



# Remote hearings in the family justice system: a rapid consultation



## About this report

Following the outbreak of the COVID-19 pandemic, and the introduction of social distancing measures, the family courts in England and Wales have rapidly adapted to using telephone and video hearings. In light of this significant change, the President of the Family Division asked the Nuffield Family Justice Observatory to undertake a rapid consultation on the use of remote hearings in the family court.

The consultation ran for a two-week period from 14 to 28 April 2020 and well over 1,000 people responded.

This report provides an overview of the consultation responses.

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## About the Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

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## Contents

Executive summary .....	1
1 Introduction .....	2
2 Overview of respondents and responses .....	5
3 Concerns about the fairness and justice of remote hearings .....	9
4 Issues relating to the technology .....	22
5 Impact of attending remote hearings on professionals' well-being.....	32
6 Examples of good practice and suggestions for future practice .....	36

## Executive summary

- Over 1,000 parents, carers and professionals in the family justice system across England and Wales responded to the rapid consultation (14 to 28 April 2020) on remote hearings in the family court, which have been introduced in the light of the COVID-19 pandemic and associated social distancing measures.
- The respondents were evenly balanced in terms of their overall positive and negative reactions to remote hearings. Most thought that remote hearings were justified for certain cases in the current circumstances; and some felt that this way of working could continue for certain cases in the future.
- Significant concerns were raised about the fairness of remote hearings in certain cases and circumstances, and there were some worrying descriptions of the way some cases had been conducted to date. These concerns chiefly related to cases where not having face-to-face contact made it difficult to read reactions and communicate in a humane and sensitive way, the difficulty of ensuring a party's full participation in a remote hearing, and issues of confidentiality and privacy. Specific concerns were commonly raised in relation to specific groups: such as parties in cases involving domestic abuse, parties with a disability or cognitive impairment or where an intermediary or interpreter is required.
- Respondents reported wide variation in the kind of cases that are currently going ahead or being adjourned and in the level of support available for parties, suggesting that some national guidance would be valuable.
- A wide range of different telephone and video platforms are currently being used to conduct remote hearings. Telephone hearings are more common, but video hearings were generally felt to be more effective.
- Concerns were raised about access to appropriate technology (for parties and professionals), the lack of clarity about roles and responsibilities in terms of setting up and supporting the administration of hearings, the extent of professionals' technological capabilities, and the limited IT support and training.
- Remote working was reported to be having a negative impact on professionals' health and well-being, although for some professionals it has meant working in a more efficient way.
- Many examples of emerging good practice, and suggestions for future practice, were provided. These largely related to the management of the process—the preparation and running of hearings, and making the most effective use of technology. Respondents to the consultation also gave feedback as to the types of cases that they felt should or should not be heard using telephone and video technology.
- Further work is required to ensure that the impact of remote hearings during the pandemic can be researched effectively in order to inform future practice.

## 1 Introduction

### 1.1 What we were asked to do

Following the outbreak of the COVID-19 pandemic, and the introduction of social distancing measures, the family courts in England and Wales have rapidly adapted to using telephone and video hearings. In the two-week period between 23 March and 6 April 2020 audio hearings across all courts and tribunals in England and Wales (not only in family courts) increased by over 500%, and video hearings by 340%.

In light of this significant change, the President of the Family Division asked the Nuffield Family Justice Observatory (Nuffield FJO) to undertake a rapid consultation on the use of remote hearings in the family court.

The consultation sought feedback from parents and carers and all professionals in the family justice system including judges, magistrates, barristers, solicitors, Children and Family Court Advisory and Support Service (Cafcass) advisers, court staff and social workers. Those who had had experience of a remote hearing (a hearing conducted by telephone, Skype or other remote platform) and/or those with expertise or other relevant experience were invited to respond.

The consultation applied to remote hearings undertaken in both public and private cases, and to all types of hearings (directions, interim and final).

The consultation ran for a two-week period from 14 to 28 April 2020.

Participants in the consultation were asked:

- Have you had direct experience of a remote hearing?
- 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?
- What factors worked well?
- Did you have any concerns?
- If you have concerns, do you consider that this way of working was justifiable in the short term?
- How could the experience be improved in dealing with the current crisis?
- Have you had any direct feedback from lay clients or third parties (intermediaries/interpreters/experts) as to their experience of the remote hearing?
- Are you happy to be contacted for further questions?

### 1.2 How we ran the consultation

Through extensive publicity about the consultation, participants were asked to either submit written responses to a dedicated email address, or to provide their responses over the telephone. In addition, the following events provided an opportunity for people to share their views and experiences relating to remote hearings. While some of the events took place prior to the consultation, this feedback was captured and has been included as part of the response.

- *Can we do digital child protection and family justice safely—and fairly?* This event was held on 8 April (ahead of the consultation) in partnership with Tortoise Media. There were approximately 90 attendees.
- *Remote hearings—fair family justice?* This event was held on 17 April in partnership with Tortoise Media. There were approximately 60 attendees.
- *The family courts after the COVID-19 crisis—what are we learning?* The event was held on 22 April in partnership with Tortoise Media. There were approximately 120 attendees.
- *Consultation with members of the Family Rights Group parents and kinship carers panels.* This event was held on 28 April. Five members attended.

Many other organisations have been holding their own consultations, and were willing to share the information that they had gathered. These were counted as one response (even when multiple people had provided feedback), unless details were provided on each individual response. There were too many organisations to list in full here, but they included:

- Achieving for Children
- Association of Lawyers for Children (ALC)
- ATD Fourth World UK
- Bristol Law Society
- British Association of Social Workers (BASW)
- Cafcass Cymru
- Cafcass
- Dads Unlimited
- Domestic Abuse Volunteer Support Services (DAVS)
- DV Flag East
- Family Drug and Alcohol Courts (FDAC)
- Family Mediation Council (FMC)
- Greater London Family Panel (GLFP)
- Independent Domestic Abuse Services (IDAS)
- Independent Domestic Violence Advisory Service (IDVA) for Cambridgeshire and Peterborough
- Intermediaries For Justice (IFJ)
- Legal Action for Women (LAW)
- medConfidential
- Mencap
- Nagalro - The Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers
- National Centre for Domestic Violence (NCDV)
- Norfolk Community Law Service (NCLS)
- Resolution
- Rights of Women
- Royal College of Paediatrics and Child Health (RCPCH)
- SafeLives
- Social Work England
- South London Legal Partnership (SLLP)
- Support Through Court
- The Association of Her Majesty's District Judges
- The Law Society

- The Magistrates Association (MA)
- The Transparency Project
- Victim Support (VS)
- Working Together with Parents Network.

Finally, a rapid literature review was undertaken on behalf of Nuffield FJO by Dr Natalie Byrom, Director of Research and Learning at the Legal Education Foundation. This reviewed the existing international evidence on the impact of remote hearings and considered how different vulnerable groups are particularly affected. This report will be published separately.

### **1.3 How the report is organised**

The remainder of this report is organised as follows:

- an overview of the respondents and their responses
- concerns relating to fairness and justice
- issues relating to technology
- the impact on professionals
- examples of good practice and suggestions for future practice.

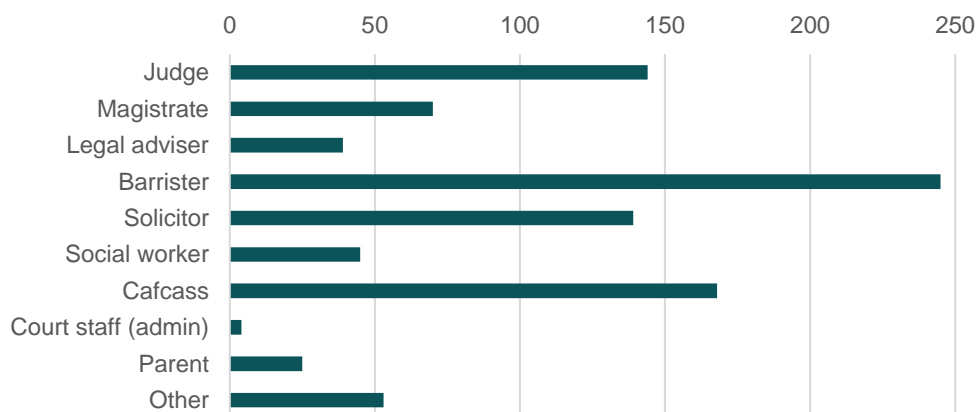
## 2 Overview of respondents and responses

### 2.1 Who responded to the consultation?

932 individual respondents to the consultation were recorded, although some responses collated information from groups of individuals, so the total number of respondents was well over 1,000 people.

- Of the 932 respondents, 144 (15%) were judges. This figure is an underestimate of the total responses from judges since several responses collated multiple views. For example, the Association of Her Majesty's District Judges Association collated 76 responses, and these were not recorded as individual responses.
- 70 (8%) of the respondents were magistrates.
- 39 (4%) were legal advisers (magistrates courts).
- 245 (26%) were barristers.
- 139 (15%) were solicitors. This included those working in local authority legal teams. The consultation received several collated responses from local authorities, so this number is an underestimate.
- 45 (5%) were social workers. The consultation received several collated responses from local authorities, so, as with legal advisers, this number is an underestimate.
- 168 (18%) were Cafcass or Cafcass Cymru staff.
- 4 (0.4%) were court staff (administrative).
- 25 (3%) were parents.
- 53 (6%) were recorded as 'other'. These included staff working for Family Drug and Alcohol Courts, Intermediaries and voluntary organisations.

**Figure 1: Breakdown of consultation respondents**

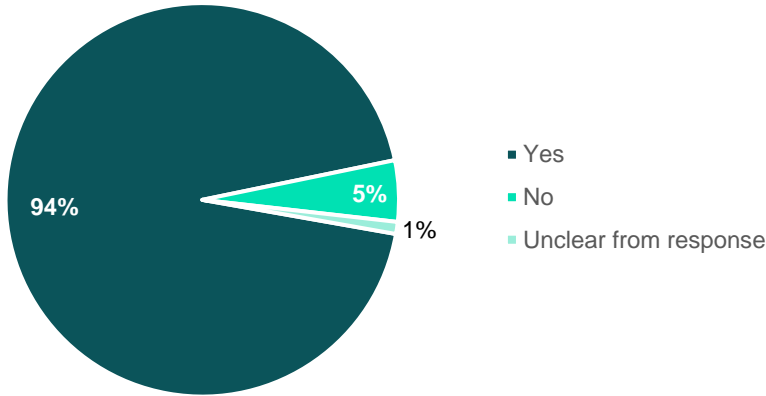




## 2.2 Had they taken part in a remote hearing?

859 (94%) of the respondents had taken part in a remote hearing.

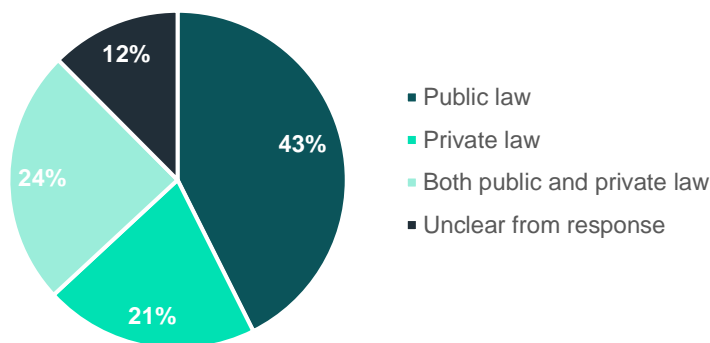
Figure 2: Share of respondents who had direct experience of a remote hearing



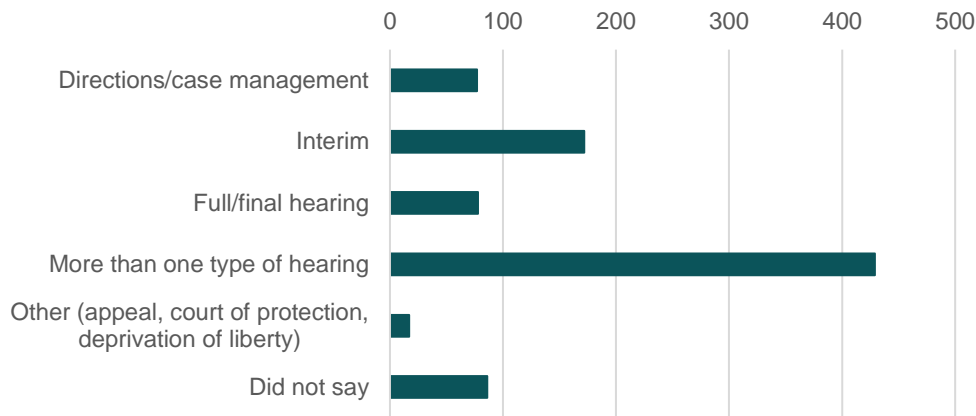
43% of respondents who had experienced a remote hearing had done so in relation to public law (only) and 20% had done so in relation to private law (only), with 24% experiencing remote hearings in both public and private law.

