

Practice guidance for Somerset DFJ area

31st March 2020

General

1. For the purposes of this document:
 - (a) The contents of this document are referred to as 'guidance' and only apply to the Designated Family Judge area of Yeovil and Taunton.
 - (b) This guidance is subject to any national or other guidance issued by higher authority and must be read in conjunction with government guidance on COVID 19.
 - (c) This guidance is issued in order to clarify arrangements during the COVID 19 emergency and is to remain in place until further notice.
 - (d) 'Judge' includes magistrates.
 - (e) For the purposes of giving directions as to how a hearing may be conducted remotely, judge also includes a legal adviser nominated for this purpose by the Designated Family Judge.

2. In accordance with the latest Guidance from the President of the Family Division and at the present time, **all hearings in the Family court in this area must be conducted remotely unless otherwise ordered by the DFJ or High Court Judge.**

3. All remote hearings must take place in a way that is consistent with the requirements of governing statutes, statutory instruments (such as The Family Procedure Rules 2010), Practice Directions, Presidential or other Guidance and other requirements of the law.

4. **All parties must commit themselves to maintaining the confidentiality of Family Court hearings** in accordance with the above.

5. It is essential that legal representatives keep the court informed when they are acting for a party to Family Court litigation and **ensure that all necessary contact details for their party** are given and maintained, including an email address if available.

6. **All parties are to file, send to the judge by email and serve position statements for all hearings**, (even in cases where the parties are in agreement each party should file a position statement stating their agreement).

7. It is essential that **case summaries and draft orders are filed and sent to the judge** conducting the hearing in order to enable the hearing to be dealt with efficiently.

8. It is expected that **lay clients will attend all remote hearings**, including directions hearings, unless there are specific concerns as to whether a remote hearing is suitable eg because of

concerns over the confidentiality of a hearing or if, despite best efforts, it has not been possible to enable their participation for practical reasons. The attendance of a lay party can be excused if the remote hearing relates solely to directions and timetabling, provided that their legal representative has full instructions and the lay party has given express consent to the hearing proceeding in their absence. Such consent must be recorded on the face of the order. If a lay party is unable to attend, legal representatives should ensure that they have a means of contacting their client during the course of the hearing should they need to take instructions

9. Legal representatives should remind their lay clients that **a remote hearing is still a court hearing** and that:-
 - (i) appropriate language must be used and that they should not speak unless directly requested to by the judge.
 - (ii) the hearing is private and no one else should be present in the room with the lay client nor should they discuss what has been said with any third party
 - (iii) they must not record nor take screen shots of the hearing and that to do so is a criminal offence
 - (iv) they should not contact any of the other parties during the hearing (e.g. by sending text messages in an attempt to encourage, prompt, influence or intimidate);
 - (v) all communication should be through their legal representative.

10. **Platform of hearings.** At present, remote hearings are likely to take place using Skype for business or Btmeetme or other phone conferencing. All professionals should ensure that they are able to attend through such platforms. All professionals are encouraged to familiarise themselves with other platforms (eg Zoom) in the event that the court is able to facilitate them.

11. **Recording of hearings** – where Btmeetme or Bt legal conferencing is used, the hearings will be automatically recorded. When Skype for business is used, the Local Authority or applicant (or legally represented Respondent if the Applicant is not legally represented) is to ensure that measures have been put in place for the recording of the hearing through the Court recording system or through Skype.

12. **Video/audio** – The use of video puts a strain on broadband capacity and may cause difficulty in all parties accessing the hearing. Please mute your microphone when not speaking and disable your video unless the judge specifically asks that video is enabled for any party.

13. In any public law remote hearing, in the absence of agreement to the contrary, the advocate for the Applicant is to be the point of contact for any lawyer or unrepresented party to let them know by email or other means if they have **dropped out of the remote hearing**. Legal representatives should be the contact for their lay or professional clients and should immediately inform the judge.

Provision of contact details

The Applicant in any new or urgent private law application or in any urgent public law application is to provide contact details for all the parties (including the lay clients where known) to the court, including phone numbers and email addresses.

These phone numbers/email addresses must not be disclosed to lay clients by the court or any other person.

Confidential addresses/contact details

The usual rules will apply to confidential addresses/contact details and the need for confidentiality should be expressly notified to the court when contact details are provided.

