

COVID-19: LOCAL GUIDANCE – CLEVELAND & SOUTH DURHAM DFC

7 April 2020

1. Local guidance

- 1.1 This local guidance addresses issues specific to Cleveland & South Durham (CSD) and supplements the updated regional guidance for Cleveland, Durham & Northumbria dated 07.04.20 issued by the DFJs for the two DFC areas. This document has been prepared following input from HMCTS, local authorities (LAs), practitioners and Cafcass. It will be updated as circumstances change. I welcome your ongoing contribution to ensure that we can best manage the exceptional circumstances in which we are now working together.
- 1.2 **Our current circumstances are truly exceptional – none of us could ever have imagined living or working in this way. I understand how difficult it has been for everyone working in family justice in our area (as well as for the families we are working with). It is a huge credit to all concerned that we have quickly adapted to other ways of working so that many cases have been able to proceed as listed. I don't underestimate the pressures these changed circumstances are bringing to your professional and personal lives. Thank you for all you have done and the cooperative way in which everyone has been working. I know I can count on you to work together, as you always do, to make Family Justice continue to function in this area during this crisis. I hope to see you all back in this court building as soon as it is safe for you and the general public to do so.**
- 1.3 In this extraordinary situation, it is more important than ever that all parties/representatives really focus on the issues which need to be tried in every case and how that can appropriately be carried out, fairly and justly. We understand the financial implications for practitioners of the current crisis. We want to carry out as much of our business as we can but only if it can be carried out justly and fairly.

2. Changes to court working arrangements

Two very useful remote meetings took place by Skype on Wednesday 25.3.20 + 1.4.20 involving Local Authority representatives, CAF/CASS Managers and Practitioners to review the situation and whether any changes needed to be made to the ways of operating in Teesside. I need to express my thanks to Helen Scourfield, Chair of the LFJB for the pivotal role which she has played in being a conduit of information between the court and yourselves. Her contribution has been invaluable and that is much appreciated but I am aware that others too have played a significant part and I also wish to extend my gratitude to those individuals and to the amazing staff and my judicial colleagues.

In the time between those two meetings taking place, the Lord Chief Justice issued new directions with regard to the Court Estate. The significance of this to the Cleveland and South Durham DFJ area is that the activity of:

- a) Darlington County Court and Peterlee Magistrates Court are suspended as from Monday 30.3.20; and
- b) Teesside Combined Court Centre [TCC] and Darlington Magistrates Court are now staffed courts which are currently closed to the public;

- c) Teesside Magistrates and Newton Aycliffe Magistrates Court are designated as “Spine” Courts which will potentially be open to the public and at which any attended hearings will be held.

This does not change the way of working which has evolved over the past few weeks save that all of the work which has been organised through Darlington and Peterlee will be organised through Teesside. This means that applications should be made to the most appropriate staffed court [TCC] and queries (by email/telephone) should be directed there where staff and some judges continue to work in the building.

- 2.2 Most judges are currently working remotely from home, although some judges are conducting remote hearings from court. Legal advisers are also working remotely from home. We are presently unable to list hearings before magistrates, but will make arrangements for their sittings to resume as soon as practicable.
- 2.3 Our HMCTS resources are severely depleted. Please limit your communications by email and telephone to those which are essential. In particular, please do not copy the listing team in to emails where availability etc is being discussed between parties.

3. Listing

- 3.1 We have re-structured the judges’ lists so the work can be managed with remote hearings – we have therefore reduced the number of hearings listed by removing some types of work from the list. Case management/directions hearings are being listed in a block not in timed slots, although the latter has been discussed. This form of listing remains under review. We will continue to work around practitioners’ availability so far as we reasonably can and if there is a specific request for accommodation we will try to be flexible.
- 3.2 Where a case is listed for a substantive hearing, the parties and court will need to consider in advance whether that hearing can proceed remotely in a fair and just way. Practitioners are asked to review forthcoming listings proactively, discussing:
- (a) whether the case can be resolved without a contested hearing;
 - (b) what issues need to be determined to resolve the case and the type of hearing required;
 - (c) the necessary directions, either to preserve the substantive hearing or re-timetable;
 - (d) the witnesses required for any contested hearing;
 - (e) whether the court will be asked to give directions by email or a remote hearing is required.

