

INTERIM PRACTICE GUIDANCE (4) FOR CLEVELAND, DURHAM AND NORTHUMBRIA DFC

COVID-19 – 7 APRIL 2020

(Northumbria and North Durham document)

1. Introduction

- 1.1 This Practice Guidance updates the guidance dated 24.03.20 and has immediate effect until further notice. It is anticipated that this guidance will be updated as required as circumstances and national guidance change. We welcome input from all stakeholders and will continue to arrange Skype/conference call meetings in each DFC area to identify issues and work together to find solutions.
- 1.2 The overriding concern is to safeguard the health of all involved in family justice. Subject to that, the aim is to keep family justice running for families in Cleveland, Durham & Northumbria as efficiently as possible in these unprecedented times. The paramount consideration is the protection of children, while continuing to deal with cases concerning them fairly and justly.
- 1.3 Wherever possible, cases will continue to be heard as listed. The court will notify the parties of any changes to the list as soon as practicable. The existing caseload will be the subject of continuous review, initially a week in advance but over time with a longer term view to the viability of listed trials.
- 1.4 All appropriate efforts should be made to resolve cases/issues where this can safely be done in the interests of children, particularly to agree at least interim holding positions for their care.
- 1.5 Judges will conduct remote hearings from home or from court in accordance with Government guidance.
- 1.6 Electronic bundles only are to be lodged for each hearing (and no paper bundles).

2. Remote hearings

- 2.1 In accordance with paragraph 4 of the President's Guidance, the default position is that all family court hearings will be carried out remotely until further notice.
- 2.2 Remote hearings will be conducted in accordance with The Protocol for Remote Hearings in the Family Court and Family Division of the High Court dated 23.03.20 (Appendix 1), subject to the following revised provisions to account for the arrangements for staffed and open courts.
- 2.3 All hearings will be conducted remotely until further notice unless the court approves an attended hearing (and there is therefore no need for a C2 application for a remote hearing).
- 2.4 A standard order is attached which applies to all remote hearings (Appendix 2). This order will be issued at the start of all new proceedings at gatekeeping; the relevant terms must be incorporated in orders made in ongoing proceedings at each remote hearing.

- 2.5 Participants at remote hearings will be required to confirm that no unauthorised person is present, that no unauthorised recording will be made of the hearing and will be reminded that it is a contempt of court for any unauthorised recording of the hearing to be made.
- 2.6 Where required, the court may provide for a sealed order to be available following the hearing (and before the order is formally drawn by the court) or direct that a draft order takes effect as if sealed. This will be considered by the court at the remote hearing.
- 2.7 Contact details for remote hearings are to be submitted to the Court using the Special Measures Inbox (Newcastlespecialmeasures@justice.gov.uk), subject header: REMOTE HEARING - case number - hearing date) no less than 24 hours before the hearing. This time period will be subject to review.
- 2.8 The court will send out notices to litigants in person regarding attendance at hearings in the terms set out at Appendix 3.

3. Attended hearings

- 3.1 Attended hearings will be exceptional. Any party seeking an attended hearing must make a formal application to the DFJ (or her nominee). Attended hearings will only be authorised where it is safe to do so. Any such hearings will take place in accordance The Protocol for Conducting Safe Live Court Based Family Hearings during the Covid-19 Pandemic dated 23.03.20 (Appendix 4).
- 3.2 In order to minimise the number of attended hearings parties should actively consider:
 - (a) whether the issues in the case can be agreed or compromised, in full or in part;
 - (b) how the outstanding issues can be dealt with at a remote hearing;
 - (c) what measures would be needed to ensure an attended hearing can be conducted safely and within any current guidance.

4. Cases listed for substantive/contested hearings

- 4.1 Where the case is currently listed for a substantive/contested hearing at which oral evidence is expected to be heard, a remote directions hearing must take place focusing on the realistic options currently available to meet the child's welfare needs and will address:
 - (a) Whether the case can be resolved without a contested hearing;
 - (b) The issues requiring determination at the contested hearing;
 - (c) The evidence required to determine those issues;
 - (d) The witnesses required for any contested hearing;
 - (e) Whether the case can be resolved by a remote hearing (by Skype or otherwise) on the date(s) the substantive hearing is already listed;
 - (f) Fixing any alternative substantive/contested hearing date (so that availability of all potential witnesses from 1 July 2020 must be available).

5. Bailiff service

- 5.1 Bailiffs will not serve documents face to face.

5.2 Orders will be made for substituted service by letterbox posting or email/text/WhatsApp/other electronic means.

6. Non-molestation injunctions

6.1 It is essential that the Court continues to meet the needs of those needing protection while affording respondents a sufficient opportunity to challenge orders made without notice.

6.2 Without notice non-molestation injunction applications will be heard by Skype or by telephone. The Court office will ascertain from an applicant whether they have downloaded the Skype for Business App to enable a Skype hearing. If not, the judge will telephone the applicant.

