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## **FAMILY COURTS REMOTE ACCESS PROTOCOL – Northern Circuit**

Local Family Practitioners have been experiencing obvious difficulties in understanding the practical arrangements necessary for Court cases in the wake of the Covid-19 crisis and within the last 72 hours there has been a cascade of Guidance and Directives from National and Circuit sources.

The Family Courts on Circuit will be closed to physical access until further notice.

Following this announcement, two extremely thorough Protocols (via Appendices 1 and 2) have been issued (23.03.2020) by the FLBA from Mr Justice MacDonald. Appendix 1 (remote hearings) as now re-tabulated by myself, as below, for easier understanding. Appendix 2 (physical court hearings to be found at <http://flba.co.uk>) is at the moment likely to be less relevant until the Court and practitioners become accustomed to the present alternative remote hearing requirements.

The several page Forward to Mr Justice MacDonald's Protocols provides an excellent explanation of the current attempts to undertake remote hearings including in a few instances full hearings conducted principally by Mostyn J. In addition, there is a very helpful explanation of the pros and cons of the various communications platforms available. Unfortunately, space prevents its summary here, but again, the Forward can be found at <http://flba.co.uk>

HH Judge Greensmith in regard to the Cheshire and Merseyside FRC has issued a local directive that certain cases listed before 06.04.2020 have been adjourned and cases already listed from that date will, at the moment, remain in the list, subject to further changes. Parties are encouraged to inform the Court as soon as possible if any of these cases require adjournment also.

It can be expected that there will be a developing capacity over the next several weeks to restore some semblance of regular Family Court activity, in which event



the Protocols will have gathering importance for the practical preparation and conduct of remote hearings, in particular.

As practitioners in financial remedy cases locally, we will require a point of contact with the Court system to be fully communicated and accessible to all. It is at least to be welcomed that this crisis is spawning multiple and long awaited regular Circuit and National communication aimed at the professional and lay court users.

We all, of course, hope that this health crisis will be under control very soon. Yet, its impact will affect the availability and level of work probably for several months. There are bound to be significant consequences for not only the finances of lay clients going through or contemplating divorce, but also, of course, ourselves as practitioners. None of us should be embarrassed in asking for advice and assistance and individual practitioners should seek out the CBILS bank loan, PAYE / self-employment "grants", mortgage holiday relief and any other applicable relief scheme, where needed.

As already set out in Flyer 76, Ashley Murray Chambers provides a Private FDR service (details available at [www.ashleymurraychambers.co.uk](http://www.ashleymurraychambers.co.uk)). Any private FDR would be provided remotely in the current circumstances via platform of choice.

To everyone, I say look after yourselves and your family and do everything to stay healthy.

**Ashley Murray Chambers**

**Liverpool**



<p><u>Version 1 - new versions will be issued as appropriate</u> (para no's below as in Protocol)</p>	<p><u>Appendix 1 - Protocol For Remote Hearings in the Family Court and Family Division of the High Court 23 March 2020</u></p>	<p><u>Arrangements</u></p>
<p><b><u>INTRODUCTION:</u></b> 1&gt;3.</p>	<p>Present default position is - <u>all Family Court hearings to be undertaken by remote hearing</u> ie telephone conferencing / electronic communications platform.</p>	<p>Protocol applies to <u>all types of proceedings under Family Procedure Rules (FPR) and to all types of hearing in the Family Court and in the Family Division of the High Court</u> and for all other purposes will be so treated as in accordance with the FPR. Any Protocol reference to a judge includes any judge of the Family Court and references to a remote hearing includes by a judge from a courtroom or any other place within the jurisdiction.</p>
<p>4&gt;5.</p>	<p><u>Protocol to be applied flexibly</u></p>	<p>So i) <u>where the requirements of fairness and justice necessitate a court-based hearing, and such is safe to conduct,</u></p>



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		<p>then the same to occur with appropriate Govt Guidance infection safeguards: note <i>Protocol for Conducting Safe Court Based Family Hearings during the COVID-19 Pandemic.</i></p> <p>ii) there <u>may be some cases which need to be adjourn for longer periods</u> as a remote hearing is not presently possible ie.re: case nature and/or the length of the hearing and/or the number of parties /representatives / witnesses incompatible with current Government social distancing guidelines</p>
6.	<u>Conduct of hearing</u> at discretion of judge under Rules/PDs applicable	But always subject to duty to determine issues judicially / according to normal principles
<p><b><u>REMOTE HEARINGS GENERALLY - Timely preparation:</u></b> 7.</p>	<u>Essential proper preparation/ planning</u> happens in good time for hearing.	Incumbent on all parties to proceedings to be proactive and co-operative re: preparation for hearings.



