Neutral Citation Number: [2020] EWFC 43

Case No: PR18C00544

IN THE FAMILY COURT

Sitting Remotely

Date: 12/06/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

Lancashire County Council	**Applicant**
- and -	
M	**First**
-and-	**Respondent**
F	**Second**
-and-	**Respondent**
C	**Third**
(By his Children's Guardian)	**Respondent**

Mr Karl Rowley QC and Mr Johnathan Buchan (instructed by **McAlister Family Law**) for the **Applicant**
Mr Paul Storey QC and Ms Sara Lewis (instructed by **Wollens**) for the **First Respondent**
Ms Vanessa Meachin QC and Ms Lucy Hendry (instructed by **Brendan Fleming**) for the **Second Respondent**
Ms Kathryn Korol and Mr Christopher Blackburn (instructed by **John Whittle Robinson Solicitors**) for the **Third Respondent**

Hearing date: 8 June 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 12 June 2020.

Mr Justice MacDonald:

INTRODUCTION

1. The COVID-19 pandemic has resulted in a temporary but fundamental shift in the manner in which the Family Court and the Family Division of the High Court hear and determine family cases. Namely, a very marked increase in the use of remote hearings conducted by means of electronic communications platforms. That temporary shift has resulted in the court having to consider, in each case, whether that case is suitable for a remote or, increasingly commonly, a hybrid hearing (whereby certain parties and / or their lawyers attend the court building while others attend the hearing by remote means) or whether the case should be adjourned for what may be an extended period until a fully face to face hearing can be achieved. That, to an extent, is the question in this case.

2. These proceedings under Part IV of the Children Act 1989 concern the welfare of C, born in September 2018 and now 1 year and 9 months old. The mother of C is M, represented by Mr Paul Storey, Queen's Counsel and Ms Sara Lewis of counsel. The father of C is F, represented by Ms Vanessa Meachin, Queen's Counsel and Ms Lucy Hendry of counsel. The application is brought Lancashire County Council, represented by Mr Karl Rowley, Queen's Counsel and Mr Jonathan Buchan of counsel. C is represented through his Children's Guardian by Ms Kathryn Korol of counsel and Mr Christopher Blackburn.

3. The proceedings were issued on 19 October 2018 and have been the subject of very considerable delay for reasons that I will come to. The matter is now currently listed for an adjourned part heard final hearing commencing on 13 July 2020 at the Manchester Civil Justice Centre with a time estimate of ten days. By reason of the size of the largest courtrooms in that court building the case will be capable of being heard fully face to face whilst at the same time complying with the current social distancing requirements put in place by the Government. The facilities in the courtroom at Manchester will also permit, as a continency plan, a 'hybrid' hearing to take place whereby one or more parties can attend the hearing in Manchester remotely without having to step inside the court building. The father, however, now applies to further adjourn the part heard final hearing until such time a fully face to face hearing can take place in Preston, for reasons that I will come to.

4. The hearing of this adjournment application has been conducted remotely. In determining the father's application for an adjournment I have had the benefit of written and oral submissions from leading and junior counsel and have read the relevant documents in the electronic bundle. Given the issues raised by the father's application to further adjourn the part heard final hearing and the difficulties of delivering an *ex tempore* judgment over a remote link, I reserved judgment for a short period. This judgment is of some length in circumstances where the position in this case is somewhat unusual and where there have been recent developments in the guidance applicable to the court's decision. It is important to make clear however, that most judgments dealing with adjournment applications of this nature will not need to descend to the level of detail set out below. Having regard to the factors that I have summarised at paragraph [45] below, I am satisfied that the father's application to adjourn the part heard final hearing must be refused for the reasons I now proceed to set out.

BACKGROUND

5. The genesis of these proceedings was the collapse and admission to hospital of C on 7 October 2018. Medical investigations that took place subsequent to C's admission to hospital revealed that he had sustained the following injuries:

   i) Bilateral subdural haemorrhages more extensive on the right hand side than on the left.

   ii) Acute ischaemic damage on the medial aspect of the left temporal occipital region.

   iii) Extensive retinal haemorrhages to the right eye.

   iv) Petechial bruising on the abdomen.

   v) Two parallel red marks on the right thigh.

   vi) A bruise between the eyebrows.

   vii) A healed laceration to the forehead.

   viii) A torn upper frenulum.

   ix) Multiple fractures to C's hands, feet and ribs and an older displaced fracture to his left arm.

6. Both parents deny responsibility for the injuries to C. The expert medical evidence in the case comprises jointly instructed reports from Dr Russell Keenan, Consultant Paediatric Haematologist, Dr Karl Johnson, Consultant Paediatric Radiologist, Dr Stavros Michael Stivaros, Professor of Paediatric Neuroradiology, Dr Rose, Consultant Paediatrician, Dr Anand Saggar, Consultant in Clinical Genetics and Dr Peter Richards, Paediatric Neurosurgeon. Having regard to the totality of the evidence in the case, the local authority now seeks findings that C's injuries were inflicted on him by either his mother or his father or both his parents. In addition, the local authority relies on welfare concerns arising out of the parents' alleged use of drugs, their emotional and mental health, their alleged hostility to professional intervention and their alleged inability to work openly and honestly with professionals.

7. Within the foregoing context, the procedural progress of this case since issue in October 2018 has been remarkably ill-starred and requires to be set out in some detail.

8. As I have noted, the proceedings were issued on 19 October 2018. On 7 November 2018 His Honour Judge Duggan timetabled the matter to a final hearing commencing on 25 March 2019 with a time estimate of five days. The pre-hearing review was held on 8 March 2019 and the final hearing commenced as timetabled and on time before HHJ Duggan on 25 March 2019. However, on 26 March 2019 the final hearing had to be stopped by reason of the father having collapsed on the first day of the hearing and being conveyed to hospital by ambulance. Having received confirmation that the father was not well enough to attend court HHJ Duggan re-timetabled the matter for a further final hearing commencing on 16 October 2019.

9. On 16 October 2019 the final hearing again commenced as timetabled by HHJ Duggan. However, the father failed to attend this second final hearing. Upon enquiry the father's general practitioner considered that he had capacity to litigate and would possibly be able to attend court. The mental health crisis team considered that the father was suffering from anxiety and that it would be advantageous for him to seek treatment for this and to attend court if he were able. Upon the father's counsel and solicitor visiting him they concluded that the father wished to participate in the final hearing but had very marked anxieties about doing so. Within this context, the father's legal team concluded that he would not be able to participate in a final hearing without the services of an intermediary.

10. Dr Waquas Waheed, Consultant Psychiatrist, was asked to prepare a report on the father's litigation capacity and the question of whether he was capable of attending court and giving evidence. Dr Waheed concluded that the father did have litigation capacity, but was suffering from recurrent depression of moderate severity. Dr Waheed considered that the father's symptoms rendered him vulnerable and to an extent restricted his ability to fully understand any new information or utilise this information to make his decisions. An intermediary report was also directed and Sarah McPhillips, registered intermediary reported on 25 November 2019 that the father would require intermediary support in advance of, and throughout the final hearing.

