



Remote hearings in the family justice system: reflections and experiences

Follow-up consultation (September 2020)



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 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.

The current report provides an overview of the findings of a follow up consultation process undertaken between 10 and 30 September 2020. 1,306 respondents completed a survey, several organisations submitted additional information, and focus groups and interviews were undertaken with parents.

This report includes a selection of graphs relating to the survey. A more comprehensive selection is available from: www.nuffieldfjo.org.uk/resource/remotedhearings-september-2020.

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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-founder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

Nuffield FJO has funded this project, but the views expressed are those of the authors and not necessarily those of Nuffield FJO or the Foundation.

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Executive summary

About the consultation

- Over 1,300 parents, other family members, and professionals in the family justice system across England and Wales responded to the follow-up survey (conducted between 10 and 30 September 2020) on remote and hybrid hearings in the family court, which have been introduced in light of the COVID-19 pandemic and associated social distancing measures.¹ This followed a rapid consultation by Nuffield Family Justice Observatory (Nuffield FJO) in April 2020.
- In addition to the survey, Nuffield FJO commissioned the Parents, Families and Allies Network (PFAN) to collect information from parents and relatives through focus groups and interviews; in all, 21 parents took part in these events. Nuffield FJO also held an online discussion about remote and hybrid hearings on 6 October 2020, which was joined by 115 participants.
- There was a good spread of responses from across England and Wales, from different professional groups and family members who had participated in all types of family court hearings using different types of technology. This provided a comprehensive picture of the experience of remote and hybrid hearings from a wide range of perspectives.

How are things working?

- Most professionals who responded to the survey felt that things were working more smoothly—either all of the time or some of the time. Professionals reported that there were some benefits to working remotely, for professionals and parties.
- Parents, other family members and organisations supporting parents were less positive about remote hearings. The majority of parents and family members had concerns about the way their case had been dealt with and just under half said they had not understood what had happened during the hearing.

Are remote hearings fair and just?

- Most professionals who responded to the survey felt that fairness and justice had been achieved in the cases they were involved with most or all of the time. However, it was clear from responses that professionals also had concerns about whether proceedings were perceived as fair by parties in all cases. Professionals also shared concerns about the difficulties of being sufficiently empathetic, supportive, and attuned to lay parties when conducting hearings remotely.

¹ In this report we use the term 'remote hearing' to mean a hearing that is conducted by telephone or video, and 'hybrid' to mean one that is a mixture of in-person and remote participants. We use the term 'professionals' to refer to those working in the family justice system, or on family justice issues. In the case of the survey respondents, this included: magistrates; barristers; judges; solicitors; legal advisers; Cafcass/Cafcass Cymru; third sector organisations; independent domestic violence advisers; intermediaries; independent experts; and advocates.

- Common problems that were highlighted included: parents taking part in hearings remotely alone, and from their homes; a lack of communication between lay parties and their legal representatives before hearings; and difficulties with communication during hearings because of the need to use more than one device or to adjourn the hearing. Particular difficulties are experienced by parents who require an interpreter or who have a disability.
- The halt in face-to-face contact between infants and parents in cases involving interim care proceedings was highlighted as a concern, as was the lack of support to new mothers involved in interim care order applications.
- There was widespread concern for litigants in person in private law matters. Many examples were given of support being provided by judges, magistrates, and legal advisers. There was recognition of the challenge for McKenzie Friends in remote hearings and the limitations on other support that could be provided from organisations like Support Through Court.

Impact on the authority of the court

- Many respondents to the follow-up survey raised concerns about the impact that working remotely was having on the formality and authority of the court. This was not an issue identified in the consultation undertaken in April 2020.

Technology

- Telephone hearings continue to be widely used and respondents noted that some parents have to join video hearings by telephone (i.e. through an audio link only). Telephone hearings are being used for final and contested hearings as well as for administrative and direction hearings.
- A wide variety of different videoconferencing platforms continue to be used alongside telephone link platforms. It is not always clear why a particular type of technology is being used, although the type of case, the availability of technology and court resources, and the preference and technological capability of the judge appear to be the most common determinants.
- There continue to be many technical problems encountered in most forms of remote hearing. Most problems related to connectivity and common issues identified included difficulty in hearing people, difficulty seeing people, and difficulty identifying who is speaking.
- More than half of professionals had taken part in a hybrid hearing where some people were attending in person and some via a telephone or video link. Although such hearings were felt to be important (as they could enable parties to attend hearings with their representatives and therefore fully participate in hearings), many professionals reported technological difficulties of running hybrid hearings.

The administration of hearings

- There are wide variations in practice in terms of how hearings are organised. Some are working well. Where problems occur, they include a lack of advance notice, sudden cancellations, and a lack of clarity about which format will be used for the hearing.
- Lay parties continue to have difficulty accessing hearings because they lack the hardware, connectivity or skills to navigate the software. Efforts are being made by professionals to help lay parties, but it is not clear who has the responsibility for this.
- While e-bundles are working well in some areas, concerns were expressed by some respondents about: lay parties not having access to e-bundles; bundles and relevant documentation not reaching the judge or the bench in time for the hearing; and a lack of clarity about how best to communicate with courts and judges in relation to documentation.
- Professionals report that a lack of sufficient court staff is hampering the smooth running of hearings, leading to inefficiencies in the way that hearings are managed and in the use of judicial time. There is a particular shortage of staff sufficiently trained in set up and use of the different types of technology.

Good practice and recommendations

- It is clear that many professionals are working extremely hard to make the system work well. Plenty of examples of good practice and suggestions for improvements in practice were provided by respondents. There is a willingness to continue to improve the experience of all those involved. There are also some elements of the system that are clearly under particular strain.

1 Introduction

1.1 Background

Following the outbreak of the COVID-19 pandemic and the introduction of social distancing measures, face-to-face hearings in the family courts in England and Wales came to an abrupt halt and were replaced by telephone and video hearings. In light of this extraordinary change, the President of the Family Division asked Nuffield FJO to undertake a rapid consultation on the use of remote hearings in the family court in April 2020. The subsequent report painted a picture of practice at that time, highlighting the opportunities and challenges arising from working under such new conditions. The President of the Family Division said of the report:

I am confident that all who are interested in Family Justice at this time will read [it].... The process of research has held a mirror up to what we are currently doing. I hope that its publication will stimulate informed discussion and debate. The process of reading the document, and seeing what is said there, may well act as a corrective for future hearings – either by identifying occasions when a remote hearing may have been less than satisfactory, or by flagging up suggestions for improvement – in a more subtle and effective manner than any formal guidance might achieve.²

At the time of undertaking the rapid consultation in April 2020, family courts were having to decide whether to proceed with hearing cases remotely, or whether to adjourn cases, on the assumption that face-to-face hearings would shortly resume. But by the time the President of the Family Division published his statement on 'The Road Ahead' in June 2020, it had become clear that social distancing measures would continue for the foreseeable future. The President noted:³

The following is clear:

- i. The current restraints (or variants of them) are likely to obtain for many months to come;*
- ii. The volume of work in the system is very high;*
- iii. The Family Court was not coping with the pre-COVID workload and radical steps aimed at changing professional culture and working practices were about to be launched when the pandemic struck;*
- iv. The ability of the system to process cases is now compromised by the need to conduct most hearings remotely;*
- v. Whilst there will be some capacity for the courts to conduct face-to-face hearings, the available facilities will be limited;*
- vi. Remote hearings are likely to continue to be the predominant method of hearing for all cases, and not just case management or short hearings;*
- vii. Delay in determining a case is likely to prejudice the welfare of the child and all public law children cases are still expected to be completed within 26 weeks;*

² Courts and Tribunals Judiciary. (2020). *The Family Court and COVID-19: The Road Ahead* [online]. 9 June, Courts and Tribunals Judiciary. Available from: www.judiciary.uk/announcements/the-family-court-and-covid-19-the-road-ahead/ [Accessed 15 October 2020].

³ Ibid.

viii. Adjourning cases indefinitely or for a period of many months will not, therefore, be an option.

Since April, professionals have continued to adapt their practice to remote working, Her Majesty's Courts and Tribunals Service (HMCTS) has introduced a new Cloud Video Platform (CVP) to courts, and some courts have fully or partially re-opened, albeit operating under strict social distancing guidelines. While most hearings continue to be conducted with all parties joining by telephone or video, some 'hybrid' hearings are taking place (involving a mix of in-person and remote communication) as well as some fully 'in person' hearings.

Six months on from the introduction of social distancing measures, Nuffield FJO decided to undertake a further consultation to explore how those involved in family proceedings are experiencing remote and hybrid hearings.

1.2 What we did

Respondents were invited to complete an online survey between 10 and 30 September 2020 (see Annex A for the main survey questions). The survey was publicised on the Nuffield FJO website and through social media and relevant professional organisations.

The consultation sought feedback from parents, other family members, 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. Particular efforts were made to encourage feedback from individuals (including, for example, litigants in person) through organisations that support parties through the legal process.

Those who had experience of a remote hearing or hybrid hearing were invited to respond. The consultation applied to hearings undertaken in both public and private family law cases, and to all types of hearings.

In addition to the survey, Nuffield FJO commissioned PFAN to collect information from parents and relatives through focus groups and interviews. Three focus groups and 10 interviews were held with a total of 21 parents. PFAN provided notes of the interviews and focus groups, as well as some background information about the parents who participated, including the type of proceedings they were involved in and where (geographic region) their case was heard. Two parents also contacted Nuffield FJO directly and had phone interviews.

Nuffield FJO also held an online discussion about remote and hybrid hearings on 6 October 2020, which was joined by 115 participants from the judiciary, magistracy, legal profession, Cafcass, local authorities and third sector organisations supporting parents and other family members.

Many individuals and organisations helped promote the survey and provided additional information including:

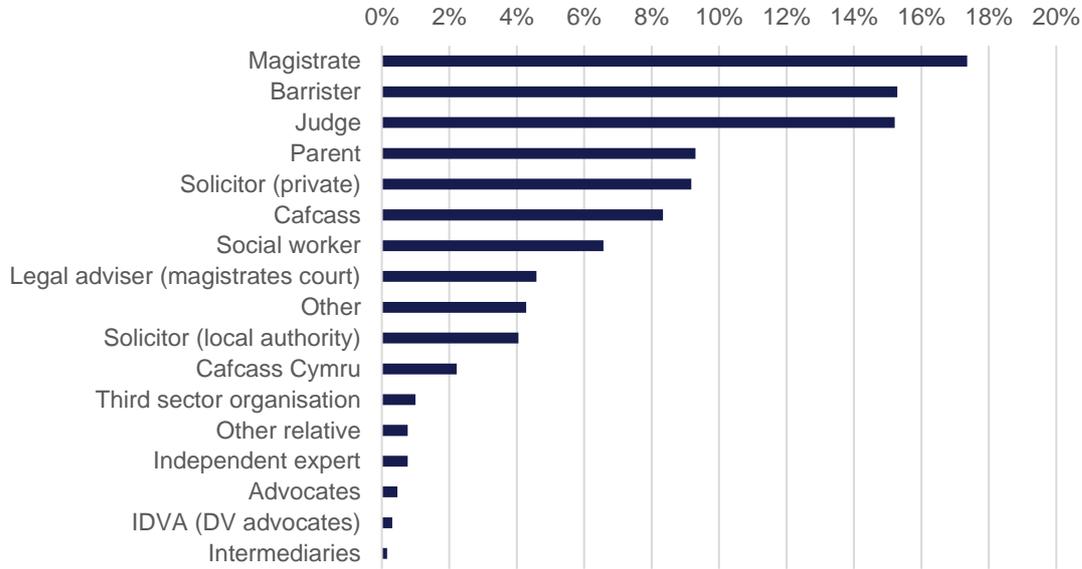
- the Greater London Family Panel (GLFP)
- Presiding Justice of the GLFP

- The Law Society
- Resolution
- Support Not Separation Coalition (includes views from 17 women)
- The Transparency Project (includes views from 94 respondents)
- Your Say Advocacy (includes views from 46 parents)
- magistrates on the Avon and Somerset Family Panel
- Derbyshire Local Family Justice Board (LFJB)
- Kyle Squire, 5 Pump Court Chambers
- Women's Aid.

2 Who responded to the consultation?

1,306 individuals completed the online survey. Responses were received from a wide range of professionals involved in family justice and 10% of respondents were parents or relatives who had participated in proceedings.

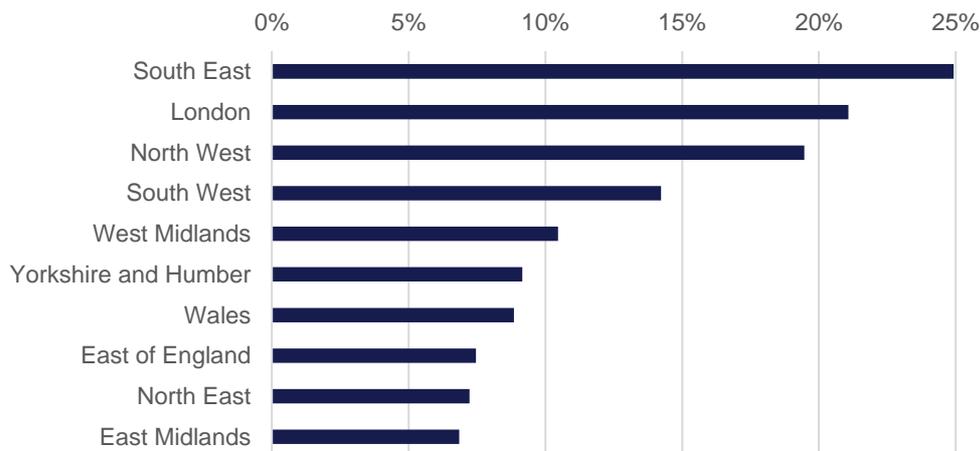
Figure 1: What is your role? (n=1,306)



Note: IDVA – Independent domestic violence advisers.

Individuals from across England and Wales responded to the consultation and there was a reasonable geographical spread in terms of where cases had been heard or presided over. Many of the professionals who responded had experience of more than one court.

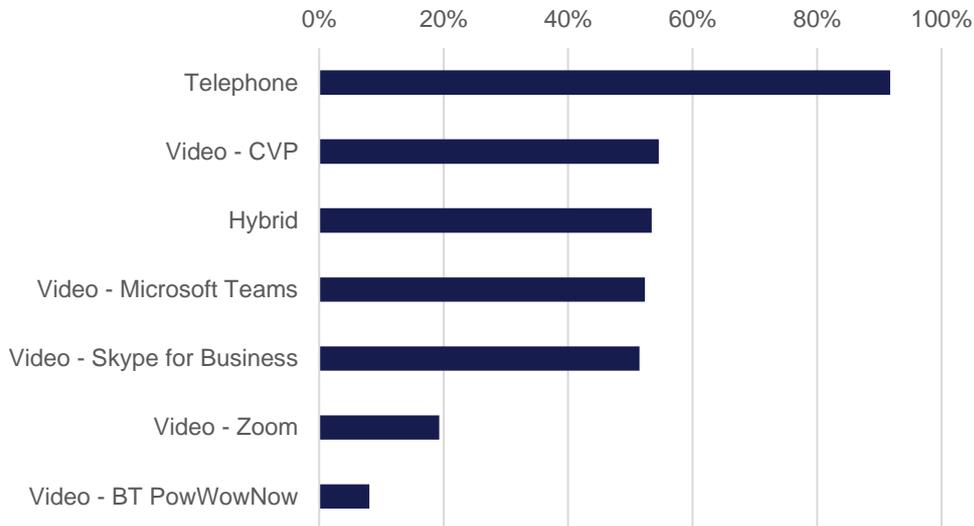
Figure 2: In which area have you attended or presided over hearings? (n=1,300)



Most professionals had experienced more than one type of hearing, usually a mix of telephone and video hearings. Almost all professionals (92%) had experienced a telephone

hearing. A wide range of video platforms are still being used. 55% had used the new CVP. 53% of respondents had experienced a hybrid hearing.

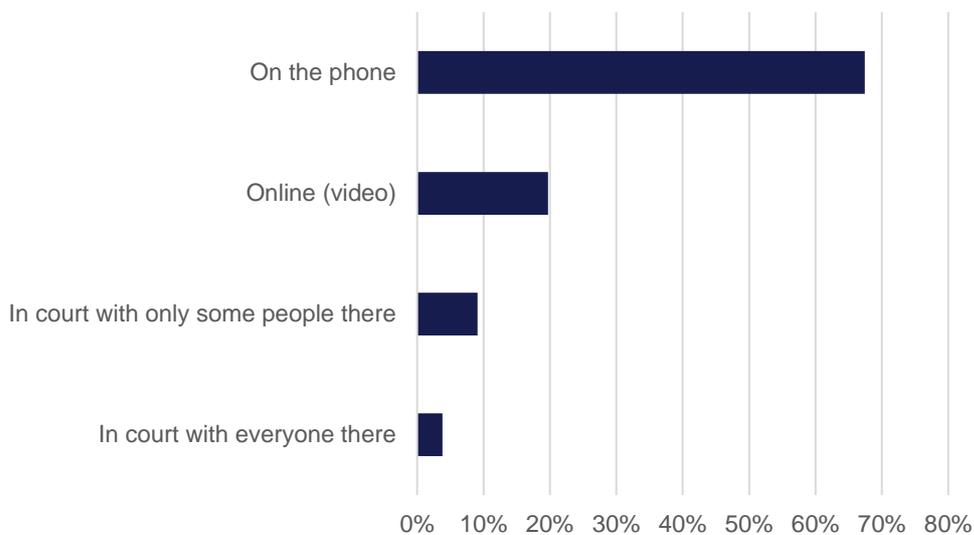
Figure 3: What formats were used for the hearing? (Professionals: n=1,131)



Note: Respondents were asked to select all relevant options, so responses do not total 100%. See separate [survey results](#) report for a breakdown by professional group.