Respondents reported attending a wide variety of hearings remotely—including directions/case management hearings (9%), interim hearings (20%) and final hearings (9%)—and 50% of respondents had experienced more than one type of hearing. In the time available it was not possible to analyse whether there was a significant difference in attitudes to remote hearings according to the type or number of hearings that respondents had experienced.

Figure 3: Share of respondents who had taken part in public, private or both public and private law hearings



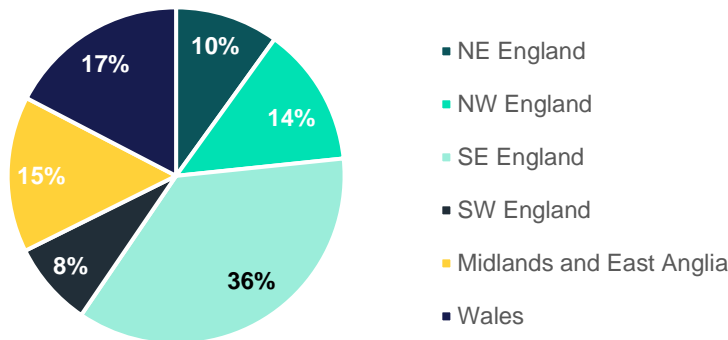
**Figure 4: Type of hearing experienced by respondents**



### 2.3 Where were respondents from?

Individuals from across England and Wales responded to the consultation and there was a reasonable geographical spread of responses. The response recorded the area where an individual’s main place of work (office) was located, rather than the location of the court they worked for, and this is likely to explain why a high number of responses were recorded in the South East.

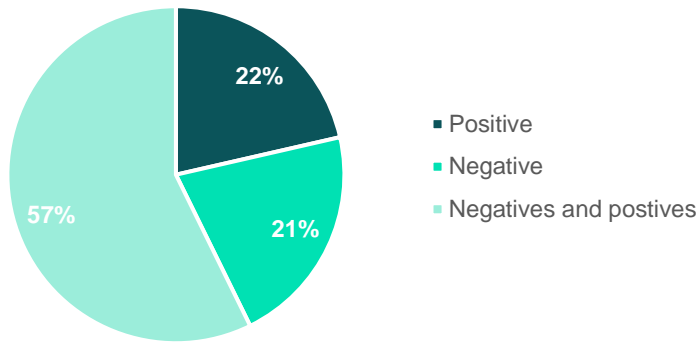
**Figure 5: Geographic breakdown of respondents**



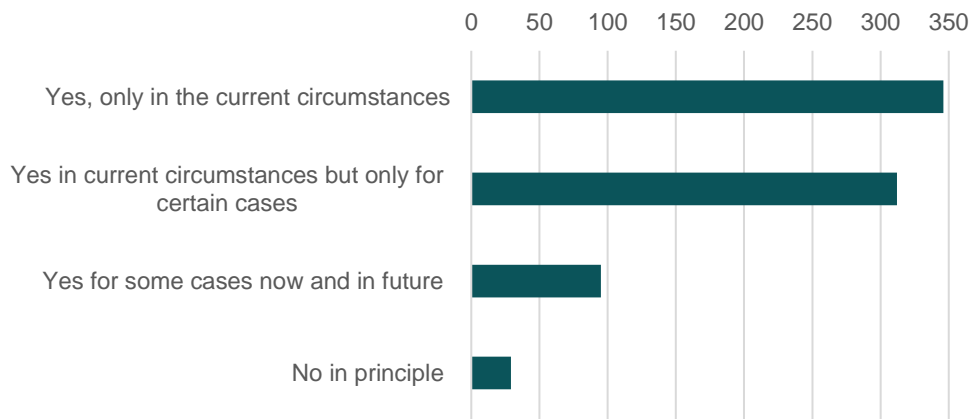
### 2.4 Were respondents broadly positive or negative about the experience of remote hearings?

There was an even balance in positive and negative responses to remote hearings. This reflected the fact that many respondents felt that remote hearings were justified in some cases in the current circumstances, even when they raised serious concerns about remote hearings in relation to other types of cases.

**Figure 6: Were respondents broadly positive or negative about their experience(s)?**



**Figure 7: Are remote hearings justified?**



### 3 Concerns about the fairness and justice of remote hearings

As well as the many expressions of concern, and some very worrying descriptions of the way in which remote hearings have been conducted to date, the consultation responses from across England and Wales also provided many examples of judges, courts, local authorities and other services working very hard to ensure remote hearings are fair and just.

The guidance for Courts and Tribunals Judiciary ‘The remote access family court’ by Mr Justice MacDonald, first issued on 23 March 2020, and regularly updated since then, begins with a quote from the President of the Family Division:

*Can I stress, however, that we must not lose sight of our primary purpose as a Family Justice system, which is to enable courts to deal with cases justly, having regard to the welfare issues involved [FPR 2010, r 1.1 ‘the overriding objective’], part of which is to ensure that parties are ‘on an equal footing’ [FPR 2010, r 1.2]. In pushing forward to achieve Remote Hearings, this must not be at the expense of a fair and just process.<sup>1</sup>*

This point is reiterated by the President in his judgment in the recent case of Re P (A Child: Remote Hearing) [2020] EWFC 32.

Many of the respondents to the consultation expressed concern about the difficulty of ensuring that the court process is fair and just when hearings are conducted remotely. The vast majority of respondents to the consultation recognised the need to balance the concerns about the appropriateness of a remote hearing with the welfare of the child and the risk of significant harm (and barely anyone opposed remote hearings in principle), but there were some who took the view that no remote hearing dealing with an issue of any substance beyond directions could be just or fair.

Despite evidence of considerable variation in court and local authority practice across England and Wales, there was remarkable similarity in the types of examples given by respondents to illustrate their concerns.

#### 3.1 Difficulties arising from lack of face-to-face contact

Many of the respondents expressed a concern about the difficulties of reading body language where there is no face-to-face contact with parties. This was particularly the case with phone hearings but also with video hearings. Respondents reported that it is difficult, if not impossible, to judge the reactions of a witness giving evidence or the reactions of a party hearing that evidence, either because they cannot be seen at all (phone hearings or some video platforms which only show a certain number of people on the screen regardless of how many are taking part in the hearing) or because they are only visible in miniature.

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<sup>1</sup> See: <https://documentcloud.adobe.com/link/track/?uri=urn%3Aaaid%3Aascds%3AUS%3A2980f7db-6065-488c-8aa3-24174f5bcbfa&pageNum=1> [last accessed 30 April 2020].

*The judge cannot see the body language of the parties—the judge is less likely to give lay parties the benefit of the doubt, especially when they are trying to be conciliatory (Barrister).*

*I find it very difficult to get a proper grip on the case without seeing the parties. Body language etc. is so important, and we are relying totally on the local authority for interpretation of what has been said—one knows very well from court that two people can hear exactly the same evidence and understand different things from it (Magistrate).*

*There is a real risk that the truth will not surface if we insist on proceeding remotely and indeed, in my view, it is at real risk of being suppressed and manipulated. The inability to fully observe a party/ witness both in court and outside the courtroom door is also an important tool in the advocates preparation and judicial analysis. I think by seeking to conduct contested hearings remotely we shall undermine public confidence in a system many are already highly critical of (Barrister).*

Many respondents noted that it is extremely difficult to conduct the hearings with the level of empathy and humanity that a majority of those responding thought was an essential element of the family justice system. Respondents also reported that it is difficult, if not impossible, to ensure that parties to proceedings receive the level of support before, during and after hearings that they would normally get if they are legally represented or involved in public law proceedings.

These concerns arose in relation to many different sorts of hearings and were not just issues identified in contested interim or final hearings.

*The court process is more important than simply being an administrative adjudication. It's a very human set of interactions. My role as a judge is absolutely dependent on the humane administration of a very, very complex interactive process (Judge).*

*A huge part of the magic and value of what we family law professions do is to be in a room, with a person, and to listen, understand, and give advice on the most human of matters—family—whilst looking them in the eye. This human connection is a vital part of what we do and is not something that can be readily replaced with technology. Empathy is vital in areas such as family law, and an empathetic connection comes in 'real life', so to speak. In that room with that person is the best it can be. Practitioners are better at their job because of the technology they use, but the best work is in person, in real life, not on my computer (Barrister).*

*There is no opportunity to look them in the eye, to convey to them your own humanity, to either encourage or warn—all of which I consider to be a vital part of the initial stages of a care case (Judge).*

*Remote hearings are impersonal and transactional rather than humane (Judge).*

*Remote hearings are not suitable for the vast majority of family cases because they prevent vital human connections. That is an essential part of the Family Court. There*

*is so much non-verbal communication. The process is about building knowledge, trust and understanding. Before the parties come in you have read the files, formed a provisional view of what is going on, you are likely to have read about times of deep distress or chaos or serious allegations made. You have built up a sense of parents' expectations of what you can do for them, which may or may not be realistic. You adjust your views as you hear what legal representatives say on their behalf but also from watching and noticing responses and demeanour. You have to inspire confidence that you can be trusted with the information you have read, that you understand the issues, that you have a plan to resolve the dispute and that the process will be fair (Judge).*

*This morning during the course of the hearing I could hear a strange sound, I worked out that it was someone sobbing and ascertained it was the mother. I had to tell her to pull herself together in fairly short order so we could finish the hearing. Had she been in court I could have noted her distress sooner and given her time to settle herself. I did give her the option of stopping the hearing altogether but she wanted to carry on (Legal adviser).*

Respondents noted that the lack of face-to-face contact also created difficulties for clients and advocates in obtaining or giving instructions during hearings, usually because there were no facilities on the video platform being used for private discussions, or because video and phone hearings were conducted without breaks for opportunities to take instructions. In some areas, greater attention was being paid to addressing this issue.

*The parents do not have the option to speak to their advocate during the hearing, if they feel they have something valuable to add or need help understanding something (Barrister).*

*Parents meeting barristers for the first time on screen/phone is very hard for them. They aren't understanding what barristers are telling them will happen next. There is not enough time for barristers to explain to parents about what is happening (Barrister).*

*I am concerned that the only effective way I can ensure my clients are able to communicate with me during hearings is to use WhatsApp as a back up channel—which is not secure, and which also requires me to give my personal phone number to a lay client. There will be some clients that I will not be comfortable doing this with, and therefore my communication with them will be more limited (Solicitor).*

*In public law as a guardian, I have found remotely attending hearings such as CMOs [case management orders] and IRHs [issue resolution hearings] a little pointless. I am hearing things I already know but am unable to give privately any further instructions to my solicitor during the hearing (Cafcass Family Court adviser).*

### 3.3 The difficulty of ensuring a party's full participation in a remote hearing

Many respondents expressed concern about parents being able to participate fully in hearings for a variety of reasons. The concerns included difficulties with accessing the necessary technology (which are explored in the next chapter). Where lay parties were able to be part of hearings—and many examples were given of hearings where they did not take part at all because the court had decided the matter could be dealt with by legal submissions—the problems in giving in instructions, or in receiving information from their legal representatives meant that it was often very hard for lay parties to understand what was happening. It was also noted that many parents involved in proceedings are daunted by the process, as well as being under emotional strain, and may find it difficult to speak at all, let alone ask for something to be explained again, or to interrupt to say they cannot understand or follow.

There was particular concern for litigants in person as they have no one to provide any pre- or post-hearing explanations or support, and are having to negotiate the system and all the recent changes with little or no guidance or advice.

Respondents also gave examples of judges having difficulty hearing what was being said because of poor connections and/or hearing from parties for whom English was a second language but who were not in need of interpreters. There were many concerns expressed about the difficulty in conducting remote hearings when interpreters were involved, particularly if more than one interpreter was required.

