

COVID-19 | July 2021

# Remote hearings in the family court post pandemic

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Report

**In June 2021, in anticipation of the easing of social distancing restrictions introduced during the COVID-19 pandemic, the President of the Family Division asked the Nuffield Family Justice Observatory to undertake a rapid consultation to inform the post-pandemic recovery plans of the family court and the Court of Protection. This report sets out the findings of the consultation.**

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[www.nuffieldfjo.org.uk](http://www.nuffieldfjo.org.uk)

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# Executive summary

Over 3,200 professionals and parents and other family members from across England and Wales responded to the consultation (conducted between 10 and 27 June 2021) about which aspects of remote hearings could continue as the family court enters its 'recovery' phase following the COVID-19 pandemic.

There was a good spread of responses from across England and Wales, from different professional groups and parents 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. The themes arising from these responses are very similar to those identified in the two previous consultations held in April and September 2020.<sup>1</sup>

## Terminology

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 respondents working in the family justice system, or on family justice issues: judges, barristers, solicitors, local authority lawyers, legal advisers, social workers, Children and Family Court Advisory and Support Service (Cafcass and Cafcass Cymryu) advisers and guardians, third sector organisations, independent domestic violence advisers (IDVA), intermediaries, independent experts, and advocates.

We refer to 'parents' in the report to cover parents, other family members and lay parties as the majority of the 183 responses were from parents (173).

## Key findings

### Could remote hearings continue?

- The majority of professional respondents saw a continuing role for certain types of remote hearing, although many felt that the decision should be made on a case-by-case basis. The main considerations respondents identified as relevant to such a decision were the vulnerability of lay parties and their wishes and views, the complexity of the case, and whether there was access to suitable technology

<sup>1</sup> See: <https://www.nuffieldfjo.org.uk/resource/remote-hearings-rapid-consultation>; and <https://www.nuffieldfjo.org.uk/resource/remote-hearings-september-2020>

for all those taking part. There were particular concerns about the use of remote hearings where intermediaries were required. There were many concerns about the challenges of managing remote hearings where interpreters were required and many concerns about the challenges facing litigants in person.

- Overall, there was support for remote ‘administrative’ hearings (subject to certain caveats) such as case management hearings (CMH), first hearing dispute resolution appointments (FHDRA) and also for initial and/or ex parte applications for non-molestation/occupation orders. There was much less support for remote fact-finding hearings, hearings involving contested applications for interim care or contact orders, or final hearings.
- Many barristers, solicitors, local authority lawyers, social workers, Cafcass and Cafcass Cymru advisers and guardians highlighted the positive impact of remote hearings on their time and working patterns.

## Technology

- Despite the majority of respondents expressing a preference for video hearings over telephone hearings, many hearings are still being conducted by phone. One in three (33%) parents who responded to the consultation had joined a hearing by phone, even if the hearing was being held by video conference.
- While respondents raised similar concerns about connectivity and access to appropriate technology to those raised in previous consultations, many respondents reported that the technology to support remote hearings had improved. A variety of video platforms continue to be used. Professionals reported mixed experiences of Cloud Video Platform (CVP); some reported it was working very well, whereas others reported a poor experience.
- Respondents’ concerns about video technology normally related to the quality of connection and access to appropriate hardware (screens and loudspeakers). These difficulties affected professionals as well as parents, but the majority of concerns related to the difficulties parents experienced in fully participating in hearings. The vast majority of parents received no help in accessing the technology to take part in the hearing.

## Ensuring remote hearings work fairly and smoothly

- A majority of professionals (63%) felt that more needed to be done to ensure that remote hearings were fair and worked smoothly. Some professional respondents commented that remote hearings would always be inferior to hearings in person. A majority of parents (83%) indicated that they had concerns about how their case was dealt with.
- A majority of parents (73%) indicated that they did not feel supported during their hearing(s). For many parents this was because they did not have legal representation or other support: just under half (46%) did not have legal representation. Others raised concerns about not being able to be with their legal representative during the hearing and the difficulties communicating with them as a result.

- Professionals and parents continue to raise concerns about the fairness of remote hearings and highlighted similar issues to those reported in previous consultations, including the difficulties experienced by lay parties accessing technology to fully participate in hearings, the lack of legal and other support for parties before and during the hearing, concerns about privacy and confidentiality, and concerns about the particular communication needs of some parents not being met.
- There were also concerns about the way remote hearings were being run, with hearings being arranged at short notice, insufficient information provided in advance, hearings being rushed and court papers not being available. Both professionals and lay parties raised concerns about the impact of remote hearings on maintaining the authority of the court.

## **Delays**

- Many responses painted a picture of a system under extreme ongoing pressure and noted that, while there was concern about the delays in cases, this needed to be balanced against ensuring justice and fairness. Some of the causes of delays were specific to the pandemic (such as technological problems, adjournments because and in-person hearing was required, problems of communication between parties and their legal representatives, and reduced opportunities to assess children and families). Other factors pre-dated the pandemic but had been exacerbated by it (such as resource and capacity pressures in local authorities, limited judicial and court capacity, delayed expert assessments and family members coming forward late in proceedings).

## **COVID-19 safety**

- Around half of parents and professionals who had attended a hearing in court felt that all the necessary safeguards were in place to ensure COVID-19 safety. Some felt that the restrictions were too strict and could be relaxed further, others felt there were insufficient safeguards in place. A common concern was limited ventilation in court rooms.
- Respondents were asked whether they had wanted to attend court and had been prevented from doing so and a majority of professionals (92%) responded negatively to this while 39% of parents reported that they had wanted to attend court but had been prevented from doing so. In most cases the decision to list the hearing as remote was seen to be the decision of the judge or Her Majesty's Courts & Tribunals Service (HMCTS) staff. Professionals raised concerns that hearings were often remote 'by default'. Some parents indicated that they were not given a choice about how the hearing was conducted and were told the courts were closed due to the pandemic.

## **Suggestions for good practice**

- Respondents stressed the need for flexibility in deciding whether a hearing should be held remotely, with many feeling that parents should have the deciding voice on the format to be used.

- Professional respondents and parents gave examples of good practice in the running of remote hearings and some respondents made specific suggestions about how remote hearings could be better run, including making sure lay parties and their representatives were better prepared for the hearing, checking access to technology/links before the start of the hearing, providing better written guidance to parents and professionals and improving the technology. It was of note that while many professionals suggested there should be more places where parents could go to be with their legal representative or other support to attend the hearing remotely, only 4 of the 174 parents who responded to the consultation indicated that they had been provided somewhere to attend the hearing.



# Introduction

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.

Shortly after the courts had closed, the President of the Family Division asked Nuffield Family Justice Observatory (Nuffield FJO) to carry out a rapid consultation on the use of remote hearings within the family court. This first consultation took place between 14 and 28 April 2020 and received responses from over 1,000 people.<sup>2</sup> A second rapid consultation took place between 10 and 30 September 2020, asking more detailed questions about technology and about specific issues that had been raised in the first hearing.<sup>3</sup> This online survey received 1,306 responses. Several organisational responses were received, and focus groups and interviews were held with parents. A seminar presenting the findings from both surveys was held for the Judicial College on 22 February 2021 and attended by over 1,000 judges and magistrates.<sup>4</sup>

As social distancing measures started to relax, and as more cases are being heard in person once again, the President of the Family division requested a third survey in order to inform discussions and decisions about how courts should operate in the 'recovery' period.

## What we did

Respondents were invited to complete an online survey between 10 and 27 June 2021 (see appendix for the consultation questions).

The consultation sought feedback from parents, other family members and lay parties, and all professionals in the family justice system including judges, magistrates, barristers, solicitors, local authority lawyers, Cafcass and Cafcass Cymru advisers and guardians, court staff, social workers and other professionals such as advocates. Effort was made to encourage feedback from parents and litigants in person through organisations that support parties through the legal process. In addition, parents who had responded to previous surveys and had indicated a willingness to be contacted again were sent a personal message and asked to respond once more if they had been involved in further hearings since September 2020.

The consultation applied to hearings undertaken in both public and private family law cases, and to all types of hearings including hearings in the Court of Protection.

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<sup>2</sup> See: <https://www.nuffieldfjo.org.uk/resource/remote-hearings-rapid-consultation>

<sup>3</sup> See: <https://www.nuffieldfjo.org.uk/resource/remote-hearings-september-2020>

<sup>4</sup> See: <https://www.youtube.com/watch?v=svu2s2NuOE4>

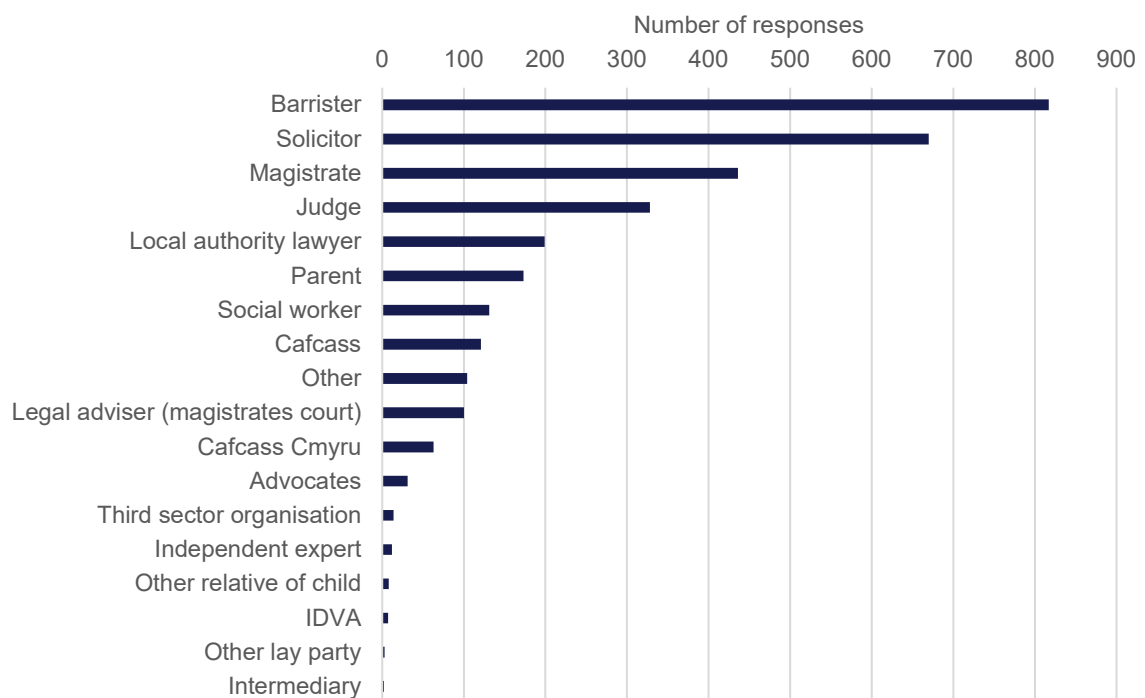
The survey was publicised on the Nuffield FJO website and through social media and relevant professional organisations.

As this survey was designed to inform activity and planning as the family justice system begins its own 'recovery' from the pandemic, professionals were asked for their views about whether specific types of hearing could continue to be held remotely. An additional question sought views about the reasons for delays in the system. As in previous surveys, parents and professionals were asked about what improvements were needed to ensure remote hearings were fair. They were also asked which technologies were being used for remote hearings and how these were working. The consultation included a question about court attendance and whether sufficient safeguards against infection by COVID-19 were in place.

## Who responded

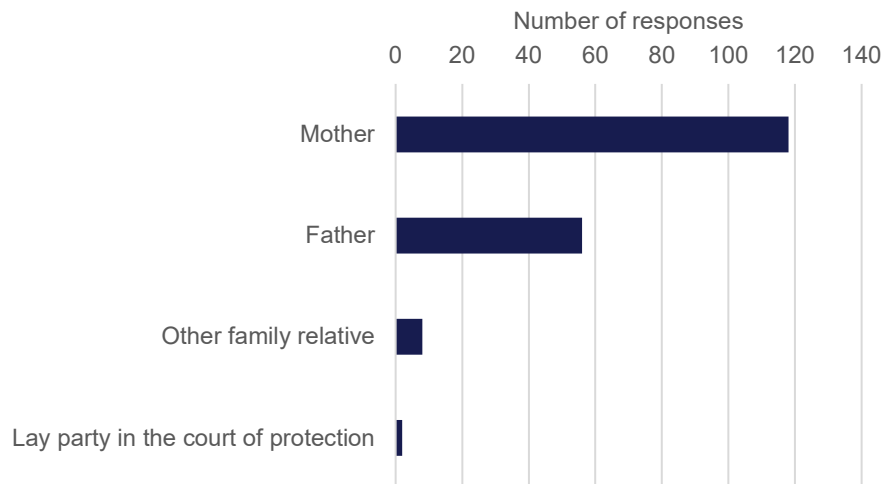
A total of 3,219 responses to the consultation were received from parents and professionals, with the largest number of responses coming from lawyers (1,687) (barristers (817), solicitors (670) and local authority lawyers (200)) and magistrates (436).

**Figure 1: What is your role? (n=3,219)**



In total 174 parents responded to the consultation (118 mothers; 56 fathers), 8 other family members and 2 lay parties in the Court of Protection.

**Figure 2: Are you a mother, father, or other family relative in the family court, or lay party in the court of protection? (n=184)**

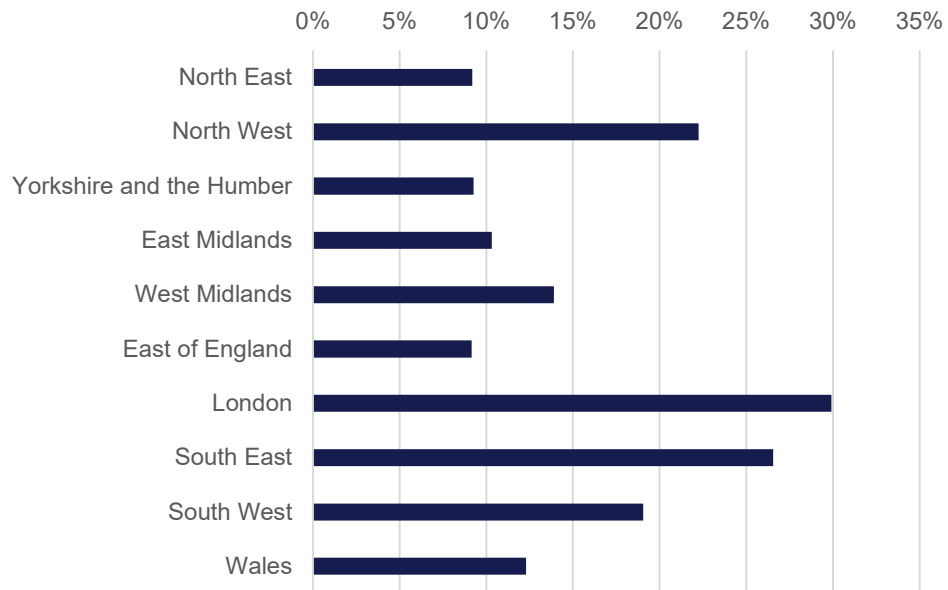


In addition, written responses were received from:

- The Office of the Official Solicitor
- The Law Society
- Association of Lawyers for Children
- Families Need Fathers
- Legal Action for Women
- Court of Protection Practitioners Association
- Women's Aid Federation of England
- Justices' Legal Advisers' and Court Officers' Service
- Law for Life.

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 3: Professionals: Where have you attended or presided over hearings? (n=3,035; respondents could select multiple answers)**



**Figure 4: Parents: Where was the court where your hearing took place? (n=142)**



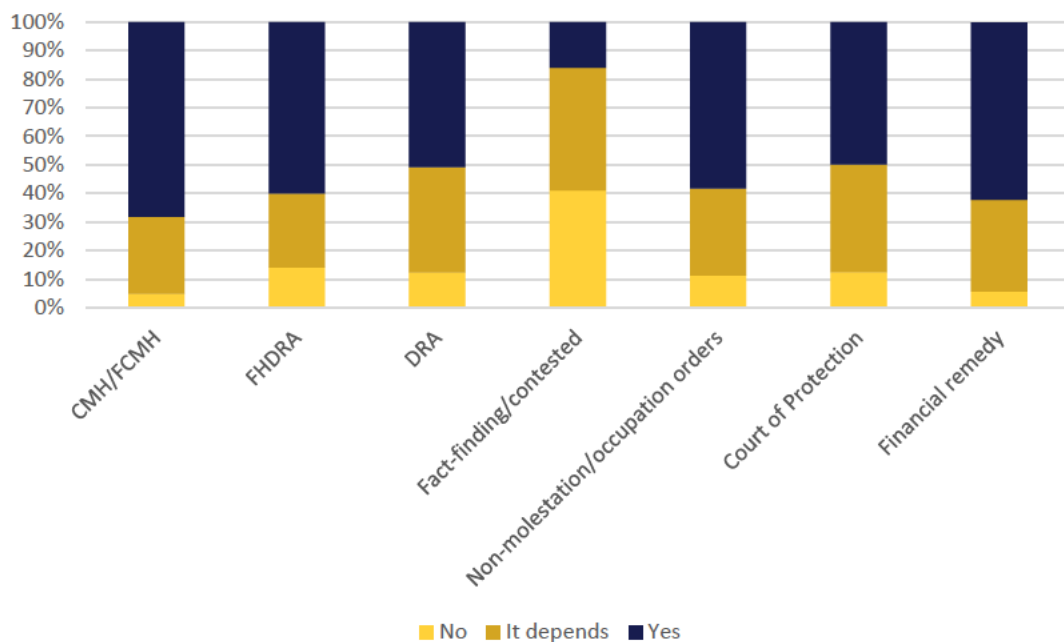
# Could remote hearings continue?

