

Birmingham Family Court: Response to Covid-19

20 March 2020

Introduction

1. I am very conscious that everyone will be anxious about the current situation, that some of you will be unwell and that others may be self-isolating to protect their health or that of others. As our Wellbeing Protocol sets out a Court case is stressful at the best of times. The primary goal now must be to keep people safe and well whilst at the same time trying to ensure that family cases can proceed fairly and efficiently through the Court without unnecessary delay. I am very conscious that this guidance will be out of date before you receive it and that a flexible approach is required.
2. National Guidance was published by the President of the Family Division (PFD) on 19 March 2020 which we will be following with effect from Monday 23 March 2020 in all the family cases listed for hearing at the Birmingham Family Court. Today (Friday 20 March) members of staff contacted all the parties in every case listed on 23 March to explain the arrangements and to ensure that there was personal contact so that queries and concerns could be dealt with without delay.
3. In order to ensure that in formulating our plans in Birmingham I had input from our local authorities and practitioners, today I 'met' by Skype for Business with Jerome O'Ryan (Birmingham Children's Trust) and Maria Demosthenous (Solihull Metropolitan Borough Council) and then with the practitioner members of the Local Family Justice Board, Mark Cooper (for the bar) and Jas Tamber (for the solicitors). I am most grateful to them all for their insightful contributions. These meetings will continue to ensure that we incorporate feedback into our plans for the future. As the President of the Family Division wrote today in an email to the DFJs, this is a marathon and not a sprint.

Remote Hearings

4. Save in the case of an emergency, for which special arrangements may need to be made, all cases will now be dealt with remotely, that is by email, telephone, video link or other electronic means such as Skype, until arrangements can be made to enable parties and/or their lawyers to attend in person in a safe way, in line with Government advice about social distancing. Arrangements will be made for remote hearings to be given a time slot rather than be block listed.
5. We have already dealt with matters where the advocates have liaised with the judge by email and submitted an agreed draft order. We have ensured that the approved order has contained detail as to the work which the parties' legal representatives have done to avoid the need for a hearing.
6. Any case currently listed that cannot proceed remotely will, therefore, need to be adjourned until arrangements can be made for it to proceed remotely or by attendance

at Court in a safe way. Judges (which of course includes the magistrates and, where appropriate, the legal advisers) will make decisions on a case-by-case basis in order to endeavour to enable cases to proceed if at all possible. Where cases are listed for a contested hearing which cannot proceed (most obviously fact finding and final hearings) a remote case management hearing will take place as soon as possible to consider re-listing arrangements and the appropriate directions, unless directions can be given without the need for such a hearing.

7. HMCTS staff have over the past few days worked as quickly as possible to enable judges in Birmingham to have the facility to use BT Meet Me, Skype for Business and other means of electronic communication to enable hearings to take place remotely. In due course, depending on how things develop, the co-operation and assistance of family practitioners in making video conferencing facilities available from their offices/chambers may well be greatly appreciated, together with other ideas as to how hearings can be conducted.
8. At each remote hearing directions will, of course, be given for the next hearing which will include the practical arrangements.

Urgent Cases

9. We will follow the guidance in paragraph 13 of the PFD's Guidance. We are looking at how best to arrange contested applications for an interim care order with a plan of removal, where evidence needs to be heard, to ensure that there will be no need for the attendance of any party at Court. The arrangements for such a hearing will be made on a case-by-case basis in an effort to ensure that they enable participation by all the parties.

Arrangements for Hearings

10. In case management and procedural hearings which are already listed, the Court will make the arrangements for them to take place remotely and I anticipate by telephone or by Skype for Business. The judges hearing the cases will for the time being sit in a courtroom or hearing room with facilities to record the hearing: ensuring that the hearing is recorded will be the responsibility of the Court.
11. Judges and legal advisers have already looked at the lists for the coming week and next week will start to do so further ahead. As I have indicated, we will aim to provide specific time slots for hearings which are already listed to take place so that the most convenient arrangements can be made. For the avoidance of doubt, at the appointed time for the hearing BT Meet Me and Skype for Business conference calls or another form of remote hearing will be initiated by the Court. It will be the responsibility of the applicant local authority in public law cases to collate the names and contact details of all the other parties, to provide them to the Court and to ensure that all of the parties know the necessary details of the remote hearing. In private law hearings this will be the responsibility of the solicitor for the applicant if there is one, and failing that the solicitor for the respondent or the child(ren) as appropriate. Where all the parties are litigants in person the responsibility will be that of the Court.