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8.	<p><u>Early consideration</u> re whether one or a series of remote hearings required to deal with issues.</p>	<p>a) Redouble focus re: <u>identifying issues</u> to be dealt with at hearing / <u>efforts to agree and narrow issues</u> whenever possible - and identify clearly for judge in advance of hearing <u>issues requiring determination</u>. (see Paragraph 12 of the <i>President's Guidance entitled COVID 19: National Guidance for the Family Court issued on 19 March 2020</i>);</p> <p>b) Renewed focus on ensuring <u>any directed advocates' meetings</u> are effective including always attended by remote hearing advocate;</p> <p>c) Obtain <u>client's instructions as soon as practicable</u> to facilitate preparation and always <i>before</i> advocates meeting. Stress to clients the difficult circumstances and need to their timely co-operation.</p> <p>d) <u>Evidence / documents must be filed / served</u> as per</p>
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		relevant case management order or PD.
9.	Listing office, clerks and judges will <u>consider as far ahead as possible how future hearings should best be undertaken.</u>	Listing office will ensure judge(s) / parties informed, with maximum possible notice, identity of hearing judge(s).
<b><u>REMOTE HEARING TYPE:</u></b> 10.	<u>Type of hearing suitable for remote hearing</u> will depend on of the particular case and be for judge having heard parties' representations	
11.	<u>Anticipated all case management hearings and longer hearings</u> re: points of law or not involving witnesses capable of being remote hearings (eg. Child Abduction and Custody Act 1985 proceedings). <u>Also some contested multi-day final hearings</u> with both lay and expert evidence may, depending on the case circumstances, be amenable to a remote hearing.	<u>Note:</u> Committal proceedings (including Judgment Summonses) will always need to be heard physically in court.
<b><u>METHOD OF REMOTE HEARING:</u></b> 12.	<u>No one method or communication platform prescribed</u> for a remote hearing.	<u>Extensive communication platforms suite available</u> including, telephone conference call, BT Meet Me, Skype for Business, Zoom, Microsoft Teams and Lifesize. In addition, court



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		intending to add further remote hearing technology over time.
13 >14.	<u>Cardinal rule</u> - at the outset of individual proceedings court and parties <i>must</i> consider and settle on communication platform to be used .	Minimum recommended bandwidth for video hearing is 1.5 MBPS in both directions.
<b><u>PRELIMINARY ARRANGEMENTS</u></b>	<u>Court's permission still required</u> for any remote hearing of all or any part of the proceedings.	
15.		
16.	Wherever a remote hearing(s) considered appropriate by court (of own motion or on application) then vital <u>there be a preliminary hearing</u> held to consider and settle the identity of the communication platform and the consequential directions required, including the lead party identity.	May be necessary for this hearing to be <u>by telephone conference</u> pending resolution of electronic comms platform to be used.
17 >18.	If one of parties represented, <u>responsibility for remote hearing(s) arrangements falls on the applicant or the first represented party</u> . If no party is legally represented, court office will make contact to explain remote hearing arrangements and send necessary instructions.	<u>If one party unable to attend remote hearing by way of an electronic communication platform</u> (eg no such access or very poor Internet connection) but can attend by telephone, then remote hearing be held by telephone conference call arranged by applicant (or first represented party) or



