



## Coronavirus: Family Law Update

By Liam Kelly, Pupil Barrister

Since the start of the Coronavirus outbreak, and the subsequent restrictions on the movement of people, HMCTS and senior members of the judiciary have issued a large amount of guidance in order to assist the profession and to keep family justice moving.

This short update aims to consolidate some of the key guidance to assist busy family practitioners keep abreast of the key issues and guidance and where to find more detailed information should you need it.

### **Child Arrangements and Contact**

Children are permitted to move between the homes of their parents or any other person who holds parental responsibility ('PR') for them (The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, s.6(2)(j)).

Parents must exercise their judgment when deciding whether it is safe for contact to proceed as normal. Parents are free to exercise their PR, by agreement, to vary the existing Child Arrangement Order ('CAO'). It is advised that this is recorded by way of text, email or, written note.

If variation is not agreed but thought necessary by one parent, exercising their PR in order to protect the child and comply with health advice, the Court will expect arrangements for indirect contact to be made by video platform or telephone if that is not possible.

Any unilateral variation of a Child Arrangement Order may be scrutinised by the Court at a later time to assess whether that parent acted reasonably in light of the official health guidance and any evidence pertaining to the child. It would therefore be advisable that any

parent doing so keeps a contemporaneous note as to the reasons why contact was varied and to notify the other parent as soon as possible.

*The President, McFarlane LJ, issued a short guide on 23 March which can be found by clicking [here](#).*

### **Appeals**

All appeals must now be submitted in a paperless format in word or PDF and emailed to [appeals.familydivision@justice.gov.uk](mailto:appeals.familydivision@justice.gov.uk) with the subject 'APPEAL TO HIGH COURT: NEW APPEAL' marked urgent if so required.

All appeals should be accompanied by an EX160B to enable the Fees Office to process payments once it reopens. The 5-day time limit is waived.

*The President, McFarlane LJ, made a short announcement on 31 March which can be found by clicking [here](#).*

*The Chancery Bar Association have made a helpful short guide to Electronic-Bundling which can be accessed by clicking [here](#).*

### **Digital and Remote Hearings**

MacDonald J has issued comprehensive and detailed guidance on the use of technology within the Family Court during this time. That guidance has been reviewed and is now in its third edition. Amongst other things, the guide sets out in detail the different remote platforms which are available to use and the impact this has on litigants in person, intermediaries, interpreters and other interested parties, as well as procedure, transparency and Legal Aid.



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MacDonald J highlights that until such time that HMCTS own cloud video platform ('CVP') is available, there can be no national Protocol as to which platform should be used to conduct remote hearings.

He says,

*'...pending the arrival of CVP, judges, lawyers and litigants should be able to choose from a suite or 'Smorgasbord' of platforms (most likely BT MeetMe, Skype for Business, Zoom, Microsoft Teams or Lifesize) depending on the circumstances of the court, the parties and of the particular case'*

Further information about each of the platforms can be found here:

- BT MeetMe - <https://www.globalservices.bt.com/en/my-account/support/collaboration/bt-meetme/user-guides/bt-meetme-reference-guide>
- Skype for Business - <https://www.skype.com/en/business/> (*Skype for Business is being replaced by Microsoft Teams and those without an existing licence may not be able to register as new users*)
- Zoom - <https://zoom.us/>
- Microsoft Teams - <https://products.office.com/en-gb/microsoft-teams/group-chat-software>
- Lifesize - <https://www.lifesize.com/>

Importantly, V.3 of MacDonald J's Guidance, issued today, makes clear that there is no agreed format and discretion must be exercised in order to achieve justice.

MacDonald J states;

*'Whilst security vulnerabilities remain, it is clear beyond peradventure that the need to keep the family justice system operational in some form outweighs, in the current unprecedented circumstances, the security issues of doing so with 'off the shelf' remote methodologies. The perfect cannot be permitted to be the enemy of the good.'*

Advocates should be mindful that remote hearings remain Court hearings and the solemnity of the same should be observed as it would be in a physical Court. With this in mind, Annex 1 sets out a series of rules which advocates should be mindful of. In summary these are:

- a) Advocates should dress as if they were attending court, although there is no need to robe.
- b) Participants must ensure that they are appropriately lit to be seen and that their background is suitable for the occasion.
- c) Participants must ensure they are not disturbed throughout the hearing.
- d) Participants should not leave the screen without permission of the tribunal.
- e) The usual restrictions on eating and drinking in court apply.
- f) Proceedings must remain confidential this may include using headphones, closing windows



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and doors and ensuring you are alone in the room.

- g) The judiciary and other advocates should be addressed as if they were in a physical court room.

In addition, guidance is given with respect to the hearing itself as follows:

- a) All participants should join a remote hearing in advance of the tribunal.
- b) The Judge's camera and microphone should remain on at all times. All other participants should be muted unless addressing the Judge.
- c) All Participant's cameras should be on at all times.
- d) At the start of the hearing the court will identify the parties and make any additional directions required in respect of the technology.
- e) The Court will give the necessary confidentiality warnings and ask participants to confirm their understanding.
- f) When giving evidence, a witness must have their microphone and camera on at all times.
- g) Time should be allowed for Advocates to take instructions throughout the hearing.

*Mr Justice MacDonald's full guidance, The Remote Access Family Court (V.3), published on 3 April 2020 can be found by clicking [here](#).*

*HMCTS guidance on remote hearings, published on 18 March 2020 and updated on 27 March 2020, can be found by clicking [here](#).*

### Court Closures

HMCTS has taken the decision to consolidate the work of the Courts into fewer centres during the Coronavirus pandemic. The list of closures is fluid and changing on a daily basis. Court users should be mindful of identifying which Courts in their area are classified as 'Open', 'Staffed', or 'Suspended'.

*A full list of closures can be found by clicking [here](#).*

### Education Provision for Vulnerable Children and Easter

The Department for Education ('DfE') has issued additional guidance on education provision for vulnerable children, those with a Social Worker, on a CIN Plan, or EHCP, during the Easter Holidays.

As a protective factor for vulnerable children, the DfE have asked education providers to maintain education provision for vulnerable children, and those of key workers, throughout the Easter holiday. Social Workers and schools are asked to encourage vulnerable children to continue to attend school throughout this period.

*The full guidance 'Coronavirus (COVID-19): guidance on vulnerable children and young people' can be accessed by clicking [here](#).*

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