



Remote Hearings in the Family Jurisdiction

1. Introduction

- 1.1. Access to justice requires litigants to have effective access to the court that is deciding their case. In some cases, this may be by way of a remote hearing.
- 1.2. This guidance on remote hearings in the Family jurisdiction follows the Judicial Principles on remote participation, issued by the Lady Chief Justice and the Senior President of Tribunals, set out below:
 - a) [Remote Participation Overarching Guidance](#)
 - b) [Remote Participation Judicial Principles](#)
- 1.3. This document has been drafted by Mr Justice MacDonald, on behalf of the President of the Family Division.

2. Rules of Procedure

- 2.1. The Family Procedure Rules 2010 r 1.4(2) provides that the court must further the Overriding Objective to deal with the case justly by actively case managing proceedings, where active case management includes making use of technology (r1.4(2)(l)).
- 2.2. Within this context, FPR r 4.1(3)(e) provides that the court may hold a hearing and receive evidence by telephone or by using any other method of direct oral communication.
- 2.3. Pursuant to FPR r 4.3 the court can order that the matter be dealt with remotely of its own motion.
- 2.4. FPR r 22.3 provides that the court may allow a witness to give evidence through a video link or by other means. [Annex 3 to FPR PD22A](#) detailed guidance as to how video conferencing should be dealt with in court.

3. Mode of Hearing

- 3.1. A Family hearing may take place in person or remotely.
- 3.2. Remote hearings use either video or telephone. A remote hearing may be fully remote (none of the participants is present in the hearing venue) or partly remote (some participants are present in a hearing venue but some join remotely). The mode may also change during a multi-day hearing, with all participants present in the hearing venue on one day but some or all joining remotely on another day.

3.3. Decisions whether to hold a remote hearing are to be taken case-by-case, based on the interests of justice. The overarching criterion is to achieve a hearing that meets the demands of the Overriding Objective in FPR r.1.1 to deal with cases justly, having regard to the welfare issues involved.

3.4. All relevant circumstances will be taken into account, including:

- a) the timing of the application;
- b) the resources available at the relevant time and the impact on the other business of the Family jurisdiction, including other cases with which it has to deal;
- c) the impact on fair access to justice for all participants; and
- d) any impact the decision would have on open justice.

3.5. There are some cases that are probably not suitable for remote hearing, including in circumstances where a party is unable to participate in such a hearing, for example by reason of a lack of access to the technology or the need for an intermediary or an interpreter, or the court is required to take evidence in circumstances that “render a remote hearing unsuited to that task”.

3.6. Ordinarily, contested final hearings or other hearings involving substantive disputed issues should be attended hearings.

4. Default approaches when listing cases for a hearing

4.1. Any hearing must be recorded.

4.2. FPR Part 3A governing vulnerable adults applies with equal force to remote hearings or partly remote hearings. When considering remote participation, a court should consider the likely impact on any participant of directing a remote hearing, particularly one who is vulnerable.

4.3. Separate considerations, as set out in [FPR r 27.11\(2\)\(f\)](#) apply to the attendance at private hearings by duly accredited representatives of news gathering and reporting organisations and legal bloggers.

5. Relevant factors

5.1. The question of whether a hearing should be remote remains a matter for the court, based on a number of clear fundamental principles.

5.2. Listing is a judicial function. The decision whether to proceed with a remote hearing, a partly remote hearing or a fully attended hearing remains at all times one for the court. It is a judicial decision involving appropriate exercise of judicial discretion.

5.3. The following is a non-exhaustive list of factors to consider when exercising discretion to direct a remote hearing:

- a) Whether the hearing is concerned with case management or with contested issues requiring the hearing of witness evidence of fact. Hearings involving contested issues requiring witness evidence are less likely to be suitable for a remote hearing.
- b) Whether the hearing involves straightforward issues or issues of complexity and gravity. Cases involving issues of complexity or gravity are less likely to be suitable for a remote hearing.
- c) Whether some or all of the evidence is provided by expert witnesses. It will ordinarily be appropriate to take expert witness evidence remotely.
- d) Whether the parties consent or object to the hearing being conducted remotely. A party's views on whether a hearing should be remote are an important factor.
- e) Whether the parties are able to engage with and follow remote proceedings meaningfully, including access to and familiarity with the necessary technology. Where a party has a disability or need for special measures this will be relevant to the decision whether or not to proceed with a remote hearing.

5.4. Whether there are suitable facilities for a video hearing.

5.5. Resource issues and other administrative difficulties cannot by themselves justify the use of remote hearings.

5.6. A formal (and timely) application and payment of fee is required where the parties seek a remote hearing in a case in which a remote hearing has not been directed in an earlier order.

6. Changes to mode of hearings

6.1. A judge may change the mode of hearing at short notice, such as by converting an in-person hearing to video. This may follow an application by a party. It may also happen because the judge has taken that decision on their own initiative, driven by circumstances that are difficult to predict in advance.