6.3 The judge will not hear oral evidence as a matter of course at a remote without notice hearing. It is important therefore that applicants set out their case for emergency protection in a written statement so that the Court can consider whether the case is appropriate to be considered without notice to the other party and requires protection through a non-molestation and/or occupation order.

6.4 At the conclusion of the hearing the Court will draw any orders and will send them to the relevant police force. Ordinarily the Court will make such orders to last for 6 or 12 months subject to the right of the respondent to ask the Court to reconsider the order.

6.5 Orders may be served by the following methods:

- (a) by email, text or other electronic means if the court is satisfied this will bring the order to the attention of the respondent. This will require the applicant to provide the court with reliable email addresses or telephone numbers for the respondent;
- (b) by process server instructed by the applicant in such safe manner as is directed by the court;
- (c) by the court bailiffs (in accordance with paragraph 7 above).

6.6 The Court will list a return date within 14 days when the respondent only need attend by telephone or by Skype. If a respondent proposes attending the hearing to oppose they must:

- (a) Notify the Court Office by email to Family.newcastle.countycourt@justice.gov.uk no later than 2 working days before the return hearing they will attend the return hearing;
- (b) confirm that they will be available at the time of the hearing to attend by Skype or Business (in which case providing an email address) or by telephone (in which case providing a telephone number);
- (c) be available to attend at the time fixed for the hearing.

6.7 If the respondent fails to notify the court or, having done so, fails to make themselves available at the time of the hearing, the Court will continue the injunction orders.

6.8 If the respondent attends the hearing and wish to challenge any orders made without notice the court will fix a further remote hearing for both parties to attend by Skype or by telephone when further directions will be given.

7. Gatekeeping

7.1 Public law gatekeeping will be done remotely by the legal adviser in conjunction with a district judge/circuit judge as appropriate, with cases allocated and listed according to priority and urgency.

- 7.2 Private law gatekeeping will be done remotely by legal advisers (in consultation with a district judge or circuit judge if required), who will allocate and prioritise having regard to urgency.
- 7.3 In private law cases where there does not appear to be a safeguarding issue and the case is not urgent, the Court may consider staying or adjourning for the parties to consider non-court dispute resolution including MIAMS or mediation. Before doing so, the court will consider:
- (a) whether safeguarding should be awaited;
 - (b) whether NCDR facilities remain available and accessible (see the section MIAMs/Mediation below)
 - (c) giving either party the opportunity to raise any safeguarding issue that means that NCDR would not be appropriate.

8. Public law cases

- 8.1 Requests for urgent hearings following issue or otherwise should be kept to a minimum. Cases requiring an urgent hearing on the day of issue will be listed for a remote hearing at 2.00pm wherever possible.
- 8.2 The court will expect to deal with interim hearings by way of submissions rather than evidence unless interim threshold issues require determination.
- 8.3 s.34 places a duty on local authorities to allow a child 'reasonable contact' with parents etc. Usual contact arrangements are likely to be significantly disrupted over forthcoming weeks in the light of Government guidance – what is reasonable must be considered in that context and s.34 applications for contact made sparingly.
- 8.4 The immediate priority on social work teams is expected to be on safeguarding rather than assessment. The court will consider on a case by case basis whether/how far assessments proceed by remote means to avoid direct contact.
- 8.5 Parties must consider whether the allocated social worker is required to attend any hearing. The default position will be that such attendance will not be necessary unless requested by one of the parties, who must be able to justify their request to the court. This means that advocates appearing on behalf of local authorities must be fully briefed. The allocated social worker should, where practicable, be available by telephone/email at the time of the hearing to give any necessary instructions. Careful consideration should be given before requesting the attendance of a social worker to give evidence. The questions should be whether that evidence is (a) likely to be challenged and (b) whether it is necessary to deal with the issues at that hearing

9. Private law FHDRA/DRA and review hearings

- 9.1 These will be conducted by remote hearing in accordance with the provisions set out earlier in this guidance.

10. Adoption hearings

- 10.1 The court will accept communications and documents relating to adoption/placement applications sent to adoptionnewcastle@justice.gov.uk (which is a secure email address).

- 10.2 Adoption hearings will continue to be listed (provided the judge hearing the case can sit in the CFCTC or Teesside Combined Court). Adoption case management hearings, permission to oppose and final hearings will take place as remote hearings unless otherwise specified. When notice of an adoption final hearing is sent to a birth parent, the birth parent will also be sent the notice at Appendix 5, informing them how they indicate an intention to seek permission to oppose. The Appendix 5 notice will also be sent to all birth parents where adoption final hearings are already listed. The court will seek confirmation from the social worker at the final hearing that the birth parent has been communicated with directly (by telephone/other electronic communication) to confirm whether they seek permission to oppose.
- 10.3 For reasons of confidentiality and security, orders in adoption applications will continue to be sent by the court by post.
- 10.4 Adoption visits will not take place until further notice. Families may choose to receive the certificate which would have been given at the visit by post, or for an adoption visit to be arranged at a later date when circumstances permit. Correspondence will be sent to each family by the relevant court explaining the options to them.

