



# Transparency Project

MAKING FAMILY JUSTICE CLEARER

**THE RAPID CONSULTATION:**

**THE USE OF REMOTE HEARINGS IN THE FAMILY JUSTICE SYSTEM**

**RESPONSE OF THE TRANSPARENCY PROJECT**

**APRIL 2020**

## About us

1. The Transparency Project is a registered educational charity operating in England and Wales, whose charitable objects are:
  - i. To advance the education of the public in the subject of family law and its administration, including the family justice system in England and Wales and the work of the family courts, in particular but not exclusively through the provision of balanced, accurate and accessible information about the work of family courts and the facilitating of public discussions and debates which encompass a range of viewpoints.
  - ii. To promote the sound administration and development of the law in England and Wales, in particular, family law, by encouraging and contributing to the transparency of processes in the family justice system, contributing to public legal education concerning family law and matters of family justice, enhancing access to justice in matters of family law and by such other means as the trustees may determine.

In short, our objectives are to make family justice clearer.

2. This is our response to the President's rapid consultation via the Family Justice Observatory concerning remote hearings in the Family Court.

## Blog posts

3. We have published a number of **blog posts** on our website written from various standpoints: a supporter of a family member (in the Court of Protection), a family court judge, and a legal blogger. We have also published a number of relevant comment pieces. In particular we draw attention to the following posts :
  - a. COVID-19 and family courts: Links in one place to new arrangements, Alice Twaiete, Mar 21 2020 (and regularly updated since),  
<http://www.transparencyproject.org.uk/covid-19-and-family-courts-links-in-one-place-to-new-arrangements/> ;
  - b. Child arrangements and shared care during the corona outbreak, Lucy Reed, Mar 24 2020, <http://www.transparencyproject.org.uk/child-arrangements-and-shared-care-during-the-corona-outbreak/> ;
  - c. Covid-19, the UK's Coronavirus Bill and emergency 'remote' court hearings: what does it mean for open justice?, Dr Judith Townend, Mar 24 2020,  
<http://www.transparencyproject.org.uk/covid-19-the-uks-coronavirus-bill-and-emergency-remote-court-hearings-what-does-it-mean-for-open-justice/> ;
  - d. Remote justice: a family perspective, Professor Celia Kitinger, Mar 29 2020,  
<http://www.transparencyproject.org.uk/remote-justice-a-family-perspective/> ;
  - e. Remote hearings: a gulf between lawyers and lay parties?, Malvika Jaganmohan, Mar 29 2020, <http://www.transparencyproject.org.uk/remote-hearings-a-gulf-between-lawyers-and-lay-parties/> ;
  - f. The Remote Family Court – where does transparency fit in?, Lucy Reed, Apr 2 2020, <http://www.transparencyproject.org.uk/the-remote-family-court-where-does-transparency-fit-in/> ;
  - g. Remote Justice : A Judge's perspective, Anonymous Circuit Judge, Apr 7 2020,  
<http://www.transparencyproject.org.uk/remote-justice-a-judges-perspective/> ;
  - h. Remote Justice: A legal blogger's perspective, Lucy Reed, Apr 10 2020,  
<http://www.transparencyproject.org.uk/remote-justice-a-legal-bloggers-perspective/> ;

- i. Coronacontact- what about the children in care?, Jack Harrison, Apr 11 2020, <http://www.transparencyproject.org.uk/coronacontact-what-about-the-children-in-care/>;
- j. Desperately seeking guidance..., Reporting Watch Team, Apr 14 2020, <http://www.transparencyproject.org.uk/desperately-seeking-guidance/>;
- k. Socially distanced courts for the digitally excluded, Paul Magrath, Apr 19 2020, <http://www.transparencyproject.org.uk/socially-distanced-courts-for-the-digitally-excluded/>;
- l. P (A Child: Remote Hearing) (Rev 3) [2020] EWFC 32: When is remote justice not justice?, Jack Harrison, Apr 23 2020, <http://www.transparencyproject.org.uk/p-a-child-remote-hearing-rev-3-2020-ewfc-32-when-is-remote-justice-not-justice/>;
- m. Remote hearings and inclusive justice, Paul Magrath, April 24 2020, <http://www.transparencyproject.org.uk/remote-hearings-and-inclusive-justice/>;
- n. Re Z – transparency and participation in the Court of Protection, Dr Julie Doughty, Apr 25 2020, <http://www.transparencyproject.org.uk/re-z-transparency-and-participation-in-the-court-of-protection/>.

## Survey

- 4. The Transparency Project is currently running an **online survey** asking parents and family members who have been involved in remote family court hearings about their views and experiences. Our questions were drafted before the Nuffield FJO consultation began, so are different, although some seek similar information. We hope that this summary may assist the consultation and are happy to share future results with the FJO, if this would be useful. No personal or identifying data has been collected. Some quotations below have typing errors, which we have not corrected.
- 5. The survey remains open. As at 28 April, we had 50 responses, of which the earliest hearing was dated 23<sup>rd</sup> March. We set out below some early indications from those responses.