It is expected that the trial advocates will undertake these reviews. In accordance with paragraph 24 of the LAA’s guidance (dated 24.03.20), where this review is dealt with by an exchange of emails between the parties and the court (rather than a telephone/video remote hearing), the order must include the details specified in paragraph 24 so that the advocates receive appropriate remuneration.

- 3.3 You are encouraged to contact the allocated judge/legal adviser and liaise with them about the feasibility of substantive hearings proceeding. Please ensure this is done by way of a composite email/position statement on behalf of the parties. The court can then decide whether the directions can be dealt with by email or whether a remote hearing is required to decide how the case proceeds.

- 3.4 Where a substantive hearing is adjourned, the court will fix a new date for the substantive hearing at a remote hearing, save where otherwise indicated in this guidance document. Availability of all required witnesses must be available.
- 3.5 Public law final hearings will be prioritised over private law cases, other than where there is a safeguarding issue. Priority will be given to cases in which progress can be made or in which progress is urgently needed.
4. **Electronic bundles**
- 4.1 All electronic bundles are to be sent to hearings.middlesbrough.countycourt@justice.gov.uk
- 4.2 In public law cases, the LAs should, wherever possible, continue to submit the full court bundle to this inbox. Where the LA is unable to do so, a bundle is to be lodged in accordance with 4.3 below.
- 4.3 In all other cases, the electronic bundle must contain the essential documents for the hearing. This bundle should be copied to the judge, where his/her identity is known, but must also be sent to the bundles inbox.
- 4.4 In accordance with the protocol for submission of bundles (September 2019), other than for urgent applications, all bundles are to be lodged not less than two working days before the hearing. Bundles for urgent hearings are to be lodged as soon as reasonably practicable.
4. **Remote hearings**
- 5.1 BT MeetMe is being used for most case management/short hearings. From the court's perspective, this is generally working well, as are the timed hearings.
- 5.2 It is very important that the court/judge receives the relevant contact details to initiate the call. These are to be emailed to the inbox), family.middlesbrough.countycourt@justice.gov.uk subject header: REMOTE HEARING - case number - hearing date) no less than 24 hours before the hearing. The onus is on the LA/first represented party to provide these details. Where the identity of the judge hearing the case is known, the information should also be forwarded to the judge (or legal adviser), but please ensure it is still sent to the inbox (in case there is a late change in the lists).
- 5.3 The majority of judges/legal advisers are generally managing the BT MeetMe calls without administrative support. With a view to reducing the number of people to be joined to each call, unless the judge agrees otherwise, only one legal representative for each party will be contacted. Legal representatives are requested to consider whether social workers/parties can give instructions in advance and/or how they can communicate with them during a remote hearing so the number of those dialled in to the meeting is kept to a manageable number.
- 5.4 The only HMCTS approved means of conducting video hearings are currently Skype for Business, Microsoft Teams and CVP (although Teams and CVP are not yet widely available). The judges are presently strongly advised against using other options (including Zoom). We recognise the advantages that Zoom (and potentially other platforms) can provide, but unless and until we are advised we can safely use other resources for confidential family hearings, it is expected that judges will decline to do so.
- 5.5 Where a substantive hearing is to proceed remotely, the representatives should liaise in advance with each other and all participants to test out the proposed arrangements.

6. **Attended hearings**

- 6.1 Please think very carefully before asking for an attended hearing. Some hearings, such as committals, must be attended - special arrangements will have to be put in place for these. Apart from a hearing which requires attendance, such as a committal, you will need to explain in detail the reasons why any other attended hearing is said to be required.

7. **Private Law hearings involving LIPS ONLY**

- 7.1 In order to reduce the workload of the staff and as a result of the lack of digital bundles in Private law cases in Teesside, cases which involve Litigants in Person **only [LIPS Cases]** will be removed from the list for the next 6 weeks at all tiers of judiciary **UNLESS the case is certified by a Judge to be urgent**, in which case the matter will remain in the list and be considered by a Judge. Any representations made by LIPs as to why their case should stay in the list will be considered by a Judge. The LIPs cases which have been removed from the list will not be re-listed to a fixed date but a Judge/Legal Advisor will carry out a review in the week of 11.5.20 as to whether it is feasible to re-list each case in the future and if so when.