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		by the court where no party is represented.
<p><b><u>REMOTE HEARING PREPARATIONS - Role of Lead Party</u></b> 19.</p>	<p><u>Identified lead party must liaise with the court in advance of the remote hearing to deal with any technical issues and provide to all parties' details required to attend hearing immediately as available and not later than 24 hours before scheduled hearing.</u></p>	<p>Usually <u>be necessary for the lead party to set up the remote hearing inviting judge to join hearing in place of rather court so doing.</u></p>
<p><b><u>Electronic Bundles</u></b> 20.</p>	<p><u>Parties must agree, and the lead party must prepare and file an electronic bundle of documents (and if appropriate an agreed electronic bundle of authorities) for each remote hearing (complying with para18 of the President's Guidance:COVID 19: National Guidance for the Family Court.)</u></p>	<p>Electronic bundle must be prepared with care by somebody with adequate knowledge of the case: <u>Bundle requirements:</u></p> <ul style="list-style-type: none"> <li>(a) be in PDF format;</li> <li>(b) all documents contained, if possible, w/i one PDF file;</li> <li>(c) PDF file must be searchable;</li> <li>(d) Pagination must be computer generated w/i PDF, not hand-written:             <ul style="list-style-type: none"> <li>(i) Original pagination must be by section and page no i.e. A1, A2, A3.... B1, B2, B3 etc;</li> <li>(ii) Insertions, after compilation, should use 'legal' numbering</li> </ul> </li> </ul>





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		<p>e.g. B13.1, B13.2, B13.3          inserted between B13 and B14);          (e) Each bundle section / each individual document referenced in index, should be separately bookmarked;          (f) Electronic bundles should contain only docs / authorities essential to remote hearing.</p>
21 >22.	<p><u>Electronic bundle must be filed with the court on CE-file (if available) or sent to the court via a cloud-based link (e.g. ShareFile, iCloud, OneDrive, Dropbox or Google Drive) rather than in a series of emails and provided to all other representatives and parties w/I relevant PD timetable.</u></p>	<p><u>Note:</u>          i) Avoid delivery by USB stick unless absolutely necessary as risk of creating a pathway of infection.          ii) Parties at liberty to agree with the court's consent use of e-bundle service from a commercial provider.</p>
<b><u>LISTING:</u></b> 23.	<p>Where more than one remote hearing in the court list, <u>the court will be required to list hearings at specified times. Time estimates provided must be met and advocates and parties must be ready to commence the remote hearing at the listed time.</u></p>	<p><u>Note:</u>          Will be little or no option to extend the time estimate once commenced.</p>
<b><u>WITNESS ARRANGEMENTS</u></b>	<p><u>If remote hearing involves oral witness evidence, advance</u></p>	<p>Parties should agree list of such docs and</p>



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24.	<p><u>consideration needed to docs witness likely be referred to.</u> The parties should endeavour to agree the list of such documents. It will usually be most convenient for an electronic bundle of the copy documents to be prepared in advance, which the lead party should send to the witness.</p>	<p>usually be convenient for copy electronic bundle of docs to be sent in advance by lead party to witness. This will require cross examining party to know in advance the identity of such docs for this purpose.</p>
25.	<p><u>Oath or affirmation taking</u> - most convenient for court to ask the witness to repeat the oath at the prompting of the judge.</p>	<p><u>Note:</u> Due to risk of creating a pathway of infection transmission - no expectation that the witness should touch the relevant Holy Book.</p>
<p><b><u>INTERPRETERS/ INTERMEDIARIES</u></b> 26.</p>	<p><u>If case involves interpreter and / or intermediary,</u> early and careful consideration needed as to how best to facilitate such involvement in remote hearing.</p>	<p>Vital done in close consultation with the relevant interpreter and/or intermediary. and <b>FPR Part 3A</b> re: vulnerable adults will apply.</p>
<p><b><u>RECORDING ARRANGEMENTS:</u></b> 27.</p>	<p><u>Responsibility for recording the hearing falls on party or court that has organised remote hearing.</u> At the conclusion of the hearing (or at such points during the hearing as is necessary) the hearing recording is to be uploaded to cloud based storage provision.</p>	<p>The judge will settle arrangements re: how recording files are to be transmitted/ stored centrally by the court.</p>
<p><b><u>HEARING SECURITY</u></b> 28.</p>	<p><u>Recording by a party or other person</u> of a remote hearing without the permission of the court is strictly forbidden.</p>	<p>(Applicable to the Family Court and the Family Division of the High Court via the</p>