11 Financial remedy, divorce and appeal hearings

- 11.1 Financial remedy hearings will proceed remotely in accordance with guidance from Mostyn J and DJ Shaw.
- 11.2 The default position is that divorce hearings and appeals will be conducted as remote hearings. Any party seeking an attended hearing must clearly set out the necessity for such a hearing.

12. Urgent Court Business

- 12.1 This will continue to be dealt with as before but all hearings will be undertaken remotely.

13. Vulnerable parties and witnesses

- 13.1 Particular care should be taken to ensure the full participation of vulnerable parties and witnesses and the need to obtain best evidence. Remote hearings may present difficulties for those who are vulnerable and the court and professionals need to be sensitive to any additional needs.
- 13.2 Support Through Court (formerly PSU) is not currently available. Anybody requiring support by phone can call the STC national helpline 03000 810 006.

14. MIAMs/Mediation

- 14.1 FMC guidelines permit mediation intakes, MIAMs and mediation to take place by Skype or other similar videocall and can still be offered. Recent guidance has been issued by FMC about the circumstances in which voice only mediation intakes can be carried out:

<https://www.familymediationcouncil.org.uk/wp-content/uploads/2020/03/FMSB-Guidance-on-Information-and-Assessment-Meetings-During-Coronavirus-Social-Distancing-Period-19.03.20.pdf>

14.2 While intake and MIAM meetings can be carried out remotely, mediation itself may have to await the ability for parties and mediators to meet if they do not want to have meetings by Skype etc. In urgent cases video mediation is possible and has been provided for within existing rules.

15. Practical matters/safety

15.1 Applications should be made online wherever possible.

15.2 Queries will be dealt with by staff by email or telephone. Wherever possible, communication should be by email.

15.3 The Court Office will minimise the need to handle court files by dealing with family matters electronically wherever possible. To assist please observe the following:

- (a) All electronic communications should be sent to court in accordance with the protocol dated .09.19 (copy attached for information, Appendix 6);
- (b) Practitioners should not send hard copies of any documents to the court; all documents should be filed electronically;
- (c) Wherever practicable, litigants in person are encouraged to submit documents electronically.

15.4 Please do not telephone or email the court unless you really need to.

HHJ R. Hudson

HHJ G. Matthews QC

7 April 2020

Appendix 1

Protocol For Remote Hearings in the Family Court and Family Division of the High Court

23 March 2020

INTRODUCTION

1. The COVID-19 pandemic necessitates that, for the time being, the default position should be that all Family Court hearings should be undertaken by way of a remote hearing using telephone conferencing or an electronic communications platform.
2. This Protocol sets out the process for arranging, preparing for and holding a remote hearing. It applies to all types of proceedings to which the Family Procedure Rules (FPR) applies and applies to all types of hearing in the Family Court and in the Family Division of the High Court. Hearings conducted in accordance with this Protocol should be treated for all other purposes as hearings in accordance with the FPR. Any reference in this Protocol to a judge is to be taken as including any judge of the Family Court.
3. The Protocol applies both to a remote hearing conducted by the judge from a courtroom and to a remote hearing conducted by a judge from any other place in the jurisdiction of England and Wales.
4. This Protocol should be applied flexibly. In particular, it should be remembered that whilst the default position is that all hearings in the Family Court should be undertaken remotely, where the requirements of fairness and justice necessitate a court-based hearing, and it is safe to conduct one, then a court-based hearing should take place with appropriate safeguards against infection in accordance with current Government guidance. In these circumstances, regard should also be had to the *Protocol for Conducting Safe Court Based Family Hearings during the COVID-19 Pandemic*.
5. Equally, given the nature and risk presented by the COVID-19 outbreak, it must also be appreciated that there may be some cases that will need to be adjourned for longer periods of time because a remote hearing is not possible because the nature of the case and/or the length of the hearing and/or the number of parties, representatives and/or witnesses make it undesirable to go ahead with a hearing in court at the current time, having regard to the current Government guidelines regarding social distancing as a means of attempting to delay the spread of the disease.
6. Whether, and the precise method by which a hearing is conducted remotely is *always* in the discretion of the judge in the individual case, operating in accordance with the applicable law, Rules and Practice Directions. Nothing in the Protocol should be taken as derogating from the duty of the judge to decide the issues in the case judicially and in accordance with normal principles.