Professionals were asked about whether they thought specific types of hearings could continue to be held remotely once social distancing restrictions ease. Parents were not asked these specific questions.

A majority of professional respondents saw a continuing role for remote hearings in all of these different types of hearings by answering 'yes' or 'it depends'. It is important to note, however, that many of those who answered 'yes' added caveats to their response, so there was a considerable overlap between 'yes' and 'it depends' responses. Respondents were least in favour of remote fact-finding hearings, hearings involving contested applications for interim care or contact orders, or final hearings.

Note: Not all professional respondents responded to every question—so here and throughout, the 'n=' number varies from question to question (and may differ from the overall sample size). In addition, respondents had the option of selecting 'don't know' in response to the questions on specific hearing types if they did not have experience of these hearings—these responses are not included in Figures 5–12.

**Figure 5: Which hearings could be heard remotely?**



Note: CMH = Case management hearing; FCMH= Further case management hearing; FHDRA= First hearing and dispute resolution appointment; DRA= Dispute resolution appointment.

There were some small differences in the answers given by different professional groups. Judges and magistrates were more likely to be cautious about the value of remote hearings, being more likely to answer ‘no’ or ‘it depends’ when asked about whether hearings should continue to be heard remotely in future while barristers, solicitors, local authority lawyers and Cafcass and Cafcass Cymru advisers and guardians were more likely to answer ‘yes’ or ‘it depends’. This needs to be set in the context of the many caveats attached to a ‘yes’ response from all professionals but may also reflect the fact that it is judges and magistrates who are having to make the decisions at the end of hearings.

Lawyers and Cafcass and Cafcass Cymru advisers and guardians were more likely than other professionals to highlight a range of improvements related to workload, efficiency, and well-being.

Magistrates highlighted a range of issues with conducting remote hearings, including issues with technology and difficulties in communication among the bench, which hindered proceedings.

## General comments

Overall, there were several reasons identified for the advantages or disadvantages of remote hearings that cut across all types of hearing. These are summarised below, before exploring professional respondents’ views on each type of hearing in turn.

A strong theme that emerged is that flexibility in the approach is important.

*Generally, ‘flexibility’ is the key to approaching all hearings. Parties may have good reasons for requesting they attend remotely or in person, each case should be decided on their particular facts/circumstances. (Official solicitor).*

*The biggest concern when deciding whether a hearing should be remote or in-person is the potential, perceived or actual impediment to access to justice that some remote hearings can cause. No matter the type of hearing, if parties or their legal representatives do not consider that they can fully participate and understand what is going on, in-person hearings should be the default format. This can include some litigants in person who may struggle with hearings, particularly where there are complex issues at play. Additionally, it is important that advocates can receive full instructions during a hearing and be able to ensure their clients understand the decisions that are being made; this can be difficult to be sure of in some remote hearings (The Law Society).*

Throughout the report, we cite survey responses verbatim. We may have shortened the responses, provided clarifications in square brackets, or amended typographical errors where we thought this might assist reading, but have otherwise cited the responses as supplied.

## Reported benefits

The following were among the most common benefits identified by those who felt that hearings could continue remotely.

- Improved efficiency – many professionals felt that remote hearings were more likely to take place on time and were better prepared and more focused. They reported fewer delays caused by legal representatives juggling physical presence in multiple courts. Scheduling specific timeslots rather than the traditional practice of listing of multiple cases at 10:00 or 14:00 was seen as helpful. According to some respondents, the need to ensure the matter concluded before the next scheduled hearing increased the efficiency and focus of hearings.
- Easier to attend – avoiding the need to travel to court was a key benefit for professionals, especially in rural areas. Some also commented that working remotely made it easier to manage childcare responsibilities.
- Work-life balance – some professionals commented on remote hearings enabling a better work-life balance and improved well-being.
- Benefits for lay parties – many professionals reported that lay parties found remote hearings less intimidating and preferred them because they do not have to cope with the anxieties and challenges of seeing other parties, and they are not burdened with the time and expense of travelling to court.
- Engagement – some professionals felt that lay parties were more engaged in remote hearings.
- Safety and well-being – some felt that remote hearings were particularly helpful for lay parties where there have been allegations of abuse or domestic abuse.

*I strongly consider that such hearings should continue remotely. Many of my clients have actually said they prefer remote hearings and they are less stressful because they are in their own home. I have noticed that hearings run far more efficiently remotely and it is very rare that we do not start cases on time. It also enables advocates to do more than one hearing per day where appropriate, which means the benefit of continuity for clients where it might not otherwise have been possible. I find my well-being is much better conducting remote hearings. I do not have the stress of travelling and I feel much better in myself. I also find I have more evenings and weekends to myself as I am able to manage my time better. It is particular beneficial to women who have families and are now much more able to work around childcare commitments and know they will be finishing on time without additional travel and uncertainty about when they are getting home. There is no disadvantage of such hearings to clients in my opinion, in which any disputed issues are submissions based and perfectly able to be dealt with well by counsel on screen (Barrister).*

*It is particularly useful where there are allegations of abuse, because the parties are not in the same room at the same time (Circuit judge).*

*I have been thoroughly impressed with the efficiency of the court service in dealing with the rapid transition to remote hearings. The cases now start almost always when scheduled, they appear to be dealt with far quicker and advocates are far*

*better prepared with the consequence that their submissions are noticeably more concise. This is in complete contrast to pre-pandemic court hearings when advocates would frequently be forced to wait outside of court for hours as multiple cases all booked at 10.00am queue to get before a judge forced to juggle their list. It would be a significant waste of public funds and judicial resources for the wholesale return to the pre-pandemic way of listing all hearings to be in person (Local authority lawyer).*

Some parents also noted that remote hearings were easier to attend and, in cases featuring domestic abuse, mothers mentioned the benefit of remote hearings in terms of safety and not having to see ex-partners face-to-face. For some parents the benefits were balanced with perceived disadvantages.

*Remote process was great (Father).*

*I couldn't talk to anyone during the hearing so I didn't feel like a participant so much as a spectator. It was preferable for me to attend the hearing by telephone from a logistical point of view (travel and childcare) and also from a personal point of view: I did not have to see my ex-partner who has been abusive (Mother).*

## Reported disadvantages

Some professionals held the view that remote hearings were inherently unfair and unsuitable, and felt that lay parties were always disadvantaged when hearings were conducted remotely. Although there was clearly some variation in views depending on the type of hearing—with fact-finding, contested and final hearings prompting most strength of feeling—a minority of respondents felt that remote hearings were inappropriate in all but the most exceptional circumstances. Judges and magistrates were more likely to express reservations about remote hearings than any other professional group. Reasons included the following.

- The importance and gravity of the decisions being made. Respondents felt it was unfair for parents to hear decisions about their children being removed or changes to contact arrangements via phone or video. Being physically present in court was viewed as being proportionate to the importance of family law; several respondents commented that justice should be seen to be 'being done'. There was concern about the loss of the 'gravitas' of the court.
- Respondents raised concerns about aspects of human interaction that are lost when communicating via video link, explaining that non-verbal communication is compromised and this impacts on the ability to perform their roles to the best of their ability. Professionals highlighted that it can be difficult to gauge the credibility of witnesses and the reaction of parties off-camera.
- Equal access to and proficiency using technology was always a problem. Many respondents were of the view that if lay parties did not have access to video, hearings should not take place remotely.
- Respondents noted it was harder for parents to engage with legal representatives online.
- Some professionals felt that remote hearings were less likely to promote conciliation and could be a barrier to negotiation and discussion.



- Concerns were also raised about the privacy and safety of some hearings. This included when children were in the room or home with parents, parties attending hearings from public spaces or with other people nearby. Judges and magistrates commented that it was hard to 'manage' who was in the room and what influence they might be having.
- Some professionals raised concerns about who is best served by remote hearings. Some thought that remote hearings are convenient for barristers, solicitors, Cafcass and social workers and that this may be prioritised above the needs of the lay parties.
- Many parents who responded to the consultation reported feeling disadvantaged by remote hearings.

*Remote hearings are just awful (Mother).*

*Hearings over the phone/video should be cancelled. It feels like you as a parent imprisoned, there is no people you are talking to, but voices/ machinery. There is no human factor to hearings (Mother).*

*The experience is bad enough, but telephone court sessions are both sterile and do not allow the judge to see the parties affected (Father).*

*Parties need to be reminded that they are engaged in a court hearing. Having a party attend a hearing whilst in bed is just one of the examples of the lack of respect for the court process (District judge).*

*Continuing the current system would mean real injustice to lay parties due to their lack of access to technology and their lack of personal contact with their legal representatives and lack of opportunity to meet the Judge. In addition, remote hearings rob the court of flexibility, lead to more interim hearings, less narrowing of the issues and is generally less useful than the opportunity (which might be one of only two in the whole process before the final hearing) of getting everyone in a room together (District judge).*

*There is a temptation to regard as 'convenient' being able to do hearings which are 'administrative' in nature. It is my view that those terms are more apposite to the position of counsel solicitors and judges than they are to lay parties i.e. to those for whom it is a case rather than their life. There is also in my view an enthusiasm for remote hearings from those who as professionals can do (and therefore bill for) more hearings than could be the case were they to be other than remote. that should not, I think be a driving force (Barrister).*

## **Considerations and caveats**

There were some common themes to the comments provided by respondents who selected 'it depends'. Many of the respondents who stated that hearings should continue to be held remotely felt that the decision should be made on a case-by-case basis. Factors that respondents felt should be taken into account included the following.

- Whether parties were represented – some felt remote hearings were not suitable for litigants in person.

- The vulnerability of the client – for example if they have learning difficulties, social functioning, or mental health problems. Some respondents commented that vulnerability can arise during proceedings and it may be hard to make these calls from the outset.
- The wishes and feelings of lay parties.
- Whether parties had access to suitable technology – many respondents felt that parties should be able to access hearings via video link, have access to suitable technology (i.e. screens to read the bundle and watch witness simultaneously), have good connectivity and support to use the technology (at a court hub if necessary). Hearings where lay parties joined by phone were generally not considered appropriate in any circumstance.
- Whether interpreters or intermediaries were required – respondents reported the difficulty of conducting remote hearings when interpreters or intermediaries were needed—and the impact this had on parents’ ability to fully understand and participate.
- Where oral evidence was being given.
- The complexity/specific factors of the case – some held the view that if the case was contested and reliant on multiple witnesses, it should be in person.
- Where there were concerns about ensuring privacy, confidentiality or safety.

Where decisions for remote hearings are made, respondents indicated a need for checks and balances to be in place to monitor the understanding, safety and well-being of parties, especially when life changing decisions are being made.

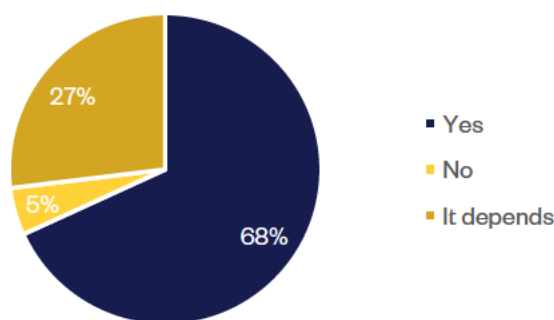
*Many parents in care proceedings have cognitive or social functioning difficulties. Many do not have access to a laptop or smart phone. I represent local authorities, from my perspective there's little impact on fairness for me or social workers to attend remotely. Similarly expert witnesses who are giving evidence. However, I query whether it's ideal for parents. There's a tangible benefit to them of attending court physically and meeting with their lawyer. Also taking necessary instructions during hearings is easier with a professional client with access to messaging software. I suspect many parents feel left out or sidelined. The public law process is already quite draconian and with many summary aspects. I think remote hearings should only continue at parties' request. Hybrid hearings could possibly continue with local authorities and guardians attending remotely, although I do query the impersonal impression that leaves for parents (Barrister).*

*Many care clients do not have WiFi. I have had to watch a woman sit in the front of her car with her partner who hit their baby sharing a mobile phone as that was the only way of joining the hearing (Barrister).*

## Case management hearings and further case management hearings

A clear majority of professional respondents (68%) believe that case management hearings (CMHs) and further case management hearings (FCMHs) can continue to be conducted remotely. However, many of those who responded 'yes' also provided caveats similar to those who answered 'it depends' (27%).

**Figure 6: Do you feel CMHs and FCMHs in cases concerning children could continue to be heard remotely? (n=2,828)**



### Continuing case management hearings and further case management hearings remotely

Many professionals reported a positive experience of participating in remote CMHs and FCMHs, indicating that they are proportionate and appropriate.

Other benefits identified are increased efficiency through reduced travel time and cases being called on time.

*I would strongly endorse CMHs and FCMHs being continued to be heard remotely. From my experience they can be carried out equally as effectively as if they were in person, and the ability to attend hearings remotely greatly improves the work/life balance of advocates (Barrister).*

*The time spent travelling to hearings and waiting in court is far better spent with working with children and families (Cafcass).*

Some respondents reported that pre-hearing discussions and advocates meetings were more focused and that it was possible to narrow the issues significantly before the actual hearing so that less time was wasted coming in and out of court. They also indicated that orders were generally agreed prior to the hearing via email exchange and advocates meetings. Examples were given of communication with parents taking place prior to the hearing through private video link or telephone call. These are examples of good practice and it was evident from many other comments that such practice was not necessarily the norm.

*Preparation has been completed ahead of the hearing. I feel that attending such hearings in person compared to how they have been attended under Covid*

*restrictions are more streamlined, they appear more effective, and there is less time waiting around in Court, or transport to and from Court. I think it would be a positive if such hearings remained virtual (Social worker).*

Several professionals commented that, in their view, parents preferred remote CMHs and FCMHs and were more engaged.

*I feel we have better participation during these hearings; parents have been joining from their own home and appear more relaxed and seem to speak more openly (Social worker).*

*Not fair on parties to expect them to travel, take time off work, arrange child-care, leave home early, arrive back late Etc for a short hearing that can be completed just as well by video/telephone (McKenzie Friend).*

## Considerations and caveats

Caveats attached to ‘yes’ and ‘it depends’ responses were often similar, and normally related to the perceived vulnerability of lay parties, access to representation and complexity of the case. While some suggested there should be a default position (remote or in person) most respondents encouraged a more thoughtful consideration of the individual case circumstances.

*There should not be blanket rules that say CMHs should/should not be remote— it really depends on the case, the number of parties and the needs of the participants. There are some advantages to remote hearings in terms of reducing waiting and travelling time and some parents seem to prefer them, so I would not wish to rule them out. Decisions as to suitability need to be taken on a case-by-case basis (Circuit judge).*

*When parents have specific difficulties such as learning disabilities, mental health issues, struggle to emotionally regulate, or might be at risk of domestic abuse I do not think these can safely proceed. There is a benefit to containing these parents within a setting to protect children being exposed to emotional harm, and protect parents from distress which is uncontained. I think case management hearings can be one of the hardest aspects of care proceedings for parents to understand as it involves procedure and protocol, and therefore having opportunities to hold these in person are preferable to ensure parents fully understand (Social worker).*

*In public law hearings I think initial hearings should be in person as they’re likely to have more impact with parents and assist their understanding of the process. CMH/FCMHs could be remote if straightforward. In my view anything complex or contested should be in person, and it should be decided on a case-by-case basis by the judge listing the hearing. I worry that too many advocates/professionals involved in the system are opting for remote hearings (or refusing to attend in person hearings) for reasons of personal convenience. We all managed to get to court before Covid, and in my view this resulted in better access to justice for parents (Barrister).*

## Not hearing case management hearings and further case management hearings remotely

While the overwhelming majority of responses indicated that CMHs and FCMHs could continue to be heard remotely, there were some compelling reasons why some professionals responded 'no' (5%). Many cited the caveats noted above. Some professionals were also concerned that the importance of the CMH and FCMH might be undermined if they remain remote and this becomes the default option.

*Never as satisfactory as face-to-face hearings. Parents in these cases are often vulnerable, lack technology or if they have it, lack the rigour/discipline/respect brought by attending; and it is more difficult to convey, discuss properly, the key issues at the CMH—this is the 'key hearing' which sets the way forward/ the agenda. There is a danger that 'case management' somehow is not as important as other types of hearings. A 'hybrid' hearing at least enables parents to attend to overcome the above—but it remains unsatisfactory compared to attended hearings by all parties (Legal adviser, magistrates court).*

*I firmly believe that the first contact with the judge (assuming continuity throughout) can set the tone and influence the final outcome. A parent can be persuaded/ encouraged to engage and develop a confidence that there will be fair hearing and unbiased investigation (Circuit judge).*

*Given the vulnerabilities of parents and often difficulties with accessing technology I do not think it is appropriate for hearings to continue to be remote unless it is a very short re-timetable. I believe it is extremely important for initial CMHs to take place in person so the parents can understand and fully participate in proceedings. It also helps for them to understand how serious matters are. It goes without saying that the best participation for a final hearing is in person. I also consider more progress is made when advocates and lay parties are in the same building in trying to reach an agreement say at an IRH. It is extremely difficult if not impossible to take instructions during a hearing when working remotely (Solicitor).*

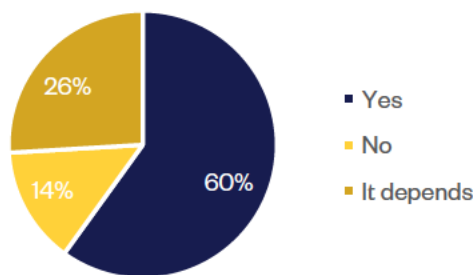


## First hearing dispute resolution appointments

A clear majority of professional respondents (60%) believe that first hearing dispute resolution appointments (FHDRAs) can continue to be conducted remotely.