11. This matter having been re-allocated to me, I listed it for a final hearing before me in Preston from 16 March 2020 with a time estimate of three weeks. The hearing commenced on 16 March 2020 with both the mother and the father in attendance, the father having the benefit of support from an intermediary. Within this context, and as Ms Meachin has pointed out during her oral submissions at this hearing, the extensive efforts put in place by HHJ Duggan to support the father to attend the final hearing in Preston before me were thus successful in facilitating his participation in that hearing, notwithstanding the symptoms generated by his depression and anxiety. This made the subsequent impact of world events beyond the control of the court and the parties all the more frustrating, particularly in the context of it having been necessary to abandon two previous final hearings.

12. The final hearing that commenced on 16 March 2020 took place in Court Two at Sessions House in Preston. The courtroom is small and was required to accommodate at least 18 people for the final hearing, supplemented at regular intervals by live witnesses, including active duty paramedics and the doctors who treated C. Within this context all those participating, save perhaps for myself, were seated in very close physical proximity to each other. On 3 March 2020 the Government had published its Coronavirus Action Plan. That plan made clear that the virus had the potential to spread extensively, that the then current data appeared to show that all were susceptible to catching the disease, that a minority of people who were infected would develop complications severe enough to require hospital care and suggested that close contact with others infected could lead to the further spread of infection. On 16 March 2020 the Prime Minister announced that everyone should stop non-essential contact with others, stop all unnecessary travel and work from home where possible and avoid all unnecessary social contact. Within the foregoing context, and having regard to the conditions in the courtroom that I have identified above, I took the decision at lunchtime on 17 March 2020 to adjourn the hearing part heard due to my

concerns that I was unable to ensure the safety from infection of the court staff, the parties and their legal teams having regard to the information that had by then become available.

13. In early April 2020 I communicated to the parties that, by reason of the need to adjourn another long hearing, I could offer the adjourned part heard final hearing in this matter a further fixture, conducted remotely and commencing on 22 April 2020. As will be seen below, following the Prime Minister's announcement on 16 March 2020, guidance was promulgated by the President of the Family Division on 19 March 2020 concerning the conduct of remote hearings in family cases. Subsequent to my offer of a remote fixture for the part heard final hearing I was informed that the parties could not agree whether the case was suitable for a remote hearing, with both parents contending strenuously that it was not. In those circumstances, and having regard to the President's Guidance, I caused the following message to be communicated to the parties:

> "As matters stand, given the stark nature of the disagreement between the parties on the question of a remote hearing, the impact of the current government guidance on the ability of the parents to attend a court, the parents' apparent lack of access to effective IT, the acknowledged difficulties with securing the effective participation of intermediaries in remote hearings and in light of emerging issues regarding the participation of vulnerable parties in extended remote hearings, my strong provisional view is that it would not be appropriate to recommence a hearing of this length and this complexity remotely unless agreed solutions to the parents' stated Art 6 concerns can be arrived at between the parties, particularly in circumstances where one of the potential outcomes of the proceedings is the permanent removal of their child".

Within this context, no party sought to further press the court to deal with the part heard final hearing by way of a fully remote hearing at the end of April.

14. Within the foregoing context, and in light of the concerns of the parents I have highlighted, the parties and the court thereafter moved to concentrate on identifying a way of undertaking a fully face to face final hearing. When the matter came before me again on 29 April 2020 (by which time the President had decided the appeal in *Re P (A Child: Remote Hearing)* [2020] EWFC 32) the order made at that hearing recorded that the court would make urgent enquiries as to the availability of one of the very large courtrooms at the Manchester Civil Justice Centre or, in the alternative, one of the courtrooms at the Combined Court Centre in Preston. On 14 May 2020 my clerk confirmed to the parties that the Manchester Civil Justice Centre could accommodate the case in a courtroom in Manchester large enough to facilitate a properly socially distanced face to face hearing. Enquiries continued with respect to the Combined Court Centre in Preston but it quickly became apparent that, due to current pressures on the court estate in Lancashire arising out of the fact that the requirement to implement social distancing means that the courts cannot operate at full capacity, and the fact that the resulting limited court space is required to be used by all jurisdictions, the Combined Court in Preston would not be able to accommodate the hearing. This remains the position. Sessions House in Preston is obviously inappropriate for a fully face to face final hearing in this case for the very reasons that caused this case to be adjourned part heard on 17 March 2020.

15. In the foregoing context, the court having indicated on 3 April 2020 its provisional view that a remote hearing would not be appropriate absent an agreement between the parties given the difficulties with holding such a hearing, and having identified at the beginning of May 2020 a means of dealing with those difficulties by holding a properly social distanced face to face hearing, I listed this matter for the conclusion of the part heard final hearing with a time estimate of 10 days. HMCTS has completed a risk assessment with respect to the Manchester Civil Justice Centre and the building has been assessed as being 'COVID-secure'. That risk assessment is publicly available and has been provided to the advocates. The local authority has made clear that if the parents are reluctant to utilise public transport from Preston to Manchester, and if the Legal Aid Agency will not agree it as a reasonable disbursement, the local authority will consider funding a daily taxi to bring the parents to and from the Manchester Civil Justice Centre for the duration of the face to face hearing. As I have noted, it will also be possible, if necessary as a contingency plan, to conduct a 'hybrid' hearing based at the Manchester CJC whereby some parties and legal teams attend the hearing in person and some parties and legal teams attend the hearing from a remote location by way of video link. Investigations have revealed that, subject to the costs of deep cleaning and use of the video platform being met a barristers' chambers in Preston can accommodate the father, his intermediary and one of his legal team to facilitate his remote participation in a 'hybrid' hearing as a contingency. Further investigations are underway as to other facilities of this type that might be available for the father, and for the mother if necessary.

SUBMISSIONS

The Father

16. In advancing his application to further adjourn the part heard final hearing until such time as it can commence in Preston as a fully face to face hearing, the father submits that he is unable to travel to participate in a fully face to face hearing at Manchester. No application has been made to adduce medical evidence in support of the contention that the father's mental health prevents him from travelling to Manchester from Preston, but the father relies in support of this submission on the following assertions:

    i) It is to be anticipated that past experience, now exacerbated by COVID-19, is likely to provoke increased anxieties in the father with respect to a venue away from Preston.

    ii) The father has in the past experienced "increased anxieties" in travelling away from Preston to another court. Whilst it is accepted that the father has travelled to Manchester to meet his legal team for the purposes of a consultation and to London, Ms Meachin and Ms Hendry submit that this was prior to the COVID-19 pandemic and was, accordingly, a very different scenario to a daily travel for the final hearing.

    iii) The father has given instructions to his solicitor that he would not wish to travel to court in Manchester and expressed his ongoing anxieties as to a contemplated fixture in Manchester.

iv) The father is now unable to contemplate any other option than a fully face to face hearing conducted in Preston.

v) Within this context, and given that the father has vulnerabilities which render him particularly anxious about court proceedings as recognised by the special measures that the court previously sanctioned for him, listing the case away from his home and local court, requiring him to travel on public transport before and after court wearing a face mask for ten days at a time when the pandemic continues will exacerbate his anxiety and is inconsistent with a proper recognition of his particular vulnerabilities.