REMOTE HEARINGS GENERALLY

Need for Focus on Timely Preparation

7. Holding a hearing remotely makes it even more essential that proper preparation and planning happens in good time for the hearing. During the currency of the current public health emergency, it will be incumbent on all parties to proceedings to be even more proactive and co-operative with respect to preparation for forthcoming hearings.
8. Consideration of whether a remote hearing or a series of remote hearings is appropriate for a remote hearing should begin early. Further, and in particular:

- (a) Having regard to Paragraph 12 of the President’s Guidance entitled COVID 19: National Guidance for the Family Court issued on 19 March 2020, parties must redouble their focus on identifying the issues that require to be dealt with at the hearing and their efforts to agree and narrow the issues whenever possible and must identify clearly for the judge in advance of the hearing those issues that remain to be determined.
- (b) Within this context, there is a need for a renewed focus on ensuring that, when directed, advocates’ meetings are effective and, in particular are always attended by the advocate who will be conducting the remote hearing.
- (c) Instructions should be taken from clients at soon as practicable to enable proper preparation and always *prior* to any advocates meeting. If necessary, solicitors and advocates should stress to clients the difficult circumstances in which the courts are at present operating and the need to co-operate with timely instructions.
- (d) Evidence and other documents *must* be filed and served in accordance with the relevant case management order or Practice Direction.

9. The listing office, clerks and judges will consider as far ahead as possible how future hearings should best be undertaken. The listing office will also seek to ensure that the judge(s) and the parties are informed, with as much notice as possible, of the identity of the judge(s) hearing the case.

Types of Remote Hearing

10. There is no intention to prescribe which types of hearing will be suitable for being dealt with remotely. This will depend on the circumstances of the particular case and will be a matter for the judge having heard representations from the parties.

11. It is anticipated that all case management hearings will be capable of being dealt with remotely, as well as longer hearings limited to the determination of points of law and longer hearings that do not involve witness evidence, for example final hearings in summary proceedings under the Child Abduction and Custody Act 1985. However, experience suggests that contested multi-day final hearings involving both lay and expert evidence may well, depending on the circumstances of the case, be capable of being dealt with by way of a remote hearing. Committal proceedings (including Judgment Summonses) will always need to be heard physically in court.

Method of Remote Hearing

12. Likewise, there is no intention to prescribe the method by which a remote hearing is to be conducted or the communication platform to be used. There is an extensive ‘suite’ of communication platforms available by which to facilitate a remote hearing (including, non-exhaustively, a standard telephone conference call, BT MeetMe, Skype for Business, Zoom, Microsoft Teams and Lifesize). In addition, court itself will likely add remote hearing technology to its own services in due course as part of the reform programme.

13. Within this context, the cardinal rule is that at the outset of proceedings the court and the parties *must* consider and settle on the identity of the communication platform that is to be used in that particular case.

14. The minimum recommended bandwidth for a successful remote video hearing is 1.5 MBPS in both directions.

PRELIMINARY ARRANGEMENTS

15. Notwithstanding the default position, the court's permission is still required for all or any part of the proceedings to be dealt with by way of remote hearing.

16. Where the court, of its own motion or by acceding to an application by one or more of the parties, considers that all or any part of the proceedings should be dealt with by way one or more remote hearings, it is vital that there a *preliminary* hearing is held in order to consider and settle on the identity of the communication platform to be used and resolve the directions required in consequence thereof, including the identity of the lead party. It may be necessary for this initial hearing to take place by way of a telephone conference pending resolution of which electronic communications platform is to be used.

17. Where one or more of the parties is represented, responsibility for making the arrangements for the remote hearing(s) in the case will fall on either the applicant or the first represented party. If no party is legally represented, the court office will contact the parties to explain that the hearing will be held remotely and will send them instructions on how this is to be achieved.

18. Where one party is unable to attend a remote hearing by way of an electronic communication platform (for example, where they do not have access to the relevant technology or have a very poor Internet connection) but can attend by telephone, the remote hearing will be held by telephone conference call, to be arranged by the applicant (or first represented party) or by the court where no party is represented.

PREPARATIONS FOR THE REMOTE HEARING

Role of Lead Party

19. The identified lead party must liaise with the court in advance of the remote hearing to deal with any technical issues. The lead party must provide to all of the other parties the details required to attend the remote hearing as soon as they are available and in any event not later than 24 hours before the hearing is scheduled to begin. In many cases, it may be necessary for the lead party to set up the remote hearing with a view to inviting the judge to join that hearing rather than the court undertaking that task.

Electronic Bundles

20. The parties must agree, and the lead party must prepare and send to the court an electronic bundle of documents (and if appropriate an agreed electronic bundle of authorities) for each remote hearing complying with paragraph 18 of the President's Guidance entitled *COVID 19: National Guidance for the Family Court*. The electronic bundle must be prepared with care by somebody with adequate knowledge of the case and the following requirements must be followed:

- (a) PDF format is to be used;
- (b) All documents are to be contained, if possible, within one single PDF file;
- (c) The PDF file must be searchable;
- (d) Pagination must be computer generated within the PDF, not hand-written:
 - (i) Original pagination must be by section and page number i.e. A1, A2, A3.... B1, B2, B3 etc;

- (ii) Insertions, after compilation of the original bundles, should be using 'legal' numbering (e.g. B13.1, B13.2, B 13.3 to be inserted between B13 and B14);
- (e) Each section of the bundle, and each individual document referenced in the index, should be separately bookmarked;
- (f) Electronic bundles should contain only documents and authorities that are essential to the remote hearing.