However, many of those who responded 'yes' also provided caveats similar to those who answered 'it depends' (26%).

Figure 7: Do you feel FHDRAs could continue to be heard remotely? (n=2,467)



### Continuing first hearing dispute resolution appointments remotely

The reported benefits to conducting FHDRAs remotely were similar to those reported above. Many respondents noted that it was more efficient to work in this way and that joining a hearing remotely could also be beneficial for litigants. Some barristers noted that private-paying clients are often proficient with technology and have access to technology.

*Many FHDRAs are, in essence, case management hearings. They should be dealt with quickly and efficiently. They, too, lend themselves to remote hearings. Any issues re child arrangements can be dealt with swiftly. There is simply no need for the parties to attend court, wait for long periods only to agree a way forward and/or spend a short period of time before the court (Barrister).*

*I don't want it to go back to what it was like before. I think it was worse for clients and lawyers. My well-being is so much better now I don't have to go to court every day or most days and I feel anxious just thinking about it. I feel my advocacy is better on screen, I am more focused, energy is better spent on that rather than waiting around at court (Solicitor).*

Professionals highlighted the need for preparation prior to the FHDRA. It was reported that FHDRAs were more efficient when Cafcass enquiries had been completed, the safeguarding letter circulated, and a robust pre-hearing discussion/advocates meeting takes place prior to the hearing in order to narrow the issues.

*Only if Cafcass have been able to complete their enquiries, but if parents can access suitable technology they are better able to organise childcare and work commitments (Magistrate).*

*I feel remote hearings for FHDRA are efficient although I think it is important to have proper preparation beforehand and that the direction for an advocate's meeting before every remote hearing is essential (Solicitor).*

## **Considerations and caveats**

Caveats expressed by those responding 'it depends' normally referred to needing to make a judgement as to the complexity of the case and whether any of the parties had particular vulnerabilities.

*It depends on the issues and whether any element of needing to have face to face discussions with a view to resolving those issues—e.g. some domestic abuse cases with a safeguarding letter flagging up that a fact-find may be required are unlikely to require a face-to-face attempt to resolve issues around child arrangements, and arguably a remote FHDRA may provide better special measures for the party alleging domestic abuse (Circuit judge).*

*In simple matters where [a] safeguarding letter has been sent out and evidence needs to be filed before the matter can progress then yes. However if there is to be any hope of resolving matters at that stage or narrowing issues parents need to be in a court room (Solicitor).*

*If client needs an interpreter, if the client needs an intermediary due to a learning disability, if client does not have the correct computer system to allow them to attend the court or if they don't have enough data to join the hearing then my answer would be no (Barrister).*

Generally respondents felt that remote FHDRA were only suitable when all parties are represented. It was highlighted that litigants in person require a higher level of support to navigate court processes and there have been some issues with containing litigants in person and achieving the same level of conciliation.

*If there are litigants in person (LIP) the court needs to build in time to allow pre-hearing discussion to the hearing time as often the LIP will not speak to counsel unless advised to by the court once the matter has commenced (Barrister).*

*NOT suitable for litigants in person. There is nothing to substitute for the authority of the court than by attendance in person at court, especially at the beginning of the court process at the FHDRA. Easier to ascertain the respective cases by face-to-face engagement and enquiry by the court. However, disruptive and threatening behaviour can be better managed on a remote video hearing and they may be able to better engage in that way (Judge).*

## **Not continuing first hearing dispute resolution appointments remotely**

When respondents did not feel that FHDRA should be held remotely in future, the reasons given often related to the difficulty of encouraging settlement in such cases.

*Litigants in person will not enter pre-hearing discussion. They will in person and some cases could be resolved whereby they are not being resolved (Advocate).*

*It is hugely important for cases to resolve, or be put on the right track at FHDRA, and this is far more likely to happen if the parties, Cafcass and the judge are together in a room. We are seeing endless wrong decisions e.g. failure to order a fact-finding hearing, which prolong the court process to the detriment of the child (Judge).*

*Remote FHDRA's have, in my experience, become effectively directions/timetabling hearings, without any meaningful opportunity to make progress on the issues (Barrister).*

Respondents also expressed concern about lay parties' ability to fully engage in hearings and the difficulty of dealing empathetically with them when they are not in the same room.

*Litigants in person are being left at disadvantage and need the support of the court in person with any queries they have, which will avoid delay in the court process (Legal adviser, magistrates court).*

*It is frequently impossible to engage with parties on a human level through video technology. It is much easier to communicate with and to demonstrate empathy to parties when in a physical courtroom (Judge).*

*These sorts of hearings are fluid requiring a high level of judicial input and client care. Doing this remotely is very difficult. The ones I have had have led to directions being made rather than genuine progress in agreeing matters, which I think would have been achieved if in person with the clients there. In particular to be in a room with the client is important (Barrister).*

However, some professionals felt that the likelihood of conciliation was unrelated to whether the hearing is conducted remotely or in person.

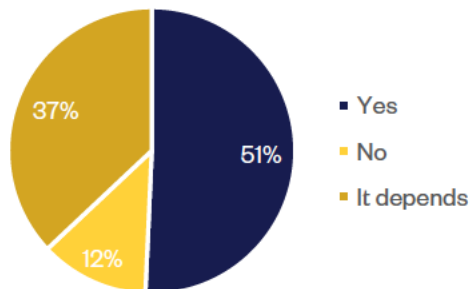
*The parties will either agree or not, and I am not sure that bringing them to court influences that. It saves people a lot of time away from work if they can attend remotely (Legal adviser, magistrates court).*



## Dispute resolution appointments

Around half of respondents thought that dispute resolution appointments (DRAs) could continue to be heard remotely, with a further 37% answering 'it depends'. A total of 12% of respondents did not think they should continue to be heard remotely.

**Figure 8: Do you think interim hearings and DRAs could continue to be heard remotely? (n=2,729)**



### Continuing dispute resolution appointments remotely

The reasons given for whether these hearings could continue to be held remotely were similar to those mentioned above, including improved efficiency, reduced need to travel, and the perception that clients preferred remote hearings.

*I would strongly endorse interim hearings and DRAs being continued to be heard remotely. From my experience they can be carried out equally as effectively as if they were in person, and the ability to attend hearings remotely greatly improves the work/life balance of advocates (Barrister).*

*These have worked very well. In many ways they are better as parties' positions on the issues are focused and you know you generally have the allotted time slot to resolve the issues for the hearing. After the initial hiccups, advocates are now well versed in jumping between the virtual court room and the virtual advocates room, as well as speaking to clients by phone. Gone are the days of clients arriving hours late at court or cases getting stuck in lists behind other cases. The whole process seems much more streamlined and focused (Barrister).*

### Considerations and caveats

Many of those who answered 'it depends' or added caveats to their 'yes' response felt that the decision about whether a DRA could be held remotely should be made on a case-by-case basis. Factors where an in-person hearing was seen to be favourable included if all lay parties did not have access to video, if they were unrepresented, or had a vulnerability that might make full participation in a remote hearing harder. Several respondents commented that if there was a chance of resolution, then an in-person hearing may be more successful.

*This depends on the nature of the interim application; whether all parties are represented and whether all parties have access to the technology required to fully engage in the hearing (Judge).*

*It depends on the issues and needs of the clients—if there are complex or very sensitive matters where a client will find the process easier to be with their lawyer, particularly in giving instructions, my personal preference is to attend in person. I think we have lost a great deal of ability to 'crack' cases at the DRA stage by doing them remotely. For discrete issues where it is certain there will be a need for a contested final hearing it makes sense to go ahead remotely (Barrister).*

*I think it depends on the issues to be considered. By way of example I have a 16.4 case where all three parents are litigants in person and it is harder to have round-table discussions to try and resolve a case remotely. We have therefore agreed to have an attended hearing. On another a parent with a learning difficulty who was in person did not engage with remote hearings but attended court, so we were able to progress matters. Parents who need interpreters or intermediaries can also struggle with these hearings being held remotely—decisions need to be made on a case-by-case basis. A disabled client may find it easier to attend remotely than travel to the nearest hearing centre however (Solicitor).*

### **Not continuing dispute resolution appointments remotely**

Among those who felt DRAs should not be held remotely, most stressed that they felt remote hearings were less effective at enabling clients to reach an agreement or settlement. This was due to a range of reasons including reduced opportunities for discussion or meditation, reduced 'gravitas' of the court, and that it was harder to read body language and fully grasp issues.

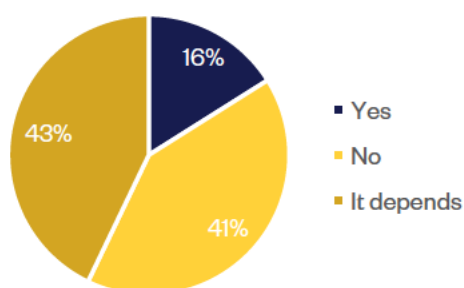
*The ability to consider non-verbal cues and to use human interactions to move the case on from entrenched starting points is much harder to do remotely.*

*Understanding and empathy are harder to project, and these qualities in a judge can sometimes be the starting point towards 'mediating' a settlement. Remote DRAs are much less effective at looking for points of agreement as a basis for negotiation. A remote DRA is much more likely to result in a 'process' hearing of directions for a contested final hearing (Judge).*

## Fact-finding, contested applications for interim care, contact and final hearings

Overall, respondents were less positive about fact-finding, contested applications for interim care, contact and final hearings continuing remotely than other hearing types. Only 16% of respondents felt that they could continue remotely, and 41% indicated that they should not be held remotely in any case. Judges and magistrates in particular were against these hearings being held remotely, with 54% and 70% respectively responding 'no.'

**Figure 9: Do you think fact-finding, contested applications for interim care, contact, and final hearings could continue to be heard remotely? (n=2,883)**



### Continuing fact-finding, contested applications and final hearings remotely

Among those respondents who felt that these hearings could be held remotely, many commented that proficiency with technology had improved over the past year, and it was entirely feasible—and fair—to conduct hearings remotely, even when there are multiple witnesses. Some felt that witnesses were more at ease online. However, even amongst those respondents who felt such hearings could be held remotely, they often held the view that the decision should be made on a case-by-case basis.

*I consider there has been a shift since lockdown started in terms of thinking by counsel and judges that this cannot be done fairly. I have now done at least two 10-day fact-finding hearings which were very complex; and remotely they worked exceptionally well. I have had the huge benefit of doing a case at the start of lockdown which was the third rehearing of a complex fact-finding because of two successful appeals. I therefore got to see the difference between my client having given evidence in person at the first two hearings, versus on screen. Her evidence was so much better on screen. She was more relaxed, and therefore came across better. Her facial expressions etc were very clear on the camera (it was by zoom) and it played a strong part in no findings made. She volunteered after the hearing how much she preferred the remote hearing. She was more comfortable giving evidence and happy not to have to travel in terms of childcare commitments. The*

*medical evidence was far better as there were no connection problems as there often are with them dialling in at court on tv screens (Barrister).*

Some respondents think that hearing witnesses via video link is an improvement to in-person hearings, even during long final and fact-finding hearings. They note that witnesses are more at ease, facial expressions are more visible, and witness coordination is more efficient.

*Multi day hearings with multiple witnesses have been more efficient remotely. Parents seem better able to follow proceedings and access support like intermediaries when remote. Seem less self-conscious and can speak to intermediary when muted and whilst hearing continuing. Easier to get instructions and deal with issues (missing docs, chasing experts/third parties) when remote (Solicitor).*

*Over the past year, I have only attended remotely, whether it be hybrid hearings or fully remote. I have found that I have been less stressed without the need to travel, and it has meant I can prepare the case more efficiently. The court staff have worked tirelessly to make these hearings as efficient as possible. I have recently undertaken a 20-day fact finding hearing. All barristers, lay clients, intermediaries and judge were remote. It worked extremely well with the use of separate 'rooms'. Experts and witnesses were able to join fine. There were some technological issues, which is to be expected for such a long hearing, but overall, I was impressed by the efficiency of how it ran (Barrister).*

## Considerations and caveats

As with other types of hearing, the caveats mentioned by respondents who selected 'yes' were similar to those who selected 'it depends'. The caveats were also broadly similar to those mentioned for other types of hearing, such as access to technology and adequate connections, the need for all parties to be represented, and consideration of vulnerabilities. The main difference related to the type and gravity of the decisions being made in these hearings.

Other considerations related to whether evidence would be given by submissions or oral evidence. There were mixed responses about the quality of evidence that could be achieved via remote video link.

*There may be suitable cases to conduct remote hearings. But given the gravity of the decisions being taken and/or the need to evaluate live evidence these hearings should normally take place as attended hearings. Parties can find it very hard to give instructions to their lawyers during remote hearings. Many struggle with electronic bundles. As a consequence, their inability to engage fully in the hearing places them at a disadvantage in having equal access to justice compared to others (District judge).*

*Remote hearings serve a useful purpose for vulnerable parties. The position changes when interpreters and/or intermediaries are required. Final hearings should normally be attended: where the issue is removal, then it should also be attended (District judge).*

*Fact finding is better done with witnesses present if possible. Where there are vulnerabilities and fearful witnesses remote hearings work well, but even so that*

*physical presence is revelatory as often as not. Contested ICOs can be heard remotely with little prejudice but a parent should at least have the option of coming to court if they wish. Interim contact is easily decided remotely in most cases. Final hearings work well both ways depending on the case. Often the huge anxiety of Court is alleviated and parties can be comfortable and frank. Pros and cons in every case (Circuit judge).*

*Fact finding remotely for LIPs is very difficult—cross examination is hard for them at the best of times. Trying to do this over the phone puts them at a significant disadvantage (Third sector organisation).*

There was support from some respondents for hybrid hearings, where some or all expert and professional witnesses join remotely. However, it was considered important that lay parties attend the hearing to ensure that they are well supported.

*It depends entirely on the case and the needs of the participants. Hybrid hearings, with some parties attending remotely and others in person have their value, but the court needs adequate systems to make them work smoothly (Circuit judge).*

If lay parties are to attend remotely, it is considered important that all participants have access to (video) technology and lay parties are supported to attend a court hub at their legal representative's office or local authority. It was also considered important for lay parties to have a say about how they would participate (fully remote, supported environment, in person). Whether such hearings are fully remote or hybrid, there is general consensus that suitable technology and suitably trained staff are required to ensure hearings proceed without impediment.

### **Not continuing fact-finding, contested applications and final hearings remotely**

The main concerns highlighted related to the ethics of making major life-changing decisions via a video or phone link, particularly when parents were alone and not supported by anyone, or when they may have been at home with children. Decisions such as removing children from their parent's care on an interim or permanent basis, or decisions about how much a child will get to see their parents, were thought to be best undertaken in hybrid or in-person hearings. Several respondents commented that decisions to remove children at interim hearings were 'harrowing' when done via phone or video, regardless of whether they were contested or not. Responses indicate a need for parents to be with their legal representative for such big decisions on compassionate grounds. Professionals highlight that parents have a right to be supported to give their best evidence.

*There is a lack of humanity for parents dealing with these issues remotely and the process seems rushed and unfair. People should not be finding out their child is being adopted over a video link. It seems more convenience over right to fair trial and open fairness (Solicitor).*

*There is no doubt in my mind that final hearings should be in person. Of course, expert witnesses e.g. doctors etc., should continue to give evidence remotely and where there are vulnerable litigants a remote platform is a form of special measure (in substitution for live link or old-fashioned video link). For a litigant who is going to 'lose' their children permanently or have their relationship with them fundamentally*



*altered, there is no adequate substitution for attending court and having the support of their legal team during the process. Whilst it has been necessary to carry out the majority of cases remotely including interim (ICO) [interim care order] removal cases, I have been left with a profound sense that it is extremely unsatisfactory for the parents. They are often sat at hospital or at home whilst the most draconian orders are made without any support—due to having to be alone 'in the court hearing' and not overheard. Of course, it could be argued that making them attend court is sub optimal but at least they have support from professionals and access to face-to-face legal advice (Circuit judge).*

*The ALC [Association of Lawyers for Children] view is that where possible fact finding, final hearings and any hearing at which a change in care arrangements or placement is sought, should be in person whether that is in private or public law. It continues to be our view that parents should be supported to attend court and have the benefit of being with their solicitor and counsel. It should not become the norm that these hearings are held remotely (Association of Lawyers for Children).*

Professionals raised concerns about the quality and coordination of evidence provided during remote and hybrid hearings. While evidence by submissions was seen as more manageable, a range of issues with examining and cross-examining witnesses via remote link were raised. Some respondents commented that access to suitable technology varies from court to court, which has an impact on the experience of remote hearings. Professionals noted that the breadth of non-verbal communication is lost and it is difficult to take instructions from clients, particularly when there is poor access to technology. There is a perception that the credibility of witnesses is difficult to gauge via remote link.