The majority of parents and relatives who responded to the survey had experienced phone hearings (67%), with 20% of them having remote video hearings, 9% hybrid hearings and 4% hearings with everyone in person in court. When asked how they had actually taken part, slightly more parents (69%) had taken part by phone (responses indicated that parents may join a video hearing by phone).

Figure 4: Hearing format (parents and other relatives: n=132)



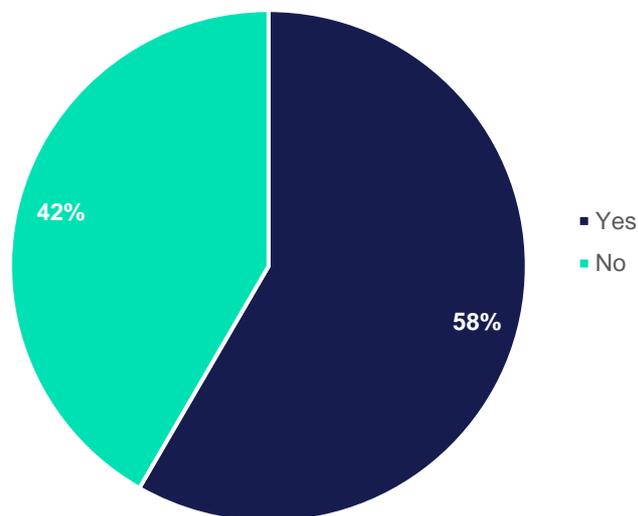
The information collected by PFAN from focus groups and interviews with 21 parents indicated that a majority of parents joined hearings by phone, with smaller numbers

experiencing video and hybrid hearings. Other organisations collecting information from parents (such as The Transparency Project) found that most parents joined hearings by telephone.

More than half of the professionals who responded (57%) had been involved in both public and private law hearings.⁴ The vast majority of respondents (92%) had heard or attended a range of cases (including interim, contested, and final cases).

58% of parents and relatives who had attended a hearing had had legal representation. 79% of professionals had heard or attended cases where one or more parties were unrepresented (usually both the mother and the father were unrepresented). 48% of professionals who responded said that half or more cases that they had heard or attended involved unrepresented parties.

Figure 5: Did you have legal representation (i.e. a solicitor and/or barrister presenting your case on your behalf) at your hearing? (Parents and other relatives: n=132)



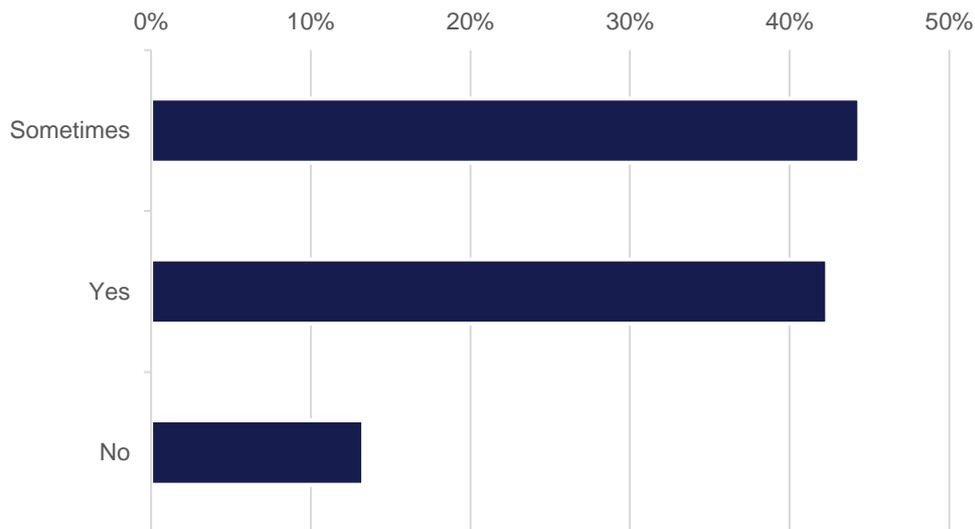
⁴ Those who answered 'other' had usually attended financial remedy hearings or Court of Protection hearings.

3 What is working well?

3.1 Things working more smoothly

Overall, the majority of professionals who responded felt that things were working more smoothly (42%) or more smoothly some of the time (44%). Only 13% of respondents felt that things were not working smoothly.

Figure 6: Are things working more smoothly? (Professionals: n=1,046)



While the consultation elicited many examples of problems with remote and hybrid hearings, which are explored in detail in later chapters, overall there was a sense that huge efforts had been made to keep family courts working, and that progress had been made in addressing some of the difficulties.⁵

Actually being able to hear cases is a major achievement! Being able to make progress towards resolving disputes which first began their journey through the system last year is working well (Magistrate).

All trials now fully attended or hybrid (attended and CVP); most directions hearings BT MeetMe (Judge).

At the beginning of lockdown, the cases tended to be shorter, for example Dispute Resolution Appointments or case management hearings. Longer cases had been administratively adjourned. Now, more lengthy and complex cases are heard remotely and it is easier to move cases and magistrates between court houses across London (GLFP).

The court staff have been amazing and everyone has worked tirelessly to ensure the smooth running of proceedings (Derbyshire LFJB).

⁵ Here and throughout, we have cited survey responses verbatim. We may have shortened the responses, and have provided clarifications in square brackets where we thought it might assist reading, but have otherwise not amended the original information.

It was apparent from the responses that the experience of remote and hybrid hearings also depended to a large extent on the professional's role.

There appears to be some mass delusion on the part of the senior family bench that remote hearings run smoothly. I might suggest that in high profile private law matters and public law matters most parties are represented which is why they are simply unaware of the day to day troubles of the district bench (Judge).

My morale has massively improved since I started doing attended hearings again but I know that my DJ colleagues' collective morale is very low as a result of the daily churn of remote hearings without an end in sight (Judge).

Parents and relatives were asked about how their case was dealt with and whether they had any concerns—and their responses were less positive than those of professionals, with 88% of respondents having concerns about the way their case was dealt with, and a majority (66%) feeling their case had not been dealt with well.

With COVID the courts are even less interested in justice – just want to clear a backlog and push cases through (Mother).

Judge had not read the case file. Very bad phone connection started 30 minutes late because of connection/log in problems, nobody could hear what the judge was saying (Father).

It has taken too long to be resolved. Now got to wait another six months and it will be nearly two years since it all started (Relative).

Interviews and focus groups with parents and relatives and responses to the survey indicate that many of their concerns are not just about the conduct of remote or hybrid hearings but were also about accessing legal representation before hearings and about the impact of COVID on contact, assessments and other services. Later sections of the report consider concerns raised by parents and professionals in more detail.

3.2 Benefits of remote hearings

Some professionals felt there were benefits to remote hearings for lay parties.

I have to say that I have changed my view about the fairness of hybrid and remote hearings... there are many good aspects...we have found that when we give people the option... nobody is opting for a fully attended hearing. It could be the impact of delay....If you are prepared to be remote or to be hybrid, you're likely to get an earlier listing. But I think it is more than that..we have found that even the most vulnerable witnesses are happy, either to come to court and attend and be supported or stay in the solicitor's offices, supported by the team in the solicitor's offices and then join remotely.. I think it is very egalitarian form of hearing in that everybody can be seen and can be heard at the same time (Judge).

It has been easier to bring parties and advocates together who are geographically distant from each other without the need for extensive travel or exposure to possible COVID-19 (Barrister).

Parties are given time to speak during hearings if litigant in person. The process is clearer and focused I believe (Cafcass).

Parties appear to be less intimidated by each other and the process (Legal adviser).

The number of 'no-shows' by lay parties has in fact decreased, as the court comes to them rather than them having to come to the court (Judge).

There were fewer responses from parents about the benefits of remote hearings, but one mother did say:

I personally feel that I'm happy that I don't have to go to court. I prefer to have it home. I really do (Mother).

Many professionals noted benefits to remote working for themselves. They were most likely to cite the efficiency of working remotely and the time saved in not having to travel. Some also felt that hearings were being run in a more focused and efficient way.

There is a lot of flexibility now and my practice is a lot more efficient due to less driving and waiting around. I find court hearings via remote are a lot more productive and to the point (Cafcass Cymru).

There is no opportunity for out of court discussion so hearings run on time and smoothly whether remote or hybrid (Judge).

The hearings are more focused and structured with advocates contributing strictly in turn and fewer interruptions. The e-bundle ensures that everyone has the same access to documents - for decades paper bundles have been notorious for being incomplete and disorganised (Barrister).

The fact that hearings are now subject to a time slot and finish in that time slot is welcome. The days of sitting at court all day waiting to get on for 5 minutes are, I hope, over (Barrister).

Don't believe the negatives too much, it is quicker, more precise and fair no need to go back to the old way of rolling up to court sitting around wasting time (Cafcass).

It has been easier to secure participation of social workers in urgent private law cases when the hearing is remote (Judge).

Some respondents also reported positive benefits of conducting hearings in a virtual environment.

They remove much of the intensity and the risk of having two people who often hate each other in the same room. Particularly on BT MeetMe where they cannot see each other so they focus less on non-verbal cues and more on what is actually being said. Provided sufficient time is allocated then the new system is an improvement on the old (Legal adviser).

The absence of physical proximity can be useful in some highly contentious cases, particularly with very small hearing rooms and limited security (Judge).

One major advantage has been in cases where domestic abuse is alleged or where there is otherwise considerable animosity between parties. As a tool to assist with PD3AA [Practice Direction 3AA – Vulnerable Persons], video hearings have been a boon and may be a permanent feature. I had feared that there would be

recording/web broadcast of court hearings, but this has so far proved to be very rare, as I understand it (Judge).

Parties have been able to participate without the stress of facing an opponent. With appropriate judicial firmness telephone hearings have gone exceptionally well (Judge).

Some respondents identified practice that was contributing to remote and hybrid hearings working well. These are outlined in Chapter 8.

3.3 How are hybrid hearings working?

More than half of professionals (53%) had experienced a hybrid hearing, where some people were attending in person and some via a telephone or video link. However, there were considerable differences between professionals—judges were far more likely to have presided over a hybrid hearing than magistrates, for example. Only 9% of parents and relatives who responded to the survey reported being involved in a hybrid hearing.

It is clear that hybrid hearings are taking many different forms. In some proceedings, parties attend the court room with the judge and their legal representative and, if necessary, advocate or intermediary, with other professionals joining by phone or video. In other hearings, parties are in court on their own without their representative, or other supporter, or one party is at court and the other not.

The benefits to parties were noted by many respondents.

Hybrid hearings are better, for at least parents and their solicitor to attend 'court together', have a working way of communicating during the hearing and receive the support. This is particularly important for final hearings with a contest and a number of experts giving evidence (Social worker).

Hybrid hearings have worked well when the Judge, the parents and the counsel are present and I do believe this makes parents feel as though they have had a fair trial (Cafcass).

Interpreters and lay clients attending in person works well in hybrid hearings (Barrister).

An intermediary in a hybrid hearing was very effective. The parent's legal representative was also present in Court and I feel that mother would have struggled without this (Cafcass Cymru).

However, many respondents also raised concerns, particularly about technological difficulties of managing hybrid hearings.

This [hybrid hearing] made it really difficult to follow both the screen and what was happening in court. There was my ex-partner and his barrister and the local authority representative and most of the rest including my barrister on Zoom. I had no idea who else was there ... because I couldn't see the list of participants (Mother, in hybrid hearing, where she was in court but most of the other parties were not).

[It is] almost impossible to get the tech to work. Parties on screen can only see the courtroom in 'tiny' perspective in comparison to other views of online participants. Multiple computers in the courtroom leads to horrible feedback (Judge).

With hybrid hearings sound from the people in the court room is the most difficult to hear if people are not very close to microphones or are using paper bundles (rustling sound sounds very loud to the remote attendees). Camera angles sometimes cut people out of view. Even high-speed connections are prone to outages and dips (Barrister).

In a hybrid hearing it is really hard to avoid the feeling of a club or connection forming between those in Court compared to those online - the shared experience is a powerful one. It is really hard to be conveying to those online what is happening in Court without feeling you might be insensitive e.g. if parents are emotional at particular evidence so you need to ask them if they need a break but feel like you are massively drawing attention to it (Judge).

In hybrid hearings it is difficult to get the tone right - if you use your 'court voice' to include all those in the room there is a danger that you come across as bellowing online - some barristers using court voice to cross-examine can come across as very intimidating (Judge).

Hybrid hearings where I am remote and cross-examining someone in court are really difficult - controlling a witness when you are on the telly in the corner of the room is very difficult (Solicitor).

The hybrid hearing I was involved in was significantly unfair. The applicant sought permission for the entire hearing to be held remotely as he could not come to court (shielding due to a medical condition). The Cafcass officer was also unable to come to court in person. However at the request of the mother the court determined that a hybrid hearing would take place. That in itself created a feeling of unfairness because the mother was in a room with the judge throughout whilst the father was not (Barrister).

There are insufficient large CVP screens in courts so with hybrid hearings the judge or the clerk has to turn their own screen around so that the parties in court can see the other parties joining remotely. It is really difficult for parents to see what is going on. The courts should invest in large CVP screens (Judge).

The technology is not consistent enough and the hardware just simply isn't good enough in the majority of court centres. I recently sat on a 10-day public law trial which was a hybrid. The remote element of the hearing was good enough. But the technology available in the court centre was not of sufficient quality. One small screen was available for all advocates and parties, positioned on the front bench by the clerk. It had one small set of speakers. The screen had to be turned to face the witness box during evidence, so the questioner could see the witness, but that meant that other counsel couldn't see the questioning counsel. At one stage, the quality of the sound was so poor that the only way a remote party could be heard was by me turning up the speakers on my own laptop, as they produced a better sound than the speakers on the court equipment. I had to provide my iPad to witnesses during evidence as there was no court bundles available (Barrister).

4 Concerns about fairness and justice

4.1 Are remote hearings fair and just?

As soon as telephone and video conferencing started to be used for the majority of the hearings in family courts, guidance from senior judiciary and judgements from the Court of Appeal stressed the importance of not losing sight of the importance of a fair and just process.

In 'The Road Ahead' the President of the Family Division, recognising that remote or hybrid hearings were going to be a feature of life well into 2021, noted that:

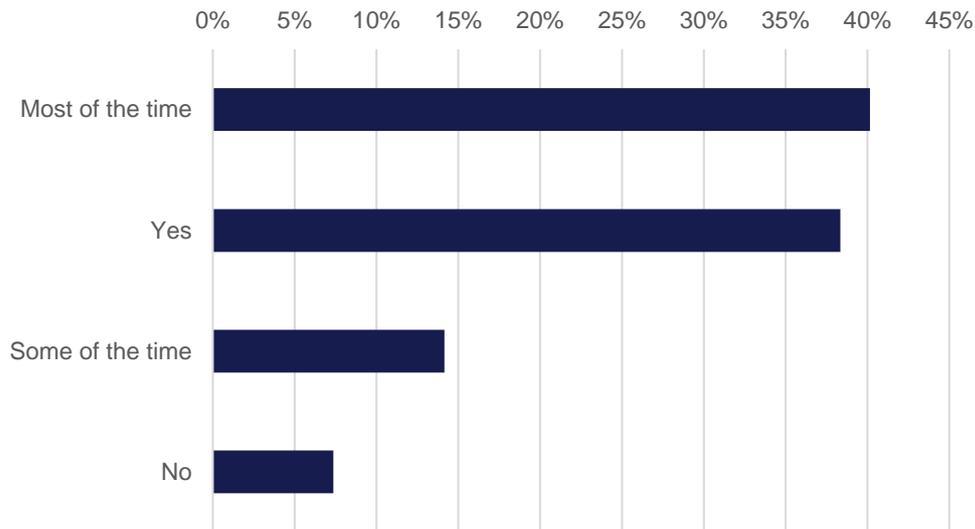
Apparent potential unfairness which justified a case being adjourned for what was hoped to be a relatively short period of time, must now be re-evaluated against this much longer timescale. The need to achieve finality in decision-making for children and families, the detrimental effect of delay and the overall impact on the wider system of an ever-growing backlog must form important elements in judicial decision making alongside the need for fairness to all parties. More positively, experience of remote hearings in the past two months has identified steps that can be taken to reduce the potential for unfairness.....enabling cases to proceed fairly when previously they may have been adjourned (para 6).⁶

In April, many respondents to Nuffield FJO's rapid consultation expressed serious concerns about the fairness and justice of telephone or video hearings, particularly for: parents in care or related proceedings; parties with disabilities affecting communication and understanding; and those attending courts without legal representation.