21. The electronic bundle must be filed with the court on CE-file (if available) or sent to the court via a cloud-based link (e.g. ShareFile, iCloud, OneDrive, Dropbox or Google Drive) rather than in a series of emails. Delivery by USB stick should be avoided unless absolutely necessary due to the risk of creating a pathway of infection. The electronic bundle should be provided to all other representatives and parties within the timescales provided by the relevant Practice Direction.

22. Nothing in this Protocol limits the parties from agreeing, with the consent of the court, to use an e-bundle service from a commercial provider.

Listing

23. Rather than all cases being listed to commence at 10.30am, where there is more than one remote hearing in the court list, the court will be required to list hearings at a specified time and there will be little or no option to extend the time estimate for the hearing once it has commenced. This means that time estimates provided to the court are critical and must be met. Advocates and parties must be ready to commence the remote hearing at the listed time.

Arrangements for Witnesses

24. Where the remote hearing will involve oral witness evidence, consideration must be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree the list of such documents. It will usually be most convenient for an electronic bundle of the copy documents to be prepared in advance, which the lead party should send to the witness. This means that a person seeking to cross-examine the witness must know in advance what documents will need to be shown to the witness during cross-examination.

25. When administering the oath or taking the affirmation, the court is likely to find it most convenient to ask the witness to repeat the oath at the prompting of the judge. By reason of the risk of creating a pathway of the transmission of infection, there is no expectation that the witness should touch the relevant Holy Book.

Interpreters and Intermediaries

26. Where the case is one that involves the use of an interpreter and / or an intermediary, early and careful consideration will need to be given as to how best to facilitate this involvement in the context of a remote hearing. In doing so, it will be vital that this is done in close consultation with the relevant interpreter and/or intermediary. FPR Part 3A governing vulnerable adults will continue to apply to remote hearings.

Arrangements for Recording

27. Responsibility for recording the hearing will fall on the party or court that has organised the remote hearing. At the conclusion of the hearing (or at such points during the hearing as is necessary) the recording of the hearing will be uploaded to cloud based storage provision and the judge will settle arrangements for how the recording files are to be transmitted and stored centrally by the court.

Security of Hearings

28. When enacted, the s 53 of the Coronavirus Bill will provide for temporary modifications of s 85 of the Courts Act 2003 which make it an offence to record a broadcast from the court that has been directed for the purpose of enabling members of the public to see and hear the proceedings and make it an offence in any event to record or transmit material from participation through a live link on penalty of a fine at Level 3 on the Standard Scale. Those provisions will apply to the Family Court and the Family Division of the High Court. The recording by a party or other person of a remote hearing without the permission of the court is strictly forbidden.

Transparency

29. FPR r 27.11(2)(f) provides that duly accredited representatives of news gathering and reporting organisations may attend a private hearing in the Family Court. Whilst FPR 27.11(3) permits the press to be excluded if justice would be impeded or prejudiced, including where the remote hearing could not, practically, take place if this step were not taken, it remains highly desirable that the operation of the Family Courts is as transparent as possible in the circumstances. Within this context, the court and the parties must give consideration to how press access to the remote hearing is to be achieved. The court must indicate on the cause list that the hearing is a remote hearing and, if possible, the particular methodology that is being used.

THE REMOTE HEARING

30. It is inevitable, particularly in the early stages of remote hearings, that there will be technical issues. Parties must be sympathetic and flexible regarding any technical difficulties that may be experienced by another party to proceedings.

31. Anybody attending the remote hearing should ensure they have good connection/signal to avoid a breakdown in connection during hearing. As noted above, the minimum recommended bandwidth for a successful remote video hearing is 1.5 MBPS in both directions.

32. Where a witness attends the remote hearing the witness will be sworn or affirmed by the judge prior to commencement of their evidence. The witness is to be alone, in a secure room with the doors closed. The witness is to ensure that there will be no interruptions or distractions for the duration of their appearance at the remote hearing. The witness should have recently re-read all affidavits or statements made by him or her in the proceedings and have a copy of those documents with them.

33. The clerk, court official or the judge(s) must complete the order that is made at the end of the remote hearing. The wording of the order should be discussed and agreed with the parties before the link is terminated.

APPENDIX 2

Case No: _____



In the Family Court sitting at Newcastle upon Tyne

ORDER OF THE COURT ON ITS OWN MOTION, MADE AT GATEKEEPING ON [date].

The Court has determined 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].

IT IS ORDERED THAT:

1. The provisions of this order apply to all remote hearings.
2. 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] as directed.
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. No unauthorised recording may be made by any participant. Failure to comply with this is a contempt of court.
6. The applicant (if represented) and otherwise the first represented respondent shall be responsible for informing the court no less than 24 hours before the hearing (by email to Newcastlespecialmeasures@justice.gov.uk, subject header 'REMOTE HEARING [case number/hearing date]') of 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 4.00pm two working days before the hearing electronically file a PDF bundle, which must include the relevant documents for the hearing.