*I have found evidence-based hearings to be extremely stressful, often disadvantaging the LIP and difficult to present evidence and obtain evidence effectively unless the technology is working perfectly. It is also far more time-consuming as there is no consistency to the technology that all parties are using (Advocate).*

*Being able to see a witness in the box is critical to a judge's assessment of their veracity and reliability, and this is impaired if it is not in person. Such serious decisions require the utmost clarity (Social worker).*

*Remote hearings lack the gravity and occasion of being in court. People behave informally and don't take seriously what is being said/decided. It's very unfair to vulnerable parents who may be unable to give adequate instructions to their lawyers (and I say this as an LA lawyer— I don't even act for parents). It's also hugely difficult for all advocates to take proper updating instructions as things develop and cross examination is difficult when you can't properly see the witness's body language and other more subtle forms of communication. Advocates' pre-hearing discussions seem much more litigious and less constructive than they used to be—there is no substitute for sitting around a table together outside the court room to thrash things out. Much is lost by conducting these hearings remotely (local authority lawyer).*

Judges and magistrates were more likely to highlight the difficulty of running hearings remotely and to express concerns about the impact on the fairness and justice of hearings. Responses indicated many were uncomfortable making life-changing decisions in this format, particularly where evidence is heard.

Judges and magistrates were most reluctant for hearings to be remote when evidence was being heard. Concerns were raised about the capacity for people to give their best evidence in this format and how this would inform their decision-making. Some judges and magistrates raised concerns about the ethics of making significant decisions without the parent(s) present. For magistrates there is the additional challenge of conferring with other members of the bench and working as a team using improvised technological arrangements.

*It is simply cruel for parents to have their children removed without having the chance to at least see the person making the decision (Judge).*

*It is too hard to manage the parties in sensitive hearings. We have all had parties sobbing down the phone/live link, when you know their children are in the next room. Court provides a safe place to conduct these hearings, so parties can be supported and a place to regroup before going back to the family setting. Body language, a sense of compassion and indeed firmness are all reduced by the technology (Magistrate).*

*There may be rare cases where this is appropriate e.g. a housebound party, but generally for their own well-being, and sense of having a fair hearing, and to ensure justice is done, parties need to be in court at the same time, hearing what is being said, being able to give instructions, and concentrating fully on these important matters (Judge).*

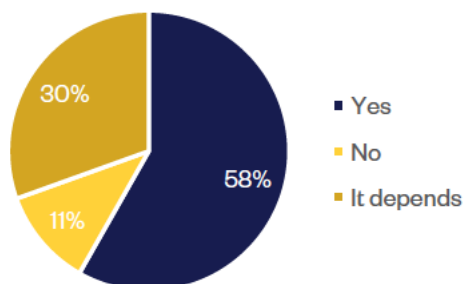
*This is not justice. Where there are disputed issues of fact there should be a face-to-face hearing (Judge).*

*These hearings change lives and we need to ensure that everyone has the best opportunity/support available to make their case (Magistrate).*

## Non-molestation and occupation orders

A majority of professional respondents (58%) thought that these types of hearings, particularly *ex parte* applications, could continue to be heard remotely. However, there were many caveats attached to 'yes' responses.

**Figure 10: Do you think applications for non-molestation or occupation orders could continue to be heard remotely? (n=2,365)**



## Continuing hearings concerning non-molestation and occupation orders remotely

Those in favour of continuing to use remote hearings for these applications noted the benefits in relation to reduced travel and waiting times for professionals and benefits for parents in not having to travel and/or arrange childcare.

Many felt that remote hearings provided a greater sense of safety for applicants who were not at risk from meeting the respondent and made it easier to enforce safety measures. However, there were some respondents, including parents, who felt that seeing the person responsible for the abuse on a screen in your own home was more unsettling for applicants than being in a court.

*These are a priority for remote hearings. Hearings can be arranged swiftly and the victim feels much safer not being in the same building as their abuser. The ability to turn off cameras is essential. Special measures are not as necessary naturally. Risks are reduced at the court building (Solicitor).*

*In my view it would be a mistake to assume that cases involving vulnerable witnesses should only be heard in person. In fact, these are precisely the sort of case where a remote hearing (if managed correctly) can offer a more sensitive approach allowing victims to avoid coming into contact with their alleged abuser and in turn, to give better quality evidence (Barrister).*

*It has helped victims of domestic abuse feel comfortable approaching the court and has reduced their anxieties about attending court (IDVA).*

## Considerations and caveats

Many of the caveats given by those who responded 'yes' to this question were very similar to the points made by those who responded 'it depends'. They included views that return hearings should be remote only if the parties agree, if they have their representatives in the same room with them (because of the problems of communication in hearings), if they have access to a video platform and are not joining the hearing by phone and if all connections are working well. It was felt a decision on the format for the hearing should be on case-by-case basis, rather than be assumed and it was felt that in person hearings were particularly important when evidence was being given or contested.

## Not continuing hearings concerning non-molestation and occupation orders remotely

Those who answered 'no' to this question indicated concerns about the potentially serious repercussions of these orders, particularly if children are involved. They also noted: the importance of being able to assess the credibility of witnesses; the loss of opportunities for negotiation and undertakings rather than orders; concerns that insufficient attention was being paid to the evidence; and worries that the parties were failing to recognise the seriousness of court hearings.

*Litigants in person need to be able to fully communicate, that includes verbal submissions and body language, attitude expression, emotional awareness. These are not felt to be adequate by litigants in person in remote hearings. Communication*



*remotely is not as clear as face-to-face—sound quality can fade in and out during hearings* (Third sector organisation).

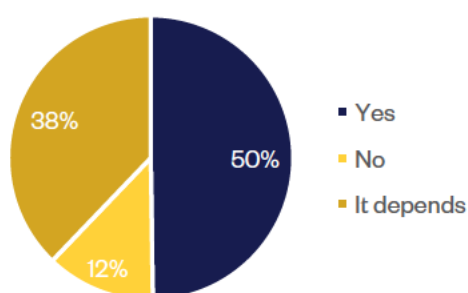
*The opportunity to mediate and resolve cases by way of undertakings is much reduced if the parties are not at court. Remote working has also meant statements are produced in a much poorer way than previously—they are not simply treated with seriousness by some clients. It's just an email not a formal statement to some* (District judge).

*I am concerned that Family Law Act orders, which are serious orders with significant consequences, are being watered down—granted too often on the papers, served by email/WhatsApp etc. An initial consideration on the papers is often required to enable truly urgent interim protective orders to be put in place as a holding position where properly justified, but the granting of a without notice order on the papers should not be a default. An on notice initial hearing can work adequately by video, but a substantive hearing at which evidence is assessed and serious consequences may follow as to findings of fact/loss of a home etc should usually be considered in court* (District judge).

## Hearings in the Court of Protection

Of the 880 professionals who responded to the question about whether Court of Protection hearings could continue to be held remotely, half answered 'yes'—although many of the comments attached to 'yes' responses contained caveats similar to the points raised by those who said 'it depends' (38% of responses). Only a minority (12%) felt that it would not be appropriate for remote hearings to continue to be used by the Court of Protection.

**Figure 11: Do you think hearings in the Court of Protection could continue to be held remotely? (n=880)**



### Continuing Court of Protection hearings remotely

Those who were in favour of continuing with remote hearings suggested that it was easier for medical and other professional witnesses to attend, that it was more efficient with less waiting around, there was less time travelling (particularly in rural areas), and some suggested that it was easier for the protected person (P) to take part.

*The Court of Protection spearheaded and put into effect the most successful example of remote access for hearings and online accessibility within what felt like two weeks of the March 2020 lockdown. They are a shining example of how to conduct remote hearings and my experience has been that in fact particularly in personal welfare and property and affairs matters, P has had greater more flexible access to being heard including by hybrid means where necessary, P and other parties acting in person in the cases I have experienced have suffered no disadvantage from having to appear in court remotely and in fact it has suited them better than having to travel to court (Local authority lawyer).*

## **Considerations and caveats**

Others thought that there should be an option for remote hearings, but that it would depend on access to technology, the needs of the parties and on their consent, and whether the application was contested.

*Personal welfare case management hearings are more than capable of continuing by remote hearing as long as all parties agree. In certain circumstances contested hearings could also be held remotely if not litigants in person or lay witnesses. It would have to be considered on a case-by-case basis, but we should not return to life pre-Covid. A mix of remote and attended hearings going forward would be appropriate (Solicitor).*

*Routine case management hearings [in welfare and medical treatment cases] can be effective when done remotely, particularly where all parties are represented; and, at the other end of the spectrum, urgent cases concerning proposed serious medical treatment can, if conducted remotely, make it easier for P, P's family and treating clinicians to participate: both more straightforward and less stressful. It has facilitated visits to P by the judge making the decision. It has allowed P to participate and to attend hearings in circumstances where their physical and/or mental health might otherwise have prevented that (e.g. a recent case concerning an expectant mother with severe agoraphobia, who would not have been able to attend a hearing in person but was able to do so via video link) (Official solicitor).*

*My experience has been in relation to personal welfare matters in all types of hearings. However, even within that it is difficult to express a 'one size fits all' approach. I am sure that there are some hearings which can and should continue to be held remotely and I expect that these will mostly fall within the category of case management hearing, where all parties are represented. However, there are many examples which may make a remote hearing inappropriate, even for case management hearings—for example, P wants to attend/ meet the judge/ may benefit from seeing the court process, there are litigants in person, represented parties need easy access to their legal representatives during a hearing, any party requires an interpreter etc. In any case, it is my view that any decisions about attendance at hearings should be led by considerations of the parties rather than the convenience of lawyers (Solicitor).*

*There is a concern that clients (those who are subject to the court's jurisdiction and/or their family members or loved ones) can feel detached when using remote hearings; as though they are passive rather than active participants. When in court, they may feel more engaged and have the benefit of speaking with not only their*

*lawyers, but the other parties and their lawyers also, which makes them feel more involved and listened to (Court of Protection Practitioners Association).*

*People who lack litigation capacity find it particularly difficult to deal with remote hearings. I consider that case management hearings where all parties are represented and there is general agreement as to the further evidence required could continue to be held remotely. Other cases are not suitable for remote hearing (District judge).*

### **Not continuing Court of Protection hearings remotely**

Some of those who answered 'no' to this question also added that remote hearings could be used for straightforward directions hearings but were concerned that any remote hearings for a person lacking capacity were fundamentally unfair.

*Profound decisions are taken in the COP [Court of Protection]. Often, they involve strong family emotions and the suspicion that the 'system' is against them. They need the transparency that can only be achieved by attended hearings (Barrister).*

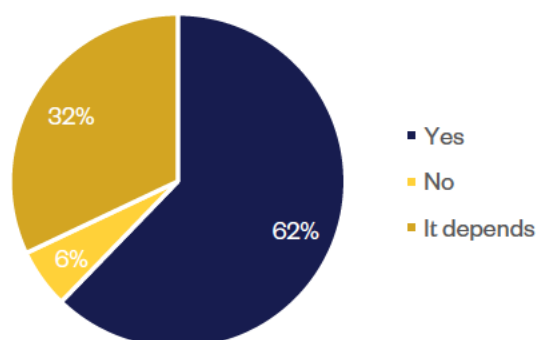
*I think heavily contested trials should be held face to face otherwise parties don't always feel heard (Circuit judge).*

*Subject to the caveat that short directions hearings involving lawyers only can be dealt with remotely. Remote hearings for people with impaired capacity are fundamentally unfair. The person may already have problems of orientation in relation to time, person and space and building rapport and engagement, and therefore meaningful participation, requires face-to-face contact. The problems are amplified where the person is unrepresented or their solicitor is not with them during a remote hearing. Subject to the above caveat, it is essential that we return to attended hearings as soon as practicable (District judge).*

## **Financial remedy hearings**

A majority (62%) considered that these hearings could continue to be heard remotely, with around one third responding 'it depends' and a small number answering 'no'. There were no significant differences across professional groups in response to this question.

**Figure 12: Do you think hearings for a financial remedy could continue to be heard remotely? (n=1,536)**



### Continuing financial remedy hearings remotely

*The Financial Remedies Court should be at the absolute vanguard of the Remote Access Family Court. It is virtually impossible to envisage any FR proceedings that could not be perfectly properly conducted remotely. A further by-product of the forced evolution of the remote access family court is the remarkable change (for the better) in the preparation of hearing bundles (less obviously irrelevant stuff being included) and in the virtual eradication of the time wasted by advocates 'wanting a bit more time' which rarely shortens proceedings and never appears to be focused on the relevant issues. Greater advocacy discipline has been introduced and it would be lamentable to see all the advances in efficiency and case management abandoned (Recorder).*

Among the points made in favour were that remote hearings were good for cases where parties lived abroad. *I have conducted a number of complex international financial remedy hearings throughout the course of the last 15 months. Parties who live outside the jurisdiction can attend remotely as can experts and other witnesses (High court judge).*

*All hearings appear to work better remotely in finance cases. They appear to start on time and negotiations are easier when not hampered by when and if the judges are available for indications (Barrister).*

### Considerations and caveats

As with all other questions, the comments indicated that there were many caveats to the answer 'yes'. In particular, many respondents indicated a firm 'yes' for first hearings but considered that final hearings and final dispute resolution hearings should be held in person. Additional caveats were that big bundles which can be required at final hearings are hard to manage online. It was also noted that it was easier for people to negotiate if they were both at court.

*Generally, first appointment hearings, first direction hearings and interim hearings in financial remedy cases can be adequately undertaken remotely, with members being able to reach agreements as well as in in-person hearings. Members are therefore happy for these to continue to be remote and perhaps be the default format, with the option of requesting an in-person format at the listing stage ... Final*

*hearings are proving more difficult to undertake remotely, particularly where there are LiPs or a need to cross-examine lay witnesses. Additionally, final hearings in financial remedy cases require communication between party and advocate more than other types of hearings. Generally, members consider that final hearings should be held in-person, unless parties express a preference that they happen in a remote format (Law Society).*

*First appointments, yes. FDRs and final hearings, no. Agreement at FDR is much more achievable with the parties at court. Final hearings are too heavy on detail for remote hearings—the strain on the judge is too great, especially when juggling electronic bundles as well (District judge).*

*An FDA could be done remotely but the FDR and final hearing should definitely not be remote. the whole point of an FDR is to get the parties together to try and resolve as many of the issues as possible. this is just so hard being remote and therefore often will not be half as effective as when they are in person. Final hearings again, should not be remote. these cases more than ever require constant information from the client during the evidence which is so hard/almost impossible in remote hearings (Solicitor).*

*There seems little reason why First Appointment and FDR hearings should not be heard remotely but video hearings rather than telephone hearings are preferable as they better approximate in-person hearings. The exception should be where interpreters are required. Where live evidence is necessary in-person hearings should be the norm (Barrister).*

*Routine first appointments can be done remotely, although complex cases involving difficult arguments on e.g. experts or third party involvement, are better in court. FDRs need to be in court to promote effective negotiation and final hearings also need to be in court (Circuit judge).*

### **Not continuing financial remedy hearings remotely**

For those who were against remote hearings the issues raised were also around the importance of in court negotiation between the parties, problems with bundles (which seemed to be a particular issue for magistrates, legal advisers and DJs) and the importance of allowing parties to decide which format of hearing they would prefer.

*I don't think parties or the court are taking hearings as seriously as they once were. There is a tendency to delay or agree directions without them being properly thought through (Solicitor).*

*These have not been successful in my view as the parties have more difficulties in negotiations at distance (Solicitor).*

*There is always an issue getting the REMO [reciprocal enforcement of maintenance orders] papers remotely, it puts more strain on everyone including admin (Legal adviser).*

*These are orders than can change the pathway of the parties. It is also a time when orders can be agreed. This is difficult to achieve remotely (District judge).*

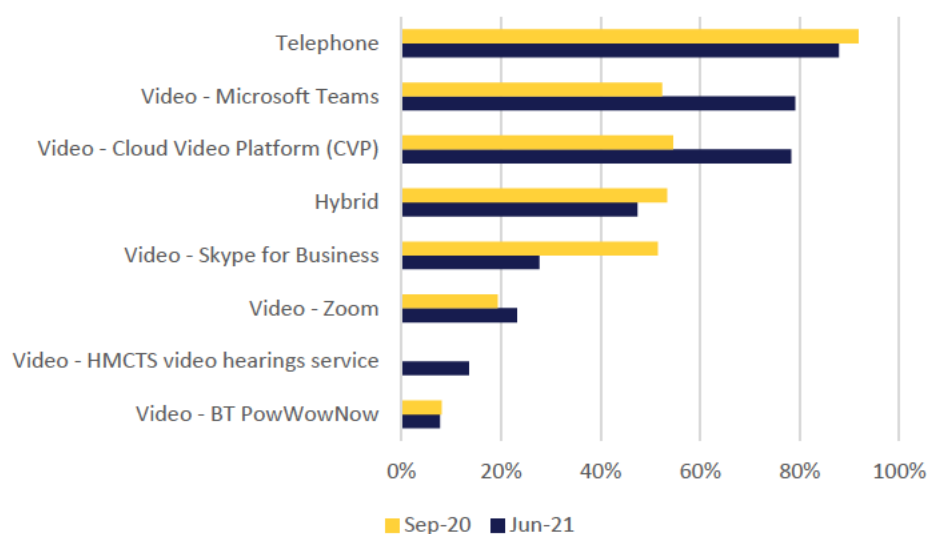


# Technology issues

Both professionals and parents were asked about what kind of technology they had used when participating in remote hearings. Professionals were asked what was and was not working well. Although parents, relatives and other lay parties were not asked specifically about the merits of different types of platforms, many of their responses to questions in the consultation referenced concerns about technology.