Most respondents to the follow-up survey felt that fairness and justice had been achieved in the cases they were involved in most of the time (40%), or all of the time (38.5%). Just 14% felt that cases were only fair some of the time, and only 7.5% thought they were not fair at all.

⁶ Op. cit.

Figure 7: Are you satisfied that that fairness and justice has been achieved in the cases you have been involved in?



Parents and relatives were asked how they felt their case had been dealt with (from 'not well' to 'very well'), whether they had understood what had been happening during the hearing, and whether they had concerns about the way that their case was dealt with.

Figure 8: How did you feel your case was dealt with? (Parents and other relatives: n=132)

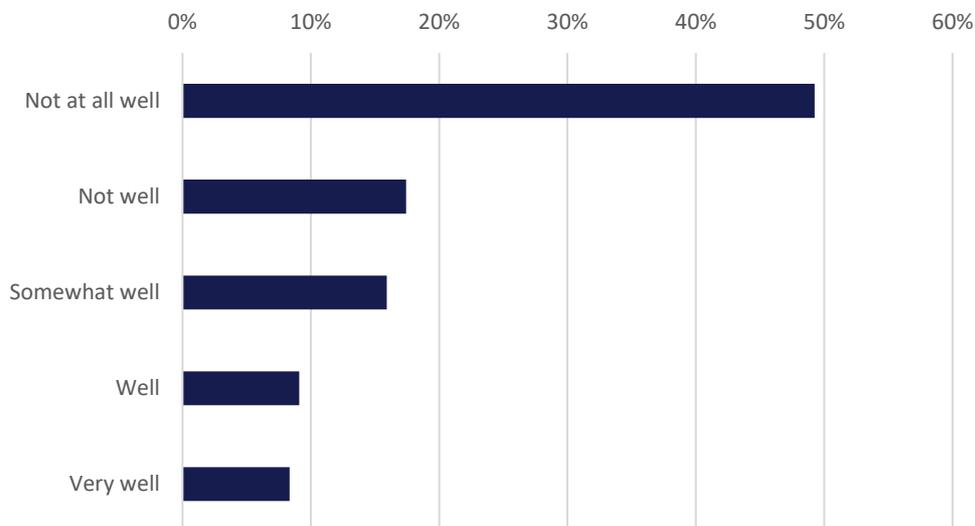


Figure 9: Did you understand what happened at the hearing? (Parents and other relatives: n=132)

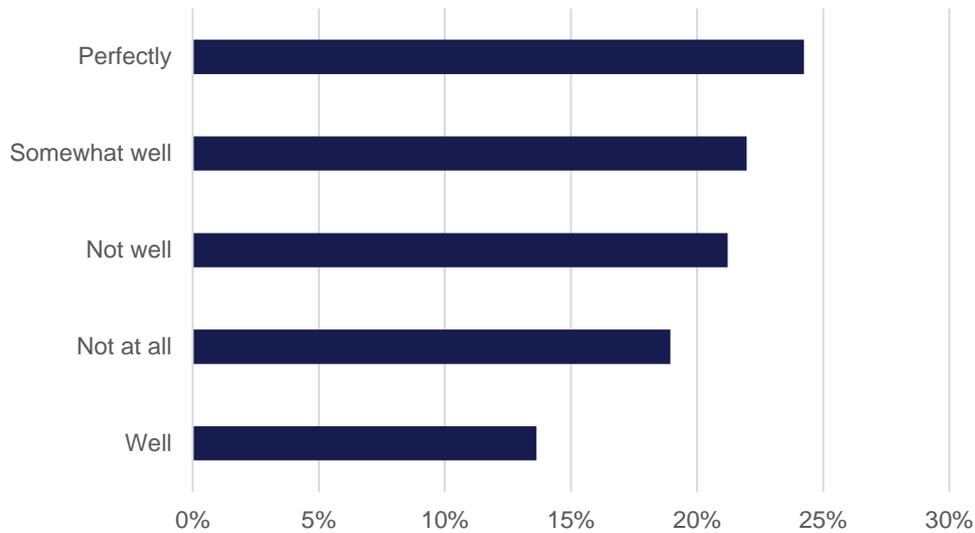
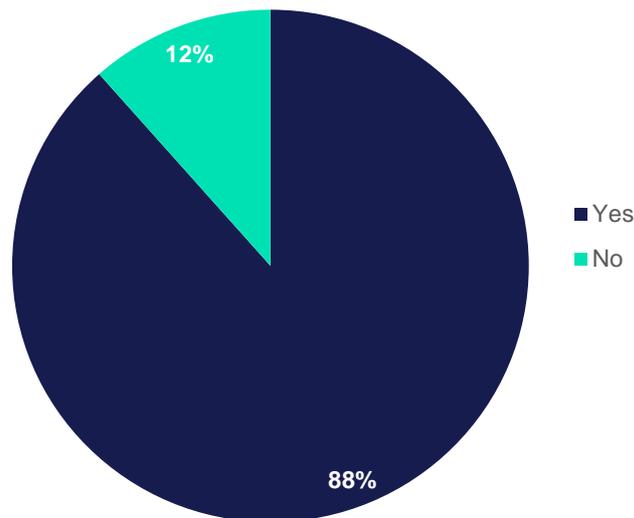


Figure 10: Did you have any worries or concerns about the way the case was dealt with? (Parents and other relatives: n=130)



The majority of the 132 parents who responded to the question felt their case had not been dealt with well, and just under half of those who answered the follow-up question had not understood what had happened during the hearing. A majority of parents (130) had concerns about their way their case was dealt with.

It was very clear from responses to the survey that professionals in the family justice system are working hard to ensure that proceedings are just and fair, but that views on whether that is being achieved vary widely depending on the types of cases that people are involved in, the types of technology involved and local practice. The comments below indicate the wide variation in views on fairness in general.

I have no doubt fairness has been maintained. It is understandable that the gut reaction of those involved in any system is to defend their existing way of working and be afraid of change. Nevertheless, such a reaction is entirely irrational. By any objective measurement, if anything the family court has enhanced access to justice and a fair process by our new ways of working (Barrister).

Final hearings appear much better thought out and these I believe have been done fairly usually with parents in court and the judges are excellent at ensuring it is working for parents. But less so perhaps in a CMH [case management hearing] or first hearing for example. The majority of judges are excellent at involving parents and acknowledging the difficulties and go to great lengths to ensure a parent feels like their contribution is being heard to ensure the remoteness has minimal impact upon their experience (Cafcass).

I am satisfied that the hearings have been fair. That does not mean however that things could not have been better and I would have preferred to have physical in person hearings in any contested matter where lay parties can more easily access support from their lawyers. In general, remote hearings have worked fairly well for directions hearings except those occasions when the technology has failed (Judge).

I have major concerns about the fairness of proceedings with both LiP and some represented parties (eg parents with learning type difficulties in care cases) in remote hearings. Removing children and making major decisions e.g. on contact, can have long term (even lifelong) consequences. Notwithstanding everyone's best efforts remote parties cannot sometimes be adequately engaged and whilst Judges and professionals can 'get on with it' and make it work I have real misgivings about how fair it is and how fair it is felt and seen to be (Judge).

I maintain the view that it feels completely wrong to remotely conduct an interim removal hearing or final hearing in a case where adoption is the care plan. I have also had numerous hearings where it hasn't been possible for parents to hear/engage in what's been going on. They often don't want the delay of adjourned hearings so tell you to keep going without them, but it's at the expense of them properly understanding what's happening and being able to give proper instructions (Barrister).

Let's not kid ourselves - none of us would have thought these methods of working achieved fairness and justice six months ago (Judge).

Respondents also noted that while professionals may consider a hearing to have been just and fair, and that the result of the hearing was the right one, this did not necessarily mean that the proceedings had been perceived as fair by the parties involved.

I think this depends on the measure you use. I have striven to ensure it was fair but I think that is but one perspective. The test is do the participants and would an objective observer (Judge).

I think they have been fair and just in terms of legal outcome but I am not sure the perception has always been of fairness and justice being done (Judge).

In some of the cases the result was inevitable on the evidence but I firmly believe that a parent has the right to see the judge in person who is making the most important decisions to affect their children. A small box on a screen does not do this- if I was a parent I would not call this fair or justice particularly as most don't have the right technical equipment and tend to be using mobile phones! (Judge).

I believe that remote/hybrid are inferior and keep that in mind. The true test is that of parties who have not got what they wanted, and whether a larger proportion of them are dissatisfied with the process than the proportion with attended hearings. I rate my own satisfaction with the process as much less important than that of the parties (Judge).

4.2 The challenges of showing empathy and providing support

A strong theme in responses to this survey, as with the earlier survey, is that family justice is not simply administrative adjudication but is dealing with personal and often painful matters, which require an empathetic and humane approach.

Many respondents (both professionals and parents) expressed concern about the difficulty of creating an empathetic and supportive environment when hearings are held remotely.

There was particular concern about hearings where interim orders are made to remove babies shortly after birth, which it would seem still mainly happen with the mother joining by a phone from the hospital.

There is nothing fair about a remote hearing which requires you to remove a newborn baby from its mother. Remote hearings do not enable you to show empathy (Judge).

I was required to represent a mother who was in hospital having given birth where removal was sought. She had no support and she took part by phone (Barrister).

There are too many cases where parties, especially mothers of newborns, are having to access the case by telephone (Judge).

There were also concerns about final hearings where care orders (particularly where adoption was the plan for the child) or placement or adoption orders were made. Again, responses indicate that many such hearings are still taking place by phone or in video hearings accessed by parents on their telephones.

The orders made are the right ones but it is deeply stressful intrusive and unpleasant for parents to have to attend hearings from their own homes, and without the support of their legal representative being with them (Barrister).

The parent sobbing alone in their flat listening to ruling of not getting baby back was harrowing (Social worker).

I was part of an adoption hearing. The parent was on the phone; without her legal representative with her (she has learning difficulties) and even though everyone was satisfied she understood and everything was explained via her advocate it felt very cold. Obviously no one wanted delay for the children in this matter; I was just empathising with how the mother may have felt (Social worker).

I worry about making orders which may be very distressing to a participant, e.g. the removal of their child. In Court, they'd at least have a lawyer with whom they could grieve, rant, consider appeal, and have support. By phone or video, they may be in

their bedroom, alone and in despair, perhaps with the child and now awaiting a visit from a social worker (Judge).

Making decisions about the removal of children remotely feels wrong. Pressing the red button on Teams after a judgement has been given for a care and placement order feels inhuman (Derbyshire LFJB).

A mother who experienced a final hearing in care proceedings where care orders were made on her three children was refused a video hearing, so this happened over the phone. She said:

They need to see you to remember you are a human being. It didn't feel like this!
(Mother, PFAN)

Another mother, who had a three-day remote hearing and was represented said:

He [the judge] made his judgement and obviously I'm a complete mess ... and I knew that I had to step out of that room and then pretend that I was OK for my two other children and obviously there was no support (Mother, PFAN).

PFAN described the impact of the lack of support in remote hearings.

Two parents made contact while in a very vulnerable state of mind. Both confessed that they were suicidal, and both felt there was no hope. Both parents had experienced remote hearings over the phone. These parents did not have any support after the hearings to help them process the information they received. The parents were not entirely clear on what had happened at the hearings. One parent felt they didn't know how to find out what had been written in the court order (PFAN).

Other responses indicated that even when the hearing is not a final hearing, lay parties may become distressed and that this can be difficult to identify when the hearing is taking place over the phone and even on occasions by video, depending on the platform used.

I think that for hearings which are not contested it may be the best that can be achieved in the present circumstances. However, even at directions hearings I think it is hard emotionally for some parents to manage. If it is a telephone hearing, I have sometimes failed to pick up that a parent has become distressed until it becomes apparent that they are crying. For those who are not represented it must be an isolating experience as there is often no support available and the court can only suggest a recess in order for an individual to have a break from the hearing. All of these factors must have a bearing on the perceptions of those involved as to whether fairness and justice has been achieved in their case although it is hard to measure in a quantitative way (Legal adviser).

We cannot always identify whether a person is going to be vulnerable. In the middle of hearing yesterday a mother told me she was self-harming. I immediately adjourned the hearing and an ambulance was called. My concern was that I had not identified the hearing as unsuitable for remote and I did not pick up on the problem until the mother told me. We have a good triage system but it didn't pick this up (Judge).

Examples were given of the way that legal representatives and local authorities were making sure that parents could be supported during hearings. Most examples referred to providing access to technology, although some examples referred to access to wider support.

LAs [local authorities] have also been making rooms available for lay parties and their advocates. Where a lay party is not legally represented social workers have offered to attend their home to share their laptops -the LA have also provided funding vouchers for calls to parents (Local authority solicitor).

Represented parties routinely participate from hearing hubs (e.g. at barristers' chambers or LA family centres) with their representative present and where IT assistance is at hand (Judge).

In areas with a Family Drug and Alcohol Court (FDAC), the keyworker from the FDAC specialist team will often be with the parent for the hearing, and the parent will build up a relationship with the judge dealing with their case through regular non-lawyer reviews.

The relationship-based approach in FDAC has helped to mitigate some of the problems in relation to showing compassion and providing support. FDACs are prioritising in person and hybrid hearings. Parents feel supported by 'their' judge, and in some areas non-lawyer reviews via phone link have increased (Centre for Justice Innovation).

4.3 Ability to pick up on responses or follow what is happening

The likelihood of proceedings being fair and just (or being perceived as so) will be reduced if participants in the hearing are not able to follow what is happening. While it may well be the case that lay parties can struggle to follow when hearings are taking place in person, remote hearings or hybrid hearings when lay parties are alone at court without their representatives increases the chances of this happening. Not being able to see people, including in video hearings where vision is restricted, also impacts on the ability to pick up on body language or other non-verbal cues.

You cannot tell how people are engaging or reacting. A respondent to a family law act injunction application was in her kitchen during the hearing and threatening to kill herself..... The cues, body language, subtle indications that we have always used during hearings to ensure that people are as engaged as possible with the hearing are lost. Similarly, all the pointers that would be there to be seen to warn us that a party was becoming angry, and thus allow us to step in at an early stage, have gone. It's appalling. We are making decisions even at case management about children's lives on the basis of a telephone call (Judge).

Whilst we do what we can to include all, where we cannot see people, it is difficult to know if they really are comfortable with what is being said. In a recent hearing, one party said via email that she had felt she had to agree to an order when really she hadn't wanted to - if this had taken place in a courtroom we would have been able to see if the person had actually really consented - no face to face contact can inhibit proceedings I feel (Magistrate).

The Judge has never seen me, she can't see what person I am. I'm not allowed to speak so she can't hear what kind of person I am (Mother, PFAN).

Compared to a regular hearing it was so much more difficult, to get a clear idea of what's going on (Mother, PFAN).

I didn't get to say anything. They just talk. Then hang up, and I don't really understand what happened (Mother, PFAN).

4.4 Communication before and after hearings

Many expressed concern about how little contact many lay clients were having with their legal representatives in the run up to hearings, and the impact this might have on their understanding of the process and their sense of fairness and justice. Responses indicated that social distancing requirements can mean that lay parties may have had very little contact with their solicitors before hearings take place, and frequently have never met or spoken to the barrister representing them at the hearing.

I didn't know what was coming from the local authority before I got into the hearing because I couldn't talk to my barrister face to face before the hearing (Mother, PFAN).

However, for me the main difficulty is building any rapport with a stranger on the day of a hearing remotely, sometimes only by phone. It is harder to assess if they understand and I worry about missing cognitive disabilities in early hearings so there is no assessment. In many cases, they now never have a face to face meeting with their solicitor throughout proceedings and I only see them at the hearing. Statements are being taken, prepared and then read out for agreement by paralegals over the phone which is not ideal for vulnerable clients. I do think all judges and professionals I have worked with in the pandemic have bent over backwards to try and ensure fairness during evidential hearings. I think the problems may arise earlier when issues which need to be assessed or addressed are not picked up until it is too late (Barrister).

Some examples were given of how pre- and post-hearing communication was being approached.

I tend to have a pre and post hearing conference and during the hearing we communicate by what's app. It can be challenging though to have several screens open at the same time, [screen for hearing, screen for bundle and screen for messages) and keep concentrating on the important issues (Barrister).

But this does require planning. For example my practice is as follows: 1. Arrange for a conference with client prior to pre-hearing discussions. 2. Arrange for client to have my email address so they can correspond with me during the hearing (where remote). 3. Seek court permission to leave hearing to take instructions if fuller instructions are needed than what can be put in a short email. 4. Arrange a short conference with client after hearing to make sure the client has understood the outcome. There are some limitations with this approach. if the client is a vulnerable party with cognitive issues which include lack of ability to communicate in writing, then emailing during the hearing can be difficult. Preparation is the key and there has to be a lot of front loading involved with counsel being needed not just for the hearing itself, in order to have an effective hearing. In terms of contested hearings with live evidence - these have been attended or hybrid hearings, and I cannot see how they could work otherwise owing to the nature of the hearing (Barrister).

Lawyers and parents commented on difficulties in giving and receiving instructions in preparation for hearings.