## **Who replied**

6. 58% of the responses were directly from parties (mostly parents / former partners) and about half from someone supporting a party.
7. Of the supporters, 14 were lawyers, 2 were lay advocates, 6 were McKenzie Friends, and 2 were family members.
8. Respondents were spread across the country, judging from the court names included in responses.

## **Type of case**

9. 25 cases were private law (including 3 financial remedy). There were 11 care cases; 2 adoption; 3 relating to domestic abuse. 'Other' cases included an application for relocation and an application relating to a Cafcass officer.
10. 27 of the hearings were case management (55%), with 8 interim hearings and 8 final orders. Six people 'weren't sure' what type of hearing it was.

## **Technology used**

11. By far the most common platform was a phone (36 hearings, 73%). Ten used Skype/Skype for Business. Other platforms used were BT for Business and Zoom (the latter being used in 4% of cases, contrary to the impression one might gain from social media). Most people answering the survey had found it easy or very easy to join. Only 5 said that it was difficult. It may be that those sufficiently connected to be aware of and able to complete this survey would also be less likely to experience difficulties with

connecting to a hearing. Two respondents told us about a hearing that went ahead in their absence.

12. However, 19 people didn't have access to the papers and the majority (35) didn't know who else was there; 40 said they couldn't be seen by others, but this was mostly because the hearing was being conducted by phone. Only 4 parents in our sample gave evidence. In total, respondents were aware of 9 witnesses.

### **Outcomes**

13. Most outcomes were directions and/or adjournments. However, some hearings resulted in:

- an appeal to the Court of Appeal
- an interim care order and removal of a child
- immediate vacation of house and a 12 month non-molestation order
- a special guardianship order
- a child in care being returned to parents

14. 32 respondents to the survey agreed with the outcome of their hearing.

### **What worked?**

15. There were 33 positive comments:

a. Several were content that the hearing went ahead and there had been progress

b. Comments included:

- 'The judge did mute everyone and give me some time to let my barrister talk with me slowly as there was no interpreter present (actually there is no way that the interpreter can work in a remote hearing).'
- 'Judge did not rush anyone; listened carefully; everyone listened more carefully to words not body language.'

- 'I found it less daunting than being in Court. I am a single parent so I didn't have to worry about childcare, which I don't have! I would prefer to complete all future Hearings remotely. It's a lot less daunting.'
- c. There were six other comments about a remote hearing being preferable e.g. saving time and money; not having to be in the same room as the other party e.g. 'I didn't get to see my abuser'.

### **What didn't work?**

16. Most negative experiences resulted from technical problems e.g.

- 'Client had internet issues so I opened my office and facilitated the client accessing the remote hearing from there. I was present and we social distanced. It was far from ideal but I did not want the client to be disadvantaged. Some of the parties had to move to a different location in their home as connection became poor - this disrupted the hearing.'
- 'The phone line was not very clear and I was surprised zoom or Skype wasn't used as we should have been able to see each other.'
- 'Solicitor had to repeat herself at request of judge when line broke up. Judge was very good - checked she could hear everything.'
- 'I was given an incorrect code. I was conferenced into someone else's hearing. Was asked by the judge to hang up and he would get someone to contact me. No one attempted to contact me. Hearing went ahead without me and decisions made that I do [not] agree with.' [apparent from balance of this response that there is a missing 'not' as inserted]

17. Other problems:

- 'No interpreter as it wouldn't work to have an interpreter in a remote hearing. No video facility and being told that Zoom cannot be used by the judge as they haven't got relevant training. can only rely on Zoom with my barrister to communicate during the hearing with her rather than in person.'

- ‘there was no advance email info as to how the hearing would be conducted so we were expecting a skype video call, this caused uncertainty for the respondent, we had to adapt very quickly when the telephone call was received”
- ‘Not being able to see the judge or the others at the hearing.’
- ‘Felt not listened to and that it was not serious enough.’
- ‘It felt distant and at times disengaging.’
- ‘The lack of visibility and remoteness. The mother heard the judge making the interim care order over the telephone.’
- ‘It was awful not to be able to have proper discussions with my advocate during hearing felt negotiations didn’t happen like they had done at previous hearings everyone seemed stressed and then just really pleased the tech worked but it didn’t feel like a proper hearing to me and I didn’t feel heard.’
- ‘I didn’t get to meet my barrister in person.’

18. Respondents were also asked whether there were any difficulties getting a quiet, private space to take part in the hearing. A number of respondents with caring responsibilities reported difficulties, or reported that the other parent had problems which were apparent during the hearing, with one respondent telling us that: ‘I had to go into the car so as not to be distracted and disturbed by the children. It wasn’t easy as I had to keep checking on the kids,’ Another told us they had three children at home and ‘had asked it be adjourned however was refused by the judge’ (this party also reported that they were given an incorrect code and excluded from the hearing – see above).

19. Other comments :

- ‘I had to put my Young children Infront of the TV. I much preferred it than the trauma of having to go to Court. Hearings are so stressful not least because I don't have any childcare.’
- ‘other party had problems as children running in and out of room’
- ‘I just asked my partner to go in a different room I would of asked him to go out but due to the corona virus issues he couldn't not’
- ‘Difficult with two small children at home’



- ‘My niece had to sit in her bedroom through the hearing’
- ‘I had to make sure my teenager kept my 6 yr old upstairs quiet’
- ‘At home with young children. They keep wanting to come into the room. Only free room is the bedroom.’

