

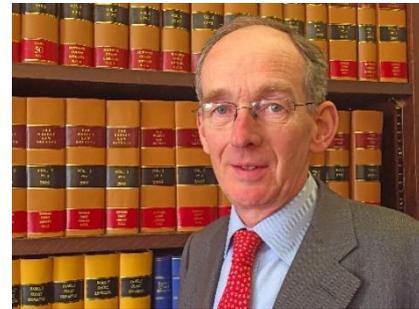


Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings

Foreword by the President of the Family Division

I am pleased to be publishing this important guidance on the need to protect victims of Domestic Abuse in Remote and Hybrid Hearings.

The guidance applies to all family proceedings where domestic abuse has been proved or may be an issue and it has been drafted to ensure the delivery of safe evidence and full participation of vulnerable parties. The guidance provides an important checklist that should be used to decide upon the format of the hearing, including identifying any need for appropriate personal protection or additional special measures.



The guidance is for all those involved in family proceedings including court staff, the judiciary, lawyers, and domestic abuse organisations. I am grateful to the Domestic Abuse Working Group of the Family Justice Council for its work in producing the guidance which I believe will be an important resource for the work of the Family Court.

Sir Andrew McFarlane
President of the Family Division and Head of Family Justice

November 2020



Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings

1. Introduction

The need to ensure safety from covid-19 infection should not mean that other safety considerations are ignored or abandoned. PD12J, PD3A and PD3AA continue to apply.

This guidance applies to all family proceedings where domestic abuse has been proven or may be an issue, i.e. hearings for protection orders, s.8 orders, financial proceedings and care proceedings. For convenience, references in the guidance to victims of domestic abuse include alleged victims and references to perpetrators include alleged perpetrators.

In order to ensure access to justice for all parties, any proceedings in which domestic abuse is an issue will require careful consideration of the extent to which any special measures are needed, and how hybrid or remote hearings should

be facilitated to achieve safe evidence and full participation of vulnerable parties.

Proactive planning in advance of any hearing, involving consideration of risk, practical and other support will be necessary to promote the physical and emotional safety of all participants.

The guidance supplements the protocols for remote and hybrid hearings contained in 'The Remote Access Family Court'.

The Family Justice Council is conscious of the extensive guidance already available to all involved in such cases and the practical difficulties which may create obstacles to the implementation of all the guidance available. However the FJC would wish specifically to emphasise the risks of harm to victims of domestic abuse if perpetrators are able to use the hearing as an opportunity for further abuse.

Checklist of considerations for proceedings in which domestic abuse is an issue

- In what environment will the victim be appearing?
- In what environment will the victim be preparing themselves for and dealing with the aftermath of the hearing?
- What will be visible to the court and any other participant in the proceedings? What will be visible to the victim?
- What kind of environment and level of visibility is necessary in order to ensure physical and emotional safety for the victim and any children involved?
- What kind of environment and level of visibility is necessary to enable the victim to give their best evidence?
- What kind of environment is necessary to enable the victim to prepare themselves mentally and emotionally for the hearing and to cope after the hearing?
- What kind of environment is necessary for the court to deal justly with the case having regard to any welfare issues involved?

2. Arranging the hearing, including the format of the hearing

Where options as to the format of the hearing are available, it is for the judge to decide which format will be used, but [victims of domestic abuse should always be consulted \(via their legal representative if they have one\) as to their preferred mode of participation](#) – in a courtroom in person, or by telephone or video.

- Consultation needs to be sensitive and facilitative (e.g. if they are unsure, asking the person to imagine how they would feel with the different options; some report feeling a helpful degree of distance via remote methods while others experience this as intense and overwhelming).
- The emotional impact of each option will vary depending on their experiences and individual vulnerabilities – it would be inappropriate to be prescriptive.
- Consultation should include consideration of children’s welfare before, during and after the hearing. What arrangements are being made for child care during the hearing? What will be the likely impact on the child if their resident parent experiences a distressing or traumatic hearing in their home?
- Consultation needs to be undertaken sufficiently far ahead of the hearing to enable appropriate arrangements to be made.
- It needs to be clear how this consultation will occur and whose task it is to undertake it. For example, parties should be asked to provide relevant details to the court at least 48 hours before the hearing to enable the judge to make a decision as to format and to set up the hearing.
- It also needs to be clear what will happen if preferences cannot be met – how that will be explained and what alternative risk reduction measures will be taken.

[It is essential that the format for the hearing and the link for the hearing are provided in good time.](#) It is acknowledged that it will occasionally be unavoidable that a hearing is fixed or rearranged at short notice. More generally, however, sending the link very close to the hearing creates additional stress and may mean that the victim enters the hearing flustered and unable to concentrate.

[Contact details for remote hearings should be kept private.](#) Emails sent to multiple participants, including lay participants, should always be sent as bcc rather than open cc for the safety of advocates as well as parties. Likewise, emails sent to multiple participants should never include a party’s or their lawyer’s mobile phone number.

3. Personal protection

[The victim and perpetrator should never be put in a situation where they are alone together, whether that is in a courtroom, on a telephone line, or in a video conference. Neither should the victim be left alone with the perpetrator and the perpetrator’s lawyer.](#)

- If the victim is represented in a remote hearing and is at a different location from their representative, their lawyer should join the hearing first.
- If the victim is in person in a remote hearing, either a member of court staff should activate the hearing and remain on the line at least until the judge has joined, or the judge should activate the hearing and admit the other parties.
- At the end of the remote hearing, depending on the platform being used,

the judge or a member of court staff should be the last to leave the hearing, or should terminate the link for all parties simultaneously.