17. Further, in the context of his contended for inability to travel to the Manchester Civil Justice Centre to participate in a fully face to face hearing for the contended for reasons set out in the foregoing paragraph, the father submits that the following matters also militate against him participating remotely in a hybrid hearing run from the Manchester Civil Justice Centre as a contingency plan to ensure his involvement:

i) Dr Waheed has provided an opinion that makes clear that the father requires intermediary support in order to participate effectively in the hearing and the court has previously endorsed that opinion by making provision for such support.

ii) The hearing commenced on 16 March 2020 demonstrated that the father was able to participate in a fully face to face hearing with the benefit if appropriate support, in contrast to the position with respect to the two previously adjourned final hearings where he lacked such support.

iii) In the circumstances, the father continues to require the assistance of an intermediary, which assistance can only be effected if the father is able to participate in a fully face to face hearing in Preston.

iv) The parents do not have technological support at home or the technology required to participate effectively in a hybrid hearing run from the Manchester Civil Justice Centre.

v) An arrangement whereby the father is required to participate remotely when all other parties and the judge are face to face in court is not what is ordinarily meant by a 'hybrid hearing', does not have the appearance of a fair trial and would not be 'even handed'.

vi) Whilst again there has been no application to adduce medical evidence on the point, Ms Meachin and Ms Hendry submit that there "must be a very real risk that such an imbalanced approach will further provoke [the father's] anxieties". Within this context, they further submit it is only by means of a fully face to face hearing in Preston that the father will be able to bring his anxieties to a manageable level, to follow the evidence properly and to give his best evidence.

18. As to the question of delay, Ms Meachin and Ms Hendry recognise that as against the statutory requirement to complete these proceedings within 26 weeks, this case is now in week 87 and will be in week 92 as at the date of the adjourned final hearing as

currently listed. However, Ms Meachin and Ms Hendry submit that this case is unusual in that C is placed with foster carers who have made clear that should C not be able to return to the care of his parents they would wish to adopt him, a position supported by both the local authority and the Children's Guardian. In the circumstances, Ms Meachin and Ms Hendry submit that the impact in this case of adjourning the proceedings until a fully face to face hearing can be listed would not be acute in terms of delay and that, in the circumstances, no party suffers any disadvantage by a further adjournment of the part heard final hearing. Whilst Ms Meachin and Ms Hendry acknowledge the information provided by the Children's Guardian regarding the increasing stress being caused to the foster carers by the continuing delay, they submit that this cannot outweigh the need to facilitate the effective participation of the father in the grave proceedings before the court.

19. Within the foregoing context, Ms Meachin and Ms Hendry submit that given the gravity of the decision before the court and the fact that one possible outcome of these proceedings will be that C is placed for adoption this court must be *extremely* careful to ensure that the father can participate fully in the court process. Within this context, Ms Meachin and Ms Hendry further submit that *only* a further adjournment to await a time when a face to face hearing can take place in Preston will afford the father the proper opportunity to properly participate and engage in a court hearing having regard to his particular vulnerabilities.

The Mother

20. Mr Storey and Ms Lewis realistically acknowledge that adjourning the case for many months is not an option having regard to the President's communication of 9 June 2020 entitled *The Family Court and COVID-19: The Road Ahead* (which I deal with in further detail below) However, they submit that the President's statement at paragraph [45] of that document to the effect that adjourning to await a full face to face hearing is *unlikely* to be an option (their emphasis) leaves, as Mr Storey put it, the door "ajar" to the father's application. Within that context, on her behalf, Mr Storey and Ms Lewis make clear that the mother supports the father's application for an adjournment.

21. Mr Storey and Ms Lewis point out that the mother herself has a history of anxiety and mild mental health difficulties. Within this context, Mr Storey and Ms Lewis make clear that the mother is unwilling to travel to Manchester on public transport and is not content with the suggestion that, as a contingency, she be in a venue remote from the other parties were the hearing to be conducted on a hybrid basis. They too make the point that the mother lacks both the equipment and the expertise to participate in a hearing from home without professional assistance in accessing the bundle and connecting to the Court by video link. The mother is set against the idea of court proceedings "invading" her home. With respect to delay, Mr Storey and Ms Lewis submit that the only potential disruption C faces by reason of a further the delay is a delay in rehabilitation to his natural parents, C being already in the placement that will be his long term home if the court decides that he cannot return to his parents' care.

22. Against this however, and sensibly, Mr Storey and Ms Lewis concede that it cannot be said that the mother falls into that category of litigants whose needs could *only* be accommodated by a face to face hearing. Within this context, Mr Storey and Ms

Lewis realistically acknowledge the contents of *The Family Court and COVID-19: The Road Ahead* and the need to look for ways to ensure that if a hybrid hearing is required as a contingency, it is a hearing that can take place fairly. Within this context, Mr Storey and Ms Lewis accept that investigations can take place with a view to putting in place support for the mother to participate remotely if necessary.

The Local Authority

23. The local authority strongly opposes a further adjournment. Mr Rowley and Mr Buchan point out that the case is now fast approaching its second anniversary, that the final hearing has already been adjourned three times, that the parents subsequently objected the remote resumption of the part heard final hearing in April and that C is now is 21 months of age and has spent his life in foster care. Within this context, Mr Rowley and Mr Buchan submit that there is an *urgent* need to resolve the question of his future placement.

24. Within this context, Mr Rowley and Mr Buchan emphasise that there will not be the capacity for a face to face hearing in Preston for many months, possibly until 2021, both by reason of the highly constrained court resources at the Combined Court Centre and the impossibility of holding in this case an appropriately socially distanced hearing at Sessions House. Mr Rowley and Mr Buchan further point out that the face to face hearing that both parents seek *has* now been made available by the court at considerable effort. They reiterate that there is now available a courtroom in Manchester which can accommodate twenty people in addition to myself and a court clerk, thus allowing the parties, leading and junior counsel for the parties, solicitors for the parents and the father's intermediary to attend a properly socially distanced fully face to face hearing. Mr Rowley and Mr Buchan remind the court that the CJC has been the subject of a full risk assessment by HMCTS indicating that the building is 'Covid-secure'.

25. Mr Rowley and Mr Buchan submit, in the context of *The Family Court and COVID-19: The Road Ahead* making clear that the child's journey must not be delayed, that further delay in this case is entirely inimical to C's welfare. In particular, and reminding the court again that C is now is 21 months of age and has spent his life in foster care, they submit that whilst the fact that C is in the placement that it is anticipated will be his permanent placement were the court to conclude it was not in his best interests to return to his parents care, this only mitigates rather than eliminates the detrimental impact of further delay on C. They emphasise that it is C's best interests for his future to be settled as soon as possible and that the further stress placed on the foster placement by delay cannot be in his best interests. Mr Rowley and Mr Buchan further remind the court that C too has an Art 6 right to a fair trial, which right will, particularly in circumstances where the court is required to determine disputed findings of fact, be adversely impacted by delay.

26. Whilst local authority recognise the father's difficulties, Mr Rowley and Mr Buchan submit that the father's Art 6 right to a fair trial cannot permit him to be the sole dictator of how such a hearing will be effected when all participants' rights fall to be considered. Further, Mr Rowley and Mr Buchan make clear that the local authority is willing to assist the father and the mother in mitigating the difficulties they labour under. In particular, in circumstances where the parents' key concern is travel to Manchester, if Legal Aid Agency will not do so, the local authority will consider

funding a taxi each day to allow the parents to travel to court without the need to use public transport.