*[In] a case involving a Polish mother and Egyptian father—both needing interpreters...the mother had severe mental health issues such that she now does not have litigation capacity, and at that remote hearing she was screaming constantly throughout the call. It was impossible to manage the hearing and even when she stayed calm the interpreters had to take turns to translate. It just was impossible for anyone to get any flow in their submission. The parents were at the same venue and father could be heard whispering or muffling the sound—it felt as if he was trying to tell the mother what to say. In court you would be able to pick up on that, but it felt very uncomfortable to me (Judge).*

*My primary concern is for lay clients who would struggle to participate meaningfully in a direct hearing. Remote hearings simply exacerbate this struggle from what I have seen (Barrister).*

*The level of functioning of lay clients may well mean that they cannot effectively participate in a hearing in a normal court setting, and therefore remote settings can be an impossibility. A telephone hearing requires intense listening and is exhausting. The same is true of looking at a screen for several hours (Barrister).*

*I am not content that the lay parties feel that they are recognised as central to the case... I sense that they feel even more powerless than when they attend court with their advocates (Judge).*

*I have had parties say this isn't fair during the call and I think that without them seeing us they don't always feel that they have been heard (Judge).*

*Lay clients have felt disheartened, like they have not had a fair hearing and that the judge was not interested in hearing the case. This is across the board with all my cases (Barrister).*

*I haven't had a hearing this week when a parent was present (Solicitor).*

*I have dealt with an EPO [emergency protection order], where the parents were calling into the hearing from the side of the motorway on pay-as-you-go mobiles. They had called a taxi and left a mother and baby home with the baby, had been chased by the police, who had taken the baby from them. The process was incredibly disempowering for the parents (Barrister).*

*Of necessity, the hearings are much quicker...Factual/legal/discursive points can therefore be left out, which reduces effectiveness/fairness (Barrister).*

Concern was also expressed for parties who had cognitive or hearing impairments, which makes it particularly difficult to participate in phone hearings. For parties who require intermediaries, many concerns were expressed about the challenges in ensuring they receive the necessary support and explanation before, during and after a hearing. It was reported that there was a shortage of intermediaries (one area had decided to use independent social workers to provide this support), and where they were able to be involved, there were considerable challenges in them fulfilling their role remotely, although some examples were given of intermediaries being physically in the same room as the party, as well as one or two examples of inventive approaches which had successfully involved intermediaries.

*If we are going to be using this process in the future, then we need to put in place a means whereby someone is not disadvantaged as a result of their disability (Judge).*

*Hearings are taking place via telephone, Skype for Business, and Zoom, depending on what is permitted by each court or LA [local authority]. Audio conference calls are working well in general, but for parents with social anxiety, sensory processing difficulties or learning needs it represents a significant challenge to only have sound. It is important that video calling is facilitated for these parents (London FDAC).*

*Zoom was able to provide a number of separate back room channels. It meant that the various intermediaries and their clients were able to review and recap. Zoom allowed for the intermediaries to observe their clients directly throughout the hearing. It meant that visually they could monitor the client's reactions and identify any difficulties to the court. According to the mid-way intermediaries' reports, the arrangements worked well (Judge).*

Responses which indicated a positive experience from parties were few and far between but included.

*Positive feedback from parents in both cases. They found remote attendance a lot less daunting than attending court (Cafcass Family Court adviser).*



*I can say that my client felt that the meeting was very helpful and the technology so simple that it led to the smooth running of the hearing (Solicitor).*

*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. (Parent, from The Transparency Project consultation).*

*The parties were relieved to get their evidence out of the way and finished. This long-running case had hung over them. I asked whether any party had concerns about the fairness of the process and sought an adjournment for face-to-face evidence. No party did (Judge, following a fact-finding hearing of several days with parents with cognitive impairments and other complications).*

*The young person who met the judge over Zoom indicated at the end of the meeting that she felt it had been positive and that she was pleased have been able to see the judge (National Youth Advocacy Service).*

*Hearings with lawyers are operating via conference calls. Non-lawyer reviews (NLRs) are also going ahead remotely, via phone. Parents are reporting really valuing the NLRs still taking place; they like being able to continue the relationship with their judge and talk to them on the phone. They are generally reporting it as a positive experience (Leeds FDAC).*

The last quote above from one of the FDAC teams is in the context of that specialist problem-solving court approach, where the parents have already formed a relationship with the judge dealing with their case and welcome the opportunity to continue it.

There were a number of responses from organisations working in the area of domestic abuse, as well as responses from individuals raising concern about the impact of remote hearings in cases of domestic abuse. Concerns included the lack of specific protocols and the management of remote hearings. Examples were given of victims waiting on the phone line for the hearing to begin with the perpetrator being the only other person on the line, and of victims feeling distressed by hearing effectively taking place in their homes. On the positive side, some victims found remote hearings considerably better than attending court, and many respondents noted that the process for obtaining non-molestation orders was straightforward and cases were being dealt with swiftly, although there was some concern about the delays in listing full hearings.

### **3.4 Concerns about lack of preparation for hearings**

Some respondents expressed concerns about parents, and sometimes legal representatives, not receiving adequate information in advance about how the hearing was going to be conducted, and how they could take part. On occasion, there were sudden changes in the technology that was going to be used, with parents expecting a phone hearing, and then finding it was being conducted online.

*The court only contacted the applicant's solicitors 16:00 the day before the hearing to ask for the parties' contact telephone numbers for the call, although we had emailed*

*them and called several times to check what was happening. We understand the courts are operating on skeleton staff, but they cannot leave it to the day before a hearing to inform parties how the remote hearing will take place as this is not usually sufficient time to contact all the parties (Solicitor).*

Some respondents expressed concern about Cafcass Family Court advisers and social workers taking part in pre-hearing phone or online discussions between the legal representatives of all the parties when the parents were not invited to join these discussions. Those giving this example felt that it was inappropriate to involve potential witnesses in this way, and that it was likely to leave parents feeling excluded from the process.

### **3.5 Issues of confidentiality and privacy**

Respondents raised concerns about the confidentiality of proceedings when conducted remotely. While there is clear law and guidance on who can be present in a physical courtroom during family law matters, this is difficult to monitor and enforce in a virtual environment. Concerns were raised about other people being present in the room with a party, listening to the hearing taking place, and possibly recording what was said, even though this was denied by the party. Respondents indicated a need for judges and magistrates to clearly articulate the rules around confidentiality at the beginning of the hearing, for there to be consistent guidance, reinforced messages throughout the hearing where necessary, and proportionate sanctions for any significant breaches of these protocols.

*Hearings are not safe and secure as many litigants in person do not respect remote hearings. Despite explaining that no one other than the party must be present or listening to the hearing and that no one can record the hearing, and then seeking assurances, I have on several hearings had to stop as it has become clear that the party has someone else listening on the line. The hearings are not therefore secure (Judge).*

There is also the risk that confidentiality will be breached inadvertently if adequate systems are not in place. In one instance a hearing overran and, because the parent and interpreter involved in the next hearing had been provided with the same dial in details, they were dialled in to the conference.

In some instances, confidentiality issues overlap with safety issues, such as where children are present or where domestic abuse is a factor. Some concerns were raised about the presence of children during proceedings. Responses indicated practical reasons why children are present, such as a lack of access to childcare due to social distancing requirements or other reason, and/or inadequate space in the home environment. One response highlighted that, if steps were taken to avoid children overhearing proceedings, they would have needed to be in their bedroom or be unsupervised for hours while evidence was heard. Examples were given of children coming in and out of the room while a hearing was progressing, and of parents being distressed at the end of hearings which was immediately evident to their children. A number of examples were given of cases where a mother had been taking part in a virtual hearing to decide whether her children, who were still with her at the time, should be removed from her care.

*The mother, who was at risk of having her four children removed, gave evidence by telephone from her garden shed as there was nowhere else private she could go as she was self-isolating due to COVID-19 and the children were in the house, being cared for by their grandmother. It was unsatisfactory to make any decision without being able to assess the evidence in the round, and unsatisfactory for the mother to give such important evidence in these circumstances. The likelihood of parents involved in care proceedings having a private space from which to attend remote hearings seems low (Judge).*

*Parents often have children around them when they are at home. Those parents may or may not try to protect the children from hearing the content of the court hearing with or without success in doing so. The children are unlikely to be fully protected from proceedings and the emotional worry and upset in the immediacy before the hearing starts and immediately post-hearing. In contested hearings it is possible the child will hear the evidence and allegations of abuse. That cannot be appropriate (Solicitor).*

*Cafcass has expressed concerns about a parent in private law proceedings who has the care of the child/ren attending remote hearings and the possibility that older children overhear information about their parents' relationship or other inappropriate matters, or that the parent may become upset and their ability to care for their child/ren is compromised (Legal adviser).*

*More thought needs to be given as to where lay clients are physically going to be—I have a hearing coming up regarding a child who lives with my client. My client is expected to participate in a four-day hearing, in a room on her own, while the child is left unsupervised. This is clearly impracticable, and this hearing has now been adjourned. She can't get any help with childcare due to social distancing requirements (Barrister).*

Space is also an issue for professionals—something covered in more detail in a later in section of the report—but one example given was:

*The social worker had her child running around in the background and this felt very inappropriate for parents. It is not okay for professionals also to be juggling childcare at the same time (Solicitor).*

In cases of domestic abuse, where coercive control or other high-risk abuse is a factor, there is a risk that the court process itself may be used as a coercive control tactic and increase feelings of vulnerability. From the feedback it is unclear how special measures are being used to help vulnerable and intimidated witnesses give their best evidence in court or to relieve some of the stress associated with giving evidence. Some are distressed by being alone at home during the hearings where they might hear or see the perpetrator.

*I am concerned about my estranged husband being able to see me and me being able to see him. My children and I are classed as high risk...and we have protective measures in place. Seeing him and knowing he will be able to see me is very scary and intimidating. I am concerned it will impact my ability to give evidence as well as I could were he not able to see me. He will be with his lawyers at their office during the*

*hearing whilst I am unable to be as we are in lockdown due to the vulnerability of family members which means I will be alone whilst the hearing takes place and have difficulty in relating information to my legal team. I have requested to appear by audio only but the judge has not yet made a decision on this. Although this would alleviate some of my concerns a little, it will also provide my husband with the advantage of being seen by the judge throughout whereas I will not be (Parent).*

*My husband has a history of recording and circulating photos and audio of court proceedings and I am concerned he will record and circulate this hearing. He is a professional video editor and I am worried that he will edit the hearing to misrepresent what was said, and perhaps even show the proceedings to our children when they are older. The children have a guardian, and she believes my husband being warned by the judge that recording is illegal will deter him; I do not believe it will. My husband's solicitor has suggested he attends the hearing from their office as a way to minimise the chance of him recording the hearing. Unless they plan to use their own equipment and check him for recording devices, I do not believe this will stop him. This will also give him the advantage of being with his legal representatives, whereas I will be alone. Due to my husband's abuse my children and I live with my parents. They are high risk and so we are self-isolating, as is my solicitor (Parent).*

However, in some cases where domestic abuse is an issue, some parties have welcomed a remote hearing.

*My client found the experience very satisfactory. In a vulnerable situation avoiding face-to-face contact. It was clear and easy to follow (Solicitor).*

*I suffer PTSD [post-traumatic stress disorder] as a result of domestic violence. The hearing was just 10 minutes. It was more professional. I felt heard and respected in comparison to dealing with the same DJ [district judge] in previous face-to-face hearings with just me and the applicant perpetrator.... I think in all difficult family cases and DV [domestic violence] cases, this should be how it is dealt with. I believe my perpetrator enjoys continuing the hearings. I believe he feels a level of control, his anger is clear, and he enjoys the drama. I preferred this way of conducting difficult family law hearings (Parent).*

### **3.6 Concerns relating to the urgent removal of newborn babies**

Particular concerns were raised by some respondents about urgent applications for interim care orders in relation to newborn babies, with new mothers having to join hearings from hospital, with accompanying difficulties in connectivity and in ensuring any privacy while the hearing was taking place.

