
Subject: FLBMail

Date: Wednesday, 15 April 2020 at 12:04:06 British Summer Time

From: FLBA

To: Mark Cooper

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Dear All,

The letter dated 9 April 2020 from the Lord Chief Justice, the Master of the Rolls and the President of the Family Division to the Circuit Judges and District Judges has now been published. It can be found [HERE](#).

The clarification message from the President's Office circulated to Judges and to the Family Bar yesterday afternoon is set out in full:

The Lord Chief Justice has asked the President of the Family Division to stress his letter was intended to do little more than remind judges that the decision about listing is theirs, without directing them. The letter does not purport to be guidance, which is why it did not go out on the Judicial Intranet. It clarifies that "do as much as possible" does not mean "do everything as before". It points to the growing experience, both positive and negative, relating to remote hearings and seeks to assist by indicating the categories of case which a judge might, or might not, consider could be undertaken remotely.

We have considered the letter and the further message above. We set out our view on behalf of the FLBA to assist practitioners who in turn can help the Family Court in the conduct of cases in light of the letter. We have received reports from the Family Bar and seen cascaded messages from Judges to lead us to conclude that the carefully worded joint letter which does not purport to be Guidance is being treated by some Judges as Guidance.

Importantly, the letter does not direct that Judges and District Judges should adjourn all cases involving live evidence from parents and lay witnesses. It actually leaves the door open to Judges to proceed with live evidence from parents and lay witnesses having considered all factors and having satisfied themselves inter alia that the hearings will be fair and effective using the facilities available

and that parents and witnesses will be properly engaged.

Unfortunately, reports to the FLBA from different areas yesterday and today suggest that some judges are translating the contents of this letter into blanket adjournment of such cases which would be to misinterpret the letter.

Furthermore, the letter does not suggest that adjournments should be without any consultation of the parties and their advocates. Again where possible we would expect there to be an urgent hearing listed at which proper consideration is given to whether a case should proceed or not with input from the parties and/or their representatives.

It is extremely important that as practitioners we work with the Judiciary to ensure fair and proper hearings for our clients and to ensure fair and proper treatment of witnesses and where possible and safe to achieve this remotely and/or through other current facilities without delay. However, we must also continue to ensure that those cases which cannot proceed fairly and properly in the current circumstances are adjourned and that case management directions and interim arrangements are achieved having engaged the parties in the process.

We must help our judges appreciate that they should not treat the letter as Guidance and that they should not automatically adjourn hearings in which parents and lay witnesses will be required to give evidence and that the advocates and parties must be consulted before any decision is made to adjourn.

It is anticipated that a V4 on remote hearings will be issued later this week or early next week by MacDonald J and that a survey launched on 14 April 2020 by the Nuffield Family Justice Observatory on the first 3 weeks of remote hearings in children cases (including where live evidence took place) to provide more detailed information for the President before he issues his Guidance in early May 2020. The FLBA were involved in the drafting of some of the questions. The survey closes on 28 April 2020. The link and the message from the President's Office about the survey has been sent separately earlier today. Please use this opportunity to complete it and to help inform the President to assist the Family Justice System.

I will update you further in due course.

Stay Well.

Cyrus Larizadeh QC
FLBA Chair

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