The Children's Guardian

27. The Children's Guardian likewise opposes the father's application for a further adjournment of the part heard final hearing in this matter. Ms Korol and Mr Blackburn submit that whilst further delay would not be totally catastrophic to C's welfare, as he remains secure in his placement and continues to flourish, a decision needs to be made for him. Further, Ms Korol and Mr Blackburn sought to makes clear that foster carers are now feeling the strain of the extended delay in these proceedings, with the prospect of a further long delay causing them acute distress in circumstances where they feel they are in limbo.

LAW

28. Pursuant to s 1(2) of the Children Act 1989 there is a mandatory requirement for the court, in proceedings in which any question with respect to the upbringing of a child arises, to have regard to the general principle that delay in determining the question is likely to prejudice the welfare of the child. Within the context of public law proceedings under Part IV of the Children Act 1989, s 32 of the 1989 Act further emphasises the duty to avoid delay by setting out a statutory requirement that all public law children cases are to be completed within 26 weeks and that any extension to the 26 week timetable must be necessary to enable the court to resolve the proceedings justly.

29. Section 32 of the Children Act 1989 circumscribes, by reference to the child's welfare and the impact on the duration and conduct of the proceedings, the circumstances in which, and the length by which the statutory time limits applicable to public law proceedings can be extended. Whilst, as Paufley J made clear in *Re NL (Appeal: Interim Care Order: Facts and Reasons)* [2014] 1 FLR 1384, justice must never be sacrificed on the altar of speed, pursuant to s 32(5) of the 1989 Act an extension of the timetable beyond 26 weeks in public law proceedings is only justified where such an extension can be shown to be necessary to enable the court to resolve the proceedings justly. Within this context, in *Re M-F (Children)* [2014] EWCA Civ 991 Sir James Munby P emphasised that only the imperative demands of justice, namely fair process or the child's welfare, will suffice to demonstrate necessity. Within the foregoing statutory context, the Family Procedure Rules 2010 articulate the overriding objective when dealing with proceedings concerning children is to deal with cases justly, having regard to any welfare issues involved. This will include allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

30. With respect to the authorities and guidance dealing with the application of these cardinal statutory and procedural principles in the context of the COVID-19 pandemic, the approach taken has evolved over time as the courts have gained experience and understanding of the suitability or otherwise of remote hearings in particular cases and of the nature and likely duration of the ongoing impact of the public health emergency on the family justice system has become clearer. In particular, I am satisfied that the factors to be taken into account today when considering whether to adjourn for a face to face hearing or to hold a remote or hybrid

hearing have further developed when compared to the approach taken the very beginning of the public health crisis in March and April of this year. Within this context, it is important to summarise briefly the evolution of the principles applicable to the determination of the question now before the court.

31. As I have noted, on 19 March 2020 the President issued Practice Guidance entitled *COVID 19: National Guidance for the Family Court*, issued with the approval of the Lord Chief Justice and the Senior Presiding Judge. Paragraph 8 of the President's Guidance stated as follows with respect to categories of cases suitable for remote hearing:

> "8. The following categories of hearing are likely to be suitable for remote hearing:
>
> a. All directions and case management hearings;
>
> b. Public Law Children:
>
> i. Emergency Protection Orders
>
> ii. Interim Care Orders
>
> iii. Issues 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
>
> d. Injunction applications where there is no evidence that is to be heard (or only limited evidence).
>
> e. Financial Cases
>
> f. Appeals.
>
> g. Other hearings as directed by the judge concerned."

32. As to the question of whether other cases might be suitable for a remote hearing, the President's Guidance stated as follows at paragraph 10:

> "It is possible that other cases may also be suitable to be dealt with remotely. As the current situation is changing so rapidly, and as the circumstances will impact upon this decision are likely to differ from court to court and from day to day, the question of whether a particular case is heard remotely must be determined in a case by case basis."

33. The President issued further guidance on 27 March 2020. That guidance emphasised the following point:

> ""Can I stress, however, that we must not lose sight of our primary purpose as a Family Justice system, which is to enable courts to deal with cases justly, having regard to the welfare issues involved [FPR 2010, r 1.1] 'the overriding objective'], part of which is to ensure that parties are 'on an equal footing' [FPR 2010, r 1.2]. In pushing forward to achieve Remote Hearings, this must not be at the expense of a fair and just process."

34. On 9 April 2020 the Lord Chief Justice, Master of the Rolls and the President of the Family Division issued a further communication emphasising again that the decision of whether a particular hearing should be heard remotely, and if so what form of remote hearing should be adopted, was a matter for the allocated judge, in consultation with their leadership judges, to be decided on a case by case basis and with the overarching criterion being that whatever mechanism is used to conduct a hearing must be in the interests of justice. The communication of 9 April 2020 did not amount to official guidance and was not intended to be directive. Rather, it sought to set out a number of indicators designed to assist judges in deciding whether a particular hearing should be heard remotely, and if so what form of remote hearing should be adopted, again with an emphasis on the judge exercising his or her discretion in each individual case. Those indicators were as follows:

> "Generally:
>
> a. If all parties oppose a remotely conducted final hearing, this is a very powerful factor in not proceeding with a remote hearing; if parties agree, or appear to agree, to a remotely conducted final hearing, this should not necessarily be treated as the 'green light' to conduct a hearing in this way;
>
> b. Where the final hearing is conducted on the basis of submissions only and no evidence, it could be conducted remotely;
>
> c. Video/Skype hearings are likely to be more effective than telephone. Unless the case is an emergency, court staff should set up the remote hearing.
>
> .../
>
> In Family Cases in particular:
>
> e. Where the parents oppose the LA plan but the only witnesses to be called are the social worker and Children's Guardian, and the factual issues are limited, it could be conducted remotely;
>
> f. Where only the expert medical witnesses are to be called to give evidence, it could be conducted remotely;
>
> g. In all other cases where the parents and/or other lay witnesses etc are to be called, the case is unlikely to be suitable for remote hearing.
>
> .../"

35. On 16 April 2020 the President handed down judgment in *Re P (A Child: Remote Hearing)* [2020] EWFC 32. The case concerned ongoing care proceedings issued in April 2019, with the subject child having been the subject of private law proceedings for a considerably longer period. The question before the President was whether it was appropriate for the fully contested final hearing in the matter (which, as the President observed, involved a particular form of child abuse which requires exquisite sensitivity and skill on the part of the court) to be conducted by way of a remote hearing. Within this context, and having made clear that because a hearing can be conducted remotely does not in any way mean that the hearing must be conducted in that way, in deciding that case was not suitable for a remote hearing the President observed as follows at [24]:

> "The decision whether to hold a remote hearing in a contested case involving the welfare of a child is a particularly difficult one for a court to resolve. A range of factors are likely to be in play, each potentially compelling but also potentially at odds with each other. The need to maintain a hearing in order to avoid delay and to resolve issues for a child in order for her life to move forward is likely to be a most powerful consideration in many cases, but it may be at odds with the need for the very resolution of that issue to be undertaken in a thorough, forensically sound, fair, just and proportionate manner. The decision to proceed or not may not turn on the category of case or seriousness of the decision, but upon other factors that are idiosyncratic of the particular case itself, such as the local facilities, the available technology, the personalities and expectations of the key family members and, in these early days, the experience of the judge or magistrates in remote working. It is because no two cases may be the same that the decision on remote hearings has been left to the individual judge in each case, rather than making it the subject of binding national guidance."