*[It] was a contested removal hearing in respect of a newborn baby. The mother has a history of local authority involvement with two other children. I represented her. I found it profoundly inappropriate not to be speaking to her in person but on a telephone when she had never met me before and had given birth to her baby only the previous day. The court decided, almost inevitably, that the child should be removed but for that mother to be listening to the hearing in a side room in hospital,*

*and to be told of the court's decision by telephone (she missed the judgment because she had been called away to feed the baby by a midwife who came in to the room where the mother was) without me being there to put an arm round her seemed horribly cruel to me (Barrister).*

*I was representing a vulnerable mother with considerable learning difficulties. She was on a hospital ward and told that she could not leave until the court hearing had taken place. She is illiterate and the phone signal was intermittent. There was nowhere suitable for her to hold a private telephone conversation and in the end she had to trust an advocate she had never met and only spoken to briefly to argue for her newborn child. She was not able to participate properly in the hearing (Solicitor).*

One respondent described her concerns about a similar application:

*I heard an ICO [interim care order] remotely from home by telephone. The matter was originally listed for a one-hour remote hearing. At the hearing, the local authority sought to separate a newborn baby who was three days old at the time of the hearing. The mother and father hadn't received the papers. The father was only made a party to the proceedings at the hearing. The local authority, and to a lesser extent the guardian, were trying to persuade me to deal with the case and grant the orders sought at the one-hour hearing. They hadn't even complied with their obligations of pursuing all placement options (Judge).*

Having adjourned the case for one day, any longer was impossible because the hospital was refusing to keep the mother and baby in hospital any longer, the respondent dealt with the application, relying on a detailed judgment given previously in respect of the mother's previous two children, but remained concerned:

*Was it a fair, transparent hearing and Article 6 compliant? I did my utmost to make it so. I had refused to hear the case on the Wednesday and heard it the following day and made directions for the local authority to comply with the requirements of the case law. The parents won't see it that way. A mother with limited intelligence, not seeing the papers until after the first hearing. No intermediary and no way of me knowing on the phone whether she was following or understanding what was going on, Limited time for the mother to give instructions and have matters explained to her. It couldn't be by Skype as the parents were at the hospital and no facilities (Judge).*

Other respondents were also concerned about these cases.

*To have a two-day old baby removed in such circumstances did not feel morally or ethically right. For a hearing which will effectively change the course of a mother and baby's lives to be condensed into a phone call does not seem right in a modern society (Judge).*

*In one case I had to speak to the parents who were sitting in a car outside the hospital where the mother had that day given birth and I had conducted a hearing removing their newborn baby from them (Judge).*

### 3.7 Concerns about whether or not cases are adjourned

It was clear from the responses that views about the types of cases that should be continuing to a final hearing or that require interim decisions to be made, vary by location. In some areas, any cases where the application was contested and the hearing would involve parties giving evidence or being cross-examined have been adjourned, while in others, both long and short-contested hearings are continuing.

*DFJs [designated family judges] continuing to issue local directives is creating confusion. I think this sort of decision should have been made at national level or else left to individual judges to decide in each particular case if they thought acceptable for a hearing to be vacated and decided on paper (Judge).*

*There are some contested hearings going ahead—a more realistic approach needs to be taken with final hearings and fact-finding hearings being postponed. Unfortunately, the courts I have experienced have understandably been keen to press on without seeming to fully appreciate the reality of the current situation (Barrister).*

*Members [of the ALC] report lay clients feeling under considerable pressure to agree to arrangements for hearings which are contrary to their own entitlement to fair process. For example a mother who was assessed as requiring an intermediary to be present with her, who had conceded threshold, agreed to participate in a final hearing without her intermediary in the same place as her or available to her remotely. This was unsatisfactory and contrary to her own interests (from ALC response).*

*I feel that there is a real conflict of interest for the legal profession. We need to finish cases so that we can bill them and get paid—having work in the system does not equate to cashflow. If the outcome of a case is inevitable, there is a temptation to ‘crack on’. We want to be working and getting paid—I know that the Bar have been hit immediately and heavily by their work reducing and my impression is that they are pushing as a consequence to proceed with cases. I am deeply concerned that we need to recognise that conflict when we are discussing and advising on whether efforts should be made to progress cases to final hearing remotely (Solicitor).*

Concerns were also raised about the high rate of adjournment in cases that could have gone ahead and avoided unnecessary delay.

*These resources are being under-utilised. The courts are adjourning many hearings when remote hearings would suffice... The courts need to deal with more hearings remotely (Barrister).*

*In some circumstances, adjournments and delaying certain decisions might be the best approach—but this appears to be a default position of the court at the moment. It is not at all justifiable, cost-effective, nor fair (Barrister).*

*Not every case involving oral evidence is capable of being dealt with by remote hearing, but there will be some. It is crucial that the parties and the court carefully*

*consider those that may be/may not be. The default position should not be [to] adjourn them all—nor should it be [to] carry on regardless. Consideration should also be given to whether it might be suitable for some form of hybrid solution to be adopted (Barrister).*

Respondents also highlighted the potential injustices that may be caused by unnecessary adjournments of cases and undue delay in reaching decisions. There is of course the issue of delay having an impact on children, particularly those who have been involved in proceedings for some time and need a decision to be made about their future. In cases where babies have been removed from parents at birth, and where no physical contact is taking place, long separations are likely to have a negative impact on the likelihood of the parents being able to resume care of their child. Responses indicated that some areas are giving the issue of adjournment serious consideration:

*The judges in our area appear to be implementing a very considered and well thought out assessment of whether final hearings should be run, ensuring that all the parties are able to give their views. The judge has also implemented a review mechanism to consider whether the decision to adjourn the final hearing remains in the child's best interests. Given that we do not know how long this situation is going to last, this is essential, as timescales for the child may change depending on how long the lockdown continues (Solicitor),*

Parents and representatives of parents raised queries about who was making the decision to adjourn proceedings, and in some cases felt that insufficient attention was being paid to their desire to have the case heard, despite the limitations of remote hearings. Other responses indicated that they were relieved when their cases were not adjourned, for example:

*Some litigants in person in private law cases have said they were extremely grateful that the court has been able to resolve their case and make final orders; they were very concerned that matters would be delayed for an unknown period (Judge).*

A number of respondents were aware that adjourning cases was going to lead to a backlog of cases to be dealt with in the future, and that this would have the result of delaying access to justice for many families unless action was taken to increase the number of judges in order to deal with the backlog, and to increase the space available for cases to be heard.

### **3.8 Other factors affecting the fairness of hearings**

Some respondents highlighted other factors that have an impact on the conduct of hearings (and on whether they are fair) that are not directly related to remote hearings but are caused by the requirements for social isolation. Concerns included the difficulty of carrying out assessments when it is impossible to meet the person being assessed, or to observe them at home, or with their children. This is having an impact on psychiatric and psychological assessments, on independent social work reports, Cafcass assessments, and viability and full assessments of potential carers among family and friends, as well as on the specialist dynamic assessments normally carried out throughout proceedings by specialist services such as FDAC teams. There are also very limited services operating to carry out drug and alcohol tests.

Respondents reported that the reduction in services is having an impact, both on the ability of hearings to proceed and on the likelihood of urgent cases:

*There has been a significant increase in the number of urgent public law cases coming before the court. Many of the public law applications are for interim care orders or emergency protection orders with a plan of separation. Hospitals are less keen on keeping babies in hospitals post-birth pending a contested hearing. The local authorities are short of parent and child placements. Some foster carers are serving notice on their current placements. Many residential units have closed their doors... local authorities (and some guardians) are resistant to these applications being adjourned to enable families to give instructions. The local authority is urging speed of determination on the basis they cannot keep children safe in parental care in the community. I anticipate the number of children removed at urgent hearings has increased. Whilst ordinarily holding arrangements can be put in place on an interim basis to enable an urgent application to be heard on proper notice this is very difficult where local authorities offer no face-to-face social work (Judge).*

The consultation responses highlighted the fact that many specialist services providing support in relation to drugs and alcohol, mental health, domestic abuse, or learning disability are only able to offer very limited levels of support in the current circumstances. Although there is evidence that many of them are working hard to sustain support, this is in the main limited to providing it over the telephone or to a limited extent online. For children removed from their parents, options for placement have reduced, with even fewer placements available in residential mother and baby settings or mother and baby foster placements and in standard foster placements. Contact is rarely taking place face-to-face when children are placed with foster carers, there are delays to making family placements, and the evidence suggests very wide variation in local authority attitudes as to whether or not to allow contact and what form it should take. This might range from very limited possibilities in some local authority areas to others where enormous efforts are being made by local authorities and social workers to ensure that children, including babies, can stay in touch with their families. All of this is reported to make care proceedings even more challenging.



## 4 Issues relating to the technology

### 4.1 What technology is being used, and how?

Respondents indicated that a wide range of telephone and video conference platforms are being used to conduct remote hearings. It is notable that there was considerable variation between regions and courts, as well as between courtrooms within courts. This indicates that personal preference as well as availability are factors in selecting technology, which results in users needing to adapt to multiple platforms.

#### 4.1.1 Telephone conferencing

Telephone hearings were viewed negatively by many respondents because you cannot see everybody, and therefore it is not possible to read body language. However, in some areas where connectivity was poor or there were frustrations with video conferencing platforms, telephone conferences were seen as simple and reliable. Telephone conferences were viewed as more accessible for some clients too.

The telephone conference technology mentioned include:

- BT Meet Me and BT Meet & Greet
- PowWowNow
- LegalConnect
- Kidatu
- WHYPAY?

Positive feedback about telephone conferences related to the simplicity of the technology and the removal of extraneous stimuli, which enabled more focused hearings. Negative feedback highlighted the limitations of hearing without visual cues, such as when to speak. Some respondents were concerned that it was more difficult to get a sense of the case without seeing body language and interactions. It was also difficult to know whether parties were engaged and listening, if they had heard and how they were responding to important information. In best practice examples, the judge and legal representatives kept checking with parties whether they had understood. In other cases, hostile interactions were sometimes difficult to manage.

*Telephone hearings work less well for any contested issue, no matter how small. It is more difficult in my view for a judge to get a real sense of the issues over the phone (Solicitor).*

*It worked well having parties on the telephone. I did not have a statement and it was necessary for me to read it, so I had to adjourn for 20 minutes and call everyone again but this worked well (Judge).*

*Telephone hearings work less well with LiPs [litigants in person] in private law cases where there is a great deal of acrimony between the parents...In one case I could not restore order and had to cut them off (Judge).*

*Telephone hearings should not be the default as appears to be the practice in some areas, rather steps should be taken to ensure video hearings can take place at which lay parties are present.... Whilst generally they can be very useful for dealing with case management issues, I do not believe they would work satisfactorily for major hearings, although they can work as a holding position/urgent out-of-hours applications where the matter will return to court in the next day or so. I would be extremely concerned about the fairness of any remote telephone hearing concerning say the removal of a child. At the very least a parent should be able to 'see' those involved in taking such important decisions and, whilst perhaps not ideal, a remote video hearing would permit great involvement in that respect (Barrister).*

#### 4.1.2 Video conferencing

Videoconferencing received more positive feedback when participants were able to overcome technical and connectivity issues. Positive comments tend to relate to technical functions replicating 'real life' as closely as possible. Being able to see everyone's face and the ability to communicate privately outside of the main forum is considered important. Professionals highlighted the need for a second screen to read documents.

The videoconference platforms mentioned include:

- Zoom
- Microsoft Teams
- Skype for Business
- Cloud Video Platform (CVP)
- Lifesize.

Ancillary technology mentioned in connection with videoconferencing includes:

- WhatsApp and other telephone messaging services—used in addition to the above-mentioned technologies between legal representatives and parties to take instructions in private during the hearings; WhatsApp seemed to be the preferred app, possibly due to the encryption function
- dual screens—where available professionals used dual screens to view others in the video conference and read documents.

There were mixed messages about the pros and cons of different video conferencing platforms. Zoom, Microsoft Teams, Skype and CVP were the most used platforms. There was a lot of positive feedback on Zoom's functionality, but there were some concerns around security. There was mixed feedback on Skype for Business and Microsoft Teams functionality—however, some of this feedback indicates that the user may not be proficient with the platform (citing the absence of functions that do exist, for example), indications that software is out of date (Skype for Business has been superseded by Microsoft Teams), equipment was incompatible or unavailable, and issues with connectivity that are largely independent of the platform. Some of these issues with technology are outlined in the sections below. In light of these factors, video conferencing platforms may be best explored through identifying functions that are important to remote hearings (See Section 6.3).

*CVP was very effective with the clearest connection... Microsoft Teams has also worked well ...Skype for Business has proved more unreliable and I have found that the judge needs to be sat in the court building to reliably record the hearing. We wasted an entire day on the first day of the contested ICO trying to join everybody to the hearing but it was hopeless and exhausting... The contested ICO by telephone was a very uncomfortable experience (Barrister).*

*By and large the Zoom platform was extremely stable—certainly far more stable than the court video link facilities—particularly those using bridging links frequently used to hear expert evidence (Barrister).*

*Initially I had concerns about the ability of the judge to get the measure of witnesses but in fact the ability to see the demeanour and facial expressions of witnesses was probably clearer than in a court room where they are at some distance(Solicitor).*

## 4.2 Roles and responsibilities

There is a lack of clarity about who is responsible for setting up remote hearings and respondents reported that this can lead to confusion and increased communication and workload. In some instances, internal organisational policies about advance booking technology and restrictions on who is authorised to make a booking complicated or delayed the set up.

