

# Practicalities and Pitfalls of Remote Hearings: Public Law Children

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Published on 30th April 2020

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## A brave new world: New ways of working

### *Technology*

- We are all probably feeling overwhelmed by the amount of technology: Zoom, Teams, Skype for Business, Cloud Video Platform (CVP). If the choice of which to use is yours, choose carefully. We are all aware of the privacy issues with Zoom, the general consensus is to use it with caution if at all (see Bar Council guidance in the useful resources section).
- For contested hearings ground rules are important to agree with advocates in advance. They need to cover who will take the lead and act as a back up on technology, what is expected of lay parties and advocates, how to inform the court and others if a party needs to speak etc. See appendix 1 [30]-[32] of Remote Access Family Court v 4 (link below)
  - o Top tip: If using Zoom, make sure you generate a password for the meeting, lock it once everyone has entered and set your data region to EU.
  - o Top tip: If using CVP make sure you have the latest version of Google Chrome downloaded, last week there was an urgent warning to judges that there was

potential security breach if the updated browser wasn't used. Also advise clients not to try and access the link in advance- this appears to result in clients being able to access the courtroom on their own much to the surprise of the judge!

- Top tip: Agree who will be the point of contact for any lawyer or unrepresented party to inform by email or other means if they have dropped out of the remote hearing. It makes sense for legal representatives to be the contact for their lay or professional clients and to immediately inform the judge.

### *Pre-hearing discussions/advocates meetings*

- More important than ever and are taking longer- the time sensitivity of a fixed hearing slot can add to the pressure.
- Top tip: consider having pre-hearing discussions further in advance of the hearing. This takes off the time pressure and means that the discussions can feed into position statements. As long as the correct recitals are in the order, pre-hearing discussions at any time should be covered by LAA.
- Top tip: use the advocates meeting to pare down the bundle if possible, large and unwieldy e-bundles are a nightmare for lay parties and contested hearings in particular.

### *Conferences with clients*

- Again, all the more important now. We are all under a duty to try and narrow the issues as much as possible, a well-timed conference can make all the difference (e.g. weak case).

- Top tip: call counsel early to discuss possible need for a conference.
- Top tip: For pre and post- hearing discussions have back channel of communication agreed with client in advance to facilitate easy taking of instructions during the hearing and afterwards.

### *Written advocacy*

- Written submissions/case summaries/position statements are even more important now. HHJ Wildblood requires a 'good and full case summary. It must include an essential reading list which only refers to documents that, exceptionally, cannot be adequately summarised in the case summary. Position statements must be provided by all parties for every hearing.
- HHJ Ingham has clarified that in Somerset position statements need to be provided even if all parties are agreed.
- Top tip: provide papers well in advance so counsel are able to advise on any position statements due.

### *Flexibility*

- More than ever we need to think creatively and be flexible in trying to make hearings work. For example, Abi Bond is doing a multi day trial in Taunton where she is attending LA offices with her client.
- Top tip: Be aware of the local resources available to facilitate hearings – feel free to get in touch with us or our clerks for assistance.

## How St John's can help

- We're fully competent with conducting hearings and pre-hearing discussions on Zoom, Teams, Skype for Business and CVP
- We are able to facilitate remote pre-hearing discussions and conferences and can be flexible on when those take place according to what's best for the client
- We can advise on the likelihood of a remote hearing being appropriate in each particular case. We are on top of the guidance and recent cases (e.g. *Re P (A Child): Remote Hearing*) [2020] EWFC 32 and hot off the press today *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] EWCA Civ 583 and *Re B (Children)(Remote Hearing: Interim Care Order)* [2020] EWCA Civ 584)
- We are fully au fait with drafting orders for remote hearings taking into account what is required for legal aid billing
- We're also happy to help with any technological issues, some of us have been working electronically for a long time
- We're happy to be flexible – e.g. take a brief by telephone in an appropriate case if you are rushed off your feet so you only need to send a very short brief for legal aid purposes
- Get in touch with us/clerks if you're not sure how different judges are working- e.g. Bristol focus on Zoom and telephone hearings, Swindon Skype for Business etc and for local practice guidance if appearing in an unfamiliar court

- Finally keep in touch – pick up the phone or drop us an email. We know how busy you are and we want to help as much as we can. We don't have the usual chat and bouncing things off others at court but let's not lose our knowledge and experience sharing in this brave new world.

## Up to date resources

Remote Access Family Court v 4:

<https://www.judiciary.uk/wp-content/uploads/2020/04/The-Remote-Access-Family-Court-Version-4-Final-16.04.20.pdf>

Bar council guidance: Videoconferencing software, data protection and confidentiality

<https://www.barcouncilethics.co.uk/documents/videoconferencing-software-data-protection-and-confidentiality/>

Communicourt update:

<https://www.communicourt.co.uk/covid-19/>

Guidance issued by HHJ Wildblood QC to Family Courts in Avon, North Somerset and Gloucester- 26.03.20

<https://westerncircuit.co.uk/2020/04/14/covid19-courtprotocols/>

Guidance issued by HHJ Ingham to Family Courts in Somerset area – 31.03.20

<https://westerncircuit.co.uk/2020/04/14/covid19-courtprotocols/>

Guidance from HHJ Hess to Family Court in Swindon

<https://westerncircuit.co.uk/2020/04/14/covid19-courtprotocols/>

Draft order from HHJ Robertshaw in Devon

<https://westerncircuit.co.uk/2020/04/14/covid19-courtprotocols/>

Summary of Family business priorities previously agreed with the President of the Family Division: 24 April 2020

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/881017/Ops\\_update\\_-\\_family\\_court\\_business\\_priorities\\_24\\_April\\_2020\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881017/Ops_update_-_family_court_business_priorities_24_April_2020_FINAL.pdf)

HMCTS guidance: How to join telephone and video hearings during coronavirus (COVID-19) outbreak (\*useful link to send to clients)

<https://www.gov.uk/guidance/how-to-join-telephone-and-video-hearings-during-coronavirus-covid-19-outbreak#joining-by-cvp-skype-or-bt-meet-me>

Inns of Court College of Advocacy Guidance: Principles for Remote Advocacy 16.04.20

<https://www.icca.ac.uk/wp-content/uploads/2020/04/Principles-for-Remote-Advocacy-version-2.pdf>

Western Circuit 'How to' guides for remote working and video platforms

<https://westerncircuit.co.uk/2020/03/24/remote-working/>

Courts and Tribunals Judiciary guidance:

<https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>

COVID-19 and family courts: Links in one place to new arrangements from the Transparency Project:

<http://www.transparencyproject.org.uk/covid-19-and-family-courts-links-in-one-place-to-new-arrangements/>

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