreement as the father was not paying various medical and school costs.

The father sought to set aside the binding child support agreement due to "exceptional circumstances... that have arisen since the agreement was made, the application or child will suffer hardship if the agreement is not set aside."

In this case, the father argued that:

- His high income meant that he was already assessed to pay the highest possible amount of child support, on top of which he was expected to pay the medical and school costs.
- He did not agree that the children should go to a private school, and therefore did not agree to pay the school fees and
- The legal fees he had incurred of around \$200,000 were a significant liability that affected his financial position

However, the court did not agree that the agreement should be set aside, as the issues raised by the father as “exceptional circumstances” were in existence when the agreement was made, and should have been known to the father.

In particular, the parties had thought about sending the children to private schools during the relationship, and the binding child support agreement particularly referred to “school fees”.

The court enforced the binding child support agreement and ordered that the father repay the arrears owing to the mother.