Some respondents described lengthy discussions about who should take responsibility for the set up and which organisation had the technology to support the hearing. While there were indications it should be the courts responsibility, courts in some regions lacked the equipment to undertake this role and local authorities 'hosted' the hearings.

*There needs to be consistent guidance for who manages and organises each hearing. There are often too many emails about who is doing what to set up a hearing. I think many of us have felt inundated with emails for just one hearing about simple matters (Barrister).*

*As judge, I arranged the Skype hearings and my clerk the BT Meet Me hearings. Technical issues made it very difficult and disjointed (Judge).*

*There does not seem to be a uniform approach to who organises the remote court hearings. The guidance, indicates the court staff will arrange the remote hearings. However, on an equal number of occasions the LA have been asked to organise the remote hearing. It would be useful if there was a uniform approach, as a significant amount of time is spent trying to seek clarification as to whether the court will organise the hearing or not, which causes extra work (Solicitor).*

In one case, counsel had been asked to host a hearing via Zoom following a failed attempt at hearing the case on Skype.

*I have very significant concerns about the propriety of counsel for a party being in charge of the hearing functions. In particular, I consider it unacceptable to expect any party (apart from HMCTS [Her Majesty's Courts and Tribunals Service]) to be responsible for securely recording, storing and transmitting the recording of the proceedings. Further we do not have the capacity to know what the risk of any*

*security breach is arising from the use of any platform, and whether our insurance covers any such breach or any other mistake we might make in carrying out what should be the function of the court. In addition, there are potential conflict or at least trust issues where a client observes us performing functions on behalf of the court from which we are duty bound to be independent (whether or not the case goes against them) (Barrister).*

### 4.3 Access to technology

Respondents reported that many parents do not have access to the technology required for fair and efficient remote hearings. Lack of access to technology is particularly problematic in public law hearings where barriers to participation may already be complex.

Respondents noted that many parents do not have sufficient phone credit, WiFi, or data allowance to participate in telephone or video conferences, or necessary equipment such as smartphone, laptop, tablet, or desktop computer, and there have been examples of barriers to participation as a result. There appears to be a lack of clarity about who should enable access to technology—the court, legal representatives, or local authority—or whether this is the parent’s responsibility. Respondents provided examples of local authorities in some areas trying to buy suitable phones or iPads for parents to use for the purposes of hearings or assisting with the cost of phone bills or contracts, but practice across England and Wales seems very varied.

*Many of my clients may not have WiFi, no credit on their phones, phones that are infrequently charged and no access to laptops nor iPads. They live in social deprivation, and their housing may be shared or not sufficiently private for a hearing to be conducted (Barrister).*

*One father is due to appear in six-day final hearing facing allegations of serious physical abuse to children without any devices, which had been seized by police. The local authority maintained he needed to buy a smartphone, which he could not afford. The solicitor ended up buying him a laptop so he can participate. The Legal Aid Agency have confirmed they will not pay (Solicitor).*

*I have had no direct experience of a remote court hearing because the courts are declining direct input from guardians in circumstances where parents cannot also join in. The parents on my cases, simply do not have the technology (Cafcass Family Court adviser).*

*My principle concern is the ability of parents to effectively engage in remote hearings. By and large they seem to be on the end of phone held by their legal representative. I sometimes worry they cannot hear what is going on. There is not the ability to communicate directly, either judge to party, or legal representative to party, that there is in an attended hearing (Cafcass Family Court adviser).*

*Local authorities in our area have been imaginative about [enabling more parents to attend via Skype], and provided family centre facilities and even laptops (Judge).*

The accessibility of suitable technology was not limited to parents. All professionals reported difficulties. Regional differences in the availability of equipment and connectivity are evident. WiFi access, broadband and phone reception varies widely by region, and by specific location within a region, which limits access to video conferencing for some, and can interfere with sound quality and participation in video conferencing. Professionals report the need for two or three screens to be able to fully participate, see everybody, read the required documents, and take notes. Organising access to equipment, teleconference and video conferencing in some instances is cumbersome. Compatibility of equipment can be difficult to troubleshoot, especially where technological capability is limited. Some judges and legal representatives described their frustrations at attempting to adapt to new technology without training or technically able support staff, while simultaneously attempting to fulfil their roles and responsibilities on often complex cases.

The lack of suitable equipment was identified as a major barrier to conducting remote hearings. For fair and effective remote hearings to take place, respondents indicated that courts and local authorities need to be suitably equipped.

*The stress of using remote technology when there is so very little kit available. Pre-COVID, court staff were always extremely stressed by video link, more so because of the fact that it had to be booked a week in advance, given the fact that there was only one screen for six judges in my building. Phone calls were done on an ordinary phone, on speaker phone in my court. If counsel were involved they had to walk around the court room and come and stand by my bench to yell down the phone. I requested a starfish phone years ago but that was not agreed by HMCTS. Recording worked but it was patchy given the poor quality of the one phone in my court (Judge).*

*The interchange between court microphones for parties attending, and the equipment used by those participating remotely, is poor. Microphones balanced close to loudspeakers and recorders work poorly. As judge I shared my laptop once with a lay party, which is unacceptable. They need laptops in court if they are to see and hear, [and to] be seen and heard (Judge).*

*As the judge, I have to use three screens—one for the video link; one for my notes; and one for the electronic bundle. This takes a bit of getting used to, but it is manageable (Judge).*

*Practitioners have been required to download and fund all manner of platforms to work remotely ... but there has been no time to be trained on any of the new communication tools and so their functions remain largely unknown to us all (Solicitor).*

*We don't have the infrastructure. I can't use Skype on the judicial laptop whilst it is docked, which means I'm reliant on WiFi, The WiFi in my court building is inadequate. I don't have the correct software to use ebundles properly or efficiently. Broadband can't support the level of use. I can't use my laptop to Skype and use it to take notes, [there are] no screens in court where I record so I have my judicial laptop with Skype on, and my iPad with the bundle—two very small screens (Judge).*

## 4.4 Issues with technology

The feedback from respondents indicated that the setup of teleconferences and video conferences can be problematic due to the technical capability of support staff and other professionals and whether professionals have access to suitable and compatible technology. Issues relating to technological capability are explored in the next section.

Responses underscored that there are often issues in joining people to the hearings regardless of the platform used (telephone or videoconference). Some issues related to proficiency, but others related to the availability and accuracy of contact details. Connecting participants can be time-consuming on some platforms, and in some instances there are limits on the number of people who can participate at one time, which meant some parties did not participate. Issues with technology have frequently caused hearings to be delayed, and it was highlighted that additional time must be factored in to accommodate these delays, as well as any other technical issues that arise.

*It was awkward initially trying to get everyone connected to the hearing but this mainly impacted the timeliness of the hearing (Solicitor).*

*Video conferencing appears to be hit and miss, and causes more difficulties. I have heard of hearings being delayed by 30–45 minutes to get the technology working. Not all firms support the same video conferencing facilities, which is problematic (Solicitor).*

*Only a limited number of phone lines [are] available for each hearing, so social workers cannot be dialled in, although children's guardians often are... Social workers have been frustrated [at] not being able to join hearings but on the whole they have been happy with the outcomes and how much faster the hearings are (Solicitor).*

*My microphone didn't work, despite working fine in a test run the previous day. I had unmuted, logged back on to system, and had made no changes to my system set up. Its failure remains a mystery... I had to telephone the judge when I wanted to make submissions or interject. My client had to communicate via WhatsApp, which was cumbersome. I asked for a 10-minute break and was refused as Judge could not sit beyond 1pm; it did not seem to me that any allowance had been made for any difficulties arising out of remote working, which may extend time needed (Barrister).*

Respondents highlighted issues with using a wide range of technology. While the 'agnostic approach' aims to enable higher rates of engagement, inconsistency creates a different set of problems, particularly where technological capability is an issue or there are permissions issues. IT administrator permissions are required to download software on to government servers and many private practice servers, which limits professionals' ability to troubleshoot these challenges at short notice. Many respondents indicate that personal equipment has been used to overcome such barriers. Inconsistency also limits the capability to capture data from a centralised court system.

*It is incredibly stressful to retain details of multiple hearings using different methods of communication and to be able to set them up each in their individual ways. Courts have different practices about who is responsible for what part of the process and I*

*find that solicitors are very reluctant on behalf of parents or guardians to have anything to do with setting up court hearings. ... Very often some authorities are unable to prepare bundles in compliance with the guidance. That creates very great difficulty in preparation and in managing submissions in hearings (Barrister).*

*Final hearings have been vacated by some judges due to lack of knowledge of the available platforms. Some judges have placed the onus on the local authorities to arrange for the technical platforms and resolve difficulties. Local authority technology [is] more advanced than the courts and does not accept Skype (Legal adviser).*

*I have some experience of parties not being able to agree on the format for communication—Skype, Microsoft Teams, Zoom, telephone call, etc. (Solicitor).*

Feedback indicated issues with the quality and stability of connections in both video and telephone hearings. There were many examples of connections dropping out and individuals missing out on important information and having to be reconnected and updated. This is not only disruptive and frustrating to the participants—there is also a risk of unfairness if important information is missed. Respondents indicated that it is easy for parties to ‘disappear’ without anyone knowing, and it can be difficult to dial back in without the support of people in the hearing. A high level of duplication occurs to ensure all participants have heard all the information.

*Every minute one of the parties would drop out of the conference call and I would have to call them back and recap to ensure that all parties had fully participated (Judge).*

*With Skype, the feed would drop out from time to time, as did various parties/advocates—advocates seemed to think Skype video was a step up, but a postage stamp sized image of someone with poor backlighting does not add much (Judge).*

*Concerns relate to the issue of some people dropping out, having to reconnect, talking over each other and control of the hearing which is not so easy when the parties are remote (Judge).*

*Occasional connection problems (either brief pauses or parties/representatives dropping out completely and having to rejoin) meant things took a lot longer than they would normally (Solicitor).*

Respondents expressed concerns about remote hearings continuing, even when a party or the legal representative of a party had been disconnected because others in the hearing had not noticed that this had happened. This was a more common problem with telephone hearings for obvious reasons but could also happen with video hearings where the technology used meant it was not possible to see all of those taking part in the hearing. There were some examples of hearings where the social workers had not been connected to the hearing or where parents had not taken part at all. Those who gave examples of parents losing the connection described them feeling uninvolved and unimportant as well as unheard as a result. Other professionals reported similar feelings when this happened to them. In all these situations, even when the hearing was for directions, if one party was unhappy with

the result, there was uncertainty about whether it was necessary to address this via an appeal or by some other route.

*The parents in the 'removal' hearing opposed the hearing proceeding on submissions only. The hearing went ahead without evidence, despite the opposition. The parents were not connected to the hearing in any way (Barrister).*

#### 4.5 Technological capability

There was a general acknowledgment that courts and professionals are working with the technology and skills that are available to them, often without any technical support. However, there was a clear message about the need to provide training and support if remote hearings are to continue.

Respondents highlighted that the technical capability of court support staff appeared to be a significant factor in:

- the setup of the hearing
- the choice of technology
- troubleshooting technical issues experienced during the hearing.

Some people, aware of their technical limitations, have preferred to conduct hearings by telephone conference to minimise technical disruptions and consider the absence of video a small sacrifice if it enables a hearing to proceed. For some, the technical issues arising from incompatible equipment exceeded the abilities of anyone not trained as an IT professional. In many instances, the technical challenges were seen as insurmountable, which has resulted in severe disruptions, ineffective, or cancelled hearings.