Even with the most committed client taking instructions remotely (especially on the phone) is both time consuming and inadequate. You do not know what the clients are looking at, you cannot easily take them to relevant sections and the current practice of not having numbered paragraphs ... really makes it a nightmare. added to that with cases that have started since March is the lack of a personal relationship and lack of guidance from body language (both ways) that makes in particular 'difficult conversations' both ineffective and easy to ignore. if clients are to have a fair trial they need the chance to have their case properly prepared - the insistence on the limited turnaround times for statements from parents et al (difficult in a public law case pre-COVID) now seems to deliberately designed to deprive them of a the ability to have their voices heard (Solicitor).

Rather than asking someone things in person you have to send an email and you need to wait five days and you still haven't heard. Even my statement. I had to give an initial statement in response to the first care report or something. It was such a nightmare I had to email my solicitor to tell her what I want and she sent me back a draft and it was really confusing trying to say what you want to say but doing it through an email and not being able to have the conversation back and forth (Mother, PFAN).

This is hugely difficult. In public law cases it is difficult to have a proper discussion with clients on the phone and FaceTime and other methods are not always possible. Clients struggle to digest difficult advice and to give instructions on the phone. There are practical problems around credit and other issues. Sometimes there are language issues. It often leaves one feeling that clients are being badly short changed, the decisions are so serious and it feels completely inadequate to take instructions and to provide some support after a hearing by phone. Clients are often hugely upset after hearings and I have come off calls feeling genuinely worried about my client's mental health and well-being (Barrister).

Lack of pre-hearing communication is also affecting the ability of advocates and intermediaries to provide effective support for their clients.

In the court building the pre-discussion and engagements with the Solicitors/Barristers is a really important aspect of the process – understanding how legal representatives are going to share information, take instructions and represent the parent. However it has been our experience over the last four months that some of this process, at times much of this process, is being lost. There are excellent examples of solicitors and barristers engaging with the parent and advocate during this pre hearing stage, sharing and updating information, but sadly we have certainly experienced at least as many occasions where this has not occurred and we have simply joined the hearing at its commencement (Your Say).

The challenges of pre-hearing communication were also identified as an issue for professional parties.

As a guardian, I have also found that sometimes when represented by barristers they do not call me before or after the hearing, and rely solely on what my solicitor has said. I find this frustrating as things are so dynamic in public law and often the pre-hearing discussions leads to new info being shared, which then is not shared with me so I can have a position for the judge. This sometimes means I am put on the spot in the hearing and asked to email my barrister the instructions, when they could have called me to discuss ahead of the hearing (Cafcass).

Not being able to confer with your legal reps made things very challenging (Social worker).

As children's guardian you miss having the discussion with parents (Cafcass).

[For magistrates] in remote hearings this valued interaction [the informal discussion at the start of the day] has been lost, and it is harder to gauge where we all stand in our approach to the cases..... The nature of the remote hearing experience creates more emphasis on the quality of both the pre and post court briefings (from 'Winging it remotely - Some thoughts for GLFPs Presiding Justices').

4.5 Communication during hearings

The majority of respondents (79%) said that lay parties were able to communicate with their legal representatives during the hearings, but the comments provided indicated that this is by no means straightforward. This was a concern for both parents and professionals.

The main problem with communication between lay parties and representatives (when they are not in the same room together) is the number of devices that then need to be used, unless regular breaks are provided for communication.

There is a fundamental difference between trying to deal with concentrating on a remote hearing with all the tech issues involved and keeping an eye on a WhatsApp/text exchange with a client, vs having them in the room with you. Most parents cannot access the video tech so are on the phone - there is therefore no way to monitor their reactions, see if they need a break or a word of explanation/ reassurance or show them documents if they need to see them. Mostly more-or-less adequate communication is taking place, but I wouldn't say it equates to good client care even with people trying very hard (Solicitor).

Yes [communication is happening] -but with difficulty in terms of the IT logistics e.g. a WhatsApp group (which means all lawyers expose their mobile numbers to clients) or a chat function within video messaging or a chain of emails. We've tried them all, but none fool proof and as a result there are delays or disadvantages to the clients. I've also found that even the most switched on clients ask fewer questions during hearings when doing so remotely than if they are sitting next to you (Solicitor).

This is a massive issue. Although arrangements are made beforehand by solicitors the failure of judges to dial in solicitors (where counsel are advocates) has left clients unsupported. In any event clients are trying to deal with two lots of technology at once e.g Teams for hearing and WhatsApp for communicating with representatives during the hearing. Clients find the technology difficult to manage at an emotional time and the lack of advance warning as to how the hearing will be dealt with is very stressful for clients. Pressurised judges are not always willing to adjourn for clients to give instructions or mindful of the communication difficulties. It is appreciated that stopping and starting hearings is difficult but the client experience is very poor. Clients have commented they feel totally alone and unsupported (Solicitor).

The difference between public and private law on this issue is - in my opinion - vast. In private law my solicitor, client and I are all on WhatsApp or Zoom chat so I can take instructions / they can raise issues immediately and comprehensively. In public law my solicitor doesn't attend, I am not comfortable with clients having my mobile number and in my experience so far, few care clients have unlimited data or access to Zoom/other internet chat function. this makes taking instructions during the

hearing basically impossible, and makes pre- and post-hearing discussions much, much more difficult (Barrister).

Parents described frustration at not being able to communicate with their representatives during hearings.

When my barrister said I don't know about something, I know that if we were sat in court, I would have made a little squeek sound and put my hand up. Barristers are usually looking around to see, she would have looked around at me. None of that happens, you get very little. ... if there is anything said in court that you are not happy with, you have no chance to either correct your barrister or challenge the local authority (Mother, PFAN).

Although some parents had been able to manage with different methods of communication.

I was lucky in a way that my solicitor is quite tech savvy. So while we were on the phone, she was WhatsApping. 'Are you in agreement? Are you happy for me to try and secure this judge moving forward?' And I could come back, "Yes". Not everybody has the ability to do that. Not every solicitor is that technical, and we shouldn't be relying on that. Everybody should go at this with the same tools being available (Mother in contact with Support not Separation Coalition).

I was on the phone so I am just sitting alone in the kitchen all by myself I am not even with my barrister I can't have any conversations with her – we were texting in between but it wasn't the same like preparing and being beside her. We knew what we were about to talk about that day but his [the ex-husband] barrister just introduced a whole bunch of other stuff about my family - wanted to get a non-molestation order. So this is not anything that is pre-determined, this is not the reason for why we are there but it was accepted by the judge. I had the evidence and I quickly sent it to the barrister, and she shared it with all the lawyers but this was all by text (Mother, PFAN).

Some respondents noted that the need to stop to communicate during proceedings was causing delays and people felt under pressure not to spend too long in discussions.

In some telephone hearings full instructions have had to be taken and the hearing has had to be paused. The judge had to end the hearing and redial all parties again which took time. It would be good if there was a way to organise a breakout room or pause telephone hearings so that full instructions can be taken quickly as sometimes taking instructions via email takes time (Solicitor).

This can be difficult depending on the technology used. For example if party is using their phone for CVP then they cannot at the same time communicate in private with their legal adviser. More breaks are taken but it does delay proceedings. It is also far more difficult for negotiations to take place between parties when all parties and legal reps are in different places and breaks need to be factored in for this. This can cause significant delays during the day (Legal adviser).

4.6 Difficulty in ensuring full participation – interpreters, intermediaries, support for people with disabilities

Many respondents stress that ensuring remote and hybrid hearings are fair and just is particularly difficult if lay parties require support because of a disability or because they require an interpreter.

Problems are magnified if interpreters, intermediaries and advocates cannot be physically with their clients or person needing support and if the systems set up for the hearing do not take account of the type of support that is needed.

If parents are Deaf or have hearing loss.

As interpreter for the deaf person, it is impossible for me to be present at a private consultation via remote video as I, the representative and the deaf person are using the court and tribunal's system. We cannot ask everyone to get off while we have a private consultation (Sign language interpreter).

I was not allowed my solicitor in the room with my deaf client because we needed deaf interpreters and had a max of four people. We had had a terrible Skype for business GRH before that. High pitched squeak for an hour and deaf client could not pin the interpreter which also meant his intermediary was not able to participate (Barrister).

We sign language interpreters do not have an opportunity to communicate with the deaf person before the hearing, so we cannot assess their language understanding, ability, any difficulties they may have, their comprehension of the court system, how much we need to break down legal jargon, their idiosyncracies of language. We cannot modify our language to meet their needs as we don't know their language needs. Also, we don't see them so cannot get any feedback from their body language and facial expression to check if they are understanding everything, if the information is too fast etc.(Sign language interpreter).

Many concerns were expressed about hearings for parents who have learning disabilities or learning difficulties. An organisation that provides advocates for parents reported particular problems with telephone meetings and hearings where they cannot judge whether a parent has followed the discussion and issues raised. They described video hearings as an improvement and express a clear preference for Zoom because it was deemed the easiest to use, the most reliable, and allows parents and their advocates to see everyone.

Advocacy engagement with parents over the last four months has not felt fair or fair enough..... the current systems are simply in and of themselves not the most effective way to include vulnerable parents in the family law or child protection process ... we know that much work is being done to provide the fairest possible response – but it remains a reality that those parents who need the support of an Advocate (or intermediary) are always going to struggle with the Court process to a greater or lesser degree and the use of remote and hybrid hearing only increases these challenges (Your Say).

Most [parents] join via their phone and so have a limited view of the participants and it can be really hard to know or retain who's who. Indeed there are many occasions when not all parties have been introduced and so the parent and advocate are left trying to work out who is in attendance and their role (Your Say).

Parents with learning difficulties in one of my cases have no idea what is going on and are not able to see or speak to their respective solicitors (Social worker).

Phone hearings really are not suitable for persons with communication disabilities to manage effectively. Language is too complex, intermediary cannot be present in their home, legal representatives do not introduce themselves before speaking (Intermediary).

Other advocates stressed the importance of being able to support parents while the case is being prepared.

As Advocates we can assist greatly in supporting parents to be ready for court, to read papers, engage with their legal team - we will work face to face to facilitate access and provide technology support - but there is a new issue for us of local authorities withdrawing funding at an earlier stage as they now know that HMCTS can fund Advocacy in Hearings once court is initiated and that means that parents don't get such comprehensive support that can assist in the overall engagement, understanding and outcomes for all parties (Advocate for parents with learning disability).

Some respondents noted that having an advocate was not particularly helpful if they were unable to provide support during the hearing.

Sometimes the technology isn't reliable and this really adds to the stress on everyone, but especially lay parties. I had a hearing with an intermediary where he was not in the same location as the vulnerable party and just sat and listened. He might have been a help before and after, but I worried that the vulnerable party was not as well supported in the virtual hearing room as I wanted her to be, but it's not up to me to dictate to the intermediary how they do their job (Judge).

I did [have an advocate]. But what was the point of it? My advocate was hanging on the phone; she can't say anything. She thought it was rubbish. It was a waste of her time, what was the point of having her being there. No-one can see her. I can't see her. How does it support me? ... But it doesn't work when you have got a remote hearing. Not certainly one by telephone. No point in her being there. Nothing she can do to help (Mother).

There were many comments about the difficulties of managing hearings with interpreters involved and about challenges for parties for whom English is a second language:

I feel that parties who have English as a second language are disadvantaged. An interpreter wouldn't help as it's the legal issues which they are grappling with. Seeing them in person would help (Magistrate).

Further, where the parties have language difficulties but do not warrant an interpreter (e.g. where English is not their first language) it feels that such court users are at a distinct disadvantage appearing remotely as everything revolves around how well information is conveyed verbally (Judge).

I have had a few cases where my client used a translator. The hearing has to be paused while the translator updates the client. I worry that the translator feels rushed, as does the client, and that some nuances are missed (Barrister).

There has also been issues with hybrid hearings whereby an interpreter was over the phone - they could hear the person next to the phone but not the other advocates/parties and could not hear at all the persons via CVP that were not present in the court building (Barrister).

4.7 Protected characteristics

Survey respondents were asked questions about whether they had any ‘protected characteristics’.⁷ Those who responded indicated that protected characteristics affected their experience of the hearing to some degree. Many of the issues raised reflect concerns already identified in this section, but the responses are an important reminder that the issues identified as problematic for lay parties also impact on professionals involved in proceedings.

Several professionals mentioned that sight and hearing difficulties affected their ability to use technology, and to follow remote proceedings. This was a particular issue for hearings conducted by telephone. Some felt that they could manage better with video—where they could see all participants—and mentioned a preference for this format.

I am registered severely sight impaired and it makes using the technology difficult (Judge).

I am hard of hearing and wear hearing aids, so it is not always easy to hear everything that is being said on the phones at a remote hearing, especially when people try and talk over each other or the phone signal is poor and volumes are not sufficient (Legal adviser).

Having to rely on interpreters being present and having to wait for people to answer/ask questions - as they could not see me I had to ensure that they remembered to give the interpreter time to translate the information (Social worker who is Deaf).

I am Deaf and it was extremely difficult as a Cafcass social worker to organise telephone interpreter (Cafcass).

Professionals highlighted issues with using interpreters in remote hearings, when it was often not clear who was speaking, people were interrupted, or spoken over. One respondent felt that as people could not see one another (on a phone hearing), they often forgot to let the interpreter speak. Another mentioned a case where, although an interpreter had been arranged for a party, the joining instructions for the teleconference were spoken in English, which they could not understand to join the hearing.

Professionals who had health problems expressed concern that they would be pressurised to attend court in person once in-person hearings had resumed and felt uncomfortable about disclosing their health issues to the judge in such circumstances. Many of these respondents felt that remote hearings should be the default for now.

Some respondents mentioned feeling discriminated against on the grounds of sexuality, race and religion. This was not felt to be unique to remote hearings, but rather a systemic issue within the courts and society more widely.

Parents spoke about the adverse mental health impact of remote hearings, which they found very stressful (more so than in-person hearings). Several respondents reported that the

⁷ This refers to groups that are protected by existing equality legislation—relating to age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

experience had a negative impact on their health or aggravated existing mental health problems. They felt that there was a greater need for mental health support throughout proceedings (for example, access to mental health support worker or advocate).

I suffer from a mental health disability of depression, anxiety, and PTSD. The failure of the courts to make reasonable adjustments caused a worsening of my condition, triggering a relapse, resulting in me being sectioned under the Mental Health Act. I feel the court behaved very negligently and this worsening of my health could have been avoided if they'd followed their own regulations (Parent).

One parent with autism said that they found the telephone hearing very challenging due to not being able to see people. For them, a video call would have been preferable; others felt that hearings should take place in person only where the parent has mental health difficulties or a disability.

A video call would be better as due to autism I need to see people. I was never sure when I was needed to speak (Parent).

In cases where parents needed an interpreter, two respondents reported that this did not work well remotely. They found it very difficult to follow what was happening, to read documents, and to know when they could speak. There were some instances where parents felt that they had been discriminated against on the basis of ethnicity or race, especially when English was not their first language.

I believe the court should be more considerate about people who don't speak English as a first language. The judge and solicitors and barristers use professional language and I struggle to understand them (Parent).

In cases involving allegations of domestic abuse, respondents spoke of feeling re-traumatised and unsafe when they had to listen to or see their alleged abuser from their own home. One respondent mentioned that the court worked with her to reduce the impact of this (she was allowed to have her video camera turned off, for example), which helped her participate in the hearing and reduced anxiety.

More proactive protection from verbal and mental abuse by removal of other party from the hearing after ample warning (Parent, victim of domestic abuse).

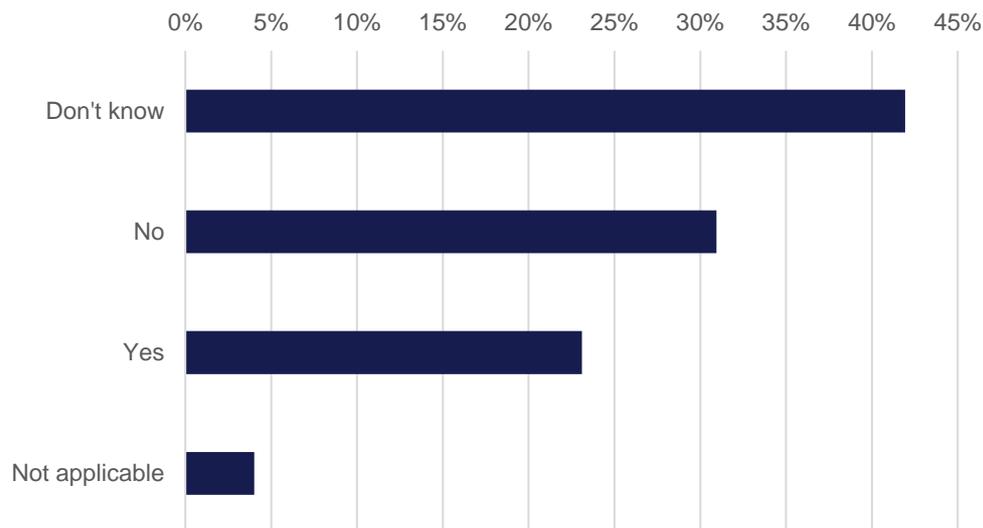
Several fathers reported that they felt that the court was biased against them as fathers.

4.8 Litigants in person and unrepresented parties

The vast majority of professionals who responded to the survey (79%) had experienced hearings with one or more unrepresented party. Of the 132 parents and relatives who indicated whether or not they had had legal representation, 58% had had representation and 42% of them had not.