Dated _____

APPENDIX 3

Notice to Litigants in Person

The court has determined that in the exceptional circumstances of the current national health crisis the hearing listed on [date] will take place remotely. This means that you are not to attend court for the hearing but can attend the hearing by [telephone/Skype].

You will be notified by [the local authority/applicant/respondent/court] of the arrangements for you to join the meeting by [telephone/Skype] no less than 24 hours before the hearing.

If you are not able to join the hearing by [telephone/Skype] you must contact the court as soon as possible and in any event no later than [] (by email to [] or telephone []). You must explain the reason you are unable to attend the hearing in this way.

The court will then determine how the hearing will proceed. You will be notified of the court's decision by [email/telephone].

Appendix 4

Protocol for Conducting Safe Live Court Based Family Hearings during the COVID-19 Pandemic

23 March 2020

INTRODUCTION

1. The default position set out in the President's guidance of 19 March 2020 entitled *COVID 19: National Guidance for the Family Court* that all hearings will be heard remotely does not preclude the possibility of 'live' hearings where this can be achieved safely. Within this context, paragraph 4 of that guidance provides that "where the requirements of fairness and justice require a court-based hearing, and it is safe to conduct one, then a court-based hearing should take place."

2. Safe live hearings, if they can be achieved, can only be so by careful and diligent adherence to the Government guidance on measures to combat COVID-19 that are in force at the time of such hearings. That Government guidance advises on social distancing measures that must be taken to reduce social interaction between people in order to reduce the transmission of COVID-19. Within this context, the primary mediator of a safe live hearing is the Government guidance on the PHE website. Nothing in this Protocol alters that guidance and that guidance takes precedence at all times.

3. The steps outlined below, if followed, are designed to ensure that if a court user is unknowingly infectious, others in the room will continue to be able to comply with the Government guidance on social distancing.

LIVE HEARINGS GENERALLY

4. Once again, the default position is that all hearings should take remotely, subject to the need to hear committal proceedings (including Judgment Summonses) physically in court. Further, and in any event, it would be inappropriate for a live hearing to take place involving a person who is symptomatic or which involved any person who is subject to mandatory social distancing by reason of them being at increased risk of severe illness from COVID-19 according to the Government guidance. In particular:

- (a) Anyone aged 70 or older (regardless of medical conditions);
- (b) Anyone under 70 with an underlying health condition listed below (i.e. anyone instructed to get a flu jab as an adult each year on medical grounds):
- (c) Anyone with a chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease (COPD), emphysema or bronchitis;
- (d) Anyone with chronic heart disease, such as heart failure;
- (e) Anyone with chronic kidney disease;
- (f) Anyone with chronic liver disease, such as hepatitis;
- (g) Anyone with chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis (MS), a learning disability or cerebral palsy;
- (h) Anyone with diabetes;
- (i) Anyone with problems with their spleen or who have had their spleen removed;

- (j) Anyone who has a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy;
- (k) Anyone who is seriously overweight (with a body mass index (BMI) of 40 or above);
- (l) Anyone who is pregnant;
- (m) Those who have received an organ transplant and remain on ongoing immunosuppression medication;
- (n) Those with cancer who are undergoing active chemotherapy or radiotherapy;
- (o) Those with cancers of the blood or bone marrow such as leukaemia who are at any stage of treatment;
- (p) Those with severe chest conditions such as cystic fibrosis or severe asthma (requiring hospital admissions or courses of steroid tablets);
- (q) Those with severe diseases of body systems, such as severe kidney disease (dialysis).

LISTING A LIVE HEARING

5. Any live hearings from Monday, 23 March 2020 will need to be approved by the judge hearing the matter, if necessary in consultation with their leadership judge.

6. Where, exceptionally, more than one live hearing is held, the court should stagger listings to reduce the number of people waiting in the foyer and to allow for cleaning between hearings. Courtrooms on separate floors should be used for face-to-face hearings if possible, to reduce the number of people waiting in the same area in the foyer.

7. To reduce the length of any face-to-face hearing, where possible, submissions should be reduced to writing and the parties should expect to deal only with those issues that are not capable of prior agreement.

CONDUCT OF A LIVE HEARING

8. COVID-19 is mainly passed on by person-to-person spread between people who are in close contact with one another and by droplets produced when an infected person coughs or sneezes. It can also spread through contact with a surface or object that has the virus on it.

9. Where a live hearing is held, the court should ensure that the following measures are implemented:

- (a) Separation (2m) of people in queue to get into the court building.
- (b) Security screening at the entrance to the court should be staggered appropriately. Separation (2m) in the queue for security must be maintained. Security to wear gloves and regularly to clean trays for visitor's belongings. Security will be instructed to ensure social distancing is observed whilst court attendees are queuing for security.
- (c) Separation (2m) between security guards and people coming into court.
- (d) Separation (2m) of at all times in the court building (including in the assembly areas and when filing to and from court). The court should stagger listings to reduce the number of people waiting in the foyer and to allow for cleaning between hearings.