*In at least four hearings, I have had insurmountable issues with the technology. I have had to abandon hearings, and others have taken double the time as people drop out of the Skype room, including me, and I have to rejoin (Judge).*

*I had a problem reconnecting to a hearing as my microphone stopped working ... I had no idea how to sort it out (Judge).*

*[Technical capability]... leads to a personal crisis in confidence when I cannot cope with technology and operate or understand equipment/resources available. The staff have been amazing but instruction on use of equipment is incompatible with social distancing and changes daily. Keeping up with what is allowed/ permissible, which seems to change daily...more technology training and access to suitable equipment when working from home is needed (Judge).*

*I am aware that some of my colleagues prefer to see advocates etc. and so use Skype. As I do not (usually) think that I need to see advocates, I do not use this method. However, this is also in part as my experience of using Skype for Business has not been good (frozen screens, no sound, loss of a party) whereas a telephone line does actually work (more or less) and via BT Meet Me is automatically recorded (Judge).*



*It is much easier to do a remote hearing if it is clerked and/or if there is a digital support assistant on hand to help. Both these resources seem to be available to High Court judges, who also tend to have parties represented by silks and juniors and solicitors in attendance, so they have more people on hand to assist with controlling and directing the hearing. I have rarely had access to any support in the past few weeks. I anticipate resources are likely to reduce, not increase (Judge).*

Capability was also identified as impacting on a judge's ability to manage a hearing:

*On one occasion I decided to utilise the function to 'broadcast' which means that all other participants are muted and only I could be heard, but I mis-keyed the button and muted myself instead. Happily when I worked out my mistake and unmuted myself, the LiP had mostly run out of steam anyway. Since then, I have learnt how to use the computer-based controls for the calls, which may go some way to helping with the uncontrollable litigant (Judge).*

*Having muted your microphone, the time it takes to realise a problem is occurring and come off mute means matters are likely to have moved on before you can intervene or [stop] a question which should not be answered [being] answered (Judge).*

In some instance, there were concerns that technological capability may be (further) affected by age or cognitive ability.

*Clients, some of whom are elderly, cannot operate the technology needed. Where they are self-isolating and live alone, they cannot access assistance in person. I have an example of an 89 year-old gentleman who is being expected to participate in a remote hearing shortly (Solicitor).*

Many respondents indicated that after an initial learning curve, professionals adapted to new technology and hearings proceeded with few or no technical issues. Professionals have demonstrated ingenuity and have adapted technology to their needs, using a combination of videoconferencing and phones, and multiple devices. In some instances, this required forgoing some features, such as video, to enable hearings to proceed.

*The judge was unable to be seen as could not get the [Zoom] video and audio to work together but he was able to join via telephone and could see everyone else. This did not cause any problem (Solicitor).*

*The platforms available have improved quickly. BT Meet Me is a good example of this, and is a good method of conducting hearings in the circumstances (Judge).*

*Initially, comments from my colleagues included protracted delays in joining all parties to the hearing, and lack of management during the telephone hearing. However, such issues I believe are being rectified as all get used to the new way of working (Barrister).*

*[Telephones] The reduced amount of inputs meant you could focus more on what was being said (Judge).*

## 4.6 Electronic bundles

The feedback about electronic bundles highlighted some significant challenges. Many respondents indicated that there are difficulties in uploading the e-bundle and e-filing documents due to file size. There is a lack of consistency across courts about who is responsible for accepting and managing electronic bundles. There are examples of poor preparation and untimely receipt of documents, often in breach of directed timescales. Many noted that it is difficult to read a bundle off-screen without a dual screen system set up, and even then it is challenging to do while taking notes. Reading e-bundles from one large PDF file is difficult and does not lend itself to efficiency, which can lengthen hearings. Where paper bundles are required, social distancing and lockdown measures are limiting the capacity to print, copy and distribute bundles to the parties and judge or magistrate.

*Getting documents to magistrates to read has ended up being the LA's [legal adviser's] responsibility on top of everything else, which again is time consuming and when documents are missing or on the file we have to scan them and then send them to magistrates (Legal adviser).*

*Bundle for hearing was 2,000 pages long. LA refused to print to provide to father, who had no personal devices to access. Solicitor's firm forced to go into closed office to print and provide to him (Solicitor).*

*I recently filed a client statement electronically (whilst working from self-isolation) and I received a reply from the court staff informing me that the email attachment was too large for them to process (Solicitor).*

*A lack of papers/bundles mean that it takes longer to find particular documents to be referred to during a hearing, if people only have one screen it can be difficult to access documentation needed whilst in the middle of a hearing (Solicitor).*

*Key documents are not being put in a single PDF bundle as required by the lead solicitor, as a rule, and hearings are delayed or adjourned as a result (Judge).*

*Despite making notes in advance, I find that with no hard copy papers (I'm not prepared to print them all out at my own cost) and no visual stimuli (i.e. the people in court), it's easy to become muddled over which facts belong to which case; again not a problem I generally have (Magistrate).*

*If I were to be working for the applicant, I will find it difficult to get an e-bundle to court because we are working from home, the paper files are all in the office (Solicitor).*

*There is the issue of how to get instructions ...many clients simply have a phone and an inbox that cannot cope with a large bundle of documents landing—justice will not be served to many (Solicitor).*

*The really urgent problem we are facing is that courts are all doing different things and judges aren't up to speed with IT or dealing with electronic bundles (Legal adviser).*

*[An] Electronic/cloud bundling system would further enhance the family court in general (Solicitor).*

## 5 Impact of attending remote hearings on professionals' well-being

### 5.1 Tiredness and impact on physical and mental health

Increased levels of tiredness were commonly cited by respondents. Remote hearings were described as 'tiring' and 'exhausting' because of the concentration required to undertake telephone and video hearings.

*The process of hearing cases remotely is exhausting. It takes additional concentration. Voices are suffering from having to speak loudly into the speaker phone (Judge).*

*Constantly being on audio and often having to shout because of the poor quality of the transmissions is draining (Judge).*

*The hearings are very tiring to do as a judge. Sitting staring at a screen and concentrating hard on a sometimes faint and crackly line is draining (Judge).*

The additional work involved in setting up remote hearings was also a factor.

*Everything takes longer. Setting up the hearing is time-consuming—getting and keeping everyone on the line (up to eight is not unusual) and going through the initial 'script' takes a good 10 minutes or more. DJs don't have clerks, so we have to do all this. The telephone hearings also take longer after they start in earnest. The ability to use non-verbal communication to see what needs further exploration/what is conceded or agreed, is lost. It is important to ask everyone to contribute several times, to make sure they are still on the line, have responded where they need to respond, have understood what is going on (Judge).*

*I have found myself working from 8am until after 12 midnight (and through to 3am) on several days simply to keep the system ticking over. I am not convinced that this can be maintained over several months (Judge).*

*It takes considerably longer to set up and then to conduct hearings and this is not accommodated in the time estimates for the listing of cases (Judge).*

*Clerks are non-existent so judges are overwhelmed with all the administrative work they will have to do. The DFJ is contacting advocates (Judge).*

*My productivity is nothing like it is normally. For example, whilst 6-7 FHDRA's is possible (though not necessarily desirable) in a normal list, I think four would be the maximum by telephone: one hour for each (instead of 45 mins) with 15 mins in between. A double-listed small claims back-to-back list consisting of 6-8 hours per judge in a three-hour listing slot (our normal way of keeping up with the small claims case load) just wouldn't work by phone or Skype (Judge).*

*Business as usual approach is largely unrealistic and places a huge strain on the judiciary. One example is that the Magistrates cannot work remotely, therefore their*

*work has been taken on by other levels of full-time judiciary. District judges are struggling to deal with their box work and full lists with a mix of family and civil (Judge).*

Some respondents said that they had been experiencing headaches due to eyestrain from more hours spent looking at a screen.

*In all cases I have had concerns about my health. I have now been working fully remotely since 23 March 2020 (a period of five weeks). In that time my eyesight has definitely deteriorated from peering at a screen for such long hours and I have had more headaches than normal (Barrister).*

Some highlighted the impact on emotional well-being and mental health.

*My morale as a judge is lower. I didn't sign up to this job because I wanted to spend all day, every day on the phone and in front of a computer screen; quite the reverse. The job is always rather a lonely one—more so than ever now (Judge).*

*Well-being has gone out the window completely (Barrister).*

*In short, this is stressing me out in a way I never encountered in all my years in practice and as a judge, and my work and quality of decision making is suffering...Fewer cases must be listed, or else judges will start going off sick (Judge).*

One advocate who is partially deaf noted the particular difficulties face by some managing telephone only hearings:

*I personally have found the process of remote working far more stressful than I had anticipated. It is riven with anxiety and so if I as a professional experience this it is must be amplified for the parents whom I represent (Barrister).*

## 5.2 Greater efficiency

Nevertheless, some professionals highlighted the fact that remote hearings can be an efficient way of working.

*Having a scheduled time has been really beneficial. On an average day attending court in person I could be waiting several hours to go in, whereas with this system the hearing starts and finishes in a timely manner allowing me to make other arrangements (Cafcass Family Court adviser).*

*There is significantly less time wasted (waiting around at court for the hearing to start—sometimes all day) and less travel time (all parties on our cases are an hour away from the court centre)—advocates are more focused and prepared (Legal adviser).*

*I feel there are definitely positives in ensuring hearings have not been delayed by implementing remote hearings and feel that remote hearings could be utilised in the future in terms of CMH [case management hearings] and direction hearings, which would save precious financial resource, time, reduction in unnecessary travel and*

*therefore impact upon the environment and may also free up valuable court time (Cafcass Family Court adviser).*

*My team have welcomed the efficient use of their time and Court time with remote hearings where the hearing is suitable to be conducted in that way and would make a plea for this to be considered more widely when we assume normal ways of working (Solicitor).*

### 5.3 Lack of clarity in guidance

Many respondents said the amount of guidance and information they had received in the initial weeks of lockdown had been confusing and overwhelming. There was also concern that it had been unrealistic given the capacity and resources available. There was acknowledgement that allowances needed to be made for the speed of the crisis and some relief that guidance was becoming clearer, but much confusion remained.

*I think there is a lack of awareness at High Court level of the issues that arise in the lower courts. To be told that remote hearings are 'eminently possible' in the early days, on the basis of experiences in the much better-resourced High Court, was galling. We have very little admin support with setting up hearings (our staff levels are down to less than half and the very hardworking staff who remain can only realistically cover basic issuing and listing of cases, as well as dealing with the huge volume of calls from parties). The families we deal with are often non-English speaking or face other difficulties in accessing the justice system, and we have a high volume of serious private law cases involving LIPs. In the early days at least, holding remote hearings in these circumstances felt beyond impossible. It is still a huge challenge (Judge).*

Local authorities were concerned that too much was being expected of them and this concern was echoed by other respondents who pointed out that while parties in care proceedings might get support from the local authority and their lawyers to access information or technology this was not the case for litigants in person. It was argued that this should be the responsibility of HMCTS.

*When the immediate crisis hit, the Court reaction was to push all responsibility on to LAs, with no consultation or thought as to the impact that would have on us. Quite frankly there appeared to be no plan, and little was done to work with us to work through this together. To date, despite concerns and objections raised in correspondence with the courts about the unreasonable obligations placed on LA, as a consequence of recent court orders, none of our concerns and objections have been adequately addressed, despite LA not having the resources to comply with them (Local authority lawyers).*

## 5.4 Lack of privacy for professionals

Some professionals were concerned about a lack of privacy. This related the difficulty of finding a private space at home to work and a feeling of being 'exposed'.

*I have no private space in which to work, I have to work at the kitchen table which is open to all family members I live with. There is no realistic chance of confidentiality during hearings. I have no secure place in which to store papers. My work environment is very uncomfortable and poorly lit. it is extremely tiring sitting at the kitchen table all day (Judge).*

*Video conferencing is especially intrusive and impacts on other people in my household (Cafcass Family Court adviser).*

## 6 Examples of good practice and suggestions for future practice

Respondents were asked to provide any examples of good practice. Examples ranged from preparing well for remote hearings, to the management of hearings themselves and to the way that the technology is being used. Respondents were also asked to provide suggestions for how remote hearings could be improved during the current crisis.

### 6.1 Preparation for remote hearings

Professionals talked about the benefits of having a clearly timetabled court list and having preparatory meetings in advance, particularly given the difficulties of obtaining instructions during the hearing itself.

*Having the court list and who is taking the hearing in advance has enabled us to send safeguarding letters and case summaries in advance to help the legal adviser prepare (Cafcass Family Court adviser).*

*Having an advocates meeting, followed by an agreed order and/or a telephone hearing is working really well (Solicitor).*

*I spend extensive time in conference with my clients before and after hearings. This helps and can address a number of the housekeeping issues they may have (Barrister).*

*By and large Skype hearings have worked well for the professionals at least. Subject to a few technical issues, professionals have adapted well. They have also been well prepared and have taken seriously the importance of an effective advocates' meeting. This has focused the issues and reduced areas of disagreement (Judge).*

*Having a consult with counsel before the hearing worked (Social worker).*

*My best experience so far has been with a local authority who sent out papers in advance, booked a pre-sitting phone call for 9.15am so we could all agree how the day was going to run. It would be good if all remote hearings were so well organised (Magistrate).*

Some felt that the process of preparing for remote hearings had benefits over usual practice.