- If the victim is due to attend court in a hybrid hearing and is legally represented, there should be an

expectation that they are joined in court by their legal representation. If they are not legally represented they may be encouraged to bring a supporter with them (see further below).

4. Special measures/participation directions

For some victims, participation in a video conference can be invasive, (re)traumatising and endangering. [It enables the perpetrator to see and note details of their private, safe space, which may also be used to track them down, break into their home, continue the exercise of coercive control, or harass or intimidate them in other ways.](#) The perpetrator may take photos or screenshots of the victim's image to facilitate this. Often, the only 'private' space from which to attend a hearing may be the victim's bedroom, and allowing the perpetrator to virtually enter and see into this space can be highly distressing. In order to avoid these consequences:

- The court should provide information on how participants can blur their background or use a generic background if the platform being used enables this. If the platform does not enable this, the court should give advice about how to make the background as generic as possible.
- Victims and vulnerable witnesses should be permitted to join by audio only and/or to leave their video turned off even if other participants are visible on video. The perpetrator can also be required to join by audio only and/or to turn their video off. If it is necessary for the court to see the perpetrator (e.g. while giving evidence), the victim should be given advice as to how to cover their screen to avoid having to see the perpetrator themselves.
- Victims may be encouraged to join the hearing from their lawyer's office if they are represented, or from another 'neutral' space if available.
- A hybrid hearing may involve the victim (and their lawyer if they have one) being present in person in the courtroom while the alleged perpetrator joins remotely. This should particularly be considered where the court facilities do not enable full special measures, e.g. separate entrance, separate waiting area, effective screening.
- A victim may be excused from attendance if they are represented and the hearing is not one at which evidence will be given – the lawyer should have the opportunity to take instructions from their client by phone if necessary.
- Provision for special measures/participation directions should be included in the case plan for any hybrid hearing.
- When warning participants that recording of a remote hearing is strictly forbidden, the court should clearly specify that any form of recording is forbidden, including video recording, audio recording, or taking a photograph or screen grab, and that doing so may be regarded as an example of harassment.

The court should ordinarily allow either party to be accompanied in any hearing by a supporter (whether or not the party is legally represented) or a McKenzie Friend (if the party is not legally represented), subject to the judge's power to exclude any supporter who disrupts the hearing.

- Ideally supporters should not be directly involved in proceedings (e.g. a domestic abuse support worker or friend).
- The supporter/McKenzie Friend should be permitted to sit quietly in the same room as the alleged victim, whether the victim is physically present in the courtroom or joining the hearing remotely.
- The court should address the supporter/McKenzie Friend directly at the outset to reinforce the expectations as to their role.

Delivering the court's decision

The court should consider how its determination will be expressed verbally and communicated in writing.

- Communication should reflect participants' level of understanding, given the likelihood that they will not absorb the detail of what is said and may not have immediate access to a lawyer to translate it for them.
- Communication should aim to protect wellbeing as far as possible, given that the victim may be alone and/or have to turn to child care responsibilities immediately after the hearing.
- The court may suggest when arranging the hearing that parties organise for someone to be on hand to debrief with them afterwards

Urgent and without notice hearings

For urgent hearings where there is not sufficient time to give the same degree of consideration as to how the hearing should take place, the risks of domestic abuse and the above checklist should still be borne in mind and a precautionary approach should be adopted.

- Parties applying for an urgent hearing should be asked to provide full details of email addresses or telephone numbers on the application form, together with a preference as to how the hearing should be conducted.
- Phoning an applicant for a protective order without notice may put that person at risk if the perpetrator is present when the call is received.

Without notice hearings may effectively be dealt with on the papers.

- In accepting applications from litigants in person, court staff should ask how the applicant would prefer to be contacted if the judge wishes to do so.
- If the applicant is represented, the legal representative may be telephoned if there is a need to clarify any aspect of the application or to seek further information.
- Applicants should not be required to attend telephone hearings on without notice applications if they are represented.

Fact-finding hearings

Delay remains prejudicial to the welfare of children and every effort should be made to conduct fact-finding hearings as rapidly as achievable having regard to the need to provide a safe and fair hearing.

- **Fully remote hearings may not be suitable for fact-finding.** A hybrid or fully-attended hearing should be considered.
- The case plan and/or ground rules hearing should include consideration of special measures/participation directions.
- If a fact-finding hearing is adjourned, interim arrangements must be considered in accordance with PD12J.

Service of protective orders

Bailiff service of FLA injunctions has now resumed and HMCTS has instructed bailiffs that these orders should be given priority and where possible, should be personally served on the day of issue. Where alternatives to bailiff service and personal service continue to be used, these alternatives should:

- Be freely available and fully meet the needs of litigants in person.
- Maximise the prospect of the respondent being made aware of the terms of the order so that breaches can be actioned effectively.

This guidance was prepared by the Family Justice Council's Domestic Abuse Working Group, with assistance from Darren Howe QC and Jo Delahunty QC. The Working Group welcomes feedback and suggestions for further inclusion in this guidance. Contact the FJC Secretariat at fjc@justice.gov.uk.