Professionals were asked whether support was available for litigants in person: 23% said support was available; and 31% said it was not available. Perhaps surprisingly, 42% said they did not know.

Figure 11: Is support available for litigants in person? (n=1,173)



It was clear from responses that there are problems for litigants in person and unrepresented parties accessing support and advice before, during, and after hearings. Some of the problems were similar to those experienced by represented parties having difficulty communicating with their legal representative. But for litigants in person the problems are more acute, given the shortage of support and a lack of knowledge about how to access it.

The feedback we received suggests that support isn't always readily available for litigants in person. While members are aware that the Support Through Court service is available, they have not generally seen evidence of the service being available during hearings. The feedback also did not note the presence of any McKenzie Friends in any hearings. It is unclear what support is being provided to litigants in person from the outset, but information around support available for remote and/or hybrid hearings must be clearly outlined in any correspondence the court service sends out (Law Society).

Support Through Court is now becoming involved once again - but this is a scarce resource and in the vast majority of cases not available (Judge).

LiPs [litigants in person] report that the Support Through Court service has been very limited during the pandemic and they have found it difficult to access support, particularly with writing statements and asking questions about what is expected of them by the court (Cafcass).

Support Through Court is based in our courthouse and is offering a remote service but I do not know of any case where they have joined a hearing in this way. The court has an information point for unrepresented parties and a legal team member maintains membership of the Litigant in Person Support Network to maintain access to latest information (Legal adviser).

Some respondents gave examples of attempts to improve the availability of support for litigants in person.

In Sussex we are re starting our support scheme with Sussex Uni law student volunteers (CLOCK) at FHDRA [first hearing and dispute resolution appointment] hearings. Personal Support Unit are sometimes available by phone but very little support is out there (Legal adviser).

We have a dedicated video room at court for lay parties whether represented or not to access video conferences. We provide technical support and permit them to have a 'supporter' present for emotional support (Judge).

Even when support is available, problems also arise because of sudden changes in the date or time of hearings, or very late notice of when a hearing is going to take place.

Key for them [problems experienced by domestic abuse advocates] was frequency of last minute changes to hearings which makes it difficult for support workers to attend (which can be crucial for engagement). In some cases judges are questioning why there is a support worker with the client (SafeLives).

There are also problems because of lack of information to lay parties about supporters or advocates attending court.

I had a domestic violence advocate but I wasn't told by the court that I had any options for support from her during the proceedings or that she could join the hearing (Mother).

Problems of communication during hearings were also raised.

This is limited, and only involves occasional use of McKenzie Friends; this is not very effective, however, as unless there is a side channel of communication, it is difficult to see what support a McKenzie Friend can actually give during a hearing (Judge).

I am a McKenzie Friend and I was unable to get onto phone call (technical failure) and had great difficulty consulting with my friend (McKenzie Friend).

In theory, as McKenzie Friend I was included. In practice, technical failure, plus as a phone call only, it was very difficult to know what was going on (McKenzie Friend).

We are McKenzie Friends not legal representatives. Any communication before and after hearings is done independently of HMCTS by telephone. During in-person hearings we would be able to quietly communicate with lay parties. No facility has been offered for doing this in remote hearings, other than informal suggestions of using WhatsApp messaging. However our clients typically only possess a mobile phone (no laptop or additional device), which they are already using for the telephone call. Expecting them to WhatsApp at the same time is presuming a level of digital and cognitive expertise which many parties lack (McKenzie Friend).

Many respondents noted the role of the judge/magistrate/legal adviser in supporting litigants in person.

In all hearings where there is a litigant in person, the judge/legal adviser has attempted to assist by explaining legal concepts or setting out what they need to make submissions on and what will assist the court (Barrister).

As a Chair I always assist litigants in person to give evidence and cross-examine. I have also dealt with McKenzie Friends and Interpreters. Often Cafcass will help

remotely but this is more difficult to arrange as it requires all but party and Cafcass officer to leave room (Magistrate).

The level of support is no different to hearings in person. Practice has shown that there are fewer requests for McKenzie Friends and parties are less anxious where hearings are remote. They are less fearful of coming into contact with the other party and less fearful of the Court and the process. In many ways a better level of engagement because parties can participate from their own homes (Legal adviser).

4.9 Removal of babies and contact

As noted earlier, some respondents to the survey were very concerned about the removal of babies shortly after birth, which tends to happen with mothers attending the hearing over the phone from the hospital.

There was also considerable concern that mothers have frequently not been able to have any physical contact with their babies following their removal. Responses indicated that a small number of local authorities have been facilitating physical contact with babies throughout the period of the pandemic, but responses to the survey suggested that in the vast majority of cases contact has been virtual with some limited face-to-face contact starting to be allowed.

For six months I could not see my baby (Mother).

Contact has generally been virtual which in my view is inadequate. The children are not able to develop or maintain a bond with their parent on a screen - particularly young babies and toddlers. It can be very confusing for the children (Barrister).

Virtual only until very recently. It's horrendous - every week I go to a managers' meeting and argue that the lockdown/COVID regs and government regs don't prevent direct contact but we have only just begun to run it again. So contact virtual unless I can argue child is in family placement and was already moving between the two households before lockdown. I spent money on a laser thermometer as part of risk management but still no contact took place until recently (Social worker).

Virtual, but with a 12 month-old baby this was all but pointless. The baby was removed at four months, COVID lockdown happened at 10 months and no direct contact then for six months. It was completely inhumane (Barrister).

Virtual contact. it was absolutely terrible, M posed no risk to the child and the LA was incredibly slow to even think about facilitating in-person contact, relying on the lack of resources. the judge was sympathetic to the lack of resources issue and told me that she could not make facilities available that simply weren't available. I accept that, but this child was under one year old and had not seen its mother for five months (Barrister).

Some respondents indicated that face-to-face contact was beginning to resume, albeit slowly.

Virtual initially but this has now moved on to in person. This for me was one of the worst effects of the pandemic and impacted on the decision as to whether or not a child should remain with their parent (Judge).

Virtual mostly. There is now a move to direct contact, but with such a load of requirements not to touch the child, hand it toys, wear a face mask etc-it's a pretty grim experience. Little children are scared by people in face masks (Barrister).

Varied - today, the mother has been told she will have to wait a week for a COVID-risk assessment before in person contact can commence. Other cases earlier in lockdown - no face to face contact at all. Its slowly getting a little better but still really troubling that parents are being separated from newborns without face to face contact being set up the next day - imagine leaving a baby in the hospital and not knowing when you will next see them (Solicitor).

One child was four months, being removed and had no face-to-face contact for six months. Video calls were made weekly but child too young to benefit from these- on first few face-to-face contacts the child has been afraid- faced with parents who are strangers and supervising staff wearing masks (Barrister).

A real mixture: some cases have involved face to face contact with the child: almost all of those have enforced social distancing (at least the 'earlier' days) so that the parent could not hold their child and had to look at him/her from 2 metres away. Mostly, in-person contact is still restricted to once per week. Generally speaking, contact arrangements are woeful (Barrister).

Virtual contact initially during initial lockdown. Now some very limited face to face. Wholly inadequate to establish any kind of bonding. Appalling for parents and prospects of success in a case (Solicitor).

Due to COVID-19 some cases were virtual, more recently the LA's are making more effort to enable face to face contact. Contact for young babies has been awful as some have not seen their parents in person for at least three months (Independent expert).

At the start of the lockdown period, contact was only virtual which is largely meaningless for a young child. It also caused the parents particular distress, beyond what these decisions usually entail. Since the restrictions have eased, most local authorities have reinstated direct contact in contact centres, however some still refuse direct contact where parents will not agree not to touch the child (which is impractical and may be emotionally harmful to a younger child). Sometimes, difficulties have been caused by foster carers (whether Reg 24 or regular fosterers) refusing to allow contact because of fears of the impact on COVID. This presents particular difficulties for local authorities who wish to promote contact, but do not want to disrupt the child by moving them in order to facilitate contact (Barrister).

Respondents noted that there were considerable differences in practice between local authorities.

There is one Local Authority who are refusing any direct contact for children under four unless socially distanced and it is having a significant detrimental impact upon the children and parents. For children in family placements this also varies, with some children seeing their parents directly every day supervised by family members to no direct contact at all. This is a significant issue and something I am very concerned about (Cafcass).

This has changed over the course of the last seven months and has varied from different LA. At the start it would be facetime with the baby three to five times per week, exchange of video messaging, reading a story singing etc as the contact

centres shut. Most cases I have with newborn and young babies contact is between three to five times a week direct and supervised now. Every case I have there has is now direct contact (Cafcass).

Differs between local authorities. One LA facilitated in person for babies throughout lockdown. In others, it was video contact at first moving to in-person as restrictions lifted (Cafcass).

Virtual only. Courts appear unwilling to challenge Local authorities when their policy on contact conflicts with the national guidance. Local authorities won't back down. Judicial Review is not easy to access (Barrister).

At the start of the pandemic, most contact was remote, although in at least two cases involving a new born baby, the LA did make arrangements for direct contact. Since July, contact is gradually moving back to being face to face (Judge).

4.10 Delay and time pressures

'The Road Ahead' noted the challenge of the growing backlog of cases and the need to progress cases that had been adjourned, if long delays in decision-making for children were to be avoided.⁸

Responses to the survey indicated that final and contested hearings are now going ahead (similarly The Transparency Project survey of 94 parents noted that there had been a small increase in the number of parents describing final hearings and hearings where evidence was taken, indicating the resumption of courts taking final hearings).

Despite the resumption of final and contested hearings, responses indicated that delays can occur waiting for hybrid or in-person hearings because of the lack of available courtroom space and the lack of appropriate technology. Respondents also referred to delays arising from waiting for a particular type of hearing, alongside delays arising from the failure of parties to comply with directions to file evidence or delays in drafting and circulating orders. Also raised are concerns that hearings feel rushed, and that judges feel under pressure not to adjourn cases.

It seems like everything is allowed to happen so the local authority can breach orders by not disclosing documents or failing to file their evidence in time and they are never challenged. Possibly because there is a different judge at every hearing (Father).

Also I feel due to the current climate there has been some leniency for default on filing evidence, or assessments on time and this is resulting in delays for children (Social worker).

Delays are mainly caused by the local authority who are late to file statements, late to schedule hearings which have been agreed (Father).

It is taking over three weeks to agree the wording of the order and then it takes time for the judge to produce the order (Father).

⁸ Op. cit.

Orders are taking even longer to be received. They go to a central place and not the court you are dealing with (Solicitor).

Hearings are being affected because of the backlog in admin work. orders not sent out in time, emails not dealt with promptly, interpreters not booked, paperwork not updated. this is all because there are insufficient numbers of staff to cope with the backlog and to come to terms with the new way of working (Legal adviser).

Safeguarding checks are taking forever where I am. I am constantly turning up to FHDRAs only to have to adjourn because safeguarding checks have not yet been carried out and we have to come back once they are done. Sometimes you don't come back to court for months due to the pressures on the court listings (Barrister).

A sense of time pressure during hearings can have an impact on the sense of justice.

Whilst as counsel one may have an idea of what an outcome is likely I do not feel that sometimes the parents feel like they have been heard, and in Public Law cases this is such a vital aspect for the parents. Because hearings have become much more time limited it does mean that things the parents may wish to be fully explored are not due to time constraints (Barrister).

I think that some of the cases I have conducted have only just been on the right side of the line in terms of the parties having, and feeling that they have had, a hearing where everyone could understand each other and where the issues were adequately explored. Given the mounting backlog of cases it is a difficult decision to make (and one which has to be made while under pressure during a hearing) whether to proceed or call the hearing off and try again later, in the context of a severe shortage of suitable facilities for attended hearings. I think all of my colleagues are under considerable stress because of these difficulties (Judge).

Judges seem rushed and less inclined to listen to detailed arguments, and details are omitted from orders because those arguments haven't been listened to. This often makes the orders worthless, and requires additional applications to get things reworded, causing unacceptable delays. Not to mention the weeks on end it takes for the court to send the orders out in the first place! (Solicitor).

During a telephone hearing the judge was very curt and was clearly clock watching as a result of the fact that the hearing was taking place by telephone and another matter had been listed immediately afterwards. I am aware that my client did not feel like the hearing was fair or that justice had been achieved as a result. My client did not feel like this would have happened had the hearing taken place in person and that his barrister would have been given more chance to speak and set out his case (Solicitor).

There are also concerns that delays are having an impact on justice, and also creating delays in reaching final decisions for children.

My main concern was delay. Having filled an emergency application In March the first hearing was at the end of May and final hearing was mid-September. The lack of standard negotiations at both Hearings was especially problematic in our case It was also somewhat concerning that no judge or magistrate over saw the case (it was dealt with entirely by a court legal adviser) and no statements /evidence was filed (Mother).

Delays in decision making are straining the system, and months have past which means the parents rightly for them advocate for updated assessment, going back to mother and baby foster care for e.g., also courts not willing to grant SO or SGO [special guardianship order] but instead give the LA a care order and leave to them to decide when to discharge (Social worker).

Fairness also means having access to justice - which is denied when a court simply pulls a case from its diary (as happened to me in June, with the 5 day case being relisted in December) because there was not a court room without proper exploration of the potential for a remote hearing (Barrister).

We have a growing number of children under interim care orders and I am becoming concerned at the potential risks to children arising from delays in making decisions about a permanent placement for them – whether return home or away from home. This is less problematic for children in family placements, but more problematic where choice is return home or go to long term foster care or adoption. As time goes on, parents are understandably seeking further assessments, arguing that their situation has now changed. That then adds to the delay (Senior manager, local authority).

The rights of the parents are being made more important than the rights of the child/ren. Many final hearings are being delayed as parents want to attend the court and in cases where adoption is the likely outcome judges are afraid to be taken to appeal (Social worker).

It took ten months to get the case to court meaning I haven't seen my child for 18 months (Parent).

I have made my application in March 2019 and still no end insight. We had six preliminary hearings and the final hearing postponed three times (Parent).

5 Concerns about the loss of formality/authority of the court

Unlike the rapid consultation undertaken in April 2020, many responses to the follow-up survey raised concerns about the impact that working remotely was having on the 'gravitas' of the court.

Professionals expressed concern that the relative informality of telephone and video hearings meant that lay parties were not taking the court as seriously as they would if the hearing were taking place in person.

Professionals noted differences in lay party behaviour.

There is a problem with the conduct and behaviour of some unrepresented parties at remote hearings. They appear to have less respect for the court process when not physically attending court. They have an increased tendency to argue with each other, talk across each other and show less respect to the court that with an 'in person' hearing. This adversely impacts on the delivery of a fair and just hearing, making it more difficult, stressful and time consuming for the judge to deal with the hearing effectively (Judge).

Remote hearings, especially by telephone, do not work if the parties are in person. They don't listen, talk over each other and the judge, and treat the hearing as an opportunity for an argument (Judge).

Lay parties often don't treat the court process with the usual respect when connecting from home. I have undertaken cases where a lay party is in bed, or in pyjamas or trying to do household tasks while participating (Barrister).

I heard one party plastering in a private law case! (Magistrate)

In private law cases done over the phone the parties are much more likely to behave inappropriately during the hearing. Litigants in person seem to feel that because they are not visible the usual constraints on their behaviour do not apply (Judge).

Parties [are] treating the hearing as just another telephone call or video call as opposed to a hearing. It has no 'gravitas' (Judge).

Parents also expressed concern about professionals appearing overly relaxed in situations where important decisions are being made about their future.

Mine [the judge] didn't have the court bundle and the judge said the local authority hadn't sent her the bundle. They were laughing like the keystone cops or something. You are in there fighting for your kids and they are having a laugh (Father, PFAN).

The social worker was zipping in and out ... and that wouldn't have happened in a court they would have had to be sitting there in silence (Mother, PFAN).

It's easier for court protocol to be followed in person. The judge can control who speaks when, but online people keep butting in and the judge has difficulty in control (Mother, PFAN).

I get interrupted and talked over more than if the hearing was in person (Father, PFAN).

There were concerns that the relative informality of proceedings would mean that parents would not realise the seriousness of the decisions being made.

Court via phone, Zoom, Teams, or even as a Hybrid simply lacks the formality and gravitas of a court hearing. Court proceedings are, and should be, a very serious matter, the formality of the Court is in and of itself a significant factor in helping parents to recognise the seriousness of their situation and can provide the impetus needed to make and achieve change and better outcomes for themselves and their children. Video platforms simply do not carry this sense of importance- indeed most of us have experienced the parents we support fail to recognise the significance of the processes they have been participating in (Your Say).

A DJ [district judge] colleague of mine said parties reached settlement at a financial disputes resolution hearing the other day and agreed an order which he signed off, but the next day an email came in from a litigant in person saying thanks for the meeting but I've decided not to go ahead with the proposals (Judge).

Some parents are not taking remote hearings as seriously so the 'last chance' motivation that people used to get from going to court has gone (Social worker).

There is definitely a loss of gravitas (e.g. social workers and their lawyers all sat together round a table sharing a laptop. does not have in any way the formal feel of the witness box) (Judge).

The respect and authority of the court is being slowly eroded. The quality of evidence mixed. The informality of the home setting undermining the seriousness of the process. Often the hearings seen as 'call' not a hearing – counsel being seen not in court attire, witnesses and parties having mugs of tea when they think they are not on view - getting up and walking about when not speaking - clearly attending to other matters – e.g. emails whilst in the hearing (Judge).