*Pre-hearing discussions and submissions are more focused than sometimes happens at court (Legal adviser).*

*Remote pre-hearing discussions are more fruitful because all advocates are obliged to establish clear instructions prior to the discussions, and not at court, as was the regrettable fashion previously (Solicitor).*

*Having the court list and who is taking the hearing in advance has enabled us to send safeguarding letters and case summaries in advance to help the legal adviser prepare (Cafcass Family Court adviser).*

## 6.2 Managing the process well

Respondents cited examples of successful remote hearings, which had benefited from a clear process.

*It is vital that at the beginning of the hearing, the judge explains to everyone including professionals about putting phone on silent, speaking in turn and making sure everyone understands this and to advise on the right way of doing things, as for some parents this may be their only remote hearing. I appreciate that the fee-earner/advocate should also explain this to a lay client, but for them to hear it from the judge gives it added weight (Barrister).*

*I was concerned that the litigants in person might feel overwhelmed and excluded but I tried hard to mitigate this by always coming to him first for a response and by asking him questions that would then negate the need for the other party to raise certain matters (Legal adviser).*

*Everyone in the telephone conference treated it like a physical court hearing and so it remained very formal and parties only spoke when spoken to (Social worker).*

*The management of both hearings was conducted well by the judges, the advocates showed respect for each other, with no interruptions (unlike in many live court hearings at court), the lay parties observed the need to stay silent (again something that rarely happens in live court hearings at court). The timing of the hearings was adhered to, and where a short delay incurred on one, the Judge herself emailed all parties to confirm the delay (very unlike actual court hearings, where waiting time, is a significant factor) (Barrister).*

Most of the suggestions regarding future practice related to the practical steps involved in running remote hearings. Suggestions often echoed the practice you would expect during face-to-face hearings.

- There should always be an advocates' meeting in advance of the hearing. For administrative hearings full instructions should be provided prior to the advocates' meeting to allow for discussion and the ironing out of any difficulties prior to the hearing.
- Advocates should have a pre-hearing discussion with their clients.
- The court should have responsibility for setting up and hosting remote hearings (this would be assisted by having email addresses and phone numbers for legal representatives saved on a court database). Courts will require more administrative support to set up systems to do this.
- Clear notice should be given of the system to be used (video or telephone).
- Electronic bundles should be rigorously enforced by the courts so that everyone is equipped with the right papers; they should be fully searchable and have a hyperlinked index.



- Make sure that an appropriate email address is used when sending out invites to the hearing.
- Invites should be sent out in good time so clients can test the technology in advance. Clients should have plenty of time to prepare and practice giving evidence via video (maybe a day added to hearings to allow testing of the technology).
- Counsel should be required to dress in court attire to instill confidence that the professionalism of the justice system is being maintained.
- Make sure an appropriate backdrop is used during video calls; HMCTS could provide a picture of a courtroom backdrop.
- There should be a check on whether parties are alone by asking them to do a camera sweep of the room.
- Judges should check that there is a way that parties can give instructions during the hearing and pause proceedings to allow this to happen where necessary.
- Regular breaks should be incorporated into hearings to reduce tiredness and allow for instructions to be provided by parties to their advocates.
- Hearings should be managed carefully by the judge, with a clear process set out at the beginning and regular checks to ask people by turn if they have anything to say.
- Advocates should have a debrief with clients after the hearing.

Respondents cited the need for regular and clear communication, especially for parties. This is partly to reduce the anxiety related to the current level of uncertainty as to whether hearings are going ahead.

*Court need to communicate when hearings are adjourned as parties have been left waiting by the phone and confused (Cafcass Family Court adviser).*

*There would be a real benefit to decisions as to whether remote hearings can be effective, what means are to be used and the platform on which the hearing will take place, being taken as early as is possible. Advocates and solicitors are becoming increasingly skilled and creative at organizing and facilitating hearings and client participation. There is a benefit to the judiciary recognizing and accessing that experience and the willingness of solicitors and counsel to do what they can to ensure the process is effective (Association of Lawyers for Children response).*

*Communication is key. I appreciate at the moment no one really knows what is happening but I think telling families that is better than telling them nothing (Parent).*

*I think the courts just need to keep in touch, maybe someone needs to have the job of getting in touch with families and explaining things easily so they are not nervous about what is happening (Parent).*

*Perhaps a leaflet or letter could be created for parents which explains the process of remote hearings, how they function practically (e.g. what is conference call and how do you make one) and what are the rules when attending. Parents need time to mentally prepare, they are already facing huge difficulties in their lives and they need support to adapt to the new way of conducting hearings and to visualise what these will be like. Most of these parents will never have made a conference call...using new technology for the first time can be very stressful particularly when it is linked to a Court hearing and your children. We need to better facilitate parents' engagement (Cafcass Family Court adviser).*

Some parents also felt that information about the process of remote hearings could help parents feel more prepared for hearings and that this provided an opportunity to improve the level of information provided generally to parents. We were told that some organisations have already started to prepare information for parents e.g. the Norfolk Community Law Service has produced a short guide to remote hearings for litigants in person.

### 6.3 Using technology effectively

Respondents also cited ways in which technology was being used to make remote hearings run as smoothly and safely as possible. Some of the tips shared were relatively simple, such as selecting a neutral backdrop for Skype hearings, and pausing for an interpreter to speak rather than speaking simultaneously.

Others cited ways to use the full features of the technology to best effect, such as the 'virtual waiting room' function on video hearings to allow pre-hearing discussions, the security of 'locking' the virtual room once the Judge has started the hearing, the 'chat' function to communicate during hearings, or the 'share screen' facility to allow one person to share pages of the court bundle.

Partly because of the advanced features, video hearings were more commonly cited as good practice than phone hearings. The ability to see all participants in a gallery view (e.g. via Zoom), to mute speakers so that one person can be heard at a time, use passwords and record hearings was welcomed. Several respondents noted the importance of doing a 'dry run' to test out the technology, for example with an expert witness.

*The ICO involved an intermediary. The client at that hearing attended via the telephone. This did not work well. She stated that she struggled to follow anything at all and the intermediary could not see the client to gauge how she was coping / participating. The hearing was re-listed and the parent and the intermediary attended via video call. This worked much better. Breaks were taken after each advocate's submission whereby I was able to check and explain with the client with the intermediary with the judge and other participants muting the volume so this could be done privately (Barrister).*

Despite the strong preference for video conferencing, there were examples of where telephone conferencing technology was being used to best effect:

*On the BT system, the dashboard option of controlling hearings on the laptop has been seen to be the best way forward. The ability to control the proceedings and to*

*see who is present is important e.g. for security/confidentiality purposes. The ability to stop others joining and to call people in to the hearing is also helpful. And to start/stop the recording too. It's an easy system to operate (Judge).*

Dual technology was also being used by some to seek instructions (or provide support for litigants in person) and fully engage the client.

*It was simple seeking instructions from client via a phone call, where the Skype itself was occurring via iPad/computer. It meant one could simply mute themselves on the Skype and call the client by phone to seek instructions during the hearing (Solicitor).*

*I make sure that my client can see me at all times during the hearing, using one kind of video technology, while conducting a hearing on another platform. I have found that this is very reassuring for them (Barrister).*

*The judge initially expressed doubt on how I could quietly advise (as I would do in a physical hearing). I offered a proposal that both the respondent and I were already prepared with a private messaging connection on a private Skype conversation on our laptops (whilst the hearing was happening on telephone). I asked would it be ok to advise in that way during the hearing and permission was given. I was able to prompt and remind the client of things they wished to express to the judge and ensure they understood the process as it evolved without disturbing the flow of the hearing. The judge also asked me to address him before the hearing ended to see if any matters that were identified before court with the respondent still had to be dealt with. This was the case and an additional important issue was decided upon by the judge. So this was a helpful step to take to ensure the respondents left the hearing with all aspects covered in the hearing (McKenzie friend).*

Several examples were given of courts taking a 'hybrid' approach, a room being provided in a (previously closed) contact centre, court room, or local authority office for parents to take part in video hearings, with all other participants joining remotely. This ensured a quiet, private space for parents to access to technology as well as support (in one example staff looked after their children during the hearing, in another an intermediary was able to support the party while observing social distancing rules):

*Abandon telephone hearings and embrace remote video platforms, get local authorities and courts to work at establishing safe spaces for lay clients to give evidence and be supported when safe working allows. Need to pool resources and know how, some Boroughs have done this: Dorset, Luton and Cambridge but I know of none within London? (Barrister).*

This idea was welcomed by some of the parents who responded to the consultation:

*I was wondering whether [parents] could go somewhere where they could have access to the technology and maybe have some training, if necessary, and perhaps have access to some support they need to fully participate (Parent).*

Some felt that telephone hearings should only be used for very straightforward cases.

*I personally find telephone hearing much more difficult to manage as I cannot tell who is present or who is talking at any given time, breakdowns go unnoticed and there is much more rapid-fire dialogue than there is by video link. I think generally they are harder for lay clients to follow (Barrister).*

*Courts should have moved very swiftly to video hearings. They are much simpler to arrange than telephone hearings because there is a link to click rather than the judge having to dial everyone in. There is a lot of guidance available but many courts have still been reluctant to set up video hearings. It has not helped the situation that a lot of the guidance has been contradictory. It has also not helped that HMCTS have steered the judiciary towards Skype for Business which is the least effective of the platforms (Barrister).*

Respondents stressed the need for a single video platform to be adopted by the courts for video hearings rather than there being a multitude of different platforms. The need for specialist IT advice to ensure that the technology meets the needs of the family justice system was identified.

Zoom was commonly identified to be preferable to other platforms, including Skype. The necessary specifications that were identified included having low download requirements, multi-screen view, muting facilities, a waiting room function, breakout rooms, recording facilities and password security.

*The breakout rooms for the Zoom hearing worked really well for being able to take instructions from clients and to have counsel to counsel discussions. Parties could also make use of the chat window to pass messages to their advocates. The host can mute parties. The waiting room is also a good feature if someone needs to be removed from the hearing for being disruptive, although it was not needed in this hearing. We could share screen for when we were agreeing draft directions. It was easy to record the hearing and then share it with the court via a secure Dropbox account. Everyone used headphones which stopped an echo. There were no difficulties with video cutting out (Barrister).*

*Zoom worked very well. All participants could be seen and heard. Individuals had the option of phoning in if they did not have access to Zoom on a computer or smartphone. I had complete control over the hearing. I was able to mute and unmute participants, handle the recording, and deal with security issues, e.g. password, lock the hearing once started. Participants were able to use separate break out rooms for private discussions. I was able to use many of the features of Zoom to enhance the experience and ensure fair and effective hearings (Judge).*

Some hardware needs were also identified, such as dual screens for professionals to read bundles and see parties. Several respondents recommended that HMCTS should provide parties with access to appropriate technology, for example by providing laptops where necessary.

One respondent made specific recommendations in relation to document management:

*For remote family hearings to work (indeed for non-remote family hearings to work efficiently) the family courts need to adopt a standardised approach to document management akin to the DCS [digital case system] used in crime (sometimes Caselines is used although I understand this is expensive for local authorities). This will provide all remote hearings with a common bundle of documents—making clear when each document was filed and served. It will encourage a culture whereby (in essence) if it is not uploaded to the DCS for all to see—it does not exist (this is the case in crime). It could be paired with platforms like Skype and zoom, whereby advocates share their screen / show parts of the document management system to witnesses/to illustrate a point (Barrister).*

Some parents also felt that remote working offered an opportunity to improve legal support and advice for parents:

*This technology could...improve access to legal advice for people. You could share scarce legal resources among multiple cases. Counsel could work from the same place by support five cases on the same day, instead of having to hang around the court all day. Instead of having to pay for a full day of someone's time you could just pay for the time you need (Parent).*

#### **6.4 Suggestions relating to the kind of guidance required**

While many of the respondents expressed concern about the volume of guidance to-date, they also stressed the need for a clear, succinct, joined-up set of guidance.