Courtrooms on separate floors should be used for face-to-face hearings if possible, to reduce the number of people waiting in the same area in the foyer.

- (e) A sufficient supply of hand wash and paper towels (or automatic hand dryers) must be supplied for all who will be in the building. This should allow for handwashing roughly every two hours by every person (obviously not at the same time). Judges should allow breaks for this to occur.
- (f) There must be no sharing of documents / iPads/ or any other items in the courtroom.
- (g) The layout of the courtroom must accord with the requirements of Paragraph 11 below.

10. At the outset of the hearing the judge should commence the hearing by reminding those present of the operational public health advice and emphasise its continued applicability in the courtroom.

11. During the hearing, the layout of the courtroom must be arranged so as to ensure that all present stay more than 2 metres from all others present. Counsel, solicitors and parties are to adhere to social distancing by sitting in appropriately distanced seats. A courtroom in which this is not possible should not be used for a live hearing. Where a court building has no courtrooms available that meet this requirement, that court should not be used for live hearings.

12. No party is to enter the court room before their matter is called.

13. Parties are to leave the court room immediately after their hearing has concluded, and then make their way promptly to the court exit.

CLEANING

14. Normal cleaning methods do kill the virus. Objects and surfaces that are touched regularly must be cleaned and disinfected frequently using standard cleaning products.

15. Additional cleaning of courtrooms that are used for face-to-face hearings will occur as often as practicable when the court is adjourned during the day.

16. Any live hearing will have a time estimate of no more than 1 hour. At the conclusion of that hearing, the courtroom will be closed and appropriate surface cleaning will take place before any further hearing is permitted to take place.

17. Where the judge lists a live hearing, the judge should ensure that the Court Manger contacts the cleaning contractor prior to the hearing to ensure that arrangements for cleaning in accordance with this Protocol are put in place.

18. Cleaning must take place in accordance with COVID-19: cleaning in non-healthcare settings (<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>)

APPENDIX 5

Notice to birth parents regarding adoption final hearings

As a result of the current national health crisis, the court has decided that the adoption final hearing listed on [date] will take place remotely. This means that you are not to come to court for the hearing.

If you want to ask the court for permission to oppose the adoption order, you must contact the court at least two days before the final hearing date (excluding Saturday and Sunday). Please contact the court by email (sent to adoptionsnewcastle@justice.gov.uk with the case number and date of the hearing as the subject of the email). If you are not able to email, you must telephone the court on 0191 2058750 and ask to speak to a member of the adoption team. You must tell the court you want to oppose the adoption. You will also need to tell the court whether you can join a hearing by telephone.

If you do this, the judge will make an order for a remote hearing (which will take place without you coming to the court building) to decide whether you are given permission to oppose the adoption. The court will usually arrange for you to join the hearing by telephone. If you have said you are not able to join a hearing by telephone, the judge will decide how the hearing will take place. The judge's order will tell you what you need to do before the 'permission to oppose' hearing and when that hearing will take place.

APPENDIX 6

Protocol for the submission of documents/bundles to

Northumbria and North Durham DFC

1. Email Communication

1.1 Emails to the Family Court are to be sent to the following email addresses:

Familygatekeeping.newcastle.countycourt@justice.gov.uk	All new <u>public law applications</u> (requiring a new case number)
Newcastle.C100applications@justice.gov.uk	All new <u>private law applications</u> (C100)
draftorders.newcastle@justice.gov.uk	All family draft orders (public law, private law, adoption & divorce)
newcastle.bundles@Justice.gov.uk	All electronic bundles
transcripts.newcastle.countycourt@justice.gov.uk	All transcript requests/other communications relating to transcripts
Newcastlespecialmeasures@justice.gov.uk	All requests for special measures (including intermediaries)
nclistingaccom@justice.gov.uk	All requests for listing accommodations
safeguarding@Justice.gov.uk	Cafcass safeguarding letters and Cafcass/local authority s.7 reports
adoptionsnewcastle@justice.gov.uk	All adoption/placement applications and other adoption/placement communications/correspondence
Family.newcastle.countycourt@justice.gov.uk	C2 applications for public and private law and all other communications/correspondence in family cases
COPNewcastle.newcastle.countycourt@justice.gov.uk	All Court of Protection communications (including applications, orders and correspondence)

1.2 All email communication from solicitors/firms and barristers/chambers is expected to be by secure email.

1.3 All emails should adopt the following naming convention:

Case number Case name Date of hearing (if applicable) Urgent (if applicable)

Emails must only be marked 'urgent' if they are genuinely urgent – please use your discretion before categorising an email as urgent.

1.4 The circuit judges, district judges and legal advisers have agreed that case management documents/draft orders are emailed to them directly.

These email addresses are not to be disclosed by any legal representative to the parties (or to any other person, save a legal representative) without the consent of the judge or legal adviser.

Please take particular care not to reply/copy all where some parties are LIPs and unwittingly reveal judicial email addresses to the parties direct.

