



Legal and Judiciary Guidance

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This Guidance, which is issued with the approval of the Lord Chief Justice and the Senior Presiding Judge, is intended to be followed with immediate effect by all levels of the Family Court and in the High Court Family Division.

2. The aim of the Guidance is to 'Keep Business Going Safely'. There is a strong public interest in the Family Justice System continuing to function as normally as possible despite the present pandemic. At the same time, in accordance with government guidance, there is a need for all reasonable and sensible precautions to be taken to prevent infection and, in particular, to avoid non-essential personal contact.

3. The default position should be that, for the time being, all Family Court hearings should be undertaken remotely either via email, telephone, video or Skype, etc ['remote hearing'], where the requirements of fairness and justice require a court-based hearing, and it is safe to conduct one, then a court-based hearing should take place.

The Rules

5. The Family Procedure Rules 2010 provide for the use of remote hearings in appropriate cases. FPR, r 1.4(e) provides that the court must further the Overriding Objective by making use of technology. FPR r 4.1(3)(e) provides that the court may hold a hearing and receive evidence by telephone or by using any other method of direct oral communication. In public law cases, FPR PD12A para 24 requires that where facilities are available to the court and the parties, the court should consider making full use of technology, including electronic information exchange and video or telephone conferencing. FPR r 22.3 provides that the court may allow a witness to give evidence through a video link or by other means. Annex 3 to FPR PD22A provides detailed guidance as to how video conferencing should be dealt with in court. Lastly, by r 4.3 the court may make orders of its own initiative.

Remote Hearings

6. The facilities to enable remote hearings are discussed in more detail at paragraph 14.

7. In contrast to jury trials in the Crown Court, there is no category of case that may be listed in the Family Court which necessarily requires the physical attendance of key participants in the same courtroom. The determination of whether or not a remote hearing is to take place will not therefore turn on the estimated length of the hearing, but upon other case specific factors.

8. The following categories of hearing are suitable for remote hearing:

a. All directions and case management hearings;

b. Public Law Children:

i. Emergency Protection Orders

- ii. Interim Care Orders
- iii. Issue Resolution Hearings;

c. Private Law Children:

- i. First Hearing Dispute Resolution Appointments
- ii. Dispute Resolution Appointments
- iii. Other interim hearings
- iv. Simple short contested cases

It is possible that other cases may also be suitable to be dealt with remotely. As the current situation is changing so rapidly, and as the circumstances that will impact upon this decision are likely to differ from court to court and from day to day, the question of whether any particular case is heard remotely must be determined on a case-by-case basis.

11. Where a case cannot be listed for a remote hearing as matters stand then any existing listing should be adjourned and the case must be listed promptly for a directions hearing, which should be conducted remotely. The primary aim of the directions hearing should be to identify the optimal method of conducting the court process in order to achieve a fair and just hearing of the issues but, at the same time, minimising as much as possible the degree of inter-personal contact between each participant. In appropriate cases, this may involve the use of a remote hearing where it is possible to conduct the court process in a manner that achieves a fair and just consideration of the issues. Recent experience has demonstrated that it is possible to conduct a complicated extensive multi-party hearing using the Business for Skype system that is available on the judicial laptop. In other cases it may be necessary for the personal attendance at court, for some or all of the hearing, by some or all of the participants.

At any directions hearing to discuss the future hearing arrangements, judges and magistrates should also require the parties to focus on the realistic options that are currently available to meet the child's welfare needs during the present straightened circumstances.

Urgent Cases

13. Even where a case is urgent, it should be possible for arrangements to be made for it to be conducted remotely. The default position should be that the hearing is conducted remotely. Where a case is genuinely urgent, and it is not possible to conduct a remote hearing and there is a need for pressing issues to be determined, then the court should endeavour to conduct a face-to-face hearing in circumstances (in terms of the physical arrangement of the court room and in the waiting area) which minimise the opportunity for infection.