8. **Private Law hearings involving at least one legal representative**

- 8.1 FHARA and DRAs involving at least one legal representative will remain in the list at this stage.
- 8.2 Where one (or more) party is represented, the telephone contact details need to be sent to the family inbox (and, where appropriate, to the judge) by the applicant, if represented, or other first represented party in good time (and no less than 24 hours before the hearing) to ensure the hearing can proceed. The court will also require the Judge to be supplied with **“the key documents”** needed to determine the hearing, and ideally a draft order. A bundle is not expected. If these documents cannot be supplied then the hearing may not be able to proceed as most judges are working from home and the staff do not have the time currently, to assess what documents are needed, scan them in and then send them to the Judge.
- 8.3. Substantive contested hearings which are already listed (fact finding or final hearings) will be removed from the list in the period 30.3.20 to 26.6.20 **unless** the parties and the Judge agree that it is practicable and in the interests of justice for the case to be heard remotely. Where there are safeguarding or other interim issues which require a shorter remote hearing, this will be afforded. Where one or more party is represented, the representative(s) should liaise with each other and any litigants in person to address the issues set out in paragraph 3.2 above. It is expected that, if at all possible, trial advocates will undertake this review.
- 8.4 Judges and listing officers will be working through the lists for the next couple of months and will reduce trials listed to a 1 hour remote directions hearing **unless you apply to the court as soon as possible for a trial to remain listed with a proposal for the Judge to consider as to how the trial could proceed fairly and justly.**
- 8.4 Safeguarding letters are being provided to the court in accordance with agreed timescales (3 days before the hearing). It is understood that more time may be needed to complete s.7 reports (although Cafcass and most LAs are currently indicating that 12 weeks for s.7 reports remains realistic). Cafcass will include in the safeguarding letter a proposed timescale for completion of any Cafcass s.7 report and will seek to liaise with the LA where a s.7 report is recommended from the LA to inform the court of the timescale proposed by the LA. It is

understood that the LA will seek to prioritise its safeguarding responsibilities in relation to actual or likely public law cases over private law cases in which there are no pressing safeguarding issues during this crisis.

- 8.5 Cafcass have provided details regarding their ability to fulfil directions for CCIs, SPIPs, DAPPs and DNA testing set out in the document attached to this guidance at **APPENDIX A**.
- 8.6 Any new applications for relocation (internal or international) are strongly discouraged until the relevant travel restrictions are relaxed. Parties to existing proceedings are encouraged to consider withdrawing the proceedings until a realistic application can be made in accordance with public health guidance. Where such withdrawal is not agreed, the court will give directions at a remote hearing, which will include consideration of dismissing the application.

9. Public Law hearings

- 9.1 LAs are requested to review their existing caseload and identify:
- (a) priority cases;
 - (b) cases which could potentially resolve by agreement;
 - (c) cases which could potentially be withdrawn or managed in a different way; and
 - (d) cases which require re-timetabling as the existing timetable is no longer sustainable.
- 9.2 Applications for interim care orders should be made in accordance with the Teesside URGENT CASE PROTOCOL to assist the court in arranging a listing of the application. Applications requesting same-day hearings should be issued as early as possible and will be listed at 2.00pm wherever practicable.
- 9.3 I have asked the listing officer to build a fire break into the diary between mid August and mid November 2020. At the time when this crisis developed we were already listing final hearings in August. This firebreak will hopefully accommodate public law [and private law] trials which **may** be vacated during the next few months. Mid August is realistic time for re-listing but we will be looking to re-list in any slots which are available dependent upon the length of the case from 1.7.20 onwards, postulating 3 months of disruption. Public law trials will not be vacated on a blanket basis as those cases which should settle, should still be resolved or indeed issues narrowed as a result of the evidence filed.
- 9.4 New cases which do not as yet have a final hearing listed will be listed for final hearing after mid November 2020, unless there is good reason to assume that they will settle or if they have compelling reasons to be heard earlier.

However, the evidence in new cases is to be timetabled in the first instance over the 26 weeks from the date of issue, with an IRH listed toward the end of that period. This will enable suitable cases to settle at IRH or for the time estimate of the trial to be at least reduced. We will endeavour on a case by case basis to bring trial dates forward in time dependent upon the prevailing circumstances.