36. A key factor in the President's decision to adjourn the contested hearing in *Re P (A Child: Remote Hearing)* was the impact he was satisfied a remote hearing would have on discharge of the judicial role in the particular case in question. A number of cautionary statements have been made regarding reliance on demeanour when assessing the credibility and reliability of oral evidence (see for example *Re M (Children)* [2013] EWCA Civ 1147 at [11] and [12] and *Sri Lanka v the Secretary of State for the Home Department* [2018] EWCA Civ 1391 at [40] and [41]). Within this context, court's impression of a parent, and its assessment of the credibility and reliability of that parent, should coalesce around matters such as the internal consistency of their evidence, its logicality and plausibility, details given or not given and the consistency of their evidence when measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts. Beyond this however, in *Re P (A Child: Remote Hearing)* the President also considered the following matters important when considering the efficacy of a remote hearing:

> "[26] The reason for having the very clear view that I have is that it simply seems to me impossible to contemplate a final hearing of this nature, where at issue are a whole series of allegations of factitious illness, being conducted remotely. The judge who undertakes such a hearing may well be

> able to cope with the cross-examination and the assimilation of the detailed evidence from the e-bundle and from the process of witnesses appearing over Skype, but that is only part of the judicial function. The more important part, as I have indicated, is for the judge to see all the parties in the case when they are in the courtroom, in particular the mother, and although it is possible over Skype to keep the postage stamp image of any particular attendee at the hearing, up to five in all, live on the judge's screen at any one time, it is a very poor substitute to seeing that person fully present before the court. It also assumes that the person's link with the court hearing is maintained at all times and that they choose to have their video camera on. It seems to me that to contemplate a remote hearing of issues such as this is wholly out-with any process which gives the judge a proper basis upon which to make a full judgment."

37. On 22 April 2020 the Court of Appeal handed down its decision in *Re A (Children)(Remote Hearing: Care and Placement Orders)* [2020] EWCA Civ 583, the President giving the judgment of the court. Having reviewed the developments that I have summarised above, the Court of Appeal articulated the following principles:

i) The decision whether to conduct a remote hearing, and the means by which each individual case may be heard, are a matter for the judge who is to conduct the hearing, subject to the applicable principles and guidance.

ii) The decision whether to conduct a remote hearing is a case management decision over which the first instance court will have a wide discretion, based on the ordinary principles of fairness, justice and the need to promote the welfare of the subject child or children.

iii) Guidance or indications issued by the senior judiciary as to those cases which might, or might not, be suitable for a remote hearing are no more than that, namely guidance or illustrations aimed at supporting the judge or magistrates in deciding whether or not to conduct a remote hearing in a particular case.

iv) Final hearings in contested Public Law care or placement for adoption applications are not hearings which are as a category deemed to be suitable for remote hearing; it is, however, possible that a particular final care or placement for adoption case may be heard remotely.

v) The requirement for 'exceptional circumstances' applies to live, attended hearings while the current 'lockdown' continues.

vi) The factors that are likely to influence the decision on whether to proceed with a remote hearing will vary from case to case, court to court and judge to judge but will include:

    a) The importance and nature of the issue to be determined; is the outcome that is sought an interim or final order?

b) Whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the child or the other parties;

c) Whether the parties are legally represented;

d) The ability, or otherwise, of any lay party (particularly a parent or person with parental responsibility) to engage with and follow remote proceedings meaningfully. This factor will include access to and familiarity with the necessary technology, funding, intelligence/personality, language, ability to instruct their lawyers (both before and during the hearing), and other matters;

e) Whether evidence is to be heard or whether the case will proceed on the basis of submissions only;

f) The source of any evidence that is to be adduced and assimilated by the court. For example, whether the evidence is written or oral, given by a professional or lay witness, contested or uncontested, or factual or expert evidence;

g) The scope and scale of the proposed hearing. How long is the hearing expected to last?

h) The available technology; telephone or video, and if video, which platform is to be used. A telephone hearing is likely to be a less effective medium than using video;

i) The experience and confidence of the court and those appearing before the court in the conduct of remote hearings using the proposed technology;

j) Any safe (in terms of potential COVID 19 infection) alternatives that may be available for some or all of the participants to take part in the court hearing by physical attendance in a courtroom before the judge.

38. Within the foregoing context, in *Re A (Children)(Remote Hearing: Care and Placement Orders)* the Court of Appeal emphasised the following at [11]:

> "It also follows that the decision on this appeal must not be taken as an authority that is generically applicable to one or more category of children cases. We wish to state with total clarity that our decision does not mean that there can be no remote final hearings on an application for a care order or a placement for adoption order. Neither is our decision to be taken as holding that there should be no 'hybrid' hearings, where one or more party physically attends at a courtroom in front of a judge. The appropriateness of proceeding with a particular form of hearing must be individually assessed, applying the principles and guidance indicated above to the unique circumstances of the case."

39. In *Re A (Children)(Remote Hearing: Care and Placement Orders)* the Court of Appeal also emphasised at [3] that:

> "The temporary nature of any guidance, indications or even court decisions on the issue of remote hearings should always be remembered. This will become all the more apparent once the present restrictions on movement start to be gradually relaxed. From week to week the experience of the courts and the profession is developing, so that what might, or might not, have been considered appropriate at one time may come to be seen as inappropriate at a later date, or vice versa."

40. As anticipated by the Court of Appeal *Re A (Children)(Remote Hearing: Care and Placement Orders)*, the situation of the family justice system within the context of the COVID-19 pandemic has now developed further. In consequence, on 9 June 2020 the President issued a further communication that reflects this evolution. The document is entitled *The Family Court and COVID-19: The Road Ahead*. Whilst this hearing occurred day before the document was published, the President gave permission for the advocates in this case to see the final version, subject to an embargo against further dissemination, in order to allow the parties to make any submissions they wished as to the impact of this document on their respective cases.

41. *The Family Court and COVID-19: The Road Ahead* makes clear at paragraph [4] that the most crucial change that must now be understood across the board by all involved in delivering Family Justice is that social distancing restrictions will remain in place for many months and that it is unlikely that anything approaching a return to the normal court working environment will be achieved before the end of 2020 or even the Spring of 2021. Within this context, the President makes clear at paragraph [6] as follows:

> "We must all take on board this significant change in perspective which will have an impact on every case management decision. Apparent potential unfairness which justified a case being adjourned for what was hoped to be a relatively short period of time, must now be re-evaluated against this much longer timescale. The need to achieve finality in decision-making for children and families, the detrimental effect of delay and the overall impact on the wider system of an ever-growing backlog must form important elements in judicial decision making alongside the need for fairness to all parties. More positively, experience of remote hearings in the past two months has identified steps that can be taken to reduce the potential for unfairness (a number are listed at paragraph 49 below and more are set out at paragraph 5.19 of MacDonald J's Guide to the Remote Family Court), enabling cases to proceed fairly when previously they may have been adjourned."