Cases involving vulnerable parties/Intermediaries

1. At least 6 weeks before any case where a contested hearing has been listed (or immediately, if the contested hearing is listed to commence before 11th May 2020) and:

- a) an intermediary has been appointed to assist a party; or
- b) recommendations have been made by a psychologist/intermediary/other as to measures which need to be adopted to enable a party's full participation in a contested hearing; or

the vulnerable party's legal representative shall apply to the court for a direction that the psychologist/intermediary/other is to be asked for views on whether that party can fully participate in a remote hearing by phone or video and, if so, what additional measures are necessary to enable full participation.

A draft order should be attached to that application.

2. At least 6 weeks before any case where a contested hearing has been listed (or immediately, if the contested hearing is listed to commence before 11th May 2020) and an assessment by an intermediary of a party has already been directed but the report has not been received, that party's legal representative shall apply to the court for directions.
3. In any other case where a party has any vulnerability not covered by the above which may impact on their ability to participate in a remote hearing, their legal representative shall apply to the court for directions.

Bundles

Public law

SCC is to provide the judge with an electronic bundle (which is to be bookmarked) by 16.00 on the day before the hearing.

A reading list **must** be provided within the case summary.

Private law

- (1) In private law, the applicant's solicitor (or respondent's solicitor if the Applicant is not represented) is to send a paginated pdf bundle by 16.00 on the day before the hearing.
- (2) This is to be sent directly to the e-judiciary email account of the judge dealing with the case.
- (3) The bundle must comply with FPR PD27A, and 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.
4. If it is not possible for a condensed bundle to be sent to the court, the case summary **must** contain a reading list of relevant documents.

Organisation of remote hearings – please see attached order templates

All cases

The legal representatives to the lay parties are to obtain instructions on whether/how the lay party can attend remote hearings and e.g. whether other people/children will be in the house and how the confidentiality of any remote hearing can be preserved.

Private law cases:

- 1) Where the Applicant is legally represented, the Applicant's solicitor, in consultation with the Respondent, must take responsibility for liaising with the **court at least 48 hours before any hearing** in relation to the arrangements for the hearing to be conducted remotely and to ensure that arrangements have been agreed with the court as to the recording of the remote hearing.
- 2) Where the Applicant is not legally represented and the Respondent is represented, the Respondent's legal representative must take responsibility for liaising with the Court as above.
- 3) Where neither party is represented, the court office must liaise with the judge of trial at least 72 working hours before the hearing and the judge must give directions for how the hearing is to be conducted. In default of specific direction from the judge the court must arrange for such hearings to be conducted by telephone though Btmeetme.

Public law cases

CMH/FCMH/IRH/Re W/pre-trial review or hearings to determine other C2 applications/directions

1. There must be an advocates' meeting at least 48 hours before any such hearing.
2. At the advocates' meeting, the advocates must decide, amongst other things, upon how the hearing will be conducted remotely and how the lay parties will participate in the hearing.
3. The Local Authority is to relay the outcome of this discussion to the court by email urgently, and in any event by no later than 4pm on the day of the advocates' meeting. Arrangements for the hearing are to be confirmed with the court by the Local Authority, to include arrangements for the recording of the hearing.
4. All parties must file and serve position statements addressing all the issues, including how their clients will be participating in the hearing, no later than 24 hours before the hearing.
5. The Local Authority is to file, serve and send directly to the judge by 4pm on the day before the hearing a draft order and a case summary containing a reading list and a bullet point list of the outstanding contentious issues to be determined at that hearing.
6. The advocates are to attend remote pre-hearing discussions 1 hour before the hearing.
7. If any party is unrepresented, that party is to be invited to take part in the advocates' meeting and pre-hearing discussions.

Contested public law hearings where evidence is to be heard

1. Unless the court has directed such a hearing of its own motion, the Local Authority is to apply for a remote directions' hearing before the trial judge at least 2 weeks before the listed hearing which will consider whether the contested hearing can be heard remotely and what form the remote hearing will take.
2. The Local Authority is to liaise with the court over the arrangements for the remote directions hearing and ensure arrangements have been put in place for it to be recorded.
3. All legal representatives are to obtain detailed instructions before the advocates' meeting below about the security, confidentiality and practicalities of a remote hearing.