Many hearings are still being conducted by telephone. Of professional respondents, 88% reported participating in hearings by phone. However, there has been a shift in the use of video technology. Cloud Video Platform (CVP) is now more widely used: only 55% of respondents to the consultation in September 2020 reported using CVP—this has risen to 78%. In September 2020, 52% reported using Microsoft Teams; this has risen to 79%. Skype is not being used as widely as previously. It also appears that hybrid hearings have become less common (see Figure 13).

**Figure 13: Professionals: What formats have been used at the hearings you have been involved in? (Sep 2020, n=1,131; Jun 2021, n=3,035)**

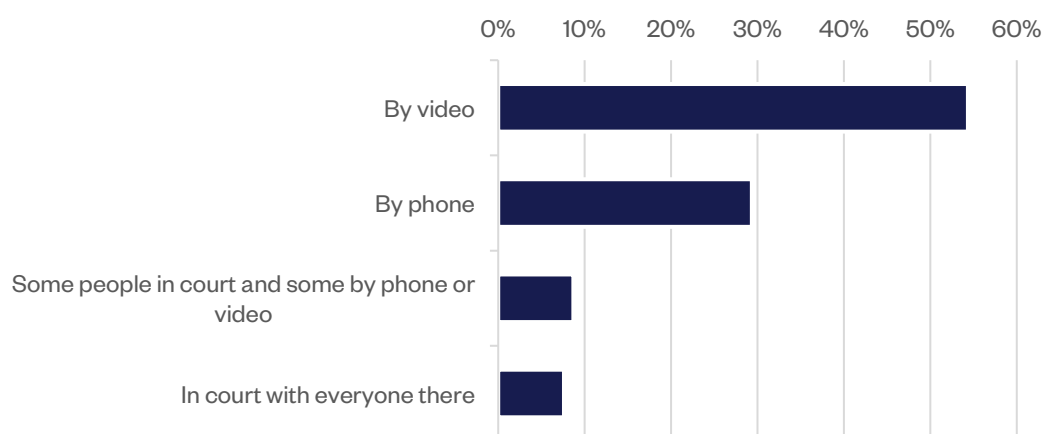


Note: respondents could select more than one response.

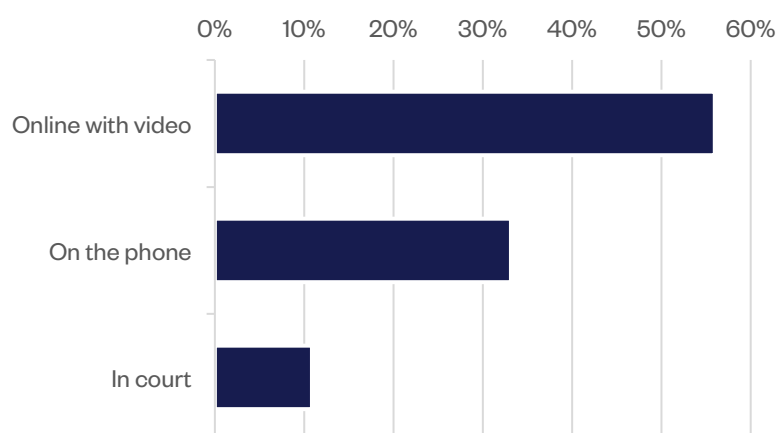
The majority of parents who responded to this consultation took part in video hearings (54%), and 29% of parents said their hearing was conducted by telephone (see Figure 14). This is in contrast to previous consultations where the majority took part in phone hearings (69% of parents who responded to the consultation in September 2020 took part in phone hearings). However, nearly one in three parents (33%) joined their hearing by phone (see Figure 15), suggesting that parents continue to join video hearings by phone and this is borne out by comments made by professionals. Relatively few had taken part in hybrid (9%) or in-person (8%)

hearings. It is important to note that few of the parents who took part in the survey reported receiving any help with joining the hearing (see Figure 16).

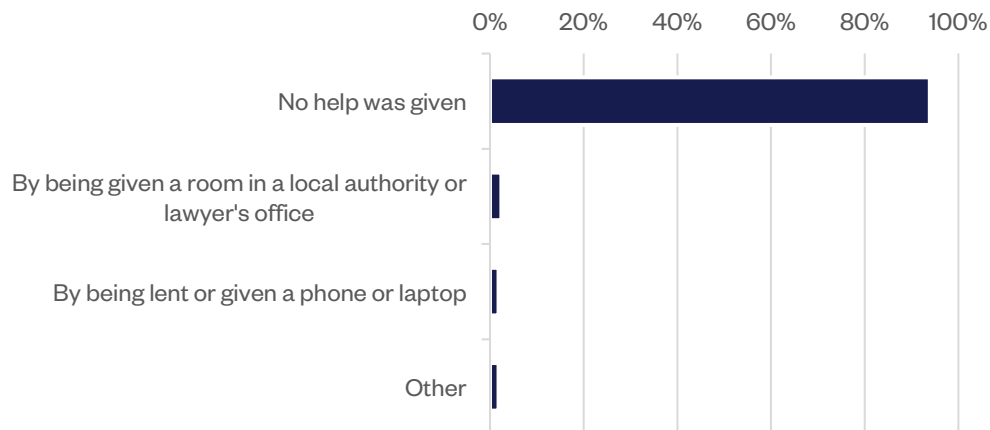
**Figure 14: Parents: Thinking about the most recent hearing in your case, was this ...? (n=184)**



**Figure 15: Parents: How did you take part in the hearing? (n=184)**



**Figure 16: Parents: If you took part on the phone or by video, were you given any help to take part? (n=164)**



There has been a notable shift in views about how the technology is working since the last consultation was undertaken in September 2020. While respondents continue to raise concerns about connectivity and access to appropriate hardware, many respondents reported that the technology had improved.

*Generally, I believe that the overall system has 'bedded in' well over the course of 15 months, and all parties seem to have adjusted well to virtual hearings (Cafcass Cymru worker).*

*All of the technology is working well on the whole. There are occasional difficulties with connection but problems have significantly diminished over time (Barrister).*

*All video platforms have improved to some degree as people are more confident in using them (Independent advocate/intermediary).*

*I consider that the technology has worked very well and is in fact a vast improvement on attendance in person when long hours are lost merely 'waiting' (Local authority lawyer).*

## Telephone hearings

BT MeetMe is the preferred telephone conferencing technology. It was noted that telephone hearings could work well for some straightforward hearings. However, there was a strong preference to phase telephone hearings out in favour of video hearings.

*Telephone hearings proceed without difficulty using BT MeetMe, though they are unsuitable for many types of hearing (Judge).*

*Telephone hearings are not ideal—all participants really need to be able to see each other but magistrates do most of their work this way. I am not clear why they can't use Teams/CVP as well (Solicitor).*

*Telephone hearings are fine for case management but should be phased out in favour of video hearings wherever possible (Judge recorder).*



*Telephone hearings are NOT suitable for public law proceedings. All of my telephone hearings have had awful connection/feedback issues, where parents have been in person they have not always been asked their views. 'Out of sight out of mind' springs to mind (Local authority lawyer).*

Professionals also highlighted particular concerns about parties having to join video hearings by telephone due not having access to the appropriate hardware, having insufficient data, poor connectivity or lack of support with navigating the technology. Professionals report that they continue to have to improvise access for themselves and clients.

*There are often difficulties with one party or another joining the CVP. For them to join in only by telephone when the rest are on video is not very satisfactory. It must be hard for them to tell who is speaking, and they are unlikely to feel fully involved and heard (Magistrate).*

*Telephone hearings are not justice, simple as. They are an appalling experience for the lay client, they do not allow for particular interaction between advocates and the judge and it is shocking that telephone hearings are still so common. CVP remains an accessibility issue, I have had countless clients who are otherwise technologically literate struggle to get on to hearings, meaning they have to dial in or even on one occasion I had to play the hearing to my client over Zoom. Paperless working is also all well and good for advocates with the right set up (tablet plus laptop), but clients rarely have such facilities (Barrister).*

## Video hearings

The majority of professionals expressed a preference for using videoconferencing platforms over telephone hearings. Professionals reported mixed experiences with CVP. Some reported that it feels 'clunky' in comparison to other platforms. Professionals noted that the choice of browser (Google Chrome) is important to improve reliability and experience. Users noted issues when there are high numbers of participants and highlight the benefits of building in breakout rooms. Some respondents had been deterred from trying CVP by other users' experiences. Improvements in CVP, such as including functions for interpreters and special measures, were welcomed.

*Given the speed at which CVP had to be implemented, it's remarkable (Magistrate).*

*From a problematic start in nearly all domains, I feel all of the technology has the potential to work well (Circuit judge).*

*Having been rolled out understandably in a bit of a rush, CVP is a good 'halfway house' for uncontested case management hearings/directions hearings. The addition of interpreter functionality and the upcoming rollout to protect vulnerable witnesses have helped, or will do (Barrister).*

*I am pleased that CVP has a new function whereby parties who are vulnerable and need special measures can be accommodated (Barrister).*

*Some parents have struggled but are guided to use Google Chrome for CVP by the court clerk and usually this is resolved easily (Cafcass Cymru worker).*

*My current preferred platform is MS Teams. I do however think there are benefits to the CVP system. There is greater sense of formality through CVP. The difficulty with MS Teams is that it is used so frequently for meetings that hearings can, particularly for lay parties, feel like meetings (Barrister).*

*Interpreters have struggled with translating on platforms other than CVP (Solicitor).*

However, some had a less positive experience of CVP.

*The [absence of] break out rooms, share screens means that all platforms but zoom have significant limitations. CVP often freezes, throws people out or otherwise messes up (Barrister).*

*I have not used any other than teams and zoom as the stories/frustrations of others trying others have meant it has not been worthwhile (Circuit judge).*

*CVP can be really difficult as the pictures of those attending become really small meaning it's hard to work out who is who. CVP is clunky and doesn't explain the joining process very clearly. The passcode is invalid until the clerk opens the room, and often this is long after the time you are asked to join giving the impression that you have the wrong dial-in details leading to panic for all (Social worker).*

*CVP has had to be abandoned each time it has been attempted due to insurmountable problems. No longer attempted (District judge).*

*CVP, I don't like at all, pictures of everyone on screen are too small, often blurry. It cuts people out. The telephone system on it doesn't work well (Barrister).*

Microsoft Teams was generally reported to be working well. Zoom was also popular for functionality but it is not always permitted due to confidentiality issues.

*Microsoft teams is the best technology for remote hearings. Skype for Business has not been used for some time now. CVP is good when it works, but there can be problems with sound quality (Barrister).*

*Microsoft Teams works well. CVP less so. Zoom works well and is perhaps the simplest. Telephone hearings work the least well because lay clients feel they are not really taking part although in some cases they are grateful not to be having to see and be seen by other parties (Barrister).*

*MS Teams works very well. CVP is adequate but lacks the tools of MS Teams. Zoom is also good, in some respects better than MS Teams as it allows more users to be on screen at the same time. Telephone participation works but is a last resort when video conferencing is unavailable (Circuit judge).*

*Teams gets very good feedback generally, and CVP less so, but there is still positive feedback for CVP. CVP is less stable than Teams. The background function for Teams is also beneficial and can provide a more professional appearance. It is unfortunate that Teams can't be run through court video link equipment (Justices' Legal Advisers and Court Officers' Service).*

## Difficulty accessing technology

Respondents' concerns about video hearings normally related to the quality of connection and access to technology. These difficulties affected professionals as well as parents, but the majority of concerns related to the difficulties parents were having fully participating in hearings.

*The court does not seem to acknowledge that holding a Teams event over a smart phone is very difficult and places many parties at a disadvantage to those in the hearing using large screen laptops and monitors. Many parties do not have satisfactory WiFi access. Courts seem unsympathetic to parties who claim difficulty joining hearings, yet I too have experienced issues following links etc, but not being able to join hearings (Third sector organisation).*

*Lawyers smugly pat themselves on the back about how awesome electronic and remote hearings are. And then you find the parties are watching on a phone. You then ask if they can look at the bundle: which is also on their phone whilst the lawyers talk about their tablets and massive screens. It's ridiculous. Parties need paper bundles and/or to be in court most of the time (Barrister).*

*I couldn't join the hearing with my mobile, no support given—just treated as if I wasn't co-operating. Had to get landline installed for subsequent hearings (Mother).*

*CVP works well for practitioners but not all parties have stable connections. We have ended up with one on CVP and one on the phone, which is unsatisfactory—particularly because the party on the telephone cannot hear the bench because of the Perspex screens (Magistrate).*

*Poor sound, signal problems. Some only on the phone. I want to look the people in the eye who be deciding something so important to me. People's lives are being affected (Father).*

*I think we have done all we can to make things run smoothly, as far as professionals are concerned at least. The difficulty is that every family is navigating the landscape afresh. Many do not have stable WiFi or a suitable device. There is little we can do to manage these problems as we don't know until each new case comes before us what the particular circumstances of the parties will be (Circuit judge).*

Law for Life raised a number of issues Roma families faced in relation to digital exclusion, including digital skills, and access to technology and equipment.

*The use of email was also difficult for many, and some professionals observed that parents struggled with clicking multiple web links. This is commonly required for scheduled Zoom calls and other similar platforms where accounts must be made, where individuals must sign up and download an application. Many also missed important correspondence if it was only delivered digitally (Law for Life).*

It was also clear that professionals have problems accessing appropriate technology and that investment in technology has not been equally distributed across courts, regions or professions. Respondents indicated that for remote hearings to continue, there must be an investment in suitable technology.

*It is dreadful that after over 12 months of this we are still experiencing problems with connection—e.g. none of the social workers from our local LA can connect by video.*

*[...] There is no satisfactory answer as to how lawyers take instructions during the hearing (Circuit judge).*

*I have concerns because of all of the technical issues [...] that happen during all the remote hearings, not hearing the expert witnesses and my barrister could not hear the expert witness, I could not hear any of the witnesses. Some of the hearings was not transcribed due to technical issues that has never been resolved (Mother).*

*I experience problems every time. IT support—it's amateurish that we have no-one to call on when CVP doesn't work.....I estimate that the first 10-15 mins of every remote hearing is spent dealing with technical issues. If you have 6 one-hour hearings that's 1 [and a] 1/2 hours lost. I'm tired of having no breaks on such days and being exhausted by the end of the day (Magistrate).*

*The quality of 'kit' in the courtroom is poor. There should be speakers/microphones and a large TV which can be webcast too—instead of investing significant monies into CVP, MS Teams could have been much better utilised and the monies used to invest in a TV, good microphone and speaker in each court room. CVP continues to have a myriad of issues (District judge).*

*HMCTS has failed on many levels including providing poor quality laptops, a CVP system that is not fit for purpose and technical support that is very limited to non-existent. If digital working is to be a significant part of the future of the family court, a fundamental review of the entire fabric of the system is required, rather than the continuous ad hoc way in which the system is currently using. A proper commitment to proper and ongoing funding will be essential (Circuit judge).*

Respondents noted the ongoing difficulty of managing the technology during hybrid hearings.

*During hybrid hearings a lot of court rooms do not have the right technology to enable proper engagement. For example, sometimes I have had parents joining by individual laptops but this causes echoes as they are in the room with the judge who is speaking out loud. I have also seen attempts to join the virtual professionals onto a large screen but this makes it hard for those not present in the room to see those present in the room (Social worker).*

*Hybrid hearings can be fine but about 50% of the time the tech is not working from the courtroom end. Have wasted hours trying to sort it out or cobble together a solution (Local authority lawyer).*

*A hybrid hearing is always much more difficult—the court room /HMCTS needs to be properly equipped to carry out a hybrid (Local authority lawyer).*

# Reasons for delays

Professionals were asked for their views on the reasons for delays, and a majority of respondents (2,965) provided views on this. Many responses, while suggesting specific reasons, also painted a picture of a system under extreme ongoing pressure and suggested that avoiding delay must be balanced against ensuring justice and fairness.

*Pressure on the system is now at breaking point. Social workers in social services and Cafcass are burnt out without any respite likely. Goodwill among professionals, which is what the family court system has expected and relied on for many years, is now entirely exhausted. None of these surveys seem to comprehend the scale of the problems. There is instead just a tendency to tinker at the edges, when a fundamental reappraisal is required (Circuit judge).*

*Social workers and guardians are going off sick, their cases have to be reallocated. Judges are overworked and grumpy with it. We are sinking under the weight of too many cases. A year ago, it was possible to power through on adrenaline and hope. I don't see how we can possibly keep working at this level. So far as I am concerned, at this point delay is the lesser of two evils because there is no 'give' for anyone I know to work harder or longer hours to get cases through faster, so if pressure keeps being piled on to keep to 26 weeks mistakes are going to be made with potentially dangerous consequences. Delay is the enemy of welfare, but so are rushed assessments, squeezed timetables and overtired professionals who are trying to complete complex and important work without thinking and reflection time (Solicitor).*

The specific factors identified as causing delays are set below. Some of these are specific to the circumstances created by the pandemic and the need for social distancing, while others are factors that were present before and have often been raised as issues that contribute to delays—but in many cases their impact has been magnified by the particular circumstances of the last 18 months.

## Factors specific to the pandemic

### Technological issues and access

Particularly during the early stage of the pandemic, some contested or final hearings were adjourned because of concerns about the fairness or appropriateness of conducting hearings via telephone or video conference.