And at paragraphs [11] and [12]:

> "[11] In the early days of lockdown, it was understandable and acceptable for cases to be adjourned for a short period in the hope that a more normal court process could then be undertaken. A short adjournment to meet the needs for fairness and due process might not unduly compromise the need to achieve a final outcome for the child. Now that we are facing many more

> months of straitened resources it is likely that nettles will need to be grasped for the sake of the child's welfare, with final hearings fixed for remote or hybrid determination, and with steps taken to maximise the fairness of the process.
>
> [12] Whilst a court is not required to hold the child's welfare as the paramount consideration when making case management decisions, the child's welfare and the need to avoid delay will always be a most important factor and may well be determinative in many cases. Making a timely decision as to the child's further care is in essence what each case is about. The child's welfare should be in the forefront of the court's mind throughout the process."

And at paragraph [13]:

> "In line with the experience of the past 10 weeks, different courts, judges and professionals will be more, or less, able to deliver change as a result of a range of factors including work-load, staffing and judicial resources, technology and (increasingly) the availability of courtrooms that are compatible with the strictures of social distancing."

42. Within the foregoing context, *The Family Court and COVID-19: The Road Ahead* makes the following points relevant to the question of whether to adjourn a case by reason of difficulties caused by the impact of the COVID-19 pandemic or to seek to proceed. In particular:

i) In cases where the fact that parents and/or lay witnesses are to be called means that the case may not be suitable for a fully remote hearing, consideration should be given to conducting a hybrid hearing (with one or more of the lay parties attending court to give their evidence) or a fully attended hearing.

ii) The call on the limited number of courtrooms will be substantial and will come from across the board from civil, crime and tribunals as well as from the Family jurisdiction. Whilst there will be some capacity for the courts to conduct face-to-face hearings, the available facilities will be limited.

iii) Where it is not possible to conduct a hybrid or fully attended hearing, the court may proceed to hold a remote hearing where, having regard to the child's welfare, it is necessary to do so.

iv) Remote hearings are likely to continue to be the predominant method of hearing for all cases, and not just case management or short hearings. In circumstances where the majority of cases must now proceed remotely or semi-remotely, every effort should be made to accommodate and enhance the ability of lay parties to engage fully in the court process.

v) In all cases active thought should be given to arranging for a lay party to engage with the remote process from a location other than their home (for example a solicitor's office, barrister's chambers, room in a court building or a local authority facility) where they can be supported by at least one member of their legal team and, where appropriate, any interpreter or intermediary.

vi) Delay in determining a case is likely to prejudice the welfare of the child and all public law children cases are still expected to be completed within 26 weeks.

vii) Adjourning cases indefinitely or for a period of many months will not, therefore, be an option and adjourning the case to await a full face-to-face hearing is unlikely to be an option where an effective and fair remote or hybrid hearing can be held with steps taken to maximise the fairness of that remote or hybrid process.

viii) There will need to be a very radical reduction in the amount of time that the court affords to each hearing. Parties appearing before the court should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be cut down only to that which it is necessary for the court to hear.

43. Within this context, *The Family Court and COVID-19: The Road Ahead* amends point g. in the communication of 9 April 2020 from the Lord Chief Justice, Master of the Rolls and the President of the Family Division to read as follows, making clear the three hearing options:

> "In all other cases where the parents and/or lay witnesses etc are to be called, the case may not be suitable for a fully remote hearing. Consideration should be given to conducting a hybrid hearing (with one or more of the lay parties attending court to give their evidence) or a fully attended hearing. Where it is not possible to conduct a hybrid or fully attended hearing, the court may proceed to hold a remote hearing where, having regard to the child's welfare, it is necessary to do so; in such a case the court should make arrangements to maximise the support available to lay parties"

44. Thus, as has repeatedly been stated, the decision whether to hold a remote or hybrid hearing or to adjourn to await a fully face to face hearing is a case management decision for the allocated judge, to be taken on the ordinary principles of fairness, justice and the need to promote the welfare of the subject child or children. The appropriateness of proceeding with a particular form of hearing must be individually assessed by the allocated judge, applying the relevant principles and guidance to the unique circumstances of the case.

45. As Mr Storey articulated during the course of his submissions, since March the relevant principles and guidance applicable to determining the question of whether to hold a remote or, now more commonly, a hybrid hearing or to adjourn to await a fully face to face hearing have necessarily evolved as the understanding of the nature, extent and likely future impact of the COVID-19 pandemic has evolved, as acknowledged in the President's document *The Family Court and COVID-19: The Road Ahead*. Within this context, having regard to the statutory provisions, procedural rules, case law and guidance summarised above, I am satisfied that the following factors inform the question of whether, in a given case, a hearing should be conducted by way of a remote hearing or a hybrid hearing or adjourned for a fully face to face hearing at a later date:

i) The welfare of the subject child or children;

ii) The statutory duty to have regard to the general principle that delay in determining the question is likely to prejudice the welfare of the child;

iii) The requirement to deal with cases justly, having regard to the welfare issues involved;

iv) The extent to which a remote or hybrid hearing will provide the judge with a proper basis upon which to make a full judgment;

v) The steps that can be taken to reduce the potential for unfairness by enabling the cases to proceed fairly when previously it may have been adjourned, having regard in particular to the need to make every effort to accommodate and enhance the ability of lay parties to engage fully in the remote or hybrid process, including the extent to which it is possible to arrange for a lay party to engage with that process from a location other than their home where they can be supported by at least one member of their legal team and, where appropriate, any interpreter or intermediary;

vi) The impact of the COVID-19 pandemic on the likely timescales for a fully face to face hearing in preference to a remote or hybrid hearing and the need to evaluate any potential unfairness against that timescale;

vii) The statutory requirement that all public law children cases are to be completed within 26 weeks and that any extension to the 26 week timetable must be necessary to enable the court to resolve the proceedings justly;

viii) The requirement, so far as is practicable, to allot to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases, evaluated in the context of the limitations placed by the COVID-19 pandemic on the resources currently available to give effect to fully face to face hearings; and

ix) The individual circumstances of the particular case and the parties, including but not limited to:

a) Whether the parties consent to or oppose a remote or hybrid hearing;

b) The importance and nature of the issue to be determined bearing in mind that parties appearing before the court should expect the issues to be limited only to those which it is necessary to determine to dispose of the case, and for oral evidence or oral submissions to be limited to that which it is necessary for the court to hear;

c) Whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the child or the other parties;

d) Whether the parties are legally represented;

e) The ability, or otherwise, of any lay party (particularly a parent or person with parental responsibility) to engage with and follow remote proceedings meaningfully, including access to and familiarity with the necessary technology, funding, intelligence/personality issues, language, ability to instruct their lawyers (both before and during the hearing) and other matters;

f) Whether evidence is to be heard or whether the case will proceed on the basis of submissions only;

g) The source of any evidence that is to be adduced and assimilated by the court. For example, whether the evidence is written or oral, given by a professional or lay witness, contested or uncontested, or factual or expert evidence;

h) The scope and scale of the proposed hearing;

i) The available technology. A telephone hearing is likely to be a less effective medium than using video;

j) The experience and confidence of the court and those appearing before the court in the conduct of remote hearings using the proposed technology;

k) Any 'Covid-safe' alternatives that may be available for some or all of the participants to take part in the court hearing by physical attendance in a courtroom before the judge;

l) Any other factors idiosyncratic to the particular case.