		pending s 53 of the Coronavirus Bill it will be an offence to record a court broad-cast directed for the purpose of enabling members of the public to see and hear proceedings and also an offence to record or transmit material from participation through a live link on penalty of a fine at Level 3 on the Standard Scale.
<b><u>TRANSPARENCY</u></b> 29	<u>Duly accredited press representatives may attend</u> a Family Court private hearing (see <b>FPR r 27.11(2)(f)</b> ) and the court and the parties must give consideration to how to achieve press access to a remote hearing. The court's cause list must indicate the hearing is a remote hearing and, if possible, the particular methodology being used.	<b>FPR 27.11(3)</b> permits exclusion of the press if justice would be impeded or prejudiced, including where the remote hearing could not, practically, take place if this step were not taken, - however it remains highly desirable that the operation of the Family Courts remains as transparent as possible
<b><u>THE REMOTE HEARING</u></b> 30 >33.	<p>i) In the early stages of remote hearings, there will be technical issues and parties must be sympathetic /flexible regarding the same.</p> <p>ii) All attendees must ensure they have good connection/signal to</p>	

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	<p>avoid any interruption during the hearing.</p> <p>iii) Any witness present at the remote hearing will be sworn or affirmed by the judge. The witness is to be alone, in a secure room with the doors closed ensuring ensure there will be no interruptions or distractions. The witness should have recently re-read all affidavits or statements made by him or her and have a copy with them.</p> <p>iv) The clerk, court official or the judge(s) must complete the order at the end of the remote hearing and the wording should be discussed and agreed with the parties before the link is terminated.</p>	

**Appendix 4**



In the High Court of Justice No: \_\_\_\_\_

Family Division / The Family Court

IN THE MATTER OF \_\_\_\_\_

AND IN THE MATTER OF \_\_\_\_\_ CHILDREN

BEFORE \_\_\_\_\_ SITTING AT \_\_\_\_\_ ON \_\_\_\_\_.

**UPON** the Court determining that in the exceptional circumstances of the current national public health emergency this case is suitable for hearing remotely ('remote hearing') by means of [video link]/[Skype]/[telephone]/[other].

**AND UPON** the  
having identified and  
following  
platform to be used  
hearings in this case



parties and the court  
settled on the  
communications  
to conduct remote  
\_\_\_\_\_.

**BY ITS OWN MOTION / BY CONSENT**

**IT IS ORDERED THAT:**

1. All hearings in this matter shall take place by way of remote hearing pursuant to FPR 2010 r 4.1(e) unless the court directs otherwise.
2. The parties and their representatives shall attend all hearings by way of [video link]/[Skype]/[telephone]/[other].
3. No unauthorised person may be present at this hearing. When asked, each legal representative must be able to confirm that no unauthorised person is in attendance or able to listen to the hearing.
4. This matter shall be listed for a remote hearing on \_\_\_\_\_ at \_\_\_\_\_ before \_\_\_\_\_ sitting at \_\_\_\_\_ with a time estimate of \_\_\_\_\_.
5. The parties shall arrange and attend remotely an Advocates Meeting no less than 48 hours before the hearing listed above.
6. The [applicant / respondent] shall be responsible for arranging with the Judge's clerk (via \_\_\_\_\_) the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place. This will include provision to the court of the necessary contact details for the parties and their representatives where these are needed to facilitate the remote hearing.
7. The [applicant / respondent ] must confirm the details of the arrangements for the hearing to the other parties by no later than 24 hours prior to the remote hearing taking place.
8. The applicant shall by 1600 hrs on the day before the hearing electronically file a PDF bundle prepared in accordance with the requirements of paragraph 20 of the Protocol For Remote Hearings in the Family Court and Family Division of the High Court, which e-bundle must include:



1. (a) A case chronology; summary and
2. (b) The statements; parties positions
3. (c) The are relevant hearing; previous orders that to the remote
4. (d) All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
5. (e) A draft order;
6. (f) Completed advocates' forms together with the single address that the signed and sealed forms are to be returned to for distribution to the advocates.

9. [Further Directions].../

Dated \_\_\_\_\_