*Earlier in the pandemic contested hearings were very difficult whereby very vulnerable clients were faced with giving evidence from home with poor IT and no support. This led to some hearings being re-scheduled (Cafcass Cymru).*

*The initial delays of Covid when many contested hearings were initially adjourned to later last year until the video platform or hybrid hearings system developed a few months in. I have never had as many cases running over 10-12 months as I have now (Solicitor).*

*Delays have resulted from an inability to hold multi-day contested hearings in the summer of 2020. We are now seeing several cases come up for final hearing which, had it not been for COVID-19, we would have expected to conclude last year (Local authority lawyer).*

### **Inappropriate use of remote and hybrid hearings**

Respondents also noted that listing had been adversely impacted by the use of remote and hybrid hearings in cases and for hearings where this was not appropriate, taking into account evidence requirements and circumstances of the parties.

*The use of telephone for all interim hearings (save for contested ICO) has prevented the judge from successfully narrowing the issues. Everything therefore is contested where some cases may have settled in the past (Barrister).*

The Law Society provided a list of case types that their members felt were inappropriate for remote or hybrid hearings and were in turn causing delays and having a domino effect on listing:

- fact-finding hearings often require more evidence gathering from witnesses (usually in relation to physical or sexual abuse cases)—such hearings can become significantly more complicated if carried out over remote platforms
- cases concerning ‘honour-based violence’, forced marriage and language barriers are often more complex and may require interpreters
- cases where parties have learning difficulties (including those represented by the Official Solicitor) or other vulnerabilities, requiring them to have face-to-face contact with their lawyers
- cases concerning large sibling groups, where multiple care plans are proposed, can bump into complications that lead to delays
- cases requiring intermediaries and translators.

### **Lack of opportunity for negotiation**

Remote hearings were also seen by some respondents as reducing the possibility for negotiation and potential settling of cases at an earlier stage. Social distancing and other restrictions were also seen to directly affect the ability of lay parties to receive advice from their legal representatives, which might have reduced the need for a contested hearing.

*Matters are not settling at IRH [issue resolution hearing]. I wonder whether this is because lawyers find having those difficult decisions very hard when doing this remotely. This could be remedied by clients attending offices more. I also wonder whether the pressure of an attended IRH focuses those discussions and we have those difficult discussions around the table which are more difficult when we are each individually just taking our clients instructions. The process of discussing*



*around the table, then going off and taking instructions helps 'negotiate' a settled way forward which you simply don't get remotely (Barrister).*

*When hearings were in person a significant amount of work was achieved on behalf of children at the first hearing; for example getting the LA and family members together in a room and getting plans and agreements arranged (yes this should have happened prior to the first hearing but often hadn't) the LA and parents and their legal reps could achieve a lot of work in person at that initial hearing which over the last year either doesn't happen or happens later which causes drift and delay for children (Cafcass).*

## **Reduced opportunities to assess children and families**

The impact of lockdown and social distancing has had a substantial impact on the ability of local authority staff and others to carry out necessary assessments of children and families and of wider family members. The difficulty in arranging contact between children and their parents and wider family has also affected long-term planning, as has the lack of support services, while adjournments and delays have meant that the situation for parents and children changes as time progresses, making further assessments necessary.

*At present assessments have been taking longer to enable the assessor to complete assessments in a fair manner. Contact services have been unavailable for direct contact on occasions due to the Covid lockdown rules and this has hampered any observation of the parent and child (Magistrate).*

*From professional experience, the local authority has been unable to utilise resources in the way it would have done pre-Covid to support rehabilitation home. This has meant that the 26 weeks has sometimes needed to be extended, particularly in high-risk cases where regular social work home visits are essential and not able to take place in the way that they would have done. Some experts have been disinclined to assess parents remotely as well (Cafcass Cymru).*

*It is not only the circumstances of the families that has been constantly evolving but that of society itself with significant changes occurring in a short timeframe e.g. lockdowns. This has significant ramification for care planning. The 'pressure cooker' created by lockdowns is also relevant in considering extensions that have been required so as to consider family members who were not previously being considered with changes in views being provided by children and young people about who they want to live with (Social worker).*

## **Factors exacerbated by the pandemic**

### **Resource and capacity pressures in local authorities**

Among the issues that were present prior to the pandemic but have been amplified by it are concerns about the pressure of work within local authorities and the courts, already negatively affected because of budget cuts and restraints, which many respondents link with increasing delays.



*As a local authority lawyer, the most significant delays appear to me to be caused by sheer volume of caseload on our social workers, expectations of both the judiciary and private practice on us, our inability to be in two places at once, the impossibility of being able to meet the needs of every family equally all of the time and the challenges of completing assessments on time under those sorts of caseload pressures and against a background of families not always keeping appointments or producing their documents or evidence on time. There is also an expectation from private practice solicitors that LA solicitors and social workers will micromanage everything in the case, again, further limiting the resource of time (Local authority lawyer).*

*Lack of resource—too few lawyers and social workers means people are practising in a reactionary way rather than being proactive in planning, reviewing and ensuring work is done to deadline. Once the timetable is lost this causes further delay as assessments need updating/circumstances change etc, which has a knock-on effect and cases are protracted. We need to be realistic in setting deadlines given the current workload—better to have a slightly longer timetable set and the case run to plan than have repeat hearings to keep patching things up at the end (Local authority lawyer).*

This pressure of work within local authorities is seen to lead to difficulties in adequate preparation of cases and problems in complying with directions.

*Pressure on local authority social workers, they have such extensive workloads they simply cannot get assessments done in a timely fashion. I am always told by LA they need 16 weeks to do a full connected persons assessment, this is a big factor in my view on the delay. Another factor is just how as the cases progress naturally things happen, applications are made late in the day for further assessments, further family members come forward etc. I think 26 weeks is unrealistic unfortunately unless each and every local authority starts to double their social work teams (Solicitor).*

*There have been delays in the filing and serving of evidence from local authorities. These delays are often a result of staff illness, staff redeployment or difficulties in completing assessments remotely. These are direct impacts of the pandemic on local authorities' already stretched capacities (Law Society).*

### **Limited judicial and court capacity**

Some of the more common factors raised by respondents were issues of listing, lack of court space, and lack of judges, with many expressing frustration in findings listings for final hearings.

*Generally speaking it is the court's capacity to fix multi-day final hearings. This is not exclusively a Covid issue and there were delays well before the pandemic. It is not unusual to invite the court to list a 5-day final hearing (which is a fairly standard length for a contested care final hearing) and be told it will be 7, 8, 9 months away (Barrister).*

*There are not enough judges or court time to hear the cases. It is an absolutely terrible situation. By the time some cases get to court some parents have not seen their children for a year. If you (whoever is reading this) could just sit in on one case and then tell me it's not gut wrenching/ terrible for the children/parents to have to wait so long I would think you must come from another planet (Solicitor).*

*I am passionately of the view listing lies at the heart of this. So called 'shorts' to start at 10 am on the day the substantive hearing extends dramatically the duration of substantive care cases and diverts the judge from the task of preparation for lengthy hearings for often the only thing 'short' in a hearing is the title 'short'. In a three-day case, three one-hour hearings make the case extend to 3.5 days. This on aggregate basis across the country must substantially add to backlog of cases. On top of this we are often having to wait for court dates. If I want to be dynamic and push a case hard I cannot because there is no judge or court to accommodate the matter (Judge).*

*Lack of court time and judges' availability—delays in final hearings mean that work has to be repeated, e.g. when LA and parties have worked to 26-week timeframe only for the case to go off for 3-4 months for court availability—means that either ongoing assessments and refilling of evidence has to take place or when it doesn't an automatic need for further adjournment for assessment to be updated (Cafcass).*

Some respondents felt that the continued use of remote hearings would be one way of reducing this backlog.

*The government has sought to place the problem with the process but it is the systemic issues and failures that cause the delays. In order now to clear the backlog there needs to be a completely new attitude to remote hearings using them for everyday lists because they are far more efficient ... To clear this backlog there will have to be an army of recorders and DDJs [deputy district judges] sitting remotely while the resident judges get on with in court hearings—so that we can double up. The backlog existed long before Covid. We now have the means to tackle it—the only question is if there is the will to embrace change and if the MoJ is prepared to pay part-time judges to be used in this way (Barrister).*

*The ability for courts to sit remotely increases the capacity for courts to reduce the backlog of cases e.g. if a recorder can sit from home to hear a case, then a physical courtroom is not needed (Barrister).*

## **Delayed expert assessments**

A majority of respondents noted that delays in securing an expert assessment had in turn contributed to the backlog in listings. And though many professionals stated this issue had been present before the pandemic, there was a strong sense this had become more acute as a result of the social distancing measures. Some respondents felt that there continued to be an unnecessary reliance on expert evidence over and above social work evidence in care proceedings, while others simply commented on the difficulty in finding experts to give evidence and on problems arising from restrictions on face-to-face meetings.

*It has been said before but a lack of experts (psychologists/independent social workers/paediatricians/radiologists, etc.) causes delay simply due to the lack of suitable experts and therefore timescales. For example, trying to instruct a psychologist to report now (June 2021) and despite wide ranging search some experts cannot start work until September/October 2021 or beyond. The delay caused when an expert charges more than Legal Aid rates, having to apply for prior authority from the Legal Aid Agency then having a hearing to decide who pays the 'shortfall' between the experts fees and the amount the Legal Aid Agency will fund,*

*to be frank (whilst I accept the need protect the public purse) the costs under the FAS [family advocacy scheme] probably exceeds the 'shortfall' (Barrister).*

*There has been a huge shortage of experts who have been willing or able to undertake face-to-face assessments. This has inevitably led to a backlog. Matters were adjourned during lockdown and the result is that final evidence has ended up out of date at the time of final hearing listings, resulting in a repeat exercise of having to update assessments etc. (Magistrate).*

### **Family members coming forward late in proceedings**

A number of respondents noted delays are caused by family members coming forward as potential carers late in proceedings, requiring time for the necessary assessments to be carried out. Some respondents express irritation at the delay this causes, while others recognise there may be reasons why relatives have not agreed to be assessed sooner and others note that if it can be possible for children to remain within their families then delay is not necessarily a bad thing.

*It is not correct to assume that ALL delay is bad—sometimes it is required to respond to new circumstances, new relatives, or to ensure a party has a fair chance to present her or his case (Barrister).*

*Real focus on trying, if at all possible, for a child to stay within the family. Cases that would have before been placement order have looked at family members further afield and have resulted in delay but ultimately children staying in family (Solicitor).*

A very small proportion of respondents reported that they had not experienced any delays in their local area, aside from minor timetabling issues when lockdown measures were first introduced.

*Cases I have been involved in have not been delayed during the pandemic save for at the very beginning (initial lockdown) when no guidance was available (Cafcass Cymru).*

*In the area I have been working in (South Wales) I have not seen delays—we have been given a clear structure and timescale from court to work toward (Social worker).*

# Attending court: COVID-19 safety

Both professionals and parents were asked, if they had recently attended a court hearing, whether they felt that all the necessary safeguards were in place to prevent the transmission of COVID-19. Responses were mixed, with around half of parents and professionals saying that they felt that all necessary safeguards were in place.

There was a general recognition of the hard work of HMCTS staff to ensure that protocols around social distancing, hand sanitising and mask wearing were followed, and that changes to court rooms had been made (e.g. installing Perspex screens). Although this helped people to feel safe, there were also comments about the risk of COVID-19 being managed as far as possible, but not eliminated. It was also noted that vaccine rollout made people more comfortable about going into court.

*We sat in a large court room and there were only 4 people there. The judge was behind a plexi screen. It felt safe (Mother).*

*Have been very happy to go into court. Sensible arrangements in place. There is no pressure to attend if we do not wish to (Magistrate).*

*Felt safer at ELFC [East London Family Court] than in any other public place in lockdown! (Solicitor).*

*I think we are doing our best. Things are a long way from perfect and I felt alive to the inherent risks involved in travelling to court on public transport but I'm not sure what more we can do with what we've got. One judge recently requested (although didn't compel) those attending to take lateral flow tests. This seemed to me to offer reassurance to us all (Barrister).*

Some respondents felt that the restrictions were too strict and could be relaxed further. This was raised in relation to the limitations on the number of people who could be in court and conference rooms, and the impact of mask wearing and/or social distancing on building a relationship with client.

*I went to the Central Family Court for an 'in person' private child final hearing. We were the only hearing on the floor. We were frequently reminded to sanitise. I did not like the two-person limitation in conference rooms—I had a client and a solicitor who had to be together to discuss matters. There wasn't even the option of a proper chair for my solicitor, which was uncomfortable and unhelpful. Three in a room of that size must be acceptable (given we can go in groups of 6 to a restaurant) (Barrister).*

*[Yes] However, they are unnecessarily rigid. Taking instructions from a client with social distancing in mind but from behind a mask does not foster a supportive and assuring relationship. Often feel you would be better off sitting in parked cars and talking by telephone, at [least] you can see the faces and expressions (Barrister).*

Most respondents who felt that there were insufficient safeguards against the transmission of COVID-19 were concerned about a lack of ventilation in court rooms.

*I am not convinced that the ventilation in court is fit for purpose and if I have the window open people complain that they cannot hear as my court backs onto a busy road (District judge).*

*I do generally [feel safe] and everyone has worked so hard, but I was definitely not comfortable sitting in tiny, unventilated conference rooms with clients until I had been vaccinated (Barrister).*

*My only concern is that despite all the additional layers of safeguards on arrival at court etc we then spend the day in an airless, stuffy court room where there is no natural air! (Barrister).*

*My main issue is about ventilation. There are all sorts of bizarre bits of tape stopping people sitting on (seemingly random) seats and stopping anyone using conference rooms (which would be the safest place to be if you are on your own!) but no ventilation at all. Even where courtrooms have windows (a delight) they are not opened. This makes a massive difference when you are in a room with multiple people for a long time. It is easy and sensible. Please ventilate our courts (Barrister).*

Some respondents complained about the length of time it has taken to install safety measures. Delays to the installation of screens seemed to be a particular issue for the magistrates' courts.

*We have only just had screens installed—why has it taken 15 months? We have ample room to sit as 3s and be safe but this is only just happening (Magistrate).*

*There has been an extremely slow response. Physical screens are not available in many family courts and the concentration has been in criminal courts (District judge).*

*HMCTS responded very slowly to all the safeguarding issues. We do not yet have screens in the magistrates court! (Magistrate).*

Others raised concerns that courts had not been regularly cleaned (especially between hearings), that hand sanitiser was not replenished or not available, and that toilets were dirty. There were also concerns that protocols around mask wearing and social distancing were not always maintained or properly enforced, often due to a lack of space in court buildings and rooms. Some commented that social distancing measures were especially hard to enforce between legal representatives and their clients who wished to give instructions during hearings. A handful of professionals and parents also raised concerns about security, including a lack of PPE for security guards and having to take their mask off. Some indicated that these issues had been made worse in recent months as courts got busier and were concerned what this might mean for the coming months.

*They didn't even have hand sanitiser available anywhere in the building (Mother).*

*When in court, if you need to speak to your client you still end up whispering very close to them. I don't see a way around this. When remote you can just send emails and WhatsApp messages to your client (Barrister).*

*Inside the court room it is a struggle often to fit the parties, witnesses, experts and representatives into most court rooms in a safe way. For example, if you have a*



*social worker, social worker team leader, solicitor, family members, counsel and sometimes P and an advocate it is easy to have maybe 10 people who need to attend a hearing. This is especially the case where the hearing is being held remotely but with a number of people attending in person as the judge often attempts to move people closer together so that everyone on the screen can see all attendees (Court of Protection Practitioners Association).*

There was evidence of considerable variation between different courts, which was mostly associated with the physical space and the availability (or lack) of rooms large enough to enable social distancing.

*It varies wildly from court to court. Some courts are very well organised, with safe security measures in place, lots of space to ensure social distancing within the building etc. Others continue to undertake over-the-top inspections at security, without appropriate PPE, or there is insufficient room to safely move about the building. For care cases there are often 12 or more people in the courtroom, and this becomes problematic in smaller courtrooms (Barrister).*

*The availability of facilities to enable clients and their legal representatives to have a private discussion whilst at court and whilst still safely distanced is extremely variable across the courts estate. Many courtrooms have little to no ventilation or are of insufficient size to safely accommodate the number of attendees (Barrister).*

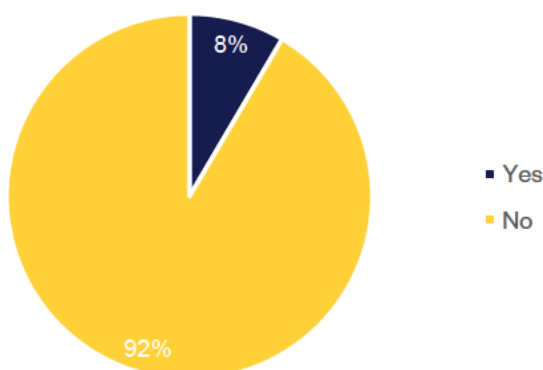
Some felt that, no matter what protocols were in place, the risk from COVID-19 could not be fully managed. Others mentioned outbreaks of COVID-19 in the court that made them feel unsafe.

*It's inevitable that when you go through security, speak with your client in a conference room, negotiate with your opponent, sit in a court room for prolonged periods that you are at risk. It just needs one person in the group of people you are exposed to for you to be at risk (Barrister).*

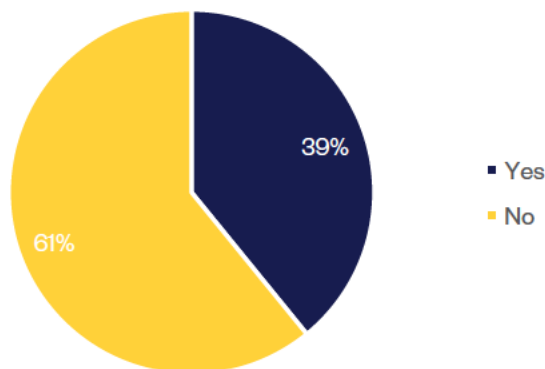
## Making decisions about court attendance

Respondents were also asked whether they had wanted to attend court and been prevented from doing so, and if so, who or what prevented them from attending.