46. Whilst each decision will be fact specific and will fall to be determined having regard to these and possibly other factors, it is clear from the signposts set out in *The Family Court and COVID-19: The Road Ahead* that adjourning cases indefinitely or for a period of many months will not be a viable option and that adjourning a case to await a fully face to face hearing is unlikely to be a proper course where an effective and fair remote or hybrid hearing can be held with steps taken to maximise the fairness of that remote or hybrid process.

DISCUSSION

47. Having considered carefully the written and oral submissions in this case I have decided that I cannot accede to the father's application to adjourn the already thrice adjourned final hearing in this matter until such time that a face to face hearing can be held in Preston. My reasons for so deciding are as follows.

48. First and foremost, the court has now made provision for a face to face hearing at the Manchester Civil Justice Centre. This was done in response to the *parents'* contention that a remote hearing was not appropriate in this case. The court in which the face to face hearing will take place has been the subject of a full risk assessment. Whilst it is not appropriate for a court to direct a further risk assessment of a court building for the purposes of individual proceedings or to stipulate alterations to the

court estate (that being the responsibility of HMCTS), the court may give such further case management directions as are required to ensure the hearing proceeds safely, for example by stipulating the manner in which parties will arrive and leave the courtroom, the layout of the parties in the courtroom and the length of court sessions during the court day.

49. The parents' reluctance to attend the face to face hearing centres on the need to travel to Manchester for each day of the hearing. The mother's objection in this regard is based squarely on the anxieties caused by having to use public transport during the course of the continuing COVID-19 pandemic. The father's anxieties are expressed more generally but also focus on the impact of the pandemic, Ms Meachin and Ms Hendry pointing out that the father's prior travel to Manchester occurred prior to the pandemic taking hold. However, and in this context, not only has the court made available a risk-assessed courtroom enabling all participants in this case to take part in the court hearing by physical attendance in a socially distanced courtroom before the judge but the local authority has made clear that it will if necessary fund private transport for the parents by way of taxi to and from Manchester. This would not only negate the need for the parents to use public transport, but would allow them to attend a face to face hearing at which they would have face to face access to and the support of members of their respective legal teams and would allow the father to have the support of his intermediary in the courtroom. Finally, I note that the court has no up to date medical evidence before it demonstrating that the father is unable to travel to Manchester by reason of anxiety and, indeed he has in the past travelled not only to Manchester but also to London, albeit before the COVID-19 pandemic.

50. Within the foregoing context, the father's argument, supported by the mother, essentially runs as follows. The father cannot attend the face to face hearing listed in Manchester by reason of his anxiety. Therefore, the choice facing the court is between holding a hybrid hearing as a contingency plan at which he, unusually in the context of that format, is the party attending remotely or further adjourning the final hearing for a live hearing in Preston and the application of the factors set out at paragraph [45] above clearly shows that it is this latter course that is appropriate. However, applying those factors to the facts of this case I regret that I cannot accept that line of argument.

51. Whilst C's welfare is not the court's paramount consideration in the current context, as is made clear in *The Family Court and COVID-19: The Road Ahead* the child's welfare and the need to avoid delay will always be a most important factor and may well be determinative in many cases. Within the context of an adjournment application, the most appropriate lens through which to examine the welfare of C is the statutory duty to have regard to the general principle that delay in determining the question is likely to prejudice his welfare. C is now 21 months old. He has spent the entirety of his young life in foster care. This case has been adjourned three times and is now fast approaching its second anniversary. Within this context, and in the context of the well-known adverse effect of delay and uncertainty on children, it is axiomatic that C has an urgent welfare need for his future to be settled in order that he can settle either in the certain care of his parents and wider family or in the certain care of his current foster carers and develop physically, emotionally and educationally in that settled context.

52. A decision to adjourn these proceedings to await a face to face hearing in Preston would result in further and extensive delay in meeting this urgent welfare need. This would be entirely antithetic to C's welfare. Contrary to the submission of the parents, the nature of C's current placement will not eliminate or significantly mitigate the effect of delay. At best, such an assertion is only true if the court decides that it is not in C's best interests to return to the care of his parents and then only to an extent. In that context, further delay will still continue to place the current foster care placement under stress, making it potentially more difficult to effect the transition into permanency if that is the outcome the court ultimately favours. If the court determines that C should return to the care of his parents then effecting that rehabilitation becomes more difficult with each day that passes and C builds an ever closer attachment to his foster carers. Indeed, the duty contained in s 1(2) of the 1989 Act is there precisely to avoid a situation whereby a child who, on investigation, should be in the care of his or her parents is deprived of that care for a moment longer than necessary. More generally, to expose C to uncertainty for months longer is plainly antithetic to his welfare.

53. There is in this case also a further dimension to the detrimental impact of delay. The court is required in this case to make findings of fact. That exercise will rely in part on an examination of the recollection of events by the parents and others and on determining the credibility of the account of the parents. The parents *and* C have a right to a fair trial under Art 6. Within the foregoing context, continued further delay will risk prejudicing a fair trial as the events with which the court is concerned continue to recede into the distance and memories dull. In this context I agree with Mr Rowley that the well-known aphorism that justice delayed is justice denied is particularly apt.

54. Moving beyond these considerations, I am also required to further the overriding objective to deal with the case justly, having regard to the welfare issues involved. Within this context, and where the father and mother contend that the case cannot be dealt with justly by way of a hybrid hearing as a contingency should they continue to refuse to attend the fully face to face hearing that has been arranged, it is necessary to identify the welfare issues involved, to evaluate the extent to which a remote or hybrid hearing will provide the court with a proper basis upon which to make a full judgment and to consider the steps that can be taken to reduce the potential for unfairness by enabling the cases to proceed fairly when previously it may have been adjourned.

55. The welfare issues involved in this case are of some gravity. The court is required in this case to decide on the available evidence whether one or both of the parents inflicted serious injuries to C. Thereafter, and dependent on the outcome of that fact finding exercise, the court is required to determine whether C should return to the care of his parents or be placed permanently away from them. The decisions the court is required to take are amongst the most serious to be considered by any court in this jurisdiction. Within this context, and if it is possible within the constraints imposed by the COVID-19 pandemic, I accept that in this case the optimal method for deciding these issues is a fully face to face hearing. That is now what the court has set up at the Manchester CJC in July. I am also satisfied however that, if rendered necessary in consequence of the position adopted by the parents with regard to that face to face hearing, in this case the alternative of a hybrid hearing as a contingency should the

parents continue to refuse to attend the fully face to face hearing that has been arranged will also provide the court with a proper basis upon which to make a full judgment.

