

Park Square Barristers Family Team are conducting hearings using Skype for Business, Microsoft Teams and Zoom. For any clerking enquiries please contact Claudine Cooper on 0113 202 8604, Paul Foster on 0113 2135209 or Nel Siranovic on 0113 2135212 or email clerkfamily@psqb.co.uk.

On 23 March 2020 Mr Justice Macdonald published guidance regarding Remote Access in the Family Court during the COVID-19 outbreak, including a Protocol for both live and remote hearings. This was supplemented by further guidance on 25 March 2020 incorporated below.

Summarised by Shannon Woodley

~~REMOTE ACCESS FAMILY COURT GUIDANCE — COVID-19~~

~~Mr Justice Macdonald has published guidance regarding Remote Access in the Family Court during the COVID-19 outbreak, including a Protocol for both live and remote hearings.~~

PROTOCOL FOR REMOTE HEARINGS:

1. The court's permission is still required for any part of the proceedings to be dealt with by way of remote hearing.
2. Instructions should be taken from clients in advance.
3. Evidence and other documents must be filed and served in accordance with the relevant case management order or PD.

4. There is no specific type of hearing which is or is not suitable for remote hearings, but it is anticipated that all case management hearings will be capable of being dealt with remotely. ~~M,~~ but multi-day final hearings may also be dealt with remotely.

5. There is no specific method of remote hearing, but there is a 'smorgasbord' of options available.

~~6.~~ A preliminary hearing should take place in order to consider and settle on the identity of the communication platform to be used and resolve directions.

~~6-7.~~ [Parties should be ready to link at the listed time.](#)

~~7-8.~~ Where one or more of the parties is represented, responsibility for making the arrangements for the remote hearings in the case will fall on either the applicant or the first represented party. If no ~~party~~ is represented, the court will contact the parties and explain and send instructions.

~~8-9.~~ The lead party must liaise with the court in advance of the remote hearing to deal with any technical issues.

~~9-10.~~ Parties must agree, and the lead party must prepare and send the court an electronic bundle. It should be PDF, in a single file, searchable and paginated. This should be sent to the court on CE-file or a cloud-based link.

~~10-11.~~ Listing should be at a specific time.

~~11-12.~~ Where evidence is being given, advance consideration needs to be given to documents being referred to. These should be agreed if possible.

~~12-13.~~ Responsibility for recording the hearing will fall on the party or court that has organised the remote hearing. [Anyone can record as long as they are a legal representative and they provide a link to the judge immediately following the hearing.](#)

~~14.~~ The clerk, court official or judge must complete the order made at the end of the remote hearing. The wording should be discussed and agreed before the link is terminated.

~~13-15.~~ [An electronic way to seal orders is now available to be done automatically on FamilyMan in the High Court. For the Family Division, if the court building is open,](#)

[court staff can seal the orders but thought must be given to how to achieve this should the courts close.](#)

PROTOCOL FOR LIVE HEARINGS:

1. [If a court-based hearing can safely take place, it should. A live hearing should only take place where a remote hearing is not possible and is sufficiently urgent to justify it.](#)
2. All live hearings should have a time estimate of no more than 1 hour.
3. To reduce the length of any face-to-face hearing, submissions should be reduced to writing and the parties should only deal with those issues that are not capable of prior agreement.
4. There should be 2m between people in the queue to enter the court building and security.
5. No sharing of documents.
6. The layout of the courtroom must be arranged so that all present are 2m away from all others present.
7. No party [is](#) to enter the court room before their matter is called.
8. Parties are to leave the court room immediately after the hearing has concluded.

Further key points to note:

[LEGAL AID](#)

- Advocates meetings can be held over video and there is no longer a limit to how many can take place as long as it is directed by the court (this can be done by email) and in accordance with the PLO and the LAA have accepted this.
- They should use a free platform, but where this is not possible it can be claimed as a disbursement.
- If an advocates meeting leads to an agreed order, with no need for a hearing and a self-employed advocate has undertaken at least 30 mins of preparation for the hearing they are entitled to claim a payment for a one hour hearing if the cancelled hearing was an interim hearing and half of the final hearing fee if it was a final hearing.
- If the court directs an alternative method of hearing, the advocate will receive the appropriate fee as if the hearing had taken place.
- FAS forms are not required and instead all of the information required will be set out in the order.
- Bolt-ons can be claimed, but a note of the hearing to justify the claim should be uploaded.
- Where pre-hearing discussions take place, this will count towards time in the hearing if the judge attends to ensure everyone is present, absents themselves for pre-hearing discussions, and then re-joins the time will all be counted.
- Time spend after the hearing is finished to finalise terms of the order will also count toward the calculation of hearing time and can be done on a different platform.
- Where a remote hearing is conducted by email, the LAA will accept as evidence a court order setting out the start and finish time and the names of the advocates. If this is not in the order the LAA will expect advocates to self-certify and provide the email chains.

GENERAL

- There is no specific communication platform that should be used. Instead, advocates should agree from the 'smorgasbord' available including Teams, Skype for Business [\(although this is presenting issues of judicial computers\)](#), Zoom and Lifestyle.
- There are not specific types of hearings that can take place remotely. It is anticipated that all case management hearings can be done remotely, but also contested and multi-day hearings with live evidence have been successfully held remotely.
- ~~— FAS forms are not required. The Order should record the names of the advocates and the listed time. Bolt on payments can be self-certified.~~
- If LIPs in private law proceedings do not have the technology, it should take place by telephone. This may limit the types of hearings that can be done remotely in this area.
- [Parties to private proceedings should give consideration to arbitration.](#)
- Judgments can be easily handed down remotely.

Appendix 4



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].

AND UPON the parties and the court having identified and settled on the following communications platform to be used to conduct remote hearings in this case _____.

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 _____) 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 prepared in accordance with the requirements of paragraph 20 of the Protocol For Remote Hearings in the Family Court and Family Division of the High Court, which e-bundle 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 _____