Please note the different arrangements for submitting orders/other case management documents provided for below.

2. Submission of draft orders

2.1 All draft orders should be emailed directly to the judge or legal adviser but must also be copied to the draft orders inbox.

No order shall include the email contact details of any judge, nor shall the email contact details of any judge be disclosed by any legal representative to any party or other person (apart from another legal representative). Please take particular care not to reply/copy all where some parties are LIPs and unwittingly reveal judicial email addresses to the parties direct.

2.2 All orders must be submitted by email in Word format (not PDF).

2.3 All orders must record the date of the hearing and identify the judge or legal adviser/magistrates who made the order.

2.4 It is expected that all irrelevant parts of pro forma orders will be deleted.

2.5 Subject to any separate arrangement agreed by the judge or magistrates/legal adviser at a particular hearing, all orders are to be submitted as follows:

- (i) The responsibility to draft the order and submit it to the court lies initially with the advocate for the applicant. If the applicant is not represented, responsibility falls to the advocate for the first and then the subsequent respondents in order, unless all of the parties are unrepresented;
- (ii) In the case of final hearings of financial remedy applications, the relevant advocate shall submit the order for approval by 4.00pm on the seventh working day after the close of the hearing;
- (iii) Following all other hearings, the relevant advocate shall submit a draft order for approval within 48 hours of the hearing.

2.6 The advocate responsible for drafting the order must, save in urgent cases where the court directs the draft order is to be submitted without any delay:

- (i) Forward the draft order to all other advocates and any litigant(s) in person for comment;
- (ii) Inform the other advocates and any litigant(s) in person of the date and time at which the draft order will be forwarded to the court;
- (iii) Forward the order to the judge/legal adviser by the specified date/time (regardless of whether the other advocates/litigant(s) in person have responded).

2.7 The draft order sent to the court should be in terms agreed between the parties in accordance with the order made by the court. The email to which the draft order is attached must inform the court if any party has not responded to confirm agreement and/or the wording has not been agreed by any of the other parties, identifying any provision(s) in issue.

2.8 In the event that, following submission, an amended order is submitted, the proposed amendment should be identified and highlighted so that the judge/legal adviser (who may already have approved the draft order) can identify the amendment.

2.9 If the advocate fails to submit a draft order as above or as otherwise agreed by the court, the matter will be referred to the Designated Family Judge. The advocate may be directed to appear before the Designated Family Judge at 9.30am on a date notified by the court to explain why the order has not been filed. The hearing may be vacated in the event the order is received in advance of the hearing.

3. Case management documents (other than orders)

3.1 Case management documents are to be emailed direct to the judge/legal adviser wherever possible. Such documents are not to be copied to the family/adoption inbox.

3.2 All documents emailed to the court for the next day's hearing after the final list has been published should be emailed to the judge/legal adviser listed to hear the case.

3.3 Case management documents are only to be emailed to the family/adoption inbox when the identity of the judge/legal adviser is not known. Please note that documents emailed to the family/adoption inbox may not reach the judge before the hearing as a result of the volume of email correspondence to those inboxes. Such emails should include the date of the hearing in the subject header and be marked 'urgent' if sent the day before the hearing.

3.4 Case management documents are to be filed in accordance with the court's timetable/directions. It is likely that documents emailed to the judge/legal adviser after 9.00am (particularly when the judge/legal adviser has a list of short hearings) will not be read before the hearing.

4 Applications/Correspondence/Statements etc.

4.1 Injunction and financial remedy applications cannot currently be submitted electronically. Until court users are notified that such applications are to be submitted electronically, they must be lodged as hard copy/paper documents.

4.2 All other communications to the court from solicitors/firms and barristers/chambers must only be sent electronically.

4.3 Communications from litigants in person should be sent electronically wherever possible, but the court will continue to accept hard copy/paper documents.

4.4 Where a document is submitted by email, it is not to be sent in hard copy.

4.5 In public law cases, statements/reports are not to be filed with the court, but served on the local authority to form part of the rolling bundle.

5. Submission of bundles

- 5.1 All bundles (electronic and paper) must be lodged not less than 2 working days before the hearing. Documents served after the bundle has been lodged should be emailed to the court: to the bundles inbox in the case of a supplementary bundle; to the judge/legal adviser (where their identity is known) or family/adoption inbox, in the case of individual documents.
- 5.2 All electronic bundles are to be sent to the bundles inbox (and not directly to the judge/legal adviser).
- 5.3 Until further notice, a paper bundle must be lodged in addition to an electronic bundle (unless the judge has specifically agreed otherwise). The Designated Family Centre is actively working towards using electronic bundles only for hearings at which no evidence is to be given. Court users will be notified in advance of the date(s) when paper bundles are no longer required for specified hearings.
- 5.4 In the case of urgent applications (falling within PD27A paragraph 2.4), the electronic/paper bundles are to be lodged with the court as soon as reasonably practicable.

Her Honour Judge Hudson (DFJ)

September 2019