

Practicalities and Pitfalls of The Remote Access Family Court: Private Law Children

Jack Harris

Barrister, St John's Chambers

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It is probably fair to say that we have all felt rather overwhelmed by the volume of protocols, practice directions, guidance and other communications that have been filling up our email inboxes with seemingly unrelenting volume and speed.

Our task of wading through each communication, trying to understand the contents, and then apply it to our cases is made even harder when the guidance changes 24 hours later, is apparently contradicted by simultaneous or later guidance, or when we are told that 'guidance' is not in fact 'guidance' at all!

This document aims to provide some signposts to useful resources, top tips, views, and share experiences of remote working in the context of private law children cases. It goes without saying that national and regional guidance etc changes on a frequent basis and that you should refer to the most up-to-date and authoritative guidance.

Different courts and different DFJ areas have different guidance, which also evolves on a fairly regular basis.

The Western Circuit website is a very good port of call for the latest guidance from different courts / DFJ areas.

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

What are the current stated business priorities for private law children cases?

If you have not already done so, I would strongly advise that you sign up to the HMCTS Updates. You can do that here:

<https://public.govdelivery.com/accounts/UKHMCTS/subscriber/new>

They used to be daily, since 24th April 2020 they are now weekly.

HMCTS also set out the current **stated business priorities** for HMCTS and provide other useful updates.

Business priorities are divided into the following categories

1. Work that must be done
2. Work that will be done

3. Work that we will do our best to

As at 24th April 2020 and in relation to **private law children** cases:

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

Work that MUST be done includes:

1. Urgent applications
2. Child Abduction Orders (including Tipstaff Orders)
3. Domestic Abuse (Family Law Act) Injunctions
4. Female Genital Mutilation and Forced Marriage Protection Orders

Work that WILL be done:

1. Gatekeeping and allocation referrals - private

Work that we will do our best to do:

1. Other family private law orders/documents/emails

There is recent specific HMCTS Guidance (dated 24/04/2020) on C100 applications for Child Arrangements Orders, Specific Issue Orders, Prohibited Steps Orders

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881172/Family_courts_C100_apps_-_Ops_update_24_April_2020.pdf?utm_medium=email&utm_source=

In summary:

1. Wherever possible, apply online: <https://apply-to-court-about-child-arrangements.service.justice.gov.uk>
2. If you need a **hearing in the next 3 days** or there are **serious safety concerns** DO NOT APPLY ONLINE - CONTACT LOCAL COURT!
3. If you can't use online and no other safety concerns then send paper application but DO NOT SEND CASH / CHEQUE!

Where can I find comprehensive guidance on the Remote Family Court?

Comprehensive and authoritative national guidance is to be found in what is now version 4 of MacDonald J's "Remote Access Family Court" which was published on 16th April 2020.

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

It is a working document and is regularly updated. At the moment it covers some 55 pages!

I hate to say it but there is no real substitute for reading that document in its entirety for a comprehensive understanding and to remain as up-to-date as possible, however I extract the following which deals **particularly** with cases concerning children in section 3.4.2:

“...the following broad indicators have been identified by the President of the Family Division as assisting the exercise of judicial discretion when deciding whether a given case concerning children is suitable for a remote hearing having regard to the particular circumstances of that case:

(a) It is likely that case management hearings, or hearings that can be conducted by submissions only can properly be undertaken remotely;

(b) Particular caution is required before a decision is taken to conduct a remote hearing in a case where the parties do not consent to that course of action. 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.

(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;

(d) Where a final hearing is to be conducted on the basis of submissions only and no evidence, the final hearing could be conducted remotely;

(e) In public law cases, where the parents oppose the local authority's care plan but the only witnesses to be called are the social worker and the Children's Guardian, the final hearing could be conducted remotely;

(f) Where only the expert medical witnesses are to be called to give evidence, the final hearing could be conducted remotely;

(g) In all other cases where the parents and/or other lay witnesses are to be called to give evidence the case is unlikely to be suitable for a remote hearing.

What has the President of the Family Division said?

Sir Andrew MacFarlane P gave the following guidance on 19th March 2020:

https://www.judiciary.uk/wp-content/uploads/2020/03/Presidents-Guidance_Covid-19-2.pdf

Note that this was issued **BEFORE** the UK was placed in ‘lockdown’ on 23rd March 2020 and in any event so far as it contains guidance, it has probably been superseded either in whole or in part by His Lordship’s further guidance and the various versions of MacDonald J’s Remote Access Family Court.

On compliance with Child Arrangements Orders:

On 24th March 2020, the President issued the following Guidance:

<https://www.judiciary.uk/announcements/coronavirus-crisis-guidance-on-compliance-with-family-court-child-arrangement-orders/>

The ‘Key Message’ was as follows:

*“The **key message** should be that, where Coronavirus restrictions cause the **letter** of a court order to be varied, the **spirit** of the order should nevertheless be delivered by making safe alternative arrangements for the child”.*

This has been the subject of much debate between professionals (and no doubt others). It is nevertheless something which has played an important part in some of the remote private law children hearings I have dealt with.

What have CAFCASS said?

