

Mid and West Wales Approach to Remote Hearings and Procedure During the Current Emergency

This document is not intended to cover all aspects that will arise in the coming weeks and months. I have attempted to answer the questions that have been raised in the region this week. It is difficult to be prescriptive at this time because the situation is shifting day by day, if not hour by hour. Therefore, we will need to be flexible and dextrous to meet the coming demands that will be placed upon all of us.

Firstly, it stands to reason that the Judiciary and all court users will need to adjust the way we work and we will need to get on with the ordinary work of the Court as best we can, despite the current public health emergency.

The PFD's Guidance 19th March 2020 makes it clear that the Courts must continue to operate during this period, using remote hearings. The purpose of this way of working is to diminish the risk to health to all, from personal attendance at the Court for ordinary court users; whether professionals or lay parties.

Can I remind you of the Guidance in respect of category of cases 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

I have been asked (many times) whether public law trials will go ahead, during this period. It is obvious that some cases will be unable to go ahead. At this point in time, whilst we await the likely surge in infection amongst the general population, person to person hearings are unwise and a hazard to health. However, that does not mean that all cases should be adjourned off into the ether. We must all strive to maintain a good and SAFE working practice.

An example of cases that are unlikely to proceed under the current circumstances are for instance, those cases requiring translation services or which require many days for a final hearing.

The greatest difficulty is likely to be around cases involving LIP's. I have received many questions regarding how the Courts are going to deal with these cases. I suggest the following steps are considered by the Judges (and also by solicitors with lay clients):

- (i) Ascertain whether the LIP or lay client (who may be self-isolating) has access to a laptop and / or landline telephone or mobile phone.
- (ii) Ensure that the LIP / lay client has sufficient funds on the phone/ downloaded the Skype app
- (iii) That they are alone at the point of participation at any remote hearing
- (iv) Confirm that the person participating is in fact the party involved and not someone pretending to be or otherwise speaking on their behalf
- (v) Ensure that they understand that it is a criminal offence and / or a contempt of court to record hearings independently and /or have someone attending the remote hearing with them (without leave of the Judge).
- (vi) I REPEAT: every LIP/ lay client MUST be warned about confidentiality.

However, the risks regarding confidentiality must not be a generic reason for not proceeding with a remote hearing. We CANNOT reach a position where there are no cases heard for many months. We may have to accept that normal confidentiality rules may need to bend and that there are some risks, such as Skype being less secure. Obviously, if there are public interest issues, such as terrorism etc, then that would be completely different.

Where a lay client is self-isolating, then it will be incumbent upon the solicitor to enquire in advance of any Advocates Meeting (and definitely any remote hearing) that the above points (i)-(vi) have been canvassed with their client.

I want to avoid myriad applications to adjourn hearings without the advocates taking the time to think creatively in terms of how a remote hearing can best be achieved. For example, can a client be loaned a laptop or mobile phone for the duration of a hearing? Can the client attend a solicitor's office to take part? It may be that a lay person can attend the Court and be patched in through the Court telephone? Please ask the question: how can I maintain this hearing? There is always ISDN capacity in County Halls, so can the LA provide a space for a LIP to attend remotely? Please understand that the utilisation of solicitor's offices / courts/ county halls, will only be feasible when safe to do so. But we must start thinking laterally, to achieve the aim of keeping the courts functioning and ensuring that our important child protection aim is maintained at all times.

I also understand the concern that some have raised regarding LIPs being potentially difficult and insisting upon attending Court in person. At present that presents a risk to the health and should be avoided wherever possible. The LIPs should be told that if the option is a remote hearing or no hearing, then the better option is the remote hearing. It then becomes the focus to identify the best way: telephone hearing / Skype etc.

The extent of participation at remote hearings is another point for advocates and the Judges to consider. For my part, although the parties are all entitled to attend all hearings, in the current climate, is this always necessary for all remote hearings? For example, CAF/CASS Cymru has already directed that the Children's Guardian should not attend and that their evidence should be taken remotely. I have already indicated to the City and County of Swansea, that I see social workers falling into the same bracket in respect of actual attendance remotely or otherwise at Case Management Hearings. If the advocates are properly instructed and on the caveat that their professional clients are available to be reached by e-mail or text etc, then they are not necessary and can go about their duties. Using the same logic, why do lay clients need to attend remotely (or otherwise) for Case Management Hearings? Is there any reason why hearings cannot proceed with advocates only, if the lay clients, consent?

In short, we need to look at a far more streamlined approach to case management remote hearings, if for no other reason than to diminish the burden on the telephonic systems / bandwidth etc.