- 9.5 The formal process of taking the case out of 26 weeks should **NOT** occur until the IRH or the time at which it becomes clear that the case cannot be resolved **within** 26 weeks. At that point the case can be adjourned for a period of 8 weeks or 8 weeks+ the additional period leading up until the FH date.
- 9.6 It is recognised that the ability of LAs to undertake assessments as per timetable is likely to be affected by current circumstances and restrictions. The parties are requested to liaise with each other where this is the case and provide the court with an explanation by email and a proposed

revised timetable. The judge/legal adviser can then decide whether to deal with the re-timetabling administratively or whether a remote hearing is required. This does not require the filing of a formal C2 application.

- 9.7 LAs are encouraged to delay issuing applications to discharge care orders (or for special guardianship applications being made to discharge care orders) until the current health crisis has abated. Revocation applications should also be delayed. The LA will not be criticised for the delay which has occurred during this crisis period.

10. Adoptions

- 10.1 LAs and adoption agencies are strongly encouraged to advise prospective adopters to delay issuing adoption applications until the current health crisis has abated. LAs are also advised against issuing applications to revoke placement orders until the current health crisis has abated.
- 10.2 Current adoption applications will be progressed as far as practicable, taking account of the limitations associated with the applications (most particularly, that all remote hearings will take place from the TCC).
- 10.3 While government restrictions on working arrangements remain in force, the court will accept a scanned copy birth certificate upon issue of an adoption or placement application to enable the application to be issued, on condition that the original is lodged as soon as circumstances permit.

11. Financial remedy hearings

- 11.1 Remote hearings in financial remedy cases will be dealt with in accordance with the directions issued by DJ Shaw (attached at **APPENDIX B**).

12. General

- 12.1 Email requests to vary directions/re-timetable will be considered with a draft order and without the need for a C2 application; C2 applications are still required for all Part 25 and other applications in proceedings.
- 12.2 The judge must be informed (in advance of the hearing wherever practicable) if the advocate proposing to undertake a hearing does not have rights of audience so the judge can confirm in advance whether this is approved. If the judge has not been notified in advance, the advocate must inform the judge of this at the start of the hearing.
- 12.3 Social workers and FCAs/CGs are not expected to be on the line for remote case management/other short hearings (unless the court directs otherwise), but are expected to have provided instructions in advance. The court will consider on a case by case the extent to which (if at all) social workers or FCAs/CGs attend substantive hearings other than to give their own evidence.
- 12.4 It is likely to be more difficult to arrange for parties to sign statements and other documents. A scanned signature should be provided where possible. In the alternative, the statement should include a typed signature with written confirmation of the contents from the maker (by email or other electronic communication). Where neither of these options can be achieved, the legal representative for the party must confirm the content of the document has been agreed by the party.

- 12.5 Interpreters are available for remote hearings through the Big Word telephony. The court will need advance notice of the need for an interpreter in the usual way.
- 12.6 Prison video links will be arranged where available and practicable.
- 12.7 The difficulties of the Police Disclosure Unit have to be borne in mind at this difficult time and requests for disclosure must be proportionate and necessary. Do not ask for an order unless the Protocol has been invoked and sufficient additional time has been allowed for compliance given the current situation.

Her Honour Judge Matthews QC

07.04.20

APPENDIX A

Cafcass update: April 2020

Child Contact Intervention (CCI), Separated Parents Information Programme (SPIP) and Domestic Abuse Perpetrator Programme (DAPP)

Due to the current Government advice on restricting movement, and increasing numbers of providers having to close centres due to the impact of COVID-19 on resources, the following temporary actions have been agreed with the President of the Family Courts:

- Courts will suspend any new ordering of CCI, DAPP and SPIP contact activities until further notice.

1. Managing cases currently in the system

SPIP cases

- Where possible SPIP's are now being delivered virtually.
- Any referrals that are in the system, both that come in from Courts or have not yet been sent to the provider will be processed in the usual way.
- Due to reduced delivery capacity there will be delays
- Participants who chose not to undertake a virtual SPIP are being returned by providers and 'held' until face to face delivery of SPIP can commence again.

CCI cases

- No new CCI referrals to providers or court recommendations should be made.
- Providers are completing open cases using remote technology where it is safe to do so and the provider has got the capacity/technology to do so.
- Before embarking on any virtual delivery, the provider needs to ensure that all parties agree and consent with the proposal; this includes the child and FCA, as well as resident and non-resident parent.
- Where it is not safe to complete the outstanding sessions remotely the provider will inform the allocated FCA.