In one hearing the judge worked from home and answered the door to a delivery in the middle of the hearing. On the whole hearings have been much more impersonal (Social worker).

Others noted that the loss of the formal surrounding of the courtroom had had a big impact on the process.

I think the loss of the formal surrounding of a courtroom is massively significant and it has led to a complete breakdown of the way the judge is seen - combined with staff cuts/admin overwhelmed - I feel that I am being directly contacted much more frequently and in a way that means perception of my role seems to have shifted to me being a service provider rather than a judge in a court of law (Judge).

The role of clerk/usher has morphed into digital video assistant who connects a call and nothing more. The importance of their work pre-COVID is now stark – a classic case of not realising the true value of something until you lose it. Their reduced role means we are starting hearings blind to issues – we waste time at the beginning finding out who everybody is, how they are in touch with one another etc and what the hearing is going to be about, so you have already lost a bit of authority before you start because of a visible lack of basic knowledge about what is going on (Judge).

CVP needs a court backdrop with crest for consistency (Legal adviser).

Respondents also highlighted concerns about technological issues and poor organisational systems conveying the appearance of unprofessionalism.

Not all HMCTS staff familiar with the mechanics of the process. It looks unprofessional. As a result of the CVP training being so clunky I have withdrawn from virtual hearings I was very concerned that too much emphasis on the mechanics and not enough on cases. As a winger felt isolated - rubber stamping exercise (Magistrate).

Nothing works consistently. In virtually all cases someone has problems joining the hearing or the legal adviser has not been supplied with current, accurate phone numbers/ email addresses meaning parties cannot be contacted, causing further delay in already packed court lists (Magistrate).

The lack of court IT, IT and admin support, makes the court look unprofessional and is less likely to inspire confidence, and possibly therefore not feel a fair, to the parties. I had to remove a baby over the telephone, and although we were confident of the decision, that just felt wrong (Magistrate).

Alongside technological issues, hearings have been disrupted and delayed by human error. Feedback from parents indicates a need to remain professional even where error occurs.

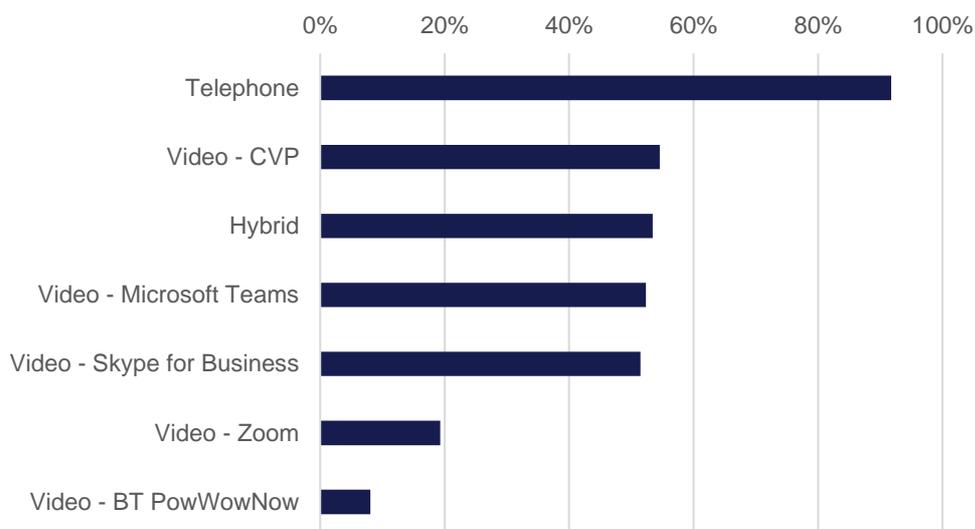
All of the lawyers phoned the wrong number and mistakenly phoned a bank. It sounds absurd but then they all joked about that mistake. And I was thinking this is my life! My children. I don't care about the fact that you called the wrong number instead of the court and now you are wasting 15 minutes of the time that we have (Parent).

6 Technology

6.1 What technology is being used?

The significant majority (77%) of professionals who responded reported having had experience of a mixture of teleconference, videoconference, and hybrid hearings. Telephone hearings continue to be widely used, with 92% of professionals saying they had been involved in telephone hearings. 53% of professionals said they had participated in a hybrid hearing.

Figure 12: What formats were used for the hearing? (Professionals: n=1,131)



Note: Respondents were asked to select all relevant options, so responses do not total 100%.

A majority (67%) of the parents who responded to the survey had experienced phone hearings and slightly more (68%) had taken part in their hearing by phone (joining by phone even when the hearing was undertaken via video conference). Only 9% of parents and relatives had taken part in hybrid hearings.

It is notable that there continues to be considerable variation between regions and courts, as well as between court rooms within courts.

Legal Advisers within the same area use different methods (Magistrate).

Some courts find it hard to manage video hearings (they prefer telephone hearings, as easier to set up). There is also inconsistency regarding which video platform: some judges are fine with Zoom and others not; not everyone is able to use Teams; CVP does not always work very well and clients would rather use Zoom in my experience (Barrister).

Different platforms, CVP, Teams, Skype, Zoom and telephone. Some courts arrange the hearing themselves, others require the LA to set it up and record it. Some courts use all of the platforms, depending which judge is sitting. Some judges are in the courtroom, others at home (Barrister).

Respondents noted common issues with all forms of technology. There were often difficulties joining people to the hearings regardless of the platform being used. Some problems related to the proficiency of the users, but others related to access to data or WiFi, reliability of the broadband connection, and the availability of suitable equipment and software. These issues are explored in more detail in the following sections.

6.2 Which platform?

BT MeetMe is the main telephone platform in use.

Professionals indicated that a wide range of video link platforms are still being used to conduct remote hearings. 55% of respondents reported using CVP, 52% Microsoft Teams, 51% Skype, 19% Zoom and 8% BTPowWowNow.

Feedback indicates that CVP has become more widely implemented and users have become more familiar with it. Microsoft Teams has also been a popular choice for remote hearings. The majority of respondents have used more than one platform. Professionals who work across courts and regions are required to adapt to multiple platforms, often in the same court. Such professionals are well placed to draw comparisons about usability and functionality.

CVP is superb. I quite like the phone system which I believe is BT MeetMe or whatever is the official court one. They are all seamless and there are few issues these days with people dropping off. The judiciary are brilliant at managing all the connections, muting and reconnections. They have followed a steep learning curve with aplomb (Barrister).

Zoom works brilliantly and telephone hearings, when appropriate, are speedy and clear. The CVP programme is alright but isn't yet up to scratch. We need the ability to select which faces we see on our screens so we can actually see them properly not as tiny figures (Barrister).

CVP has gone from fuzzy and barely adequate to quite good. Teams from Good to very good. Zoom from Good to excellent - but it is less favoured for hearings (Barrister).

Of the platforms I have used, Teams is by far the best and I use it for virtually all client conferences not involving court. Unfortunately, there seems to be an issue with judicial laptops using Teams and most courts persist with Skype (Barrister).

Zoom is particularly good with the breakout rooms and connection stability. Teams is a stable and reliable technology and far more stable than Skype for Business which seems temperamental. CVP is coming on in leaps and bounds and in particular for hybrid hearings is an excellent solution. I have undertaken several hearings in excess of 7 days with CVP with success (Barrister).

All video conference technology is woefully inconsistent. Our court at present has CVP licences but not as yet used them (Judge).

While videolink functionality and professional proficiency has improved, the technology presents issues for people with sight, hearing or communication difficulties.

From my perspective, none. Why? all the technology is sound activated. As a sign language interpreter I am making no sound, nor is the deaf person. At least on Zoom I can chose to pin someone. On CVP I can't. The request has to go back via the administrator to someone based in Darlington who is authorised to pin. There are usually two sign language interpreters booked. Throughout the hearing every 20 minutes we have to interrupt and request that the other interpreter be pinned! Very intrusive for the participants! (Sign language interpreter).

Without exception the advocacy team have all experienced difficulties with being able to access Teams , as well as significant challenges with parents being able to join when not physically with the advocate – this is very often in respect of not being able to link at all or the inability to join with both audio and video (Your Say).

Despite judicial guidance around the use of Zoom, the platform continues to be used. Professionals highlight its usability and functionality as superior to CVP.

Zoom. Far and away the best in my opinion in conducting many remote hearings as a deputy judge since May. Easier to set up. Fundamentally I can see all of the parties including lawyers which I can't on CVP and I regard this as the single biggest deterrent to wanting to use it (Judge).

Zoom is still the best platform, especially for lay parties, as it is the easiest to access on a phone. It is not permitted officially, however many hearings where I sit are listed to be heard via Zoom (not by me!). CVP is improving, but still has many glitches (Judge).

Zoom works really well when I have used for meetings and conferences, but I haven't had it used for court. I understand the difficulty is the storing of the recording, but it would be nice if that could be resolved as it is by far the most reliable format and easiest for lay clients to access (Solicitor private).

The family judges of the High Court are happy using zoom which has in my experience worked extremely well. The central family court's system is markedly inferior (Barrister).

The ability to put documents onto the screen in Zoom hearings is particularly helpful (Judge).

Of all the 'video' platforms we have been invited to use with parents, 'Zoom' has proved to be the easiest and most reliable – it is easy to access for parents without having to download any apps or technology – which can prove to be the first real challenge - and its functionality means that participants (at least on a full screen - laptop/computer) can see all participants, which is really important (Your Say).

6.3 Decisions about which technology to use for which hearing

A majority of respondents (65%) indicated that there were clear reasons why different systems were used for hearings, although 35% indicated either that they did not know or that the reasons were unclear.

Respondents generally agreed that procedural hearings such as case management conferences (CMCs), FHDRAs and issues resolution hearings (IRHs) can usually be conducted effectively remotely, and can achieve a level of efficiency above a face-to-face hearing. Hybrid or in-person hearings generally occur when:

- parents are unable to access appropriate technology or require a higher level of support to participate
- the parent requests it
- evidence must be heard in contested interim or final hearings
- the matter is complex
- it is assessed that justice cannot be achieved with a fully remote hearing.

Attendance at court is usually reserved for parents and their legal representatives, especially if parents require an intermediary or interpreter.

Telephone platforms are reportedly better suited for administrative and less complex hearings but the responses indicate that there are many instances where more complex hearings have been conducted via teleconference.

I am concerned about the over-reliance on telephone hearings. These can make clients feel disconnected and I worry particularly about litigants in person. I've undertaken FDRs and Final Hearings by telephone and believe these should either be in person, hybrid or by video. Evidence over the telephone is not appropriate (Barrister).

There are some in person hearings but most remain by telephone. The courts remain reluctant to establish video hearings, I am not sure why. I have only now come across one judge who says the CVP system works in their court (Barrister).

Majority of hearings other than complex final hearings are still happening via phone. Only some are via Teams (Cafcass).

Professionals and parties report that the rationale for how hearings will run is not always clear and can change at late notice.

The type of hearing that takes place differs from court to court even in similar situations/similar hearings (Solicitor).

Some court centres are tending to do directions type hearings via telephone, with final hearings being by video. There are last minute changes to the type of remote hearing and the reasons for the changes aren't clear (Barrister).

Practices on when a hearing will be remote, in person or hybrid vary between court centres and even between judges. The arrangements for the hearing are often left to the last minute ... there are also differences between the platforms usedall of these variances make it difficult to predict and plan for the hearing. Sometimes details are only provided a day or so in advance (Barrister).

Many respondents felt that, in some courts, decisions were more dependent on the availability of technology and court resources.

My sense is that decisions about the type of hearing is very resource led rather than case led. For example only CJs have licences for CVP so DJs are on the phone (Judge).

Some types of video and hybrid hearings require admin staff support which is not available in some courts because of the level of staffing (Judge).

Some rely heavily on telephone hearings and other do not. Some court centres have more hybrid capability than others (Judge).

If the Judge and the advocates have the opportunity of considering the next listing and there is co-operation from the listing office, hearings can meet the specific needs of a case (e.g. hybrid where parent with learning difficulties and needs to be in attendance) but more often cases are listed based on availability of licences for CVP etc. As a DDJ [deputy district judge] it is usual that there are insufficient licences for me to conduct hearings via CVP/ space for a hybrid hearing and almost always hearings before me are conducted by telephone whether this is a suitable medium or not (and very often it isn't e.g. for litigants in person) (Barrister).

The preference and technological capability of the judge were perceived to influence whether a hearing would be held remotely or hybrid as well as the choice of technology.

In terms of trials, it very much depends on the judge and how s/he views it is best to give and receive evidence. The DFJ in each court has a different view as well. This may of course be dependent on factors that vary between courts, such as the resources of the court and local COVID conditions (Barrister).

The high court is more flexible in its approach. Different courts and different judges hold different values as to the ability and success of remote or hybrid hearings. A lot depends on the individual judge (Cafcass).

Some Judges appear to have preferences in how the hearing will be conducted (Cafcass).

It seems to depend on the Judge. Some are willing to try all types of remote hearing. Others will not touch CVP because of the repeated failures and the loss of time which merely compounds their already overburdened diaries (Barrister).

Some judges like telephone call, other judges like Zoom. They vary between courts (telephone only at one) another court likes Zoom but then other courts like MeetMe. One judge the other day had one hearing on phone and the next hearing on MeetMe. Some judges are great with technology, others not so much (Cafcass).

Certain judges are more wedded to the idea of attended hearings where possible and they have very different views - e.g. some judges don't think they need to see a party giving evidence others will consider it very important to have the witness and the questioner the courtroom (Barrister).

Some judges avoid in person hearings - others prefer it - many are shy of video hearings and often we fall back on the phone which is not ideal (Barrister).

6.4 Particular issues for magistrates

Magistrates report that they do not have the same access to technology as judges. This also appeared to be the situation for many district judges. Magistrates generally do not have CVP licences and must rely on teleconferences and, to a lesser extent, other videoconference platforms. Only 24% of magistrates have used CVP compared to 69% of judges. Of the 228

magistrates that responded to this question, 27% had not used videoconferencing for remote hearings at all.

Magistrates, who sit in hearings as groups of three, highlighted that teleconferencing and videoconferencing platforms do not meet their needs.

In face to face courts those whispers, passing of notes, nods of the head all add a layer of confirmation that the direction of travel has the approval, or not, of colleagues, [and] in remote hearings these cues are now (from 'Winging it remotely - Some thoughts for GLFPs Presiding Justices', Presiding judge).

The Magistrates court hearings have all (without exception) been telephone hearings (Barrister).

There is no IT support for hybrid hearings, and problems result particularly with 'feedback' in the court room. The magistrates court rooms are not set up and magistrates are having to bring in their own IT (laptops etc) to make the hearings work. Legal advisers are getting insufficient and inadequate admin support which is impacting the availability of papers, particularly if they have come from LiPs (Magistrate).

Hybrid hearings are an IT challenge because HMCTS are not providing the necessary IT in the magistrates courts, and magistrates have been left to use their own IT to keep the courts going, without any support. LiPs need their own devices, which they frequently don't have, and there is none provided. magistrates have ended up lending their own laptops and iPads to LiPs so they can see/hear the CAF/CASS officer - which is unacceptable (Magistrate).

The hearings work well if the technology works. The issue is what equipment you personally own. As a magistrate we are not paid or receive any financial assistance with equipment so it's hit and miss how good your colleagues equipment is. I receive nothing for sitting at home not even substance payment and yet use £1000s pounds of my own equipment to facilitate and keep courts running. The hearings formats work well once you are used to them (Magistrate).

Since we have no resident Family Legal Adviser in Bath there is no drive to get us back in Court. If this is going to carry on to Christmas and beyond I will have to seriously consider my position on Family Bench – sitting at home on the phone for hours on end is not what I signed up to (Magistrate).

6.5 Equitable access to technology

There are five key considerations when enabling the participation of parents:

- access to hardware (phones, laptops, tablets, etc.)
- connectivity (availability of reliable WiFi or data)
- technological capability and specific needs of the parent
- the cost of data or teleconference
- navigating the software (linking in, navigating teleconference and videoconference functionality, availability of support during the hearing etc.).

Most of the feedback from respondents related to whether or not parties had access to hardware, a reliable Internet connection, or help with navigating the software.

The limitations to the support that can be provided remotely emphasised the need for adequate preparation and support before hearings commence. The availability of support during the hearing is limited by the capabilities of parties and professionals, ability to access others technology or 'see the problem', and the logistics of providing support remotely. Late distribution of links reduces the amount of time lay parties have to familiarise themselves with the platform before hearings commence. Even where provision of support is successful, there is usually a delay to the proceedings.

I've had many hearings where lay parties have simply been unable to navigate the technology and there is little we can do to help them remotely. This is compounded where the links are being sent out only shortly before the hearing starts. One example is where an elderly client had received the link to join the hearing and we later discovered that it had gone into a junk folder; unfortunately the Judge could not wait for us to resolve the issue (Solicitor private).

One of my clients, who cannot read particularly well, had a lot of trouble making a Teams link work. It took me several minutes to explain it to her and finally she had to copy the link and open it in a browser as it wouldn't 'click' for her (Barrister).