In certain cases, for example, FHDRA hearings there may be a difficulty in dealing with these remotely, but please try and undertake FHDRA's remotely via telephone or Skype. If District Judges/ Magistrates are dealing with cases, where there is a necessity for in-person hearings, then please remain vigilant regarding the current health advice from the Government. At present, the guidance is that people keep 2/3 metres apart: it may be therefore that you are ask parties to sit at the rear of the court, etc, open windows where possible to have ventilation.

In respect of FHDRA's please note that CAF/CASS Cymru will NOT be attending any FHDRA in person. The CAF/CASS Cymru proposal is that the Family Court Advisor for the FHDRA day will read all papers for the day, call an agreed person at 9.30 to talk through the cases and any issues they see arising, and then remain available by phone that day. I am content with this. Each Court in the region should agree with CAF/CASS Cymru a single point of contact, so that this can be readily implemented, I suggest maybe Glesni / Peter can take the lead in this from the Court's side. This should be an urgent task.

Current CAF/CASS Cymru Restrictions.

I am sure that you are all aware that in addition to CAF/CASS Cymru officers not attending in person at hearings that, WT4C, DNA testing and contact centres are no longer available options at this time. Please keep this in mind when making 'spend time with orders' etc.

The current expectation is that We expect that there will be far more incomplete SERs at this time, due to delays in police and LA disclosure. Nonetheless, CAF/CASS Cymru have assured me that they will make increased efforts to undertake the telephone safeguarding interviews prior to FHDRA.

Bundles

It is fortunate that Mid and West Wales have the portal system. I am content with access to the court bundles being via the portal in Public law cases, rather than sending PDF bundle as outlined for the remote hearings, as suggested by the PFD in his Guidance and template order. Concerns have been raised with me that Magistrates will want hard copy bundles for IRH and FH and that LA is concerned that in the near future they may struggle due to 1) depleting workforce and 2) if people are all made to work at home. These are good points and for my part, I see no reason why the Magistrates should not have access to the Portal in the same way as DJJ and CJJ.

Contact Details.

Our local template Order will include the following wording and contact arrangements:

*“If this hearing is to be by way of **telephone hearing**. The appropriate telephone conference call will be arranged by the applicant or, if the applicant is in person, the first named represented party. The relevant telephone number for the Court is **01792 485820**.*

All telephone conferences must be made through an approved service provider. The four approved providers are;

-British Telecoms PLC - 0800 028 4194

-Legal Connect - 0800 953 0405

-Kidatu - 0800 279 4595

-Arkadin Legal Hearings – 0800 279 5596

The estimated hearing time is given above. If the hearing is not concluded within that time it is likely that it will be adjourned to another date with a new time estimate.

*If you require further information about telephone conferences, please contact the Court on **01792 485800**.”*

The above can be adapted for other Court centres in the Region.

Further to that, on Monday we are testing an alternative way of conducting telephone hearings (BT Meet me) – Judith Evans will be testing it with her Magistrates list. That is a system whereby the court rings out and connects the parties into a conference call at no cost to them. I will let you know how that pans out.

Practicalities of Skype for Business.

On the 19th March 2020, the LCJ addressed 150 Leadership Judges via Skype for Business. It is an example of how broad the use of this technology can be. I am aware that many of you, including the judiciary are unused to Skype and have not been trained. There are links in the PFD’s Guidance to how to use this system. Do not be afraid of it. In time, we will likely progress to ‘virtual court’ technology, but as things stand we need to use what we have. I do not doubt there will be failures and errors at the start and as we grapple with this new form of working.

However, we must try and build our confidence and experience over what may be a lengthy period of remote working.

I have been asked about recording responsibility. My understanding with Skype is that there is a record feature built in and all one has to do is press the relevant record feature. Judges should remember to do so and perhaps it may be best if the advocates remind the Judges to do so!

There is some assistance regarding Skype usage here:

<https://intranet.justice.gov.uk/documents/2020/03/conducting-multi-jurisdictional-hearings-via-skype.pdf>

Please familiarise yourself with it.

The Guidance does not Mention Final Hearings so how are they to be conducted?

I have already touched on the difficulties inherent in running in-person hearings at present. Whether a trial can proceed remotely, will be determined on a case by case basis, through the normal Case Management structure. For example, at IRH, it will be a key consideration for a Judge and it is for that reason that advocates should consider the possibilities, as I have set them out.

However, some cases are clearly not suitable at present, as I have already said and that is why there must be a case by case approach. On a practical note, the LA will continue to email the relevant clerk to the Judge hearing the case or the family court email address, as is current practice with regards to documents such as case summaries; chronology; parties' positions statements; Guardian's Analysis and Draft Order. [That is the case for ALL remote hearings]. Other material forming the trial bundle will be on the Portal. I have provided communication reference below.

The Immediate Future

I suspect with the current crisis meaning that families are self-isolating, that there may be an increase in urgent public law applications. These will all be conducted remotely and I see no reason why that cannot be achieved, given that the majority are considered on a submissions basis in any event.