*“Our National Improvement Service has put together some advice to encourage effective co-parenting and help maintain your child’s routine in these uncertain times. It is important that families amicably try to find solutions that are in the best interests of the child and the health of those around them. **Please click here for the advice.***

*Please also visit our **resources for parents and carers** page which provides a list of other resources and organisations that can offer independent advice”.*

<https://www.cafcass.gov.uk/grown-ups/parents-and-carers/covid-19-guidance-for-children-and-families/>

What Platforms: Zoom / Skype for Business / CVP / MS Teams / Telephone Hearings

The Western Circuit has a very good collection of ‘how-to’ guides on its website thanks to the contributors which are listed at the end of that webpage.

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

Government guidance on how to join a remote hearing usually appears on the new Notice of Hearing. If you don’t ever see a Notice of Hearing (or don’t see it in time!) then the government guidance is helpful and can be sent 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>

E-bundles - How To

It is beyond the purpose and scope of this note / Forum to set out detailed guidance and training on the preparation of e-bundles.

The Family Law Bar Association (“FLBA”) has delivered on-line training on the preparation of e-bundles including step-by-step written guidance and comprehensive information about what software is needed including views on the merits of each piece of software.

It is by far and away the easiest and most accessible resource for training. It is available on the Resolution Learning Platform:

<https://learn.resolution.org.uk/>

E-Bundles: Who, what, when, how ...

Who: Unless otherwise provided for:

1. If you are the legal representative for the Applicant you are responsible for the e-bundle.

2. If you are the legal representative for the Respondent, and the Applicant is acting in person, you are responsible for the e-bundle.

What: Unless otherwise provided for (and note some judges will specify what they want and what they don't want in an e-bundle for any particular hearing), your e-bundle needs to be agreed, in electronic format, and compliant with existing rules and practice directions e.g PD27A FPR 2010 https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_27a

How: Unless otherwise provided for:

1. Your e-bundle need to be a single pdf file (rather than a series of documents / files which make up the bundle);
2. Your e-bundle needs to be indexed (depending on your software, hyperlinking is possible but don't think strictly required for private law children hearings;
3. Each item and section should electronically bookmarked (e.g. Section A, C100);
4. Each page of the bundle should be electronically paginated;

5. The bundle should be OCR (Optical Character Recognition)-searchable (which means that you can search the pdf for specific words / phrases);

See FLBA guidance referred to above for step-by-step guides on how all of this can be achieved and what software is recommended.

When: This seems to differ from court to court. Some courts say nothing, in which case it is advisable to lodge the bundle in accordance with the timescales provided for by existing orders, or otherwise rules and practice directions ([https://www.justice.gov.uk/courts/procedure-rules/family/practice directions/pd part 27a#para6.1](https://www.justice.gov.uk/courts/procedure-rules/family/practice%20directions/pd_part_27a#para6.1))

Some courts say 1 day before. Check the notice of hearing.

Practical Top Tips

Before a hearing

1. Start preparation for a case as early as possible;
2. If instructing Counsel, do so as soon as possible and start discussing practical and logistical arrangements, e.g. how / when to have a pre-

hearing conference, how can a line of communication be maintained during the hearing, what happens after the hearing etc;

3. Be proactive in seeking to agree as much as possible with the other side as far in advance as possible;
4. Seek to reach agreement so that the hearing can be vacated;
5. Be realistic about what can be achieved in any particular hearing. At a FHDRA in 'normal' circumstances you might seek to agree (or have determined) not only directions (e.g. necessity for reports / expert evidence / statements etc) but **also** interim child arrangements. If you have contested directions and contested interim child arrangements it is unlikely they can both be dealt with during a remote hearing.
6. Draft orders are an absolute must for any case management / directions hearings under normal circumstances. They are **EVEN MORE IMPORTANT** now! So, if not instructing Counsel, then have a draft order on the go from the outset and seek to agree as much of a draft order as possible before the hearings;
7. Don't let the e-bundle be a burden! Tackle it early on, agree the contents, and send it as directed to the court. See above specifically for top tips and resources on bundles;

8. Note timetables for filing of case summaries etc (now, usually either 'one clear day in advance' or 'by x o'Clock' the day before the hearing). If this can't happen for whatever reason, inform the court as soon as possible. Note who it needs to be sent to.

9. Be prepared for things to change at the last minute!

1. All of the remote hearings I have conducted have not been at the time they originally been listed for. That is to say that the court have contacted parties / solicitors / chambers on the day before **or the day of** the hearing to move the time **forward and back**

2. Be careful about having more than one case on the same day. It is a matter of personal professional judgment, but different cases on the same day in different courts before different judges seems foolhardy!

3. I am aware that judges have also changed the format of the hearing from telephone hearing to a Zoom / Skype / CVP hearing so be prepared to adapt and be flexible.

4. Have a back-up plan. What happens if your telephone line gets cut off? What happens if your internet goes down and you lose

the connection? Having a contingency in place reduces the risk of spontaneous combustion when it inevitably does.

On the day of / during the hearing

10 Be prepared for things to change!

11. Check that the judge has what you expect him / her to have in front of them and that they have read what you want them to have.

12. Don't be panicked if the judge has not received anything that you expected him / her to have received. Be prepared and be ready to send case outlines and e-bundles directly to the judge during the hearing;

13. It is sometimes helpful to encourage some ground rules to be set at the beginning of the hearing e.g. the order of proceedings, what orders things will be dealt in, who speaks when. This will vary hugely case-to-case, and from judge-to-judge.

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**JACK HARRIS
St John's Chambers**

jack.harris@stjohnschambers.co.uk