6.5.1 Access to hardware

The significant majority of professionals access remote and hybrid hearings via telephone link or a range of video conferencing platforms, whereas parents predominantly participate via phone (64%), even where other parties have joined via video link. Accessing hearings via telephone, where others have joined via video link, means parents may miss out on important visual information or participate less fully than other participants in hearings that may make significant decisions about their lives.

I've had 4 hearings remotely since lockdown started in March 2020 some by telephone and some by video. There was one where I was on telephone due to my poor Wi-Fi connection and everyone else was on video (Parent).

Parents tend to use their phone which I think is unfair if we can all see each other (Social worker).

In some cases laptops have been provided but generally no technology is provided so even if lawyers are on video parents are on the phone (Solicitor private).

Local authorities and legal representatives have taken the lead role in ensuring parents have access to hardware. Local authorities, and in some instances solicitors, provide the hardware (laptops, smartphones, screens, etc.).

One client was given a tablet by the social worker but most parents in care proceedings do not have the proper technology and do not get provided with it - they are expected to manage on their phones (Barrister).

Some of our local authorities are providing devices. At court we have some pool laptops that we make available when we can, but these are in high demand (Judge).

The local authority (and their solicitors) ensure parents have access to the appropriate technology to participate in advance of a hearing. In some cases the LA have been providing to parents a lap top to use or have encouraged the lay person to

attend the LA offices to share laptops to participate at hearings (Local authority solicitor).

I do not think they are supported enough. A fairly significant number of parents in care proceedings are attending via a smart phone and borrowing someone else's laptop - I would say about 30%. We have been able to make arrangements in some cases for a room in chambers or at the local authority offices (Barrister).

6.5.2 Connectivity and navigating software

Support for parents to navigate videoconferencing software was most likely to be offered by legal representatives or HMCTS staff.

When acting for parents a lot of time is spent ensuring they can manage the technology (Barrister).

Support is provided only by legal adviser or judge conducting the hearing, the ushers who are proactive in areas who assist in setting up are brilliant in supporting LIP's who struggle (Legal adviser).

There are clear examples of professionals working together to find solutions. In some instances barrister chambers, solicitors' offices, and local authorities have provided use of chambers and office space ('clean rooms') for lay parties to participate, provide privacy, and support them to use the technology. These solutions usually ensure parties have access to a reliable Internet connection. In hybrid hearings, parents typically attend the court and are supported by court staff or their legal representatives to access technology.

Parents are being sent links in advance and details of how to log in. If they struggle offices are being provided for them to join (Social worker).

The court is being helpful providing support to lay parties to connect. I am aware of a local authority which has provided access and technological support for lay parties to access hearings if they don't have access to a device and cannot go to their solicitor's office (Barrister).

If appropriate the lay party has been allowed into court to participate in the hearing. Social services have provided access to a room with computer equipment to access the hearing (Barrister).

In some cases, usually quality solicitors or barristers' chambers have made available good equipment, stable broadband and a private room for clients. This has helped. With learning disabled parties, I have even had remote control of their device arranged so their lawyer could manage the technology for them to join remotely. In some cases, the local authority has made available a room and a device for parties to join the hearing (Judge).

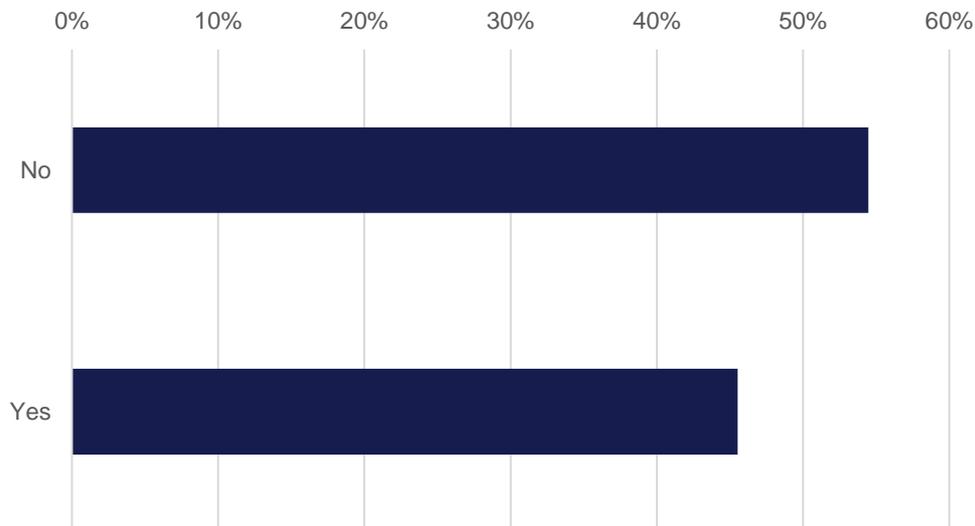
6.5.3 Who is responsible?

Feedback indicates that there is some debate about who is responsible for enabling participation for lay parties.

Surprisingly, some professionals did not know if lay parties were supported to access technology, or conveyed only a vague understanding of what arrangements might be in

place. This is in some part influenced by remote working arrangements where a full understanding of others' circumstances may not be apparent. However, knowing whether support has been provided to overcome issues of access, and that participation has been optimised, is an important component to fairness in decision-making.

Figure 13: Are lay parties being provided with support to access technology? (n=1,131)



Some local authorities are more willing than others to facilitate parental participation by provision of laptops etc. A mobile phone may be adequate for a CMH, but not for a trial. And paper bundles need to be provided for lay participants. Some LAs have offered only to provide facilities at LA offices, which parents may be very reluctant to attend. Provision of necessary communication devices for participation should fall within routine legal aid funding. There seem to be a range of business happy to rent out laptops for short periods (Barrister).

Support has been provided but its inconsistent. I have struggled to get senior manager permission for us to be able to provide support. There's no clear message from legal system about whose role it is so local authority get blamed for not doing it when parents legal reps are refusing to open office. That has got better as some solicitors now back in office. At one point I had to send social workers out to a house three times in one hearing because we're not allowed to use the office, not allowed to provide parents with laptops, and not allowed to spend long periods sat in parent's house (Social worker).

There are examples of good will arrangements being established to support parents' access. Some legal representatives have absorbed costs to ensure clients can access technology and fully participate.

Support comes from their solicitors. The difficulty that continually arises is that HMCTS are not funding access to technology. Therefore solicitors are out of pocket when providing devices for clients to use during hearings. It would be helpful to have clear guidance from HMCTS who is to fund the provision of devices for lay parties to participate in hearings in particular to access the bundle or to connect remotely (Barrister).

In some parts of the country, for e.g., Lincolnshire, the local authority has set up local 'pods' where a lay party and advocate can attend closer to where the client lives and a screen/tablet is provided plus a bundle to be booked in advance. I am aware of at least two barristers Chambers who provide this service (even when not instructed in case). Many barristers Chambers, including my own, have this service for clients who we represent. However, very few solicitors' offices seem to be open and offering this facility to clients, I suspect for financial reasons as it is expensive with deep cleaning etc. No additional payment is being made to us for providing the service (Barrister).

Those parents in FDAC appear to have been given help with technology by the FDAC team, but not by the Court. LAs are sometimes assisting parents in care cases. I am not aware of support provided by HMCTS (Judge).

Some legal representatives were sceptical of the support being provided by local authorities to lay parents to access technology, although this appears to vary across courts and regions.

The support that is provided is usually by their Counsel - I think there is a lack of support provided by the Local Authorities, who do not seem to be aware that many of the clients in public law proceedings do not have the access to the necessary devices, nor at times the ability to be able to attend hearings without any distractions. I have found that I have had to try and get them a usable or access to an appropriate device and also talk through with them how the hearing will be managed and what their involvement will be (Barrister).

LAs are sometimes providing a tablet or a phone, but it takes a lot of pushing to get them to do so. They are reluctant to provide devices as they may not get them back or they will be damaged after the hearing. It has been a major bar to access to justice. A tablet can cost as little as £49.99 and is not a huge expense for the LA in order for parents to be able to engage properly. Other issues are parents who have no IT skills and no email address, getting paperwork to them and statements approved has been challenging (Solicitor).

6.6 e-bundles and documentation

The sharing of documentation via e-bundles continues to be problematic. Legal representatives and parents reported difficulties both with receiving documents and with viewing them.

E-bundles are a big sticking point. Well over 90% are non-compliant with the remote access guidance, in particular that the bundles (1) do not come as a single PDF, (2) the bundle is not text searchable, (3) it has not been bookmarked and (4) pagination has not been done electronically. Whilst I can remedy these issues on my end, it takes me at least an hour to do so. The parties often do not have access to the same technology to allow them to remedy these issues. The clients are then left with a 350 page bundle which is incredibly difficult to use. No consideration appears to have been given to the need to supply some clients with paper bundles (for example if they are not technologically literate, have only a mobile phone and nothing on which to open an e-bundle or are unable to access an e-bundle) (Barrister).

It is unfortunate that some local authorities are lightyears behind others in technology. LAs in the north of England are fully signed up to technology like Caselines, making electronic delivery and management of bundles very easy. Then there are LAs on the Western Circuit who cannot even provide proper ebundles in

pdf format with electronic pagination. I would have thought that economies of scale would have enabled the MoJ to bulk buy Caselines for every LA in the country for a far cheaper cost than each LA having to make their own arrangements (Barrister).

The PDF programme that we have been provided is a poor substitute for those used by the profession. We need to have a better means of accessing electronic bundles (Judge).

In some instances the bundles had not been provided.

Police witnesses had no access to bundles or other information they needed for the case and this caused long delays in their evidence – ‘It took up a whole day’ (Mother, PFAN).

The judges never seem to be given the bundles even though the last two cases I have had they have been emailed with parties' contact details so must have been received. We don't know who judge is until they actually ring us so cannot send bundle. Judges are just making decisions with none of paperwork in front of them (Legal executive).

The late receipt of case papers has been an issue in the family court for many years but especially at the moment. Magistrates are unhappy with poor management of bundles. Essential papers are often missing and need hunting down. This can sometimes be due to statements and proposals not being submitted by parties until the last minute (Avon and Somerset Family Panel magistrates).

The Transparency Project reported that problems accessing bundles and documents had increased for parents since the April 2020 survey.

Where parents lack access to suitable technology, they lack access to the e-bundle. Parents are primarily participating in hearings via telephone and may not have access to laptops to view documents simultaneously.

A really worrying example was a mother in care proceedings crying over the phone as she failed to manage to access the court bundle in a hearing to determine interim removal of her child (Barrister).

Parties very often do not have bundles and if they do, are accessing them on the same devices that they are using to facilitate the Court hearing (Legal adviser).

Access to Court Bundles are an issue for parents if they are litigants in person and they do not have a laptop as reading from a phone is not acceptable or fair. On these occasions the court needs to be creative about getting a laptop to access the information (Cafcass).

Some have had positive experiences with e-bundles, which has improved access and organisation, and are reported to be an improvement on paper bundles.

The e-bundle ensures that everyone has the same access to documents - for decades paper bundles have been notorious for being incomplete and disorganised (Barrister).

Respondents also indicated problems with communication with the court and with submitting documents.

In one of my areas all documents come in and are fielded automatically and accessible by a legal adviser or judge. In another of my areas parties are emailing in documents which are then in a queue for a week or two, then printed off and put in a shelf awaiting to be tied up with a file. never get there before the hearing (Legal adviser).

We, as counsel, don't have access to all of the judicial email addresses. We have been told that we must email our position statements etc directly to the Judge hearing the matter but lists are often posted late into the day and we don't have a directory for judicial email addresses so may not know the address. Sending these documents to central email addresses for onward transmission to the judge is not working and often doesn't make it in time. It means a lot of time is wasted unnecessarily (Barrister).

There is a real difficulty with judges just not receiving case outlines / position statements due to staff email overload - I see this both as a DDJ and as an advocate - unless you can send something direct it almost never arrives.... it is really not helping with the effectiveness / smooth running of hearings and means lots of duplicated work (Barrister).

[We need] a mailbox for urgent matters to be addressed in private law from professionals. Currently the court office is only taking telephone calls between 10am - 2pm and if there's an urgent matter to alert the judge to emails marked urgent aren't getting picked up. Sometimes for 3 weeks. A 16a Risk Assessment urging a more urgent hearing wasn't passed to the judge until the morning of a hearing. Very concerning when the LA are refusing to assess a case (Cafcass).

7 The administration of hearings

7.1 Wide variations in practice

Respondents reported wide variations in terms of how hearings were being organised.

There is no consistency as to who arranges the calls and when, nor when remote hearings are going to be by telephone or video link and no consistency as to when, if at all, hearings will take place with parties and lawyers present (Solicitor).

One centre is running the list much like 'in person' with parties waiting for some length of time on a conference for the Judge to join, the other is running extremely efficiently with timeslots (LA solicitor).

I sit in one large court and one small court. The smaller court is very badly organised and has to be prompted in relation to each case to make arrangements. There is no awareness of what constitutes a fair remote hearing shown by the office staff. The larger court has systems in place which result in daily lists being presented with all necessary information, video hearings set up and supported on the basis of directions given and electronic bundles supplied. This is much more effective. I suspect that the difference is due to leadership (Judge).

Some hearings are entirely organised and run by the court clerk, others by the judges themselves. Every court has a different 'deadline' and system for sending in details for the remote hearing. Some send us a link to the hearing just minutes before, some days before. One court insists on sending the same email chain with the hearing link to ALL advocates and parties, regardless of whether there are litigants one person that will now have my email address, or parties with domestic violence allegations where email addresses should have been kept confidential (Barrister).

7.2 The role of legal advisers and clerks

There were reports of court staff doing their best in difficult circumstances.

The Court Clerks and staff are managing well generally and it appears that there are background support staff that come in to help out. It is getting better and better as we move forward (Barrister).

HMCTS staff have been really helpful supporting hearings and keep smiling even when the tech lets everyone down (Local authority solicitor).

Our wonderful legal advisers seem to be doing most of the work, although I have heard that additional admin staff are being recruited (Magistrate).

Legal Advisers have been brilliant! (Magistrate).

I have had three extremely good hearings where the legal adviser was superb in leading the hearing and coordinating everyone's involvement (Magistrate).

Trained/technologically aware and accomplished clerks can make the difference between hearings with initial but resolved issues and hearings ineffective due to technology issues (Magistrate).

In order to facilitate remote hearings, legal advisers are being diverted away from their core responsibilities. Legal advisers have variable technological capability and many have not had access to training or support. Legal advisers are widely praised for their perseverance and flexibility in their role, however, there are indications that the additional burden is taking a toll.

Legal advisers are having to perform additional roles for remote hearings. We host or manage the conference (whether telephone or CVP) in addition to our standard responsibilities including clerking the hearing; drafting Justices' Orders and Reasons; providing legal advice to Justices and assistance to Litigants in person (Legal adviser).

*In the family hearings done by magistrates *all* the work falls on the legal adviser - chasing the files and getting them to us, contacting the parties and connecting them. Getting a complete set of papers has always been a problem in our courts. A benefit to the magistrates of remote working is that the papers (such as they are - they are often incomplete) are emailed to us the evening before. But legal advisers are doing that in the evenings, often as late as 9pm (Magistrate).*

The legal adviser is responsible for so much more now, including cleaning the courtroom. There is no usher to support the court. Before lockdown there were two or three ushers on the floor for six courts (Legal adviser).

Legal advisers have managed the technology for all the remote hearings I have sat on. This is a significant (and in my view unreasonable) burden. ...The legal adviser's primary role is to advise the bench and help manage the proceedings. This is already a demanding remit. Adding the management of the communications technology is a step too far: it slows down proceedings and can distract the legal adviser. Remote hearings are already more demanding and tiring than in person hearings, and should be properly supported by communications technicians to ensure that the legal adviser, the bench and the parties can focus on the substance of the hearing (Magistrate).

7.3 Inefficiency of current arrangements

Some respondents pointed out that the shortage of administrative support is leading to inefficiencies and confusion about who is responsible for setting up hearings.

Some arrange the remote facility themselves, others rely on the solicitors/parties to organise this. It is all very last minute from the court. Often judges have not read the papers and decide hearings cannot go ahead with huge emotional and cost implications (Solicitor).

It took over 11 minutes to get everyone into a telephone hearing during the last week. That is not an effective use of judicial time! (Judge).

So much time is wasted by legal Advisers and judges searching files for phone numbers and or emails and setting up hearings (Legal adviser).

Court did not telephone us for one hearing. Couldn't call the court- were held in a queue, 20th, waited 90 minutes and got cut off. No explanation provided despite filing notice of acting and a bundle! (Solicitor).

[It would help if] court offices [were] answering the phones/responding to emails/ensuring paperwork sent to judge (Legal executive).

Others pointed out the inefficiency of judges (especially district judges) undertaking more administrative work.

We are really struggling with a shortage of HMCTS staff to support CVP hearings as more hearings need to be supported than previously (in the past DJs did not have a clerk for private law direction and this is needed much more now) (Judge)

BT MeetME is prone to callers dropping out or proving unable to join - with one usher for five DJs in our court, most of the judges have to dial up themselves. In a big case, this can involve pressing well over 100 buttons on the phone to set up the call. The system is fragile, so that if one tries to enter a further number before the recorded message about the previous number has fully played, the whole call is lost and has to be started again (with another 100+ buttons to press...) (Judge).