DAPP cases:

- No new DAPP referrals to providers or court recommendations should be made.
- Where a referral from Cafcass has been received by the provider but work has not yet commenced, providers are being asked to inform the Cafcass national commissioning team (NCT) and allocated FCA.
- The support DAPP providers offer at the moment varies and NCT are working with providers to establish what remote support can be offered.

DNA

- Courts can continue to order DNA testing (in private law cases where the application is for a CAO), as we are currently able to use DNA samplers to undertake this on our behalf.
- However due to restricted capacity, **orders should only be made where this is critical for the progression or conclusion of cases and/or where there would be significant risks to the case by not doing this.**

This guidance is subject to review and is intended to be interim only.



APPENDIX B

**In the Family Court
sitting at the**

Case

No:

Financial remedy draft order

ORDER MADE BY DISTRICT JUDGE xxxx ON

2020 SITTING IN PRIVATE

Upon the Court determining that in the exceptional circumstances of the current national public health emergency this case is suitable for remote hearing by means of telephone/Skype/other HMCTS approved provider.

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 telephone/Skype/other HMCTS approved provider.
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. This matter shall be listed for a remote [select applicable paragraph]
 - First Directions Appointment. The parties are reminded of the accelerated First Appointment Procedure set out in the 4th Schedule to the Financial Remedies Court Good Practice Protocol, and the guidance of Mostyn J dated 17th March 2020. The parties are encouraged to adopt the accelerated procedure in an appropriate case or to request a paper hearing wherever practical.
 - Financial Dispute Resolution Appointment. Parties should make use of private FDRs, arbitration and other non-court based methods for dispute resolution where it is practical to do so. Where parties consider that any hearing listed on or after 6th April 2020 is not likely to be effective and/or seek to adjourn for the purposes of enquiring into or engaging in ADR they are encouraged to make any such application promptly.
 - Final Hearing. [vacate any hearing before, say mid-April] There will a Mention hearing t/e 30 minutes [no less than 14 days before Final Hearing date]. At that hearing, directions shall be given as to the arrangements for attendance by remote means, the provision of an electronic bundle, the timetable and any other practical matters necessary to ensure the smooth running of the Final Hearing.

The parties shall send to the court and to the other party, by 11.00 on the day before the Mention Hearing, a draft directions order and Position Statement.

The parties are invited jointly to request that the court conduct the Mention Hearing and give directions in respect of any disputed issues by way of a paper hearing without any remote attendance being required.

The Mention Hearing shall be vacated in the event that the parties agree the directions and they are approved by the court.

- Directions Hearing
- Application Hearing
- MPS Hearing
- LASPO Hearing

on 2020 at [time] before [*Name of Judge*] with a time estimate of [xxx].

5. **Arrangements for the remote hearing** Each court site has telephone conferencing numbers to facilitate hearings and, when required, allow recording of those hearings.
6. HMCTS staff, when instructed by a judge, will send the notice of the telephone or Skype hearing to all parties. This will advise you how you will be invited to the call and provide information for the hearing to be effective. This includes a request to provide the court with a preferred contact number by which they can join the hearing. In order to join a hearing by video you will need a computer or suitable phone with access to the internet, a web browser, camera, microphone (you can use your device's built-in microphone), and a quiet space where you will not be disturbed. You do not need any specific software. The court or tribunal will send you an email with a link to click and you can join the hearing using HMCTS' Skype for Business software as a guest.
7. If somebody requires a reasonable adjustment or an interpreter, HMCTS staff will make sure this is considered and actioned when arranging the hearing. All telephone and Skype hearings will be recorded.
8. **Steps to take before the remote hearing** Where the parties are legally represented there shall be a Meeting of Advocates, to be held by remote means, no later than 4 days before the hearing is to take place in order to attempt to narrow the issues and agree upon the reading list for the Judge.
9. The applicant shall no less than 2 working days before the hearing is to take place send to the court at [e mail address]:
 - a) An agreed focussed reading list of only those documents that are essential to determine the issues that fall for determination at the remote hearing for the Judge who will conduct the hearing together with an agreed estimate of the necessary reading time
 - b) An agreed PDF bundle, which must be searchable and paginated, containing only those documents or parts thereof that are referred to in the reading list. The total number of pages must not exceed 100 pages.
 - c) A draft order
 - d) The parties' statements of costs
10. All documents shall be lodged by the court by e mail. Any e mail sent to the court shall contain, in the subject field, the case name, case number, and hearing date.

Dated 2020