

The Family Court at Birmingham

Wellbeing in the time of Covid-19

Ensuring Family Practice is Consistent with Health and Wellbeing

Introduction

1. Our Wellbeing Protocol was circulated in January 2020. In paragraph one I set out that the President of the Family Division had reminded us that the Family Justice System is dealing with an unprecedented workload and indicated that the increased workload affects litigants, professionals, practitioners, court staff and members of the judiciary, that is everyone who works, practises or attends court here.
2. This document is written less than nine months later. We have now been working ‘in the time of Covid-19’ since the end of March and have continued to ensure that the Family Court at Birmingham has provided access to family justice every working day and out of hours.
3. It is quite clear that our current ways of working will have to continue well into 2021. If we are to manage our workload effectively and continue to serve the children and families who come before the Family Court at Birmingham, all those working in the system **must** ensure that they are mindful of their own wellbeing and that we all endeavour to ensure that we comply with the suggestions made in the Wellbeing Protocol.
4. I am very conscious that we all have heavier workloads, that is more cases to deal with, than we normally would, as very few cases were concluded in the four months from April to August and we have, in the last few months, received a tsunami of new work. This will, of course, have an impact on the timetable for the proceedings. It has been inevitable that the pandemic has caused delays in cases before the Family Court and it is recognised that everyone whose case has been delayed will have experienced anxiety and stress.
5. In order to ensure that cases are as effective as possible when they are listed, the Court must be given realistic timescales as to when evidence can be filed and served. It is no help to anyone, least of all for example, the social worker or the family court adviser, to give an optimistic date when evidence will be ready. The result of that is more work for everyone: the consideration by all the parties of the position, the drafting of an application for an extension of time, the court staff processing that and, last but not least, the judge amending and approving an order and sending it to the court staff to be drawn. There is usually an impact on the timetable for the other parties and on the next hearing. Even if the hearing can remain listed, it is inevitable that everyone has to prepare the case at a time dictated by when the evidence is available and not at a time of their choice. This is of particular concern as many of those involved in the Family Justice System have responsibilities for others and that restricts when they can conveniently do their work.

6. If everyone's evidence and position statement is out of time there is no proper opportunity for reflection on the implications of the matters contained in them. As we all know simply reading documents is not enough and we all need adequate time to think about what is set out and the consequences for the proceedings. Please may I make a plea on behalf of the judges hearing the cases, including of course the justices' legal advisers and the magistrates. We come last in the line so if everything is late we frequently receive the last document(s) only minutes before the case is listed to start with the least opportunity properly to think about the content.
7. We all, in these unusual times, should aim to be more measured about blaming others. There is, I suggest, even more reason to be kind to each other and understanding. We are all only human and there are very few instances where those working in the Family Justice System have deliberately got things wrong. It is rarely necessary to be aggressive. We should all bear in mind that the pandemic has affected everyone in some way and that it has had a negative effect on the mental health of many of us. If people are put under unreasonable pressure then it is likely that some of them will be unwell and unable to work.
8. In 'The Road Ahead' the President made it clear that 'the road is long' and that is going to be the case. At paragraph 43 he set out: 'If the Family Court is to have any chance of delivering on the needs of children or adults who need protection from abuse, or of their families for a timely determination of applications, 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'. Paragraph 46 provides: 'Parties will not be allowed to litigate every issue and present extensive oral evidence or oral submissions; an oral hearing will encompass only that which is necessary to determine the application before the court'.
9. It will only be by applying this framework in all cases that we will not only minimise delay in the proceedings but also reduce the level of stress for everyone involved. Advocates' meetings are proving to be very productive. May I urge you all to concentrate on narrowing the issues and limiting what evidence is required to that which is necessary. Where this is being done it is ensuring that cases proceed in a proportionate way.
10. We are all receiving far more emails than previously. Please try and keep them as short and focused as possible and not to send consecutive ones where this can be avoided. When you are not available alternative contact arrangements on your out of office email should ensure that you are not copied into subsequent correspondence and that a response is sent by a colleague if something is urgent. There is no need to 'reply all' to say, 'thank you, 'you are welcome', 'received' or 'noted'. If there is a reason for requesting a formal response please indicate what it is.