I have had to set up all of the hearings myself due to shortage of staff- this is a difficult and time consuming process (Judge).

It is getting better but for probably the period March - July District Judges at my court were having to make all arrangements themselves. We are still having to triage all family cases ahead of time to establish the type of hearing suitable, unlike civil cases where the staff will undertake this role with guidance from DCJ. There is now some support from staff to gather information to assist once that issue has been determined and make it available to the judge on the day, and staff gradually being trained to set up the hearings (Judge).

Others noted the additional administrative demands of hearings involving litigants in person, already evident pre-pandemic, but compounded by remote hearings.

Quite simply, far too many court users are acting in person when dealing with one of the most important aspects of their lives; that is, issues concerning their children. Litigants in person do not follow rules, fail to understand procedure, often de-rail final hearings at the 11th hour (usually inadvertently) and, due to the lack of legal advice, fail to manage their expectations as to what the court can do for them, the length of time and sheer number of hearings required to achieve what they want, the timeframe for re-establishing contact and the delays in re-listing matters. Litigants in Person are a massive drain on the court's already limited resources, through no fault of their own. A corollary of the above is that a massive increase in the number of family judges is required, together with a commensurate increase in the number of family sitting days, which, in turn, requires more courts to be available. The family court system needs much more money and resources; it currently survives on the goodwill of judges, court staff and professionals (Cafcass, the Bar and solicitors) to get things done; that goodwill will eventually evaporate (Judge).

8 Suggestions and examples of good practice

Many of the challenges highlighted in previous chapters indicate the kind of changes that are needed to ensure that remote and hybrid hearings work well and are fair and just. We do not revisit all these themes here but note, for example, the need for:

- technological improvements (such as access to big screens and headphones) to enable hybrid hearings to work well
- support in person (such as a legal representative, interpreter, intermediary or advocate) for all vulnerable parties to be able to fully participate in hearings
- additional support to enable litigants in person to participate in hearings effectively
- national guidelines regarding the safety of face-to-face contact for parents who have infants removed due to care proceedings
- measures to improve the 'gravitas' of hearings—such as having a standard court crest video background and better court administration
- continued work to improve technology across the family court estate
- better IT support for district judges and magistrates
- clarity about who is responsible for supporting parties to have access hardware and have good connectivity, and to be able to navigate software to participate in hearings
- more administrative staff to ensure the smooth and efficient running of hearings.

In addition, many respondents gave examples of what did work well and made recommendations for the future. While some of the problems identified will require additional resources if they are to be addressed, much of the good practice described would not be particularly costly to implement.

If everybody stuck to their roles and responsibilities, and we understood what each other did, and didn't overlap, and if cases were prepared properly, I do think things would be much more efficient...I think a high percentage of cases are ill prepared (Local authority solicitor).

Ironically, the court service doesn't actually need cutting edge technology. Cameras, screens and microphones are, in essence, established technology. I appreciate that the task is slightly more complex than that, but it focuses one's mind to remember that what is required is not actually the height of modern technology (Barrister).

8.1 More face-to-face or hybrid hearings

Many respondents highlighted the need to increase the number of face-to-face hearings.

Primarily, the physical court estate needs to be opening up more. I don't accept that more courtrooms couldn't be opened up safely. It is imperative to access to justice.

Giving evidence from home was hard due to technical issues. Things were easier when I went to court to give evidence there and the parties were in other venues (Barrister).

We need to get back to Court as soon as possible using other buildings as 'Nightingale Courts' if Courts are inadequate (Magistrate).

From the point of view of a Magistrate it is worrying how many colleagues are feeling dispirited, low and considering their options. If it were possible to bring the Bench together I think it would make a real difference to morale (Magistrate).

Some respondents focused on the need to ensure some face-to-face contact for parties, either in or outside the courtroom. They emphasised that, where vulnerable lay parties have representation and/or an advocate, intermediary or supporter, then every effort should be made to ensure that they are with those people while the hearing is taking place and in whatever form the hearing is taking place.

Our local authority has provided rooms to be used as witness suites and solicitors' firms and local sets of chambers have also successfully been providing this. However, in my view it should be available not randomly but in every case - the Court service should be providing a witness suite, whereby (subject to COVID restrictions) a person attending a remote hearing can be assured of:

- (i) working equipment to connect to a hearing, see other participants and have access to a bundle without stress;*
- (ii) the ability to be accompanied in the room by their lawyer, intermediary and/or a person specifically there to give them support;*
- (iii) the ability to monitor participation in the sense of – nobody there who shouldn't be, no devices switched on that shouldn't be, flags raised to the Court if feeling physically or emotionally not safe to continue;*
- (iv) access to holy books, witness cards etc;*
- (v) the ability to create an atmosphere that is emotionally containing i.e. comfortable and not like a police interview suite, but has some formality – e.g. when they see themselves on screen there is a Court crest or HMCTS logo behind them and they are on a comfortable chair that they can sit up straight and be seen;*
- (vi) the ability to have a conference pre-, post- and during hearings (Judge).*

Other respondents suggested similar ideas—such a room within a local authority, Cafcass property, solicitors' or barristers' buildings where a CVP link and technical support could be made available for parents to use.

[Make] remotely accessed venues in solicitors offices and county council offices more suitable for lay parties, interpreters and intermediaries to sit closer together and Perspex screen facilities available in courtrooms (Judge).

Open hubs when ready and safe; [with] parties having access to better hardware and internet at their legal reps' offices (Magistrate).

Parents should be given the option of going to a law office to participate, and have legal help (Magistrate).

Provision of fully equipped 'clean rooms' or pods which lay parties could use to participate in remote hearings (Third sector organisation).

Perhaps secure desktops in small private cubicles in corridors in the court building or even in shopping centres/ malls where lay clients can go to sit in a quiet place to join the hearings via video link if they do not have the technology at home to join a hearing via video (Barrister).

Alternatively, respondents suggested that there were other ways that lay parties could be supported to access proceedings remotely.

HMCTS to fund devices for lay parties to be used to enable access to the hearing both for remote connections and also accessing the bundle (Barrister).

[In relation to infant removals] With the major maternity units, the relevant local authorities should provide (laptop or computer) with good WiFi in a suitable private room (Judge).

8.2 Improving the way hearings are run

When asked about what was working well, or suggestions for good practice, many respondents identified ways in which remote/hybrid hearings could be better run.

Some of these suggestions related to specific challenges of conducting a hearing that was fully or partially remote. But some relate to good practice regardless of whether the hearing is held remotely.

Before the hearing:

- ensure all parties are given details about the hearing and the technology being used well in advance
- ensure hearings are listed with sufficient notice to allow parties to have an advocates' meeting before the hearing
- avoid late changes of date that will affect advocates'/intermediaries' ability to attend
- inform parties about the ground rules for attending a hearing (such as not recording and being alone)
- try out the technology first and check that all involved can hear/see well and test the mics
- ensure that there is a navigable PDF bundle for all participants
- ensure lay parties can communicate with their solicitor, advocate or intermediary during the hearing
- set up means for professionals (the bench) to communicate with each other during the hearing.

At the start of the hearing:

- start hearings at the appointed time
- introduce all those on the call
- start with a clear explanation about how the hearing will run so parties can engage effectively and can be heard
- explain that it is an official court hearing and normal courtesies and protocols apply
- check there are means for a solicitor and client to communicate during the hearing
- make it clear that all parties (especially those unrepresented) will be heard, and provide reassurances that views will be sought frequently throughout, and that there is consequently no need to worry or interrupt.

During the hearing:

- make sure everyone has been afforded the opportunity to speak
- on telephone hearings make sure speakers identify themselves
- on video hearings, make sure parties can be seen at all times
- take regular breaks
- allow time for lay parties to communicate with their representative and/or intermediary or advocate
- mute those not speaking
- check understanding of terms (e.g. s7, Welfare check list) with litigants in person
- ensure that the outcome has been understood by the parties.

Although these suggestions appear obvious, both professionals and parents raised concerns about the way that parties were currently experiencing remote and hybrid hearings, suggesting that such practice was not always evident.

The judge should explain how the phone process works. No-one explained to us how we could metaphorically raise our hand in proceedings. To a layman, a Judge is a scary person and I feared interrupting her. I fear for anyone on the autistic spectrum in this process and believe that their needs should be taken account of if they are not already (Parent).

A concerning proportion of litigants, even those who were represented reported not having access to the papers during a hearing, including final hearings (The Transparency Project).

When the video link is sent to parties, they should be asked to confirm receipt so that the court knows it has been received, or can resend if no response received (Magistrate).

If I could have talked to the judge, I felt ignored throughout (Parent).

[I would have liked] more guidance when court papers were sent (Parent).

[It would have helped if the] Judge had listed what was happening and going to happen (Parent).

Information is not in user friendly format (Legal adviser).

It was also clear from the responses that some courts have developed good practices.

We provide detailed orders which set out exactly what they need to do – e.g.; how to download app in advance, make sure they can charge their device during the hearing as drains power; the email address of the court to provide their own email address and to correspond with the court; how they will access the hearing via an email sent to them by the court; when that email will be sent etc (Legal adviser).

We put in our instructions for connecting to remote hearing that go out with the link that you need to enter in your name and your role in the case (J Smith, counsel for mother) so everybody knows who you are (Judge).

Court clerks do run CVP test hearing for parties and witnesses prior to hearings to try and iron out any connection/hardware issues (Barrister).

We have continually updated our working guidelines and offered a number of 'bite sized' video-based training sessions to develop our skills and confidence managing remote hearings. As we have become more experienced and confident we have been able to reintroduce appraisals, mentored sittings (for recently trained justices) and supported sittings (to train new presiding justices) (GLFP).

I check at the beginning of the hearing as to how [communication between lay party and their legal representatives] will be managed during the hearing and for contested cases with evidence ask that the lay parties and their legal representatives are at the same venue (which won't necessarily be the court) (Judge).

As a winger, I set up an email link with the Chair. This enables us to communicate while still on telephone & can help speed up decision making (Magistrate).

8.3 Other ideas for improving the administration of hearings

Respondents also made suggestions about how preparation for and smooth running of hearings could be made more efficient.

[Have] compulsory bundles even if only consisting of a case summary and position statement (Judge).

[We need a] centralised directory of all judicial email addresses or a specific email address to send documents for remote hearings and which is constantly checked and where documents are sent to the judge immediately (Barrister).

That parties are called or sent text reminders before hearings so they attend (Cafcass).

That there is guidance is issued to parties who are litigants in person before the FHDRA so they understand the limitations of the process and what can be achieved. A joint Cafcass/ HMCTS team could draft such a paper (Cafcass).

A legal adviser or gatekeeping judge to triage a case at application with a 10 minute phone call to establish the areas of conflict and set the parties on a course for self-resolution (or third-party supported) ahead of the FHDRA (Third sector organisation).

A family support officer post to be created whereby a staff member of the family court helps both parties to structure their time in front of the bench to be more efficient. This could be especially useful with litigants in person (Third sector organisation).

A virtual usher who can speak to parties in the virtual lobby before they join the remote hearing might reassure some litigants in person who are unsure what to expect (Legal adviser).

We believe that it should be an expectation for extracts from the bundle to be read aloud during remote and hybrid hearing – especially but not exclusively when the parent is giving their evidence. ...We would respectfully suggest that reading aloud the relevant passage/extract the parent is given the fairest possible chance of responding (Your Say).

8.4 Technological innovations

In addition for the need for continued improvement in access to (and the functionality of) technology across the family court estate, some respondents recommended further changes.

Phone hearings could be by a free-to-call service which people dial in to, rather than the judge or clerk having to call each person in turn (Barrister).

Helping justices set up a second screen for papers with HDMI leads (most could then use a TV monitor) (Magistrate).

Financial resource to ensure technology can support video hearings in all cases (the CVP does provide for connection by telephone so there really is no need for BT MeetMe anymore) and that hybrid hearings take place with proper link to large screens, webcams, microphones etc. in all courtrooms (Judge).

A break-out room in the virtual hearing room would be very useful, but I'm not aware of this on CVP or BT MeetMe - the platforms I use most often (Judge).

A court waiting room (Solicitor).

Separate platforms for intermediaries, interpreters and solicitors to be able to interact with their clients (Judge).

A parallel video retiring room to enable private discussions between justices without asking parties to leave the virtual court, email and WhatsApp groups (GLFP).

8.5 The need for more administrative staff

Many respondents pointed to the need for more administrative staff.

Although 71% of respondents reported that there had been sufficient HMCTS staff to support hearings, a significant number of respondents noted that there were insufficient staff to support the administration process:

[We need] more trained HMCTS support staff in court (Judge).

[We need] more staff to assist in placing the calls and dealing with the admin that remote Hearings generates (Judge).

The loss of DJ usher/Court clerk role is huge - now all their job seems to be is to make sure everyone connected and let me in to the call (Judge).

[We need] more HMCTS staff. Remote hearings require twice the amount of staffing work than attended. Documents that would be handed to ushers are now emailed to the central inboxes which are over 800 hours behind in processing correspondence. In addition, [we need] more judges to hear routine private law matters. Capacity is down from five cases a day to four cases in many cases and three a day in some. That creates a necessary increase in the number of judges required (Judge).

[We need] more HMCTS support for Judges to ensure that they are not required to act as administrative assistants! In order to make our remote hearings effective at the start of the pandemic, we took the decision for the Judge to send out the invite to the

Teams meeting. This means that at least 30 minutes out of every working day is taken up with this take. Whilst it has meant that we have been effective in having Teams hearings on most matters, which are very productive, it is an enormous burden for the judiciary, especially in FDAC (Judge).

Hybrid hearing require HMCTS support simply not provided in my 'small' court (which in fact sits four district judges plus deputies, and which deals with some of the most deprived people in England) (Judge).

8.6 Suggestions for future guidance

Although most of the suggestions provided by respondents would not require changes in guidance, some respondents noted the need for clarifying guidance. In particular, one respondent recommended reviewing the Family Procedure Rules to set out:

- *who is responsible for arranging and recording the hearing to the court*
- *the steps parties should take in making representations about the format of the hearing. This could include an amendment to application forms and respondents' notices*
- *timescales for the arrangements to be made by the court and communicated to the parties*
- *mandate that consideration is given, when a party is a 'vulnerable person' within the meaning of FPR 3A, to the hearing being in person and specific reasons being given to justify why it is suitable for remote hearing.*

In addition a new procedure rule could be supplemented by a practice direction which consolidates the guidance which has been given by the senior judiciary of the non-exhaustive list of matters which are to be taken into account when deciding whether a hearing should be remote or not (Barrister).

Annex A: Survey questions

All respondents

- What is your role? (n=1,306)⁹
- In which area have you attended or presided over hearings? (n=1,300)

Professionals

- What is the picture on hearings now in your area, or in the courts you have attended? (n=1,173)
- Are there clear reasons why different hearings are conducted using different methods (remote/hybrid/in person)? (n=1,173)
- If you have experience of a number of different courts, are there differences between them in relation to the management of remote hearings? (n=1,173)
- What type of case/cases have you been involved in? (n=1,173)
- Have you heard/attended a range of cases (case management hearing, first hearing dispute resolution appointment, interim, contested, final)? (n=1,173)
- Were all the parties legally represented? (n=1,173)
- If no, who was unrepresented? (n=1,173)
- In roughly how many cases have parties been unrepresented? (n=1,173)
- Are lay parties able to communicate with their legal representatives before, during and after the hearing? (n=1,173)
- Is support available for litigants in person? (n=1,173)
- Were interpreters used? (n=1,173)
- Were intermediaries used? (n=1,173)
- Were there sufficient HMCTS staff to support the hearing (e.g. CVP hosts or court clerks)? (n=1,173)
- What formats were used for the hearing? (n=1,131)
- Are lay parties being provided with support to access technology? (n=1,131)
- Have you been involved in a case where a newborn, infant or child under four years old has been removed from their parent? (n=1,116)
- Are things working more smoothly? (n=1,046)
- The President of the Family Division has emphasised the importance of remote/hybrid hearings being fair and just. Are you satisfied that fairness and justice has been achieved in the cases you have been involved in?
- How do you identify your ethnicity? (n=1,046)
- Did any of the following protected characteristics affect your experience of the hearing? (n=1,042)

⁹ n indicates the number of people that responded to the question. An analysis of the aggregated responses to these questions is available from: www.nuffieldfjo.org.uk/resource/remote-hearings-september-2020

Parents and other relatives

- Are you a mother, father or other family relative? (n=132)
- Did you have legal representation (i.e. a solicitor and/or barrister presenting your case on your behalf) at your hearing? (n=132)
- How did your hearing take place? (n=132)
- How did you actually take part? (n=132)
- Did you have any help to take part (i.e. given or lent a phone/laptop/tablet)? Or were you provided with a room to take part in the hearing? (n=131)
- Were decisions made at the hearing, about where your child should live, or your contact with your child? (n=132)
- Was your baby removed from your care? (n=132)
- If your baby was removed from your care, were you able to see them face-to-face? (n=24)
- How did you feel your case was dealt with? (n=132)
- Did you understand what happened at the hearing? (n=132)
- Did you have any worries or concerns about the way the case was dealt with? (n=130)
- How do you identify your ethnicity? (n=132)
- Did any of the following protected characteristics affect your experience of the hearing? (n=1,042)