56. It is the case that a hybrid hearing of the type being contemplated if the parents do not take advantage of attending the face to face hearing that has been listed will require them to give evidence and be cross-examined remotely. I accept that, to date, a hybrid hearing has ordinarily involved lay parties attending court to give evidence whilst other aspects of the hearing continue remotely as a means of addressing certain disadvantages of remote hearings and this is the manner in which a hybrid hearing is characterised in *The Family Court and COVID-19: The Road Ahead*. However, there is nothing in principle preventing, where necessary, a hybrid hearing operating the other way round as a contingency, in this case if the parents continue to refuse to attend the fully face to face hearing that has been arranged, provided such a hybrid hearing can be achieved fairly. In the particular circumstances of this case, I am satisfied that it can.

57. Whilst, as the President made clear in *Re P (A Child: Remote Hearing)*, there will be some cases where it is important for the court to be able see the parent in the courtroom itself, the credibility of the parents' evidence falls to be evaluated primarily by reference to matters such as the internal consistency of their evidence, its logicality and plausibility, details given or not given and the consistency of their evidence when measured against other sources of evidence (including evidence of what the witness has said on other occasions) and other known or probable facts.

58. Further, all parties in this case are legally represented by advocates of the highest calibre who are well versed in the use of video links for the taking of evidence. The effectiveness of remote examination and cross-examination by experienced advocates is now well demonstrated. The court also has extensive experience of the same. The court will keep the fairness of the proceedings under ongoing review and the parents benefit from the right to seek permission to appeal if they contend the procedure adopted has been unfair. Further, some three months into the temporary widespread use of remote hearings in the family jurisdiction both the court and those appearing before it have extensive experience and confidence in using the technology required to orchestrate a successful remote or hybrid hearing if necessary. Finally, for reasons I will come to, it should be possible in this case to ensure that each parent will be appropriately supported by at least one member of their legal team and, in the case of the father, his intermediary if one or both of the parents chooses not to attend the face to face hearing.

59. Within this context, if the court is required to conduct a hybrid hearing of the type outlined above as a necessary contingency should the parents continue to refuse to attend the fully face to face hearing that has been arranged, I am satisfied that neither the father nor the mother would be denied a fair hearing if required to give their evidence from a remote location during the course of such a hybrid hearing.

60. I have of course borne carefully in mind that both parents object to this matter being dealt with by way of a hybrid hearing as a contingency (although I must also take account of the fact that the court is only contemplating a hybrid hearing as a contingency because both parents have indicated they are unwilling to attend the fully face to face hearing the court has listed in an effort to provide them with the most

optimal hearing). Further, I accept that the father in particular has difficulties with anxiety which the court is duty bound to address by reason of the requirements set out in FPR 2010 Part 3A. All parties accept and the court has directed that the father have the services of an intermediary throughout the proceedings. I am satisfied, again for reasons that I will come to, that this can be achieved even if the father is participating remotely.

61. As noted by the Court of Appeal in *Re A* at [10] the impact of personality, intellect or mental health factors will, almost by definition, be case specific. Within this context, it is plain that the father considers that his anxiety renders unable to contemplate attendance remotely, and indeed unable to contemplate any option other than a face to face hearing in Preston. In this regard I note that, beyond the assessments provided by Dr Waheed and the intermediary, there is no medical evidence before the court demonstrating that the father's anxiety renders him unable to participate in a remote hearing. More importantly however, notwithstanding the father's vulnerabilities I am satisfied that in this case that it is possible to take steps to ensure that a hybrid hearing conducted as a contingency should the parents continue to refuse to attend the fully face to face hearing that has been arranged is conducted fairly.

62. In particular, it is clear from the information before the court that steps can be taken in this case to ensure that the parents can participate remotely in the company of one or more of their lawyers and, in the father's case, his intermediary at a location other than their home. The provision of the contingency arrangements canvassed at this hearing, whereby if the parents continued to refuse to attend the face to face hearing they could attend a location or locations away from their home but in Preston with at least one of their lawyers and, for the father, his intermediary will, I am satisfied, ensure that the parents have access to legal advice and support, can give instructions during the course of the hearing and can be supported to use the required technology to participate in the hearing.

63. Whilst it can be argued that this latter approach is not completely optimal when compared to the option of a fully face to face hearing in Preston, that argument falls to be evaluated against both the fact that the court has already set up a fully face to face hearing in Manchester and the length of the delay that would result in this case if the court adjourned the matter until such time as a fully face to face hearing could be effected in Preston. As I have made clear, following extensive investigations undertaken by the court, and having regard to the duty on the court to allot to the case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases, evaluated in the context of the limitations placed by the COVID-19 pandemic on the resources currently available to give effect to fully face to face hearings, the impact of the COVID-19 pandemic on the likely timescales for a fully face to face hearing is such that a hearing of this nature is unlikely to be achievable before late 2020 and possibly early 2021. Balancing the effect of such a delay against the disadvantages of a hybrid hearing conducted as a necessary contingency in the event that the parents continue to refuse to attend the fully face to face hearing that has been arranged, I am satisfied that, provided the steps to ensure a fair hybrid hearing that I have outlined are taken, the consequences of that delay far outweighs the disadvantages of holding, as a necessary contingency, the type of hybrid hearing I have described.

64. Within this context, and finally, I remind myself of the statutory requirement that all public law children cases are to be completed within 26 weeks and that any extension to the 26 week timetable must be necessary to enable the court to resolve the proceedings justly. Within this context, I am not satisfied that it is necessary to adjourn the final hearing for a *fourth* time in order to achieve a just final hearing. For all the reasons I have given, if rendered a necessary contingency in consequence of the position adopted by the parents with respect to the face to face hearing in Manchester, I am satisfied that in this case a hybrid hearing at which one or both the parents attend the hearing at the Manchester CJC remotely will also provide the court with a proper basis upon which to make a full and fair judgment and that, accordingly, an adjournment to await a face to face hearing in Preston is not necessary or appropriate in this case.

CONCLUSION

65. For the reasons I have set out, I refuse the father's application to adjourn the part heard final hearing in Manchester. In this case, the court is able to conduct a fully face to face hearing in a manner that addresses the parents' anxieties with respect to travel or, as a contingency if the parents *still* refuse to attend that hearing despite the provision of private transport, to facilitate a hybrid hearing in a manner that permits the parents fully and fairly to participate. I intend to retain those two options for the adjourned part heard final hearing which will proceed as currently timetabled. It is earnestly to be hoped that the parents will take advantage of the facility for private transport that will be made available to them to attend the fully face to face hearing that has been arranged in response to *their* contention that this case is not suitable for a remote hearing.

66. If however, the parents continue to maintain their objection to travelling to Manchester, final arrangements will have to be made to implement the contingency plan of holding a hybrid hearing in which the parents attend remotely from an appropriate venue or venues in Preston. Investigations in this regard are well advanced and I will approve the final proposals in this respect in due course.

67. Finally, the father and the mother must understand that should they choose not to avail themselves of the results of the extensive efforts the court and their legal advisers have made to facilitate their respective participation in these proceedings in the difficult context presented by the COVID-19 pandemic, it remains open to the court to proceed to determine the issues before it without them, including drawing adverse inferences from any failure to give evidence before the court.

68. That is my judgment.