**Figure 17: Professionals: Have you wanted to attend court in person but been prevented from doing so? (n=3,035)**



**Figure 18: Parents: Have you wanted to attend court in person but been prevented from doing so? (n=184)**



In most cases, whether the hearing was listed as remote was seen to be the decision of the judge or HMCTS staff only. Some parents and relatives indicated they were not given a choice about how the hearing was conducted, and were told that the courts were closed due to the pandemic. Professionals also raised concerns that hearings were often remote 'by default'.

*I was told by my legal team and the judge that the hearings would be remote. I was not really given an option, as I would have had to wait months and months for a hybrid hearing and the case had already lasted more than a year (Parent).*

*I was told that it has to be remote. Even my final hearing coming up apparently has to stay remote (Parent).*

*Cases tend to be listed for remote hearings as a default position rather than considering whether a case should and would more fairly be dealt with in person (Magistrate).*

*Judicial determination that the hearing could be conducted remotely, despite observations made to state that would be inappropriate (Barrister).*

*General instruction that all magistrate sittings would be CVP. Which is odd as some other areas have no such instructions. The convenience/cost saving of CVP means that this becomes the default when it should be exception (Magistrate).*

In hybrid hearings, limits on the number of people who could attend court meant that the attendance of certain professionals or lay parties was prioritised. Some professionals also commented that their employers had issued guidance preventing them attending court in person (e.g. Cafcass, some social workers).

*I was for the LA and I felt it important that I attended to cross-examine the parents who were attending but I was told I could not. In another case my client had significant learning difficulties and required the assistance of an intermediary—the hearing was originally hybrid with me and the client attending and then the court emailed today it was not possible and the hearing was to be remote (Barrister).*

*The court deciding the hearing would be remote or hybrid and that no party needed to attend or the no of attendees was limited. I represent children often and so given the client, i.e. the guardian is a professional, they are often not needed in person and priority is given to the parents and their reps—plus most judges then prefer to have*



*the LA rep in court too—so usually the children's rep is not as 'necessary' to be in-person (Solicitor).*

*Legal advisors advised staying away unless absolutely necessary. It is always necessary. We should not have closed courts. Justice should be seen to be being done (IDVA).*

A handful of comments also indicated that hearings would be listed as remote in order to avoid delay.

*I haven't been prevented, it's more that the court has proceeded with video hearings and, given problems with listing, it probably makes more sense to go ahead than cause further delay for a child (Cafcass worker).*

*[The] matter would be severely delayed if anyone wanted an in person final hearing (Solicitor).*

# Ensuring remote hearings work fairly and smoothly

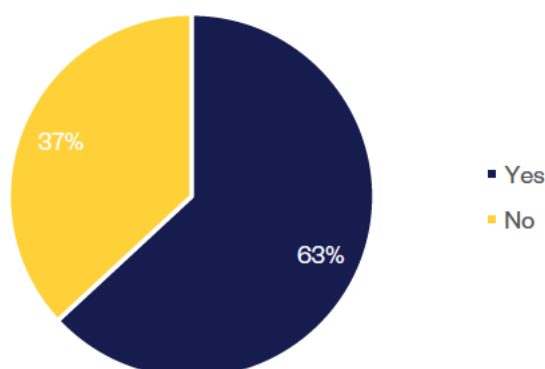
Professionals were asked whether anything more needed to be done to ensure remote hearings were fair and worked smoothly. Parents were asked whether they felt supported during hearings, whether they had concerns about the hearings they had been involved in and what would have improved the situation for them.

The themes that emerged from responses to all of these questions were very similar to those identified in the two previous consultations and echo many of the comments made in response to the questions about specific types of hearing. Professionals continue to express concern about the ability to support parents and lay parties during remote hearings, and their capacity to engage. These concerns were echoed by many of the parents who responded to this consultation.

Some of the issues and concerns raised by both professionals and parents about remote hearings, for example around technology or the loss of authority of the court, are specific to remote hearings while others were problematic before the start of the pandemic but are now causing considerable pressure on the system, for example the position of litigants in person and unrepresented lay parties and a shortage of judges and courtrooms to deal with the number of cases.

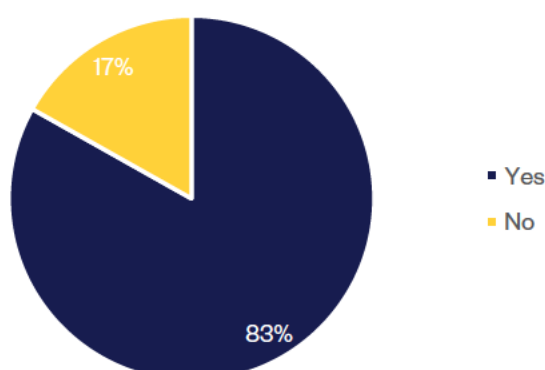
A majority of professionals (63%) felt that more needed to be done to ensure that remote hearings were fair and worked smoothly. While 37% of professionals answered 'no' to this question some of the comments attached to the response 'no' indicated that the respondent felt that nothing could be done that would ever make remote hearings fair, while others felt that things were working as well and as fairly as could be expected in the circumstances but that remote hearings were inferior to hearings in person and likely to continue to suffer from technical problems.

**Figure 19: Professionals: Are there further arrangements that need to be in place to make remote hearings fair and work smoothly? (n=3,035)**



A clear majority (83%) of parents had concerns about the way their case had been dealt with.

**Figure 20: Parents: Did you have any worries or concerns about the way your case has been dealt with during the hearing or hearings? (n=184)**



There were a number of parents and relatives who were very unhappy about the decisions that had been made in their cases and their concerns reflect themes that were apparent before the onset of the pandemic and remote hearings, particularly in private law. These include: concerns that judges and lawyers do not have a good understanding of domestic abuse and, in particular, of coercive or controlling behaviour; judges are misogynistic; courts do not properly understand parental alienation; courts are biased against fathers; dissatisfaction with Cafcass; and frustration at the expense of legal representation and the lack of availability of legal aid. Many other parents, relatives and lay parties raised concerns specifically about their experience of remote hearings. The majority of these comments are relevant to the issue of fairness and the smooth working of remote hearings and are included here. Other comments are included in the sections on technology or delay.

Some professionals and parents felt that remote hearings could never be fair, and a return to in-person hearings was necessary to ensure justice and fairness. Many parents in particular emphasised the importance of the decisions being made on

their and their children's lives, the perceived unfairness of these decisions being made remotely, and the difficulty of feeling like they had been heard in a remote hearing.

*I have read tweets from family lawyers saying remote hearings are so much better because they don't have to travel as much and they have a better work/life balance. ... I rather take exception to these tweets as a person going through possibly the worst situation of my life dealing with a contentious divorce and child proceedings who needs the family law to resolve our situation. I appreciate that all lawyers work hard but there should be some recognition that remote hearings can be challenging for the lay client (Mother).*

*There are fundamental problems in remote hearings which cannot be overcome (Circuit judge).*

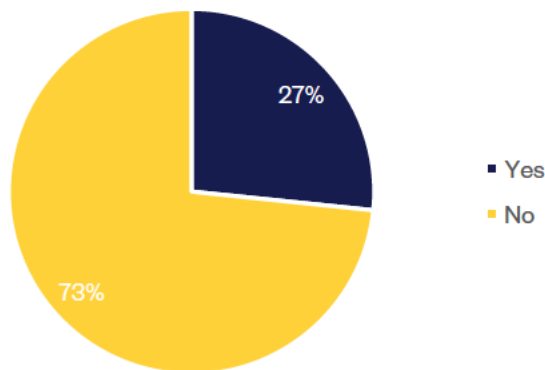
*After 15 months of trying to support parents with learning disabilities through these very difficult hearings, I am unable to think of a way to make them fair for these parents due to their particular individual difficulties (Independent advocate).*

*The judiciary has done its best to adapt the use of technology to meet an unprecedented situation but we should return to normality as quickly as we can. There is already a perception that family justice is administered in secret and remote working simply fuels this suspicion (District judge).*

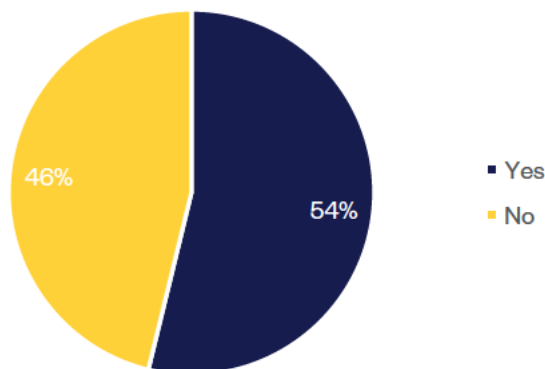
## Supporting parents and lay parties during remote hearings

As in the two previous consultations, professional respondents raised serious concerns about the ability to properly support parents and other lay parties during remote hearings. A majority of parents (73%) indicated that they did not feel supported during their hearing(s). For many of the respondents this was because they did not have representation or other support: just under half (46%) did not have legal representation and a much smaller number had accessed an advocate or McKenzie friend to assist them during the hearing. Others raised concerns about not being able to be with their representatives during the hearing, making communication difficult.

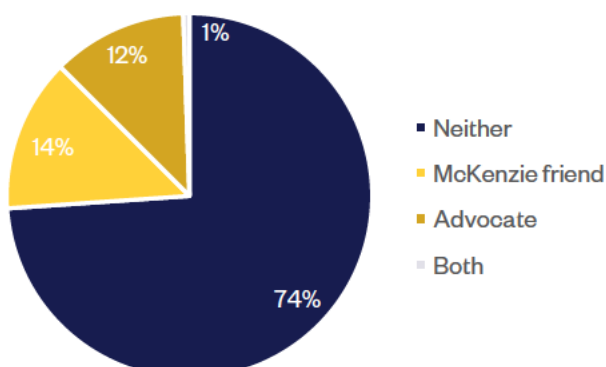
**Figure 21: Parents: Did you feel supported during the hearing or hearings? (n=184)**



**Figure 22: Parents: Did you have, or do you currently have, legal representation? (n=184)**



**Figure 23: Parents: Did you have, or do you currently have, an advocate or a McKenzie friend to help you during court hearings? (n=184)**



Professionals expressed concern about vulnerable lay parties being alone at home for hearings where decisions were being made that would impact the outcome of the case, or where final and life-changing decisions were being made. There was also concern about the difficulties for lay parties, particularly those in public law

proceedings, arising from lack of access to private space or to the necessary hardware to enable them to join hearings effectively.

*It needs to be understood that most people caught up in the social welfare parts of the family justice and Court of Protection systems are massively disadvantaged. They may well not have somewhere private to sit and give evidence. They are unlikely to have access to the necessary technology. They may well need the personal, i.e. presence, support of their lawyer (Advocate).*

*We continue to hear troubling reports of lay clients being left unsupported, emotionally vulnerable and excluded from the court process. Our members remain very conscious of their inability, in a remote setting, to provide emotional support to their clients before, during and after decisions made by courts about the care and future of their children. It is also challenging to discuss complex evidential or sensitive matters with a lay client with no real ability to gauge their response. This is common to both public and private law cases. Members continue to express disquiet and real concern about the well-being and welfare of lay clients whom they are unable to properly support and assist (Association of Lawyers for Children).*

Parents also commented on not getting enough support, including where they felt that specific disabilities or needs were not taken into account.

*I have mental problems and these have not been taken into account by the court (Father).*

*I was not offered any support even though the judges were aware that I have ASD [autism spectrum disorder]. I was not permitted to have any other person with me to support me. I have felt discriminated against and my ASD has been taken into account that I am unable to be a mother of my 2 children (Mother).*

*I had a remote hearing in November 2020. I wish there was a 'sort of' button above because while I felt like I wasn't alone, I didn't feel that level of support I had when I attended court in person (as I had done a number of times before) where the solicitor and barrister would sit in a conference room and we would speak and it was more organic and I felt my questions better answered. I felt a bit disconnected during the remote hearing. I have had a number of hearings in this case (Mother).*

Many respondents referred to the continuing challenges of communication between lay parties and their representatives before, during and after hearings.

*I wasn't able to communicate with my barrister, and my children were in the next room (Mother).*

*I never met my barrister and was unable to communicate to him/her during the hearings. Because everything was done on Teams or on the phone for the case management hearings I never felt in control of my case and needless to say, I lost (Mother).*

*My barrister didn't say a crucial detail and since I couldn't directly speak to her for her to speak on my behalf, I tried to speak myself. They couldn't hear me and even though I tried to get their attention by waving—they didn't seem to notice and information that I wanted to say was not taken in account for the final decision making (Mother).*

*I was unable to privately communicate with my legal team which meant that if I had concerns in that particular hearing I could not voice them privately (Father).*

Some parents reported better experiences with communication.

*My solicitor was great, set up Teams meetings so we could speak over my iPad before and after hearings (Mother).*

*I am lucky to have extremely supportive legal advisors who communicated with me throughout and after the hearings (Mother).*

*Had a conference with my barrister before and after and I could message her via WhatsApp during (Mother).*

Particular issues were raised in relation to communication during hearings where interpreters or intermediaries were present.

*A key issue going to the heart of a fair process is ensuring that the interpreter is able to communicate, seamlessly with the lay client. In a remote setting, this often requires the interpreter and the lay client to have two devices: one to access the hearing online, and a telephone so that the interpreter may interpret directly without interrupting the hearing. This is simply not an option for most public law court users. It also makes it difficult if an interpreter needs to interpret for two lay persons who are in separate venues. Remote settings pose further challenges for interpreters to speak up when advocates speak too quickly, and equally a lay client may find it harder to show that they are finding it difficult to understand the interpreter. CVP has added a side room function to facilitate interpretation. This is beset with difficulties. Members report frequent technological issues such that simultaneous interpretation was not achieved. When it cannot be achieved, hearings are lengthened considerably to allow for translation (Association of Lawyers for Children).*

*For women whose first language not English it very difficult to understand translations, especially on the phone where connections are not always stable. [...] In remote hearings it is much harder for participants to interrupt if they become aware that they are not being translated properly. We have been told by some women that the standard of translation is extremely poor as often the translators do not have a good working knowledge of family court language. Consequently what participants are saying to the judge is not translated accurately, they sometimes either make short cuts or say what they think the women should be saying without realising this can seriously affect a case (Legal Action for Women).*

*One member recently represented a family member in a withdrawal of life sustaining treatment case which was listed remotely on an urgent basis. There was a language barrier, and the family were not used to using technology. An interpreter had to attend the hearing remotely. Having engaged in some discussions with the client using video conferencing software, the solicitor made the decision to drive to their home to be with them during the hearing, had she not done so, it is hard to see how the remote hearing could have progressed effectively, or at all. Throughout the remote hearing the interpreter had to call the solicitor's phone during breaks to relay what had happened during the hearing to the client (Court of Protection Practitioners Association).*



*Lawyers do not talk to Roma families in courts. It is also hard to interpret for them, in court context especially, because they use complex language and difficult ways of explaining (even if I know the terms, I have no time to explain it to them). It is difficult to facilitate communication between them and Roma parents, this requires a lot of skill (Roma advocate and interpreter, Law for Life submission).*

### **Support for litigants in person and unrepresented lay parties**

Both professionals and parents raised concerns about support available for litigants in person and unrepresented lay parties. Similar concerns were raised in the response of the Law Society. This echoed comments received in response to the questions about specific hearings, where concerns were raised about the capability of litigants in person to engage in, follow, and access remote hearings. Comments from parents explain the difficulties they faced representing themselves in remote hearings. This included particular issues raised about remote hearings, but most comments highlighted the difficulty parents had navigating the court process without representation in general.

*I'm not very good on the phone and find it difficult to put myself across and express myself (Father).*

*It was like a lamb to the slaughter. All the professionals have vast experience at court, even those that are not legally trained have vast experience within a court arena. For a desperate parent doing it for the first time without access to legal advice is barbaric (Father).*

*It was an awful experience I was up against a legally represented person with a full legal team. There were issues with childcare and with connection which affected my witnesses and the judge didn't care (Mother).*

*Access to justice is still hampered when there is a huge imbalance if one side has legal rep and the other is an unsupported LIP. Court language is still a barrier to the understanding of those who have no prior experience of it, have limited understanding of formal English language or where there are other issues i.e. poor mental health (Norfolk Community Law Service).*

*I found it close to impossible to know when to speak or if I should. Felt completely out of my depth with little understanding of what was really happening. And zero chance afterwards of making amends for missed opportunity due to not realising. Petrified of interrupting if I shouldn't have too, so very passive (Father).*

Some parents noted the role of the judge/magistrate/legal adviser in supporting them.

*The judge was careful to make sure we understood the process (Father).*

*The judge explained the procedure well and was accommodating to all (Mother).*

*My McKenzie friend as ever helped me through the different steps of the hearing (Father).*

*I thought I would find it quite intimidating but I actually didn't mind it that much. The legal advisor was quite good and did answer any questions I had (Father).*

## The administration of hearings

Other issues raised were about the administration of hearings, including information provided to parties prior to joining the hearing, technical issues, and the management of remote hearings. Again, many of the comments here reflect similar themes identified in the two previous consultations.