### **Other observations**

20. A free-text box at the end of the survey invited other comments. These included:

- ‘It needs more coordination before the hearing. An usher needs to assure all docs and artefacts been received. Video hearing should be encouraged. It relays on IT skill of judge or clerical staff.’
- ‘The court didn’t approach us (I am the applicant) unless I contacted them asking how the hearing will be conducted. I thought it was the courts responsibility to inform both parties at least one week before the hearing so we can prepare accordingly. No information was provided if we have to go to court or if it was a remote hearing and what we need to prepare. The court knew we both are LIP’s so this was very important.’
- ‘It was not to bad having the hearing via Skype and phone call. The first hearing was phone call and it felt a little strange as you could not see people speaking or there reactions. But the judge was good and gice me the option for Skype and we had test hearings and it was better as I could see who was speaking and their reactions to things been said.’
- ‘The DJ did not have the file for the hearing. He said the court mislaid the files including my witness statement and evidence I submitted. The Judge asked the solicitor for the other parties if they want to go ahead with the hearing even though the DJ did not have the file and the solicitor agreed the hearing should go ahead. I was not asked if the hearing should go ahead. I felt discriminated against and unfairly treated.’
- ‘initially the judge felt there was no way for a mckenzie friend to quietly advise a litigant in person. when i explained we were already connected on skype messaging on our laptops (and the hearing being heard on telephone) the judge agreed i could

support in this way. this was very helpful for the client and similar to the quiet advice role of mckenzie friends in physical court hearings. i was able to privately prompt the LIP to address issues that were outstanding so as to address all the issues he wished to raise with the judge to his satisfaction. this type of private messaging seemed essential to assist the LIP to fully understand and respond to court processes and decisions they would otherwise be unfamiliar with. it felt like a very positive way to assist in private inline with mckenzie friend guidelines.'

- 'West London Family Court would not answer their emails or phones for weeks on end. After 4 weeks I got through and spoke to someone, explained my situation, and they just talked over me to say there's nothing they can do and then hung up on me. When someone is suicidal this is not the way to treat human beings that are suffering.'
- 'It went well - I saw it as a positive. Sadly we've already had many hearings and are familiar with the court process. The court building is intimidating and there's a lot of waiting around. This felt much more efficient and precious solicitor bills have wracked up as we've spent the day kicking our heels for court time. This kept the hourly charge much more affordable. Not sure how I'd have felt if it was first time appearing in court, but we needed the matter heard quickly and it was. Judge was very clear we were still in court.'
- 'Advised court beforehand I was not mentally well enough to go ahead with telephone hearing how the hell does a court evict you at the height of Coronavirus lockdown...' [respondent to ex parte occupation application]
- 'The fact the parents were unable to use the same resource as the judge and representatives led to a hearing in which the gravity of the decision was somehow less apparent.' [lawyer, public law proceedings]
- 'Whilst it meant the hearing went ahead I found it highly different to previous hearings - didn't feel like it was a proper hearing or that it was justice. I'm all for progress but not at expense of justice being seen to be done - it was difficult - I could see it working well for just routine but this was about my children and I feel opp for negotiation was lost.'

- ‘The respondent did not confirm he was alone and he also did not confirm he was not recording the proceedings.’
- ‘During the previous Hearing's there have been screens due to DA history. I couldn't see my ex on the audio call however if it was a video call I wouldn't want to see him if possible because this would really trigger and upset me.’
- ‘The parent who had asked for an adjournment told us that they had ‘Complained to the court and was told the judge has refused to comment. Breached data protection by allowing me to join someone else’s hearing. And broken my Human Right to a fair trial.’ [From the outcome box it is apparent that this hearing had led to the court ordering a s7 report and the respondent only found out about this outcome on receipt of the court order 3 weeks later.]

## **Conclusion**

21. It is probable that we have not captured the experiences of the most technologically disadvantaged or excluded parents, who may have been unaware of the survey or may have lacked confidence to complete it (although it appears that a number of legal representatives completed the survey on behalf of parents). Conversely, as with any survey of this nature, participants who were dissatisfied may have been more motivated to complete the survey than those who felt it went well. We have received social media comments from a number of parents about their negative experiences, who we have encouraged to complete the full survey but who do not appear to have done so. Our sample contains responses concerning short case management hearings rather than contested trials or longer hearings.

22. Although this is a small self-reporting sample, and conclusions can't be drawn, the survey gives some insight into parents' experiences. For some, just the fact that the courts were adapting to the Covid-19 environment and making some progress with their case was a relief. In certain circumstances, the remote hearing had been preferable (particularly those who identified themselves as victims of abuse or who had been involved in long running private law proceedings). However, some parents attempting to participate by phone did appear marginalised and at a disadvantage.

23. We will continue to gather responses for the duration of the lockdown period and will analyse the results once we have a fuller picture.

**The Transparency Project Team**

**28 April 2020**