4. There must be a remote advocates' meeting at least 48 hours before that directions' hearing to consider whether, and if so how, the hearing can be conducted fairly or securely if conducted remotely.
5. All parties are to file and serve position statements at least 24 hours before the directions hearing addressing whether a remote hearing can be fairly or securely held and the impact of delay (Please see Order 2 below for factors which are to be addressed). If all parties are in agreement following the advocates' meeting, a position statement from the Local Authority will suffice, but this must address all factors in relation to the security, confidentiality and practicalities of the remote hearing.
6. The advocates are to attend remote pre-hearing discussions 1 hour before the hearing.
7. If any party is unrepresented, that party is to be invited to take part in the advocates' meeting and pre-hearing discussions.

Contested private law hearings where evidence is to be heard

- 1) Unless the court has directed such a hearing of its own motion, the Applicant (save where the Applicant is not legally represented and any respondent is, when the first named represented Respondent shall do so) is to apply for a directions' hearing before the trial judge at least 2 weeks before the listed hearing which will consider whether the case can be heard remotely and what form the remote hearing will take.
- 2) The advocates and any unrepresented party are to attend a remote advocates' meeting at least 48 hours before that directions' hearing to consider whether, and if so how, the hearing can be conducted fairly or securely if held remotely.
- 3) All parties are to file and serve position statements addressing whether a remote hearing can be fairly or securely held and the impact of delay at least 24 hours before the directions hearing. If all parties are in agreement, a position statement from the Applicant (or if unrepresented, the represented Respondent) will suffice, but this must address all factors in relation to the security, confidentiality and practicalities of the remote hearing.
- 4) The advocates and any unrepresented party are to attend remote pre-hearing discussions 1 hour before the hearing.

Test of arrangements

Where it is determined that a contested hearing lasting 1 day or more will be conducted using remote methods and unless the Court directs otherwise, the Applicant (save where the Applicant is not legally represented and any respondent is, when the first named represented Respondent shall do so) is responsible for setting up a test of the remote method at least 48 hours before the contested hearing, in particular to ensure that lay parties are able to attend.

FAS forms – all orders should set out the times of the hearings (including any pre hearing discussions), bundle length and bolt-ons for specific advocates.

Orders

1. All orders either listing or resulting from a remote hearing should have the following warnings on the front page:

Warning to all parties

Pursuant to section 85 of the Courts Act 2003 as amended by Schedule 25 of the Coronavirus Act 2020, it is a criminal offence for a person to make or attempt to make an unauthorised recording or transmission of any image of or sound made by any person whilst that person is participating in court proceedings through a live video or audio link. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The subject matter of all hearings in this matter is confidential and no person other than the parties is to be present during any hearing which takes place through a live video or audio link.

2. All orders must also state that this order takes effect immediately notwithstanding the absence of a court seal.

Suggestions

If you have issues to raise or suggestions for better working, please could solicitors do so via Becky Marshall rebecca.marshall@porterdodson.co.uk and barristers via Melissa Barlow melissa.barlow@3pb.co.uk.

There will be a weekly meeting on Mondays with judiciary, Cafcass, SCC and your representatives so please raise issues with them in time for that meeting.

Thanks

Finally, many thanks to you all for your hard work in supporting the Family Justice system, and Somerset in particular, at this difficult time.

HHJ Liz Ingham
DFJ Somerset
30th March 2020

Order for remote hearings



In the Family Court

No: _____

IN THE MATTER OF _____

AND IN THE MATTER OF _____ CHILDREN

BEFORE _____ SITTING AT _____ ON _____.

Warning to all parties

Pursuant to section 85 of the Courts Act 2003 as amended by Schedule 25 of the Coronavirus Act 2020, it is a criminal offence for a person to make or attempt to make an unauthorised recording or transmission of any image of or sound made by any person whilst that person is participating in court proceedings through a live video or audio link. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The subject matter of all hearings in this matter is confidential and no person other than the parties is to be present during any hearing which takes place through a live video or audio link.

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 person attending the hearing 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. There is to be a remote advocates' meeting at least 48 hours before the hearing listed above which is to include any unrepresented party. The costs of this shall be considered a proper disbursement on the legal aid certificates of legally aided parties.