### Communication and information prior to the hearings

Professionals and lay parties raised issues about short notice of hearings, hearings being cancelled, the platform changing at short notice, or sufficient information not being provided in advance. They highlighted a need for clearer information to be sent by the courts, including an overview of how the process will work, and for this information to be sent sufficiently in advance of the hearing so that people can prepare effectively.

*I had a direct access barrister for the final hearing, but on the day the judge decided the matter was not suitable for a remote hearing, postponed it (wasting my direct access fee) until an in-person hearing could be scheduled, then another judge picked the case up and scheduled the hearing as remote anyway, at which hearing I couldn't afford another barrister (Father).*

*I received two hours' notice of the hearing and was unable to have any support. This is despite contacting the court as I had heard nothing in nearly 6 weeks. All emails went ignored and the phone was never answered. I had an email requesting my position statement. When I asked if there was a hearing date I was told someone else would let me know and they didn't (Mother).*

*Parents getting frustrated because they are not getting invite detail prior to the morning of the hearing. Some parents and at times social worker unable to get logged in because only sent log in invite 5-10 mins before hearing in front of judge. More stressful that actual court hearings when everybody present has opportunity to feel they are being consulted and part of the proceedings (Social worker).*

Several respondents also raised the issue of parents being unable to contact the court if they had difficulty joining a hearing, or being informed of last-minute delays or changes.

*I was unable to connect, but no contact details were given to be able to contact anyone from the court to help with this. I did call the court only to be put through to the person that sends out the information with a link to the hearing and she told me herself that she couldn't help as she only sends out information. It made for an incredibly stressful start to an already stressful situation. The case was delayed for 30 minutes altogether but this time was not added to the end (Mother).*

*A client of mine had to wait in her car for over an hour whilst she waited to be called by the court, she was not contacted and then informed that the application had been dealt with on paper. This was extremely stressful for the client. It is also difficult to arrange representation for a client for an ex-parte hearing if we do not know if it will take place that day or the following. Whereas for applications fielded in person at court, they would usually be heard that day, as soon as a judge became available (Law Society, quote from response).*

*If there is a delay in the hearing starting the parties need to be informed as people become very worried that something has gone wrong if they don't know what is happening (Solicitor).*

## Managing hearings

Parents and professionals raised issues about the ways in which remote hearings were managed. Many of these comments linked to concerns about how technology was working, as well as the time allocated for remote hearings, and etiquette.

*It was all too rushed and the judge did not offer me a chance to ask questions regarding the long words he used which I did not understand (Father).*

*Obviously rushed and the matters were not given appropriate attention or time. Judges focused on finishing at a set time to attend their next case (Father).*

*My barrister got cut off. One attempt was made to contact him and then the hearing carried on without him and I was on my own. I was asked directly by the judge if I agreed with something technical and I had no one to ask so didn't know what to say (Mother).*

*More time needs to be built into the time estimate—or administratively at the court end—to get all parties online prior to the actual hearing start time. An hour-long hearing becomes a 40min hearing too easily if parties are struggling with the technology and it does take time to iron these out (i.e. to dial in a party by telephone, or log off and on again). There is very little a court can do to help with any contested matters in under an hour (Barrister).*

*The magistrates did not have any of the court papers or the file (Mother).*

*Telephone call in numbers do not get hidden from the other party which can be detrimental in abuse or complex cases you have to 141 the number before you call as it appears on the call screens if done via CVP (Mother).*

*When speaking on the phone judges should ensure that they are audible to the parties. It is difficult for the parties (including counsel) to keep asking the judge to speak up. I have experienced many hearings where a family member has been present and has not been able to hear, not been able to communicate adequately with me/the solicitor during the hearing, and in some instances my client has received a negative decision after such a remote hearing which appears to me as a result is all the more difficult for the lay client to accept. In hybrid hearings there can be problems with hearing what is being said in the court room when you are attending remotely (Barrister).*

## Maintaining the authority of the court

Professionals and lay parties were concerned that remote hearings were detracting from the authority of the court and making it harder for lay parties to take the proceedings and the outcomes sufficiently seriously. This was an issue raised in answer to several of the questions about specific types of hearing.

*Ensure people know how they should use personal devices in a hearing. The last one I did the lady was sitting in bed with her mobile phone and it was impossible. The one*

*before that the man was sitting in his car with his 8-year-old son in the passenger seat. We had to ask him to ask his son to get out of the car (Magistrate).*

*We'll still get people lurking unseen in the background (or parties sitting in front of the camera in pyjamas with a cigarette and a mug of coffee (last week's father)) whatever we do (Magistrate).*

*Lack of respect by the magistrates regarding court formalities and the need for preparation. One admitting they were not 'familiar' with Teams resulting in technical issues and delay in starting the hearing. Another magistrate was dressed inappropriately with tattoos visible and proceeded to take a phone call whilst the hearing was stood down with their microphone was on and had to be chastised by the legal advisor (Mother).*

*Social workers need to take remote hearings seriously. Their lackadaisical attitude and appearance impacts on the dignity of the court (Barrister).*

# Suggestions and examples of good practice

## Deciding how hearings are run

Respondents stressed the need for flexibility in determining how hearings are run, and making decisions on a case-by-case basis. Many felt that a triaging system would be helpful to support these decisions, and that parents should be given choice on whether the hearing should be held remotely.

*Checklist for court on the basis of families' ability to participate effectively—literacy, language, access to interpreters, access to private, confidential space to join from, access to safe space to join from, need for support from advocate or other need to communicate with legal representation, enough notice to plan, virtual hearings sometimes being organised at very short notice—this may work for professionals but not for families especially taking into account the above list (Third Sector Organisation).*

*Amending the COP Rules to require that parties consult and then inform the court of the views of all relevant individuals as to whether the case should be heard remotely, as a hybrid hearing or as an attended hearing (Court of Protection Practitioners Association).*

*At the discretion of the judge and parties. If a party wishes to attend I would never say 'no'. Issue specific (Circuit judge).*

*I would consider having a consultation with parents in advance to identify their specific needs. For example someone with communication needs may prefer in-person, whereas someone with anxiety may prefer remote. I think that fairness is essential and so the service needs to perform its function whilst also taking into consideration the needs of those whose lives are being discussed (Social worker).*

*We would like to stress the importance of offering vulnerable parties choice in any arrangements going forward. Survivors of domestic abuse need to be able to choose the safest option for their individual circumstances, and they are the best people to decide which option is best for them (Women's Aid Federation).*

## Supporting parents

Several suggestions focused on supporting parents to attend remote hearings. This included providing better written guidance to lay parties before the hearing. Many emphasised the need for a contact number to be provided in case of difficulties joining the hearing or delays, and for the court to be able to dial parties in directly.

*A briefing note should be supplied to parents (whether represented or not) setting out what will happen and how to prepare for the hearings, with a contact point and email for any queries about the procedure (Legal adviser).*

*The instructions sent to parties need to be made even simpler than they are now. Shorter, plain English documents are needed because most of the individuals who use the court service do not understand or read what is sent to them currently (Legal adviser).*

*Identification early on of the parties' ability to participate in video hearings and a guide as to how to participate. It would be helpful if a factsheet and contact numbers could be provided e.g. how to join CVP or downloading and installing Teams and how the link will be emailed, what to do in the event you don't get one or cannot join. We have people who just sit and do nothing if they don't get a call or a link to join! (Legal adviser).*

*There needs to be a helpline to contact if you are not connected to a hearing when you are expecting a call. We have had this happen numerous times, where the court has forgotten to dial in a volunteer. Nobody in the court can do anything to add the volunteer or even tell us if the hearing has started or not. This needs to be addressed as we have volunteers sitting around for over an hour wondering what is going on with the hearing and waiting for a call that never comes (Third sector organisation).*

*I think solicitors need to spend more time with their clients ensuring they can use the technology. It often seems to be the barristers last minute asking them to download Teams. Their solicitors can be doing more to help their clients consistently access hearings virtually without resorting to being called in (Social worker).*

*I have drafted a local practice direction for one of our courts so that Litigants in Person and professionals understand what is required of them. We could really do with an FPR [family procedure rule] remote working Practice Direction: from muting when logging on to a hearing, to having a stable WiFi connection and no-one else in the room, to ensuring everyone has access to a bundle and/or a holy book of their choice ( if they want one) if they are to give evidence, to bringing a mask to court and obeying room number limits in the court building and not bringing lots of other people to court (Barrister).*

Parents also highlighted a need for clearer information about the court process to be provided.

*More time with legal representation before. More understanding of the hearing and the process (Mother).*

*Video. Clearer explanation about the hearing and advice to exchange mobile numbers with barrister. Judge more aware of what lockdown was like for single parents (Mother).*

*An agenda with clear steps sent out before each hearing. i.e. a list of who will speak when and in what order. Standard business practice and it would make it far easier to prepare and know where you were on the journey of the hearing (Father).*

Other suggestions focused on the need to ensure better communication between parties and their representatives. Some highlighted a need to improve the technology to support this (e.g. breakout rooms), while others suggested that it would be helpful for there to be more places where parents could go to be with their legal representatives or other support and attend the hearing remotely. While a number of respondents made reference to local authorities or solicitors providing digital hardware and space to attend hearings, others suggested that HMCTS should take more responsibility for this if remote hearings were to continue and/or that local authorities and solicitors should receive additional funding to provide the support needed.

*Lawyers have to ensure that parents are supported and fully understand what is happening. I attended one hearing where the judge asked the parents' lawyers to confirm they had a parallel communication channel with the parents during the hearing and I think that should be a standard check at the start of all remote hearings (Social worker).*

*Breakout rooms for parties to speak with their representatives and for parties to negotiate before hearings as was done at court would be very useful (McKenzie friend).*

*The creation of satellite remote hearing centres, e.g. in local council offices, libraries etc. where parties in more rural areas could attend to have the advantage of better technology and quiet surroundings but without the need for extensive travel would be a real advantage (Recorder).*

*If parents don't have access to a device then local authorities should offer virtual court rooms (Solicitor).*

*Where represented solicitors need to provide access to technology and a neutral space. It is difficult to see how parents can engage in the process when they have neither (Circuit judge).*

*Greater emphasis on the court service providing technology, documents and internet access to vulnerable parties. In this area I have been disappointed by the failure of the court service to assist in providing these facilities. Much of the burden has been passed onto local authorities and solicitors' firms and this has created an unbearable amount of pressure on their already stretched resources. The court service has not been willing to help. This has resulted in a number of 'casualties' in the profession so far and if we are not careful we will find ourselves in a position where there are insufficient local firms who undertake care work because the duties imposed upon them outweigh the benefits to their firms (Barrister).*

*Have rules in place about whose job it is to facilitate parents' attendance and access to technology and resource that effectively. If it's the local authority's job then we need money. I can't get a post-it note in my department, it's totally unrealistic to expect me to have iPads or laptops lying about to lend to parents (Social worker).*



## Improving the way remote hearings are run

Some respondents (both professionals and parents) made specific suggestions about how remote hearings could be better run. This included processes that could be put in place to ensure all parties were better prepared for the hearing, and improvements to technology.

### Preparation before the hearing

Checking links the day before or in advance of the hearing, having an usher to manage attendance, ensuring all bundles have been sent out.

*As in in-person hearings, it would be helpful if an usher is available and perhaps starts the hearing 15 minutes early to ensure that everyone is present/has their lawyers/sees if Cafcass need to talk to one party before the hearing etc. (Cafcass).*

*Ensure that magistrates receive their bundles the evening prior the hearing. Ensure that the bundles are properly paginated. Ensure that the LA or the chair set up a virtual retiring room on a different link to the hearing (Magistrate).*

*At Portsmouth a dedicated hub has been set up to arrange remote hearings and contact all parties the day before to check links and ensure they are working and identify any issues in advance of the hearing (District judge).*

### Improved admin and technological support

*Some areas have a member of staff to support the technology—someone who allows the participants into the virtual court, and can assist them if necessary and is available to contact the parties if one case is running a little over time etc. In the area in which I work all of that falls to me which detracts from my primary job of either dealing with the case or advising the magistrates about the case (Legal adviser).*

*If they are to continue, then there needs to be dedicated HMCTS staff engaged to ensure technology works and takes the workload off legal advisors, bundles need to be sent earlier so magistrates can read them properly (Magistrates).*

*More staff and more training. I am extremely fortunate in that I have my own clerk, who also happens to be a digital support officer, so she is usually on hand to deal with any technical issues for me and for other judges in the building. However, when she was on annual leave recently, it transpired that no-one else in the entire building knows how to dial someone into a Teams hearing. I am aware that the staff in my court have effectively been training each other on an ad hoc basis but it does seem ridiculous that over a year into the pandemic, the training for the staff appears to have been so poor and unstructured. They have kept us going through these incredibly challenging times and it just makes it unnecessarily stressful for them when problems arise that they cannot solve owing to inadequate training. Frankly they deserve better (Circuit judge).*

*HMCTS needs DSOs [digital support officers] who are properly trained (rather than self-taught) and can provide regular in-house training and help to judges as and when required. The court service also needs court-based IT troubleshooters who can resolve issues quickly as they arise (Circuit judge).*

## **Improved technology for communication between parents and their representatives, for interpreters, and for magistrates**

*Better arrangements for translation via interpreters. This is better for CMH type hearings with the interpreter being connected to the client via phone rather than translating openly on the remote hearing link. Otherwise this is extremely time-consuming and the hearing lacks fluency (Barrister).*

*A mechanism for justices to have retiring room conversations without closing the sessions (Magistrate).*

*There needs to be an improvement in the platforms used to allow for breakout conferences and advocates discussions without the need to disconnect/use other devices (Recorder).*

*It would be really helpful if CVP could offer remote conference rooms/breakout rooms like Zoom does to enable face-to-face meeting rooms remotely to be able to take instructions from your clients or have advocates discussions. I undertook a 4-week trial on zoom in the high court and this was an invaluable function (Barrister).*

*Hybrid hearings could work extremely well but courts should invest in 'Teams rooms' i.e. purpose-built calling and meeting room solutions to minimise echoing and feedback which currently complicates arrangements (i.e. because only one device in the courtroom would stream to other remote participants). This technology is not expensive and is widely used in other sectors. It's a real shame HMCTS has been so behind on this as it could be transformative (Barrister).*

## **Providing better access to bundles**

*There needs to be much more attention paid to online bundles. The current system is very difficult for non-lawyers. CaseLines is superior to all other platforms that I am aware of. It should be promoted (District judge).*

*Get all local authorities to get systems that create proper electronic bundles that can be navigated quickly and easily (Solicitor).*

*Easier access to and more consistent use of e-bundles would promote a smoother remote process. There have been good reports from those who use CaseLines, and we consider that more widespread use should be considered. Ensuring access to technology to enable engagement in the remote process is fundamental (Association of Lawyers for Children).*

## **Improved data to inform improvements to technology**

One comment suggested that local areas should undertake their own consultations to understand what improvements are necessary locally.

*Much information about technological difficulties in hearings is anecdotal. If we are to retain remote hearings in some form and for some hearings or category of hearings, which seems inevitable, it would be helpful for there to be a survey undertaken in one geographical area where all the technological issues are logged and suitable remedies can be identified (Association of Lawyers for Children).*

# Appendix:

## Consultation questions

### Professionals

- What is your professional role?
- Where have you attended or presided over hearings?
- What type of cases have you been heard/taken part in?
- What formats have been used at the hearings you have been involved in?
- What technology is working well?
- What technology is not working well?
- Do you feel case management hearings (CMHs) and further case management hearings (FCMHs) in cases concerning children could continue to be heard remotely?
- Do you feel first hearing dispute resolution appointments (FHDRAs) could continue to be heard remotely?
- Do you think interim hearings and dispute resolution appointments (DRAs) could continue to be heard remotely?
- Do you think fact-finding, contested applications for interim care, contact, and final hearings could continue to be heard remotely?
- Do you think applications for non-molestation or occupation orders could continue to be heard remotely?
- Do you think hearings in the Court of Protection could continue to be held remotely?
- Do you think hearings for a financial remedy could continue to be heard remotely?
- Are there further arrangements that need to be in place to make remote hearings fair and work smoothly?
- What do you think are the main reasons for delays in the completion of public law cases?
- If you have recently been attending or presiding over hearings in person in a court or courts, do you feel that all necessary safeguards are in place to reduce the likelihood of transmission of COVID-19?
- Have you wanted to attend court in person but been prevented from doing so? If so, who prevented you from attending court in person?

## Parents and relatives and lay parties

- Are you a mother, father, or other family relative in the family court, or lay party in the court of protection?
- Where was the court where your hearing(s) took place, or is/are taking place?
- How many court hearings have you attended (in person or remotely) since September 2020?
- Did you have, or do you currently have, legal representation?
- Did you have, or do you currently have, an advocate or a McKenzie friend to help you during court hearings?
- Did you feel supported during the hearing or hearings?
- Thinking about the most recent hearing in your case, was this by phone, by video, in court with everyone there or some people in court and some by phone or video?
- How did you take part in the hearing?
- If you took part on the phone or by video, were you given any help to take part?
- Did you understand what happened at the hearing or hearings?
- Did you have any worries or concerns about the way your case has been dealt with during the hearing or hearings?
- If you had concerns, what would have made the court process better?
- If you have recently attended the court for a hearing in person, do you feel that all necessary safeguards are in place to reduce the likelihood of transmission of COVID-19?
- Have you wanted to attend court in person but been prevented from doing so? If so, who prevented you from attending court in person?
- What is your ethnic group?
- Would you define yourself as having a disability?

# Nuffield Family Justice Observatory

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

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