The Wellbeing Protocol

11. The time for court hearings to commence is now fixed and this should not be changed except in exceptional circumstances. Remote short hearings are generally working well

by Teams, BTMeetMe and CVP. Advocates' meetings and pre-hearing discussions are proving effective in focussing the parties on the issues for the court to determine. Such hearings need to start and finish on time, so the late delivery of position statements is frustrating for the parties and the court. It is much more difficult to take last minute instructions when you are not with your client in a conference room in the court building. The President's template of directions for a remote hearing requires a draft order to be included in the electronic bundle. This happens very rarely. A case management hearing where there is a draft order is usually more effective, with the draft order providing the agenda. Where there is no such order the advocates are having to spend a significant amount of time after the conclusion of the hearing producing a draft for the judge to consider. Frequently there is a long delay between the end of the hearing and the court receiving the order. I am concerned that orders are unnecessarily long and are involving the advocates in having to keep coming back to a case, rather than completing the ancillary matters immediately after the end of the hearing with the judge and then submitting the order and the matter then being concluded. The preparation of the order being a 'work in progress' is neither proportionate nor good for anyone's wellbeing.

12. May I remind you that the Birmingham short form orders are suitable for all hearings after the first case management hearing or the order made at the FHDRA, and that they encourage brevity and save valuable professional time. Paragraphs 18 to 20 of the Wellbeing Protocol remain pertinent, albeit that the final 'tweaks' to the order and the inclusion of the information for the Legal Aid Agency need to be done after the parties have left the 'virtual court'.
13. The Covid-19 witness template sets out when the hearing is to start and the timing for each stage. Hearings before the District Judges start at 10am (with attendees able to arrive between 9.30am and 10am) and before the Circuit Judges at 10.30am (with attendees able to arrive between 10am and 10.30am). Lunch is between 1pm and 2pm for the District Judges and between 1.30pm and 2.30pm for the Circuit Judges. Only a limited number of people are allowed in the court building at the same time and so the case plan template requires consideration of support for litigants and how that can best be given. Parties can no longer come to the court building with members of their family or friends. Following the rules in respect of social distancing and wearing a mask are imperative so that everyone feels comfortable in the court building and is as safe as possible.
14. Attended and hybrid hearings in the current circumstances are usually more tiring than pre-Covid hearings. Breaks should always be timetabled on the witness template. No-one is required to attend the court building when they are able properly to participate remotely.
15. Attention is drawn to paragraphs 10 to 14 of the Wellbeing Protocol, which are particularly pertinent when everyone is so busy:

'(10) The sending of work-related emails should ideally be confined to business hours. However, it is appreciated that some practitioners may keep different working hours due to caring responsibilities or other factors. **In any event**, there should be no expectation of a **response** after 6pm or before 9am. There should be no expectation of a response if someone is on holiday and has an 'out of office' reply that is active.

(11) ‘Reply All’ responses to emails should be avoided where possible. **Only** those directly concerned with the relevant communication should be included.

(12) Case summaries should be short and should focus on the issues with which the listed hearing is concerned.

(13) Position statements should omit summaries of the background (which can be placed in the case summary) and ordinarily should be limited to one side of A4 and to a maximum of three sides of A4, setting out the parties’ position using bullet points in respect of the issues for that hearing. Bullet points can be expanded upon in submissions. Position statements should ordinarily be provided by no later than 4pm on the day prior to the hearing. For hearings before the Circuit Judges in Birmingham, the email address urgentfamilyprep@justice.gov.uk should be used in accordance with the guidance that has previously been issued.

(14) Witness statements should avoid the repetition of matters which are contained in earlier statements and should concentrate on the issues that they are directed to deal with. There is no need to repeat the same information within the same document.’

The Next Few Months

16. I am concerned that, if at all possible, we should continue to work as we are currently doing until it is possible to have more attended, that is face to face, hearings where they are required which, hopefully, will be sometime in 2021. With the hard work of everyone concerned remote and hybrid hearings are generally productive. I am, however, acutely aware that everyone in the Family Justice System feels under pressure and my aim is that the court process should not, if possible, increase that pressure. Everyone is working very hard but none of us must forget our wellbeing, hence my circulating this document.
17. If you have any matters which cause you concern please raise them with me or a member of the Birmingham Covid-19 group, whose commitment to this court and to family justice and whose insight into how we can do things better over the past nine months has been invaluable. We all, and me in particular, owe them a huge debt of gratitude.
18. For the avoidance of doubt, the members of the Birmingham Covid-19 Group are Her Honour Judge Thomas, Jerome O’Ryan and Elisabeth Julien (Birmingham Children’s Trust), Maria Demosthenous (Solihull Metropolitan Borough Council), Jas Tamber (Anthony Collins Solicitors), Mark Cooper (St Ives Chambers and the West Midlands Family Law Bar Association), Michelle Hulme (Cafcass) and Steve McAuley (HMCTS).

Sybil Thomas
Designated Family Judge for Birmingham
October 2020