6. The [Local Authority / applicant / respondent] shall be responsible for arranging with the Court the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place and is to liaise with the court over the method of recording. 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 [Local Authority / 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 [Local Authority / applicant / respondent] 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;

9. All advocates and unrepresented parties shall attend a remote pre-hearing discussion 1 hour before the hearing listed above.

Dated _____

Order for directions relating to a contested hearing



In the Family Court

No: _____

IN THE MATTER OF _____

AND IN THE MATTER OF _____ **CHILDREN**

BEFORE _____ **SITTING AT** _____ **ON** _____.

Warning to all parties

Pursuant to section 85 of the Courts Act 2003 as amended by Schedule 25 of the Coronavirus Act 2020, it is a criminal offence for a person to make or attempt to make an unauthorised recording or transmission of any image of or sound made by any person whilst that person is participating in court proceedings through a live video or audio link. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

The subject matter of all hearings in this matter is confidential and no person other than the parties is to be present during the hearing listed below whilst it is being conducted.

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

1. This case is listed for a remote hearing before
on at _____ to consider whether the hearing listed on _____ can be heard remotely. Time estimate 1 hour.
2. No unauthorised person may be present at this hearing. When asked, each person attending must be able to confirm that no unauthorised person is in attendance or able to listen to the hearing.
3. There is to be a remote advocates' meeting at least 48 hours before the hearing listed above which is to include any unrepresented party. The costs of this shall be considered a proper disbursement on the legal aid certificates of legally aided parties.

4. If all parties are agreed as to the feasibility and format of a remote hearing following the advocates meeting, the [Local Authority/Applicant/Respondent] is to file, serve and email to the judge or legal advisor directly a position statement at least 24 hours before the hearing listed above addressing the factors listed in Paragraph 6 below together with an agreed directions order.
5. If the parties are not agreed as to the feasibility and format of a remote hearing following the advocates meeting, each party is to file, serve and email to the Judge or legal advisor directly a position statement at least 24 hours before the hearing listed above addressing the factors listed in Paragraph 6 below. The Position statement of any unrepresented party is to be forwarded by email to the Judge/legal advisor by the [Local Authority / Applicant/ Respondent].
6. The following factors are to be addressed in position statements (together with any other relevant factors):
 - a. Does any party or witness have learning difficulties or any condition (including any mental health condition) which would make it difficult for them to participate in a remote hearing
 - b. Is an intermediary or interpreter necessary
 - c. What are the views of any intermediary on whether a remote hearing can be conducted, and what measures will be necessary.
 - d. Where will witnesses and lay parties attend the hearing from
 - e. If home, who else will be present in the house
 - f. Are there children present in the house
 - g. If children, who will be able to care for them during the hearing
 - h. Have there been any previous concerns over any relevant adult sharing information inappropriately with the children
 - i. Can the hearing be confidential given the venue of any party/witness attending the hearing
 - j. Do all witnesses and lay parties have suitable devices to use to attend the hearing
 - k. Are the witnesses and lay parties able to download any necessary software

- l. Do all witnesses and lay parties have sufficient broadband to enable the hearing to be conducted through a video means
 - m. Do all witnesses and lay parties have sufficient funds to enable the hearing eg credit on phone, data charges.
 - n. How will witnesses and parties access the bundle, if necessary
 - o. Are there any concerns over the integrity of any evidence given in these circumstances due to (inter alia) the possibility of influence by another person present, intimidation by another person present or because a remote hearing is likely to impact on any party's or witness's ability to give full and frank evidence
 - p. The impact on the likely time estimate of the hearing being conducted remotely
 - q. The impact of delay on the children/parties if the matter cannot be heard remotely
7. All advocates and unrepresented parties shall attend a remote pre-hearing discussion 1 hour before the hearing listed above.
8. All parties are to fully complete a witness template for the contested hearing which is to be filed by the [Local Authority/Applicant/Respondent] at least 24 hours before the hearing listed above.
9. The [Local Authority/Applicant / Respondent] is responsible for:
- a. arranging with the Court the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place and is to liaise with the court over the method of recording. 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; and
 - b. Arranging the remote advocates meeting and pre hearing discussions.
8. The [Local Authority / 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 [Local Authority / applicant / respondent] shall by 16.00 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;

Dated: