
GARDEN COURT
CHAMBERS

Fact-finding in the Court of Protection

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23 March 2021

Fact-finding in