Clearly, the LA ranks are likely to be depleted, as are the court staff and judiciary. We must ensure that we can still operate a legal process which achieves protection for children. That must take precedence. However, I ask that those representing lay parties, advise their clients about realistic options and outcomes (not that you don't already) for their clients. That is important now, more than ever.

On this latter point, can I touch on other concerns raised with me by LA's regarding the provision of supervision contact. Social workers and Contact Supervisors, will doubtless be hit by the need to self-isolate etc and therefore they will be unable to meet the stated arrangements for contact as set out in Interim and Full Care Plans. I have already indicated to

the City and County of Swansea that I wholly understand the pressures that they are going to be under to meet their duties generally, but particularly with regards to supervision of contact, transportation to contact etc. LA's cannot be blamed for this public health emergency and the constraints that will flow from it. I DO NOT WANT an increase in (unrealistic or fanciful) applications coming from parents in respect of reduction in their contact, purely as a result of this emergency. Again, lay parties need to be informed that child protection comes before contact at this difficult time.

To ensure that there is a check and balance to this situation, I ask that the LA's notify the Children's Guardian, if a reduction takes place. If there is merit in a potential application, then it is better made by the Guardian than a parent in these circumstances. That way, the Court can be assured that a hearing is genuinely required.

The same approach should be made in private law proceedings where there are likely to be closures of contact centres, for example I know that the centre Pembrokeshire is now closed with staff ill or self-isolating. The Court cannot be inundated with request from disgruntled parents about the reduction or even loss for a period of contact. I do not want the applications filed in every case where a parent is not self-isolating and wants contact to continue. The simple answer is likely to be that nothing else can be provided during this unprecedented time of public health emergency, in any event. Therefore can I urge LA's to also think creatively in terms of contact continuing differently, for example via phone / Skype/ Facetime with supervision from a relative or foster carer, until this emergency passes. The same can be applied to private law cases where the LA are not involved.

In short, we need to keep social workers safe and practising and concentrating on child protection work.

Para 16 (a) of the PFD's Guidance of the 19th March 2020.

Public Law

In these circumstances, in a public law case for example the local authority would simply be responsible for checking that every representative / party had access to Skype and, if so, providing the court, for the attention of the judge, all of the relevant email addresses for the judge to plug into the Skype meeting invitation in Outlook. If it proved that a Skype hearing was not possible, for example because a party did not have access to it, then the local authority's responsibility would extend to liaising with the court to set up a telephone hearing paid for by the HMCTS bulk contract, if that was the alternative mode of remote communication chosen.

As to issues of costs of using the technology for remote hearings:

- (i) Skype technology is free and it is just a matter of organising the connection for the LA's.
- (ii) If BT conference calls are used then HMCTS have a bulk contract and the organising LA must liaise with the court to set up the call, get the number and access code, etc

I have been asked whether the cost of BT conferencing will be shared equally between all parties and the court? My understanding is that *Para 16(a) is not intended to, and should not, impose any financial burden on the LA. It is intended only to give them the administrative burden of setting the hearing up.* If I am wrong about that, then the costs for arranging the telephone hearing via BT Conferencing service shall be shared equally between the parties and are considered to be a wholly necessary expenditure on the funding certificates of the legally aided parties.

Private Law

Where there are only LIPs:

For Judges: with respect to Skype for Business on the judicial laptops, following the instructions attached to this email appears now to allow the judge to set up the Skype meeting invitation via our Outlook 365 using the LIPs email address.

Where a judge needs to set up an urgent hearing then the advocate's email addresses (provided that the advocates also have Skype installed on their computers) can be entered as above and they can be invited to attend.

As I understand it, if the Judge arranges the Skype meeting via Outlook in the circumstances above (which seems by far the simplest route) their primary email address will appear to the representatives / parties. I suspect that in circumstances where our email addresses are formulaic and can be worked out with little effort, this does not represent a real risk of security breaches for the judiciary.

Cleanliness

In Swansea, I have asked that the main entrance and key frequently touched areas in the public areas are regularly disinfected, for example, bannister rails, lift buttons, door handles, conference room tables. Each Court centre should ensure a similar regime is put in place to preserve the safety of all.

Conclusion

We are in strange times. We must work as best we can, to best achieve what we can, for the children in the region.

I have attempted to answer as many of the issues that have been raised with me during the last 48 hours. Doubtless, more will follow. Please try and limit the communication to the Courts. Remember the Court staff and the Judiciary are being depleted as well, through illness and self-isolation.

This is a time to focus on what is essential court business.

Nobody, and I mean nobody, should be taking unnecessary health risks during this time.

Keep safe, y'all.

HHJ PHJ (DFJ)

20th March 2020