



To whom it may concern

By email only: consultationfjo@nuffieldfoundation.org

28 April 2020

Dear Sirs

Bristol Law Society Official Response to Rapid Consultation on Remote Hearings in Family Proceedings

Bristol Law Society has over 4500 members in and around Bristol. Our primary functions include promoting the legal profession, supporting our members and facilitating Access to Justice in our community.

We have sought the views of our members in response to the Rapid Consultation on Remote Hearing in Family Proceedings. Whilst this response cannot possibly represent our entire membership, it reflects the general consensus of those we have consulted.

Have you had direct experience of a remote hearing?

Bristol Law Society have received feedback from across the profession, in relation to remote hearings that have taken place.

If yes, what sort of hearing was it, which court centre was involved, through which remote method was it conducted and what was your role?

Feedback has been received of experience of various types of remote hearings for Divorce/ Financial Remedy matters, Private and Public Children Act matters – directions, Interlocutory Applications (LSPO, MPS), FDRs, FHDRAs, Final hearings, ICO hearings.

What factors worked well?

We have had positive feedback as to the adaptability of the Bristol family law community, and a general attitude across the profession to finding a solution to ensuring hearings are run effectively.

We have also received positive feedback that directions hearings (such as FDAs in FR proceedings) have successfully been conducted as a paper exercise, saving time, money, and the court's resources. There have, however, been instances where directions have been agreed and where the judge still requires remote attendance.

Where hearings have gone ahead, we have heard that the courts have consistently been helpful in setting up remote hearings (be it either by telephone or video conferencing applications) and generally judges have successfully ensured the smooth running of remote hearings though there have been technical issues in this regard, resulting in some people being excluded from the call and there being pressure to carry on with the hearing in their absence where the missing parties are not the advocates. Hearings have therefore gone ahead with most (but, on occasions, not all) parties in attendance. We are, however, concerned that the success of remote hearings depends on the complexity of the hearing and also of the technological literacy of judges, legal professionals and of lay clients.

Did you have any concerns?

A number of concerns have been raised to Bristol Law Society. Chief amongst these is the effect of remote hearings on lay clients. Feedback has consistently focused on the difficulties associated with advising/supporting clients from a distance. Practitioners often appear to rely on WhatsApp/ Text messaging to ensure clients understand what is going on during a hearing. This not a secure method of messaging to which all clients have access. Where a client does not have access to alternative means of messaging, they are often left without advice and without emotional support.

In this vein, significant concerns have been raised in relation to the suitability of remote hearings for matters which may have a significant and life-changing impact on, often vulnerable, clients. Where these matters are not urgent, we suggest that it would be more suitable for these hearings to be adjourned and heard in person when appropriate legal and emotional support can be provided.

We have also received several reports of significant delays caused by litigants in person who are reportedly more difficult to manage in remote hearings and whose behaviour leads to increased friction and delays.

Feedback has also largely focused on the significant and overwhelming amount of guidance which has been given at a regional level across different courts. We have received reports that this has proven difficult and time consuming for practitioners to navigate. Additionally, we have received numerous reports of conflicting guidance leading to otherwise uncontentious matters, such as an application to adjourn a hearing, leading to a contested hearing. This wastes court resources, parties' costs, and leads to often significant emotional strain for clients, and a source of real stress for practitioners, which would otherwise be avoided with the benefit of consistent, national guidance that is required to be applied across all courts, rather than allowing regional guidance to be issued, in some instances, on a court by court basis.

Additionally, the technology associated with remote hearings has led to a number of concerns. Whilst video hearings have consistently been reported as the preferable method to conduct such hearings, technological issues appear to affect telephone and video hearings alike. For example, we have received reports of: both clients or legal advisors being unable to connect to, and therefore becoming excluded from, hearings; significant delays in connecting to the hearing; difficulty in hearing the parties clearly; and the parties becoming cut off, all of which lead to considerable delay.

Finally, the suitability of remote hearings is also a point of concern. In particular, remote hearings (either via telephone or video conferencing applications) do not easily facilitate out of court negotiations. It is therefore felt that this leads to hearings which either may have been avoided entirely or where issues may otherwise have been narrowed beforehand, leading to a waste of court time and resources. There is also significant concern regarding the platforms used for video hearings, which is not uniform across the judiciary and can cause difficulty where, for example, law firms block certain applications on their hardware. We have received feedback that hearings have taken place over Zoom, with concerns raised as to whether Zoom provides sufficient security for the parties in terms of the sensitive data that is transmitted during hearings. In addition, we understand that there is pressure for practitioners to address the need for clients to have the appropriate technology to be able to participate in the hearing, which is not always available. We have been made aware of guidance suggested to family practitioners that each party participating in the hearing should have two computer screens to be able to access the bundle and stay engaged in the hearing itself. We understand that in many cases, this is simply not feasible for practitioners and clients alike.

If you have concerns, do you consider that this way of working was justifiable in the short term?

For straightforward applications, such as directions hearings, and truly urgent hearings, we believe that these issues can be justified in the short term. However, where issues are complex or contested, for example for a final hearing in Financial Remedy proceedings, we believe there are real and significant risks which cannot be abated if matters are disposed of via remote hearings. These include the risk of decisions being made on the basis of unreliable evidence, parties having to give evidence remotely which can be difficult to manage (particularly if a party becomes very

distressed, as is not uncommon) and of a significant adverse impact on lay clients where potentially life-changing matters are decided remotely, where there is no direct support for the client immediately following the hearing in the way they thought would be made available to them when the matter commenced. There are serious welfare issues for all parties involved, including the judiciary, the legal professionals and the lay clients that need to be considered and balanced if remote hearings should be necessary to for more substantive matters.

How could the experience be improved in dealing with the current crisis?

We have received a number of suggestions, including:

1. Time estimates for remote hearings should be extended to account for issues with the technology and to allow consistent opportunities to pause the hearing to advise clients. By way of an example, we would suggest that a directions hearing which would otherwise be listed for 1 hour should be listed for 2 hours;
2. Guidance should be handed down on a national level only, to avoid the overwhelming distribution of, sometimes contradictory, guidance at a regional level which can differ even between 2 local Courts;
3. Non-urgent and complex matters (particularly final hearings of matters) should not be dealt with remotely and should, instead, be adjourned until they can be heard when the parties are able to physically attend Court; and
4. Where a complex matter is deemed urgent and is required to be heard remotely, a pre-hearing directions hearing should be heard to iron out technological issues and to familiarise the parties with the format of the hearing. This will ensure the smooth running of the hearing.

Have you had any direct feedback from lay clients or third parties (intermediaries/ interpreters/experts) as to their experience of the remote hearing?

We have received consistent feedback from our members that their clients have reported that proceedings are difficult to follow remotely (this is especially the case via telephone where it can be difficult to see who is speaking) and that they would be very concerned if a final hearing, or a more substantive hearing, were to be heard remotely.

Are you happy to be contacted for further questions?

Yes

Yours sincerely



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