*There have been successive pieces of detailed guidance from senior leadership judges. The three branches of the civil justice system [family, civil and court of protection] all issued their own guidance, some of which did not accord with the other. There have been too many detailed pieces of guidance issued by too many leadership judges. Judges on the 'coal-face', dealing with litigants in person, have had so many pieces of guidance sent to them that they struggle to assimilate it all and follow it (Judge).*

*Having one set of best practice guidance—a practice direction—dictating certain essentials (Legal adviser).*

*Joined up, short, practical guidance from the top would be helpful—the first couple of weeks were a nightmare torrent of emails pulling us in every direction. It really pointed up the muddled lines of command in the judiciary/court service and the tensions between civil/family. The DCJ [designated civil judge] said one thing, the DFJ [designated family judge] quite another, and reams of guidance, no doubt intended to be helpful, poured in from above until I felt buried alive. Clarity is beginning to emerge. Short, focused, consistent guidance is what those of us on the front line really need. The joint letter on 9 April from the LCJ/PFD/MR [Lord Chief Justice/President of the Family Division/Master of the Rolls] was an example of what is actually helpful (Judge).*

A wide a range of issues were identified as requiring guidance.

- Guidance on managing risk [risk to the child, child participation/exclusion, domestic abuse, post-hearing conflict, mental health issues, managing space/privacy, support to children and families post hearing/outcome/what to do if during a hearing it became clear that a party has allowed a third party to attend the hearing unknown to the court].
- Guidance on hearing evidence [special measures when giving evidence, video recorded evidence in chief and cross examination].
- Guidance on adjournment [necessary and unnecessary delay].
- Guidance on participation [parents with additional needs (learning difficulties, cognitive impairments, mental health issues etc)].
- Guidance on practical issues [event set up, sharing documents, preparation, advocates meetings (narrow issues), testing equipment, allowing time for technical issues, contemporaneous notes of hearings (how is this/could this be resourced?)].
- Guidance on document management [timely distribution, bundles available digitally, clear responsibility for distribution, confirmation of receipt].
- Guidelines on professionalism and formality [including advice to parents and professionals, guidance on confidentiality and privacy, background, positioning the camera, posture / presentation, distractions, pets etc].
- Rules on cross-courting which apply when physical attendance is required.
- Guidance for parents taking part in remote hearings.
- Guidance for expert witnesses.

## 6.5 Suggestions regarding which cases should be heard

The consultation identified a need for guidance to identify the cases that should proceed using remote hearings. Many stressed that it would be helpful to clarify that the courts should not be aiming for 'business as usual' and guidance was needed to inform how to triage cases during this period.

Respondents gave many examples of the types of cases they thought could be dealt with remotely without the risk of prejudicing justice and fairness. There was a considerable element of agreement about some types of cases but disagreement about others.

There was widescale agreement that directions and case management hearings were suitable and many respondents felt that these were in fact better dealt with by remote hearings than face-to-face hearings, which require waiting at court and travel time.

*For directions and short hearings I think the telephone remote system works well there just needs to be clearer communication from courts and judges (Solicitor).*

*[The way of working is] Justified for case management where the decisions are procedural (Judge).*

*Perfectly good for submissions cases and should be used more (Barrister).*

*I think for straightforward directions or applications, the process works fine as long as both parties are represented (Judge).*

*The CMHs and agreed FHs were so much more efficient. Lots of time (whole mornings and often entire days) are wasted waiting around at court for a half hour hearing. Remote hearings enable them to be conducted efficiently with less time and resources wasted and reducing our carbon footprint (Solicitor).*

There was also a wide measure of agreement that cases could be fairly dealt with remotely when parties were in agreement, or where the evidence was uncontested:

*Where parties are in agreement or close to agreement and would like a final order rather than prolonging court proceedings further (Judge).*

Some respondents also indicated that in some private law cases, where progress had been slow, the prospect of further delay made parties more amenable to proceeding with a remote hearing.

*Partly because of the pressure, and the uncertainty as to how much longer this situation will go on, I am settling cases in private law proceedings where there have been months of litigation, tugs of war over children. I find I can be a little more robust because time is of an essence and encourage people to settle and reach agreement. I feel I am settling cases quite effectively (Judge).*

*In some private law cases where the parties are not very far apart, sometimes the fact that this may be the only hearing for some time, can mean that parties are more likely to compromise. Sometimes they are relieved just to have a hearing that will resolve things. Some of those remote hearings are actually going quite well (Magistrate).*

Although there was recognition that situations requiring the immediate protection of a child would need to go ahead there was also, as noted above, considerable concern about the ways in which these cases were handled and concern about such cases progressing to a final hearing, which will inevitably raise problems for the future,

*From what I have experienced, remote hearings work very well for short and largely uncontested matters. As soon as you factor in challenge to substantive evidence and a lay client with obvious vulnerabilities – as I suggest the vast majority of parents facing care proceedings will have – it does not work well and at its worst will be a breach of the Article 6 rights of the lay clients. I appreciate that a balance needs to be struck. However, at the moment I think a number of significant practical issues are being overlooked as everyone is (understandably) focusing on technology at the moment (Judge).*

*[Going ahead] justified in urgent cases requiring interim removal which will not wait and where an attended hearing would not be safe. But not justified in final contested hearings where parents need to give evidence (Judge).*

*It is justifiable to deal with matters where safety and protection are paramount (Judge).*

Many respondents felt that contested final hearings and any hearings requiring cross-examination were not suitable for remote hearings.

*I have very significant concerns about the use of remote hearings for anything other than directions, short notice applications and the simplest of contested matters. There have been real difficulties in ensuring the participation of vulnerable parties, particularly those with limited access to technology and requirements in terms of support (e.g. intermediaries), and I am not convinced that it will be appropriate in many hearings to cross examine people about personal and sensitive issues when they are alone in their own homes or otherwise isolated from sources of support (Judge).*

*My trial by zoom is a four-week case before a High Court Judge that was listed back in September. It is happening now. A child has died. Several family members are in the pool of possible perpetrators. They are vulnerable with no access to a computer (or WiFi in one instance) which has led to the advocates purchasing a cheap tablet for clients and one saying they will give evidence over the telephone. Even then they have chosen not to listen to medical evidence as it is complex and requires concentration which they struggle with. Whilst we are pleased that we have been able to maintain the fixture for the family (the child died over a year ago), it is not the way these cases should be conducted. It is important to note that what us advocates perceive as justice will be very different to what lay clients perception is (Barrister).*

*I think in some cases remote working is a solution however for matters such as a final hearing I don't see how this can be managed fairly, especially for a lengthy hearing. Not all parties have access to the technology (Social worker).*

*In relation to hearings where evidence is required over a number of days. I do not think these hearings are suitable to be conducted remotely (Solicitor).*

*I would have concerns about taking evidence in contested issues when the demeanour of witnesses is important (Judge).*

*I have serious concerns about conducting a contested final hearing with evidence remotely. I do not think that these are justified in the short term, save in the most urgent and serious cases (Judge).*

Possible exceptions to this general concern about cross examination were cases which are continuing remotely, having started in court, where the parties know their representatives and have spent some days in front of the Judge, or cases where evidence will only given by professionals. Other examples of final hearings being deemed appropriate were those which were uncontested but involved complicated legal submissions. Examples were also given of hearings in the Court of Appeal or the Court of Protection which respondents had deemed to have been successfully and justly dealt with.



*In my view Court of Protection cases are far easier to deal with remotely, and I have no concerns about those at all. Family cases are very different indeed... In my view, the main improvement would be to accept that some cases obviously cannot be heard remotely, the simplest and most well defined can (e.g. case management hearings or final hearings which are not opposed or are by consent) and there are some in the middle which are best left to the judge to decide (Judge).*

There were particular concerns raised with regard to litigants in person, with some respondents recommending that legal aid should be granted to litigants in person, allowing them to secure representation, and relieving pressure on the court by enabling a more focused hearing. If cases involving litigants in person proceed during this time, it was felt that they should be by video conferencing and not telephone.

*For cases involving litigants in person, I think the cost may be too high as there is a danger that they will be lost in the system and that their voice will not be sufficiently heard (Barrister).*

*Litigants in person can be more difficult to manage in a remote hearing setting, leading to friction and delay (Solicitor).*

Other circumstances which respondents identified as needing to be considered when deciding when to go ahead included the need for interpreters or intermediaries.

*I have adjourned two final hearings where interpreters were needed for two parties in each. These would have been unmanageable remotely with the systems we have (Judge).*

*I fully appreciate the need for timely hearings in the interest of the children, but if an interested party requires an intermediary, it is unlikely that phone hearings will enable effective participation (Intermediary).*

*Intermediaries are generally very unhappy with remote hearings. I have had two cases involving deaf participants with learning difficulties which have had to be re-listed as it was not possible to have a fair hearing (Judge),*

Some recommended that there should be a presumption in favour of adjournment where lay parties are required to give evidence which is contested:

*A clear decision should now be made to move most or all significant contested matters back for a period of several months in the light of the concerns which I and other colleagues have experienced. These views are widely shared by many judges to whom I have spoken (Judge).*

Others identified ways that contested hearings might be able to go ahead while continuing to comply with social distancing rules:

*For contested hearings, it may be possible to have clients, court interpreters and advocates together in a very large solicitors office or in a very large room in chambers (i.e. so long as they can remain 6 feet apart). This would minimise*

*circulation with others but would ensure an ability to take proper instructions in private (Barrister).*

Others flagged considerations such as whether parties have access to sufficient broadband and WiFi.

Some respondents were keen to stress the value remote working for certain cases and felt that this way of working should continue in the future.

*It strikes me that post pandemic we should continue to run the more mundane hearings such as CMH's and reviews where there is no need for evidence and save actual court time for contested hearing such as final hearings or interim removal hearings (Cafcass Family Court adviser).*

*Advocates welcome phone hearings for case management (when appropriate and when the parties attendance is not required) in my experience. It saves masses of time and they usually prepared very thoroughly. This is something which should carry on post-COVID with enhanced kit and special listing times for case management hearings. Costs will be cut. Provision can be made for the parties to attend as well (Judge).*

*The enormous benefit of a remote hearing ....is the time and money saved for both the lawyer, professional client and other parties in general. I would strongly support consideration of these type of hearings being conducted remotely going forward to make better use of resources in general (Solicitor).*

*Skype should continue to be used (if agreed and sanctioned) to save travel for parties who live at a distance for example, and for experts, and cases where parties are abroad, if the specific case allows (Judge).*

*I am also of the opinion that there are a number of hearings that could continue this way as a long-term solution to overloaded judges and local authorities (Legal adviser).*

*As all the Non Molestation Orders that we apply for are ex-parte applications, our clients are generally in the middle of crisis and it is often really traumatic for them to attend court. Clients regularly break down in tears as they are so overwhelmed and daunted by the prospect of going to court, as well as it being difficult to arrange childcare arrangements at such short notice. Therefore to have a Judge phone them, when they are in a safe and familiar environment, presents them with a more manageable situation. The whole process is far less intimidating, and clients have felt positive and empowered, rather than distressed. Moving forward, we would like to see this method utilised on a permanent basis, especially for non-molestation orders (Domestic Abuse Service).*

## 6.7 Suggestions relating to training

Some respondents identified the need for national training for court staff and judges in order to ensure consistency and end regional disparities. It was suggested that the Judicial College could provide training on how to conduct remote hearings fairly and effectively and how to deal with electronic bundles. This could build on existing courses:

*I would add that I have earlier this year twice tutored on the Judicial College's Faculty Induction Seminar for newly appointed judges and have previously tutored on their Business of Judging and Judge as Communicator courses. I think this has given me a strong awareness of issues pertinent to a fair hearing and the course content has helped me to conduct remote hearings. It has also made me aware of the importance to parties of procedural justice, so that I have endeavoured to provide it while being cautious about the extent to which it has been achieved (Judge).*

The need for training to support IT skills was also identified.

*It is an unfortunate of my experience that since my appointment there has been a lack of training on IT. The current situation is illustrative of the continuing lack of training and support. We all received details of how to access Skype for Business. We were not offered any training for this but we managed to arrange our own training.....I have not used Skype for Business with the Judges confidential address to conduct a hearing as I am concerned that my knowledge is not sufficient to do so effectively. (Judge)*

*I appreciate 'we are where we are' but I think lessons need to be learnt about the inadequacy of IT training for judges and about the lack of investment in IT and video facilities in courts (Judge).*

## 6.8 Suggestions relating to evaluation

Respondents felt that it was important to learn from the experience of undertaking remote hearings and to evaluate their impact on all parties. Steps would need to be put in place at an early stage in order to undertake systematic research that would be able to draw lessons of future value to the family justice system. For example, one respondent commented:

*I would like to see every order considered remotely to state that fact **explicitly** at the top. E.g. This order was made/this case was considered by Ms X JP & Mr Y JP sitting remotely due to the COVID-19 outbreak (Magistrate).*

Steps would need to be put in place in order to undertake systematic research on the impact of remote working