12. In public law cases the local authorities are able to provide electronic bundles for the use of the Court and HMCTS is working to endeavour to ensure that these are available for the use of the judges. In private law cases the Court will liaise with the solicitor who is making the practical arrangements for the hearing in respect of the bundle. Where the litigants are in person the responsibility is that of the Court.
13. The parties are encouraged to try and agree directions in advance of hearings and to submit a consent order for approval so that a hearing can be avoided altogether. The draft order should be sent to the appropriate Court inbox indicating that it is urgent and giving the date of the hearing in the subject line. In a case before a circuit judge the draft order should be sent to the urgentfamilyprep email address and where the case is before a district judge should be sent to the judge if that is the usual course. As always, the judge may make the order or may propose amendments. If there are issues to resolve the judge may propose a telephone hearing. The work that goes into agreeing directions will be recorded in the order of the Court. I have raised the serious concerns in respect of the payment of practitioners with Mr Justice Keehan, the Family Division Liaison Judge for the Midland Circuit, who has escalated them to the PFD. I understand that there is to be a meeting with the Legal Aid Agency on 24 March. We will ensure that Court orders reflect the latest guidance.
14. As the President's National Guidance makes clear a 'meeting' should take place before the telephone hearing: this will, hopefully, ensure that the issues are narrowed and succinct arguments can be put to the Court. Alternatively, the parties may agree that the issue(s) in dispute can be the subject of short written submissions with a view to the Court making a decision on the papers. I have produced a template for use in Birmingham (in accordance with Appendix A of the PFD's Guidance) which endeavours to ensure that the work done in advance of a remote hearing is properly remunerated.
15. As always, preparation for a hearing is key to it being productive and written position statements should obviate the need for significant submissions. Please ensure that all the documents which the judge will need to consider are submitted in advance (in accordance with Practice Direction 27A and paragraph 18 of the PFD's Guidance) as we will not be able to delay the start of a remote hearing to read documents which are sent at the last minute.
16. The Court will make the arrangements for interpreters where it is its responsibility to do so and they will be able to participate in remote hearings by telephone. Communicourt has issued guidance in respect of intermediaries.

Suitable Cases for Remote Hearings

17. Paragraph 8 of the PFD's Guidance sets out the categories of hearing that are suitable for a remote hearing. We will ensure that arrangements are made in respect of all those categories. In the majority of first hearing dispute resolution appointments (FHDRAs) both parents are litigants in person and so HMCTS will need to make the

arrangements. It will, therefore, take some time before it will be possible for them to take place remotely. Arrangements will need to be made for Cafcass (the duty family court adviser (FCA)) to join the telephone hearing (and to provide the Court with a telephone number) and the Court will need to ensure that it has a telephone number for each of the parties on which they can be contacted at the time of the hearing. It is unlikely to be possible for the FCA to discuss matters with the parties prior to the hearing and so the hearings may take longer and it is likely that the FCA will have to make a recommendation based on the discussions during the hearing. Magistrates, who do the vast majority of the private law work in Birmingham, have no experience of conducting telephone hearings and this will need to be taken into account in respect of how many it is appropriate to list.

18. In the future, it may be possible for some of the measures that are included in the PFD's Guidance to be adapted and adjusted on a case-by-case basis. It may, for example, be possible for attended hearings listed at specific times to take place provided the court rooms and waiting and conference facilities in the court building enable them to do so safely and in line with Government guidance.

19. We will await further National Guidance in respect of attended hearings.

Cases in the Court of Protection

20. Guidance has been issued by the Vice President of the Court of Protection which should be followed.

Cases in the Financial Remedies Court

21. Guidance was issued by Mr Justice Mostyn on 17 March 2020 (Appendix B to the PFD's Guidance). His Honour Judge Robin Rowland has issued local practical guidance.

Guidance for Remote Hearings

22. There will need to be the same sort of formality in a remote hearing as there is in an attended hearing in a court room or hearing room. The judge will need to set 'ground rules' at the outset, such as that each party speaks when it is their turn; that no-one interrupts anyone else; that microphones are kept on mute when you are not speaking; that no-one is present who would not be allowed into the court room for an oral hearing; and that no party records the hearing (see paragraph 17 of the PFD's Guidance). We will need to make arrangements for the court clerk or usher to join the pre-hearing meeting to ask for an update, as they would if those discussions were taking place at Court. We may also need to make provision for the Court to proceed with a remote hearing in the absence of an advocate (or litigant) who fails to join the hearing without good reason.

23. The judges dealing with remote hearings will, for the time being, be sitting at the Birmingham Family Court in a court room or hearing room and will be dressed as they normally would be. The practitioners whom I have consulted have suggested

that I should include a reference to dressing for a Court hearing when it is a video or Skype hearing!

Communication with the Court

24. As you will envisage, the Court has been inundated with calls and emails. The priority of the staff has been setting up the arrangements to enable us to deal with cases when they are listed where possible and cases where this will not be possible and to contact those involved in cases on Monday. The volume of enquiries is adding to the pressure that they are already under. A significant number of members of the court staff are absent as they are ill or self-isolating or due to their caring responsibilities. Answers will be given to queries as soon as they can be and the Court will communicate with you as the situation develops.

25. Mark Cooper and Jas Tamber have both ‘volunteered’ to liaise with me on behalf of practitioners as to ways in which the arrangements can be improved and developed. They have, I know, communicated with the bar and solicitors as to how this is to work. Please follow the suggested procedure and do not inundate them or this process, which I regard as very important, will not work!

Thank you for everything that you are doing in very difficult circumstances to try and continue to deliver family justice through the Court. If we all work together and are prepared to adapt and be creative in our approach I am confident that we will be able to consider the issues in the hearings envisaged in the PFD’s Guidance in a fair and just way so that we can provide an appropriate service to safeguard vulnerable children and adults.

Please look after your health and that of those working with you.

Sybil Thomas

Designated Family Judge for Birmingham

20 March 2020

