



PRESIDENT OF THE
FAMILY DIVISION

SIR ANDREW MCFARLANE

PRESIDENT OF THE FAMILY DIVISION AND HEAD OF FAMILY JUSTICE

● **COVID 19: National Guidance for the Family Court**
19th March 2020

1. 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 government guidance is, however, primarily aimed at the social setting, rather than the business/work environment. Depending on the circumstances there may be the need, and no harm involved, in having a number of people present in court for an oral hearing.
4. Taking these competing factors together, whilst 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

- d. Injunction applications where there is no evidence that is to be heard (or only limited evidence).
 - e. Financial Cases [see the guidance issued for the Financial Remedies Court by Mostyn J on 17th March at Appendix B below].
 - f. Appeals.
 - g. Other hearings as directed by the judge concerned.
9. Where a case in one of the categories listed in paragraph 8 above has already been listed for a hearing at which the parties are due to attend court then, if it is possible to make arrangements for the fixed hearing to be conducted remotely, then the hearing should go ahead remotely without any personal attendance at court. A draft directions order is at Appendix A below.
10. 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.

12. 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.

Remote Hearings: technical matters

14. Remote hearings may be conducted using the following facilities as appropriate to the individual case:
 - a. By way of an email exchange between the court and the parties;
 - b. By way of telephone using conference calling facilities;
 - c. By way of the court's video-link system, if available;
 - d. The use of the Skype for Business App installed on judicial laptops;
 - e. Any other appropriate means of remote communication, for example BT MeetMe or FaceTime.

The most recent HMCTS update on the use of video and telephone hearings (issued on 18.3.20) during the coronavirus pandemic is at

<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>

If you are unfamiliar with Skype there is a simple user guide on the Judicial Intranet (under the Practical Matters tab, select Coronavirus (Covid-19) and scroll down)

<https://www.youtube.com/watch?v=2WUe59-aWl8&feature=youtu.be>

<https://www.youtube.com/watch?v=9MpqcXAdx0k&feature=youtu.be>

<https://www.youtube.com/watch?v=qQpQEDYskrc&feature=youtu.be>

https://www.youtube.com/watch?v=H8xbgad2q_Q&feature=youtu.be

15. Any arrangement for a remote hearing must make provision for the hearing to be recorded. Where the hearing takes place with the judge/magistrates in a court room, recording will take place in the ordinary manner. If BT Conferencing is used for a telephone hearing then that system will produce a transcript of the hearing. Where Skype for Business is used, there is a facility within the software for the digital record of the hearing to be recorded (this is not the same as a typed transcript but may suffice for most purposes).

16. The responsibility for making technical and other arrangements for a remote hearing and for confirming the details of the arrangements for the hearing to the other parties no later than 24 hours prior to the remote hearing taking place is to be undertaken by the following party liaising with the court:
 - a. The local authority in a public law case;
 - b. The applicant, if legally represented, in a private law case;
 - c. The respondent, if legally represented and where the applicant is not, in a private law case;
 - d. The court where no party is legally represented.

17. When conducting a remote hearing, there is a need for the judge or magistrates to use their best endeavours to ensure that only those who would be allowed into the court room for an oral hearing are privy to the remote hearing and that all parties understand that the system used by the court will record the proceedings and that no other recording is to be made by any of the parties.

18. On the day before a remote hearing the applicant must electronically file a PDF bundle which complies with FPR PD27A, and which in any event must include as a minimum:
 - a. A case summary and chronology;

- b. The parties' positions statements;
- c. The previous orders that are relevant to the remote hearing;
- d. All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
- e. A draft order;
- f. Completed advocates' forms together with the single address that the signed and sealed forms are to be returned to for distribution to the advocates.

Final Observation

19. These are exceptional and unprecedented times. The situation both nationally and in each locality is changing daily, if not hourly. I am well aware of the intensely difficult and highly stressful circumstances that all those working in the Family Justice System are currently experiencing and I am greatly appreciative of their commitment to the continued delivery of justice in circumstances which, only a week or so ago, would have been considered unimaginable. This Guidance is intended to deliver a very significant change of direction in the method of working within the Family Court, whilst at the same time enabling us to continue to operate and to meet the pressing needs of those who turn to the court for protection and justice.

The Rt Hon Sir Andrew McFarlane
President of the Family Division and Head of Family Justice
19th March 2020

APPENDIX A



In the High Court of Justice

No: _____

Family Division /

The Family Court

IN THE MATTER OF _____

AND IN THE MATTER OF _____ CHILDREN

BEFORE _____ SITTING AT _____ ON _____.

UPON the Court determining that in the exceptional circumstances of the current national public health emergency this case is suitable for hearing remotely ('remote hearing') by means of [video link]/[Skype]/[telephone]/[other].

BY ITS OWN MOTION / BY CONSENT

IT IS ORDERED THAT:

1. All hearings in this matter shall take place by way of remote hearing pursuant to FPR 2010 r 4.1(e) unless the court directs otherwise.
2. The parties and their representatives shall attend all hearings by way of [video link]/[Skype]/[telephone]/[other].
3. No unauthorised person may be present at this hearing. When asked, each legal representative must be able to confirm that no unauthorised person is in attendance or able to listen to the hearing.
4. This matter shall be listed for a remote hearing on _____ at _____ before _____ sitting at _____ with a time estimate of _____.
5. The parties shall arrange and attend remotely an Advocates Meeting no less than 48 hours before the hearing listed above.
6. The [applicant / respondent] shall be responsible for arranging with the Judge's clerk (via Anita.Knight@justice.gov.uk) the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place. This will include

provision to the court of the necessary contact details for the parties and their representatives where these are needed to facilitate the remote hearing.

7. The [applicant / respondent] must confirm the details of the arrangements for the hearing to the other parties by no later than 24 hours prior to the remote hearing taking place.

8. The applicant shall by 1600 hrs on the day before the hearing electronically file a PDF bundle, which must include:

- (a) A case summary and chronology;
- (b) The parties positions statements;
- (c) The previous orders that are relevant to the remote hearing;
- (d) All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
- (e) A draft order;
- (f) Completed advocates' forms together with the single address that the signed and sealed forms are to be returned to for distribution to the advocates.

9. [Further Directions].../

Dated _____

APPENDIX B
MR JUSTICE MOSTYN

NATIONAL LEAD JUDGE OF THE FINANCIAL REMEDIES COURTS

In the light of the guidance this morning from the Lord Chief Justice I would like to ask all the zone leaders to propose to FRC judges the following measures.

1. First appointments should be done wherever possible using the “accelerated” paper-only procedure in the fourth schedule to the FRC protocol (<https://www.judiciary.uk/wp-content/uploads/2019/11/FRC-Good-Practice-Protocol-November-2019.pdf>). The terms of that schedule do not need to be followed strictly; judicial latitude is encouraged. Judges should accept consent orders dealing with first appointments routinely.
2. Parties should be encouraged to have their FDRs done privately. Such private FDRs should routinely be done remotely. Most barristers’ chambers and solicitors’ offices have facilities to enable FDRs to be done remotely.
3. The default position for other hearings is that they should be done either by Skype (Skype for Business is available on all judicial laptops) or by telephone. The extension of the existing virtual courts project is being actively investigated.
4. Physical hearing should only take place where this is absolutely unavoidable.
5. The physical lodging and handling of documents should be avoided. The use of ebundles should be virtually mandatory. See <https://www.judiciary.uk/announcements/financial-remedies-courts-e-bundles-protocol/>
6. FRC judges should endeavour to do as much work as they possibly can from home.

I would ask that these measures are given wide publicity in your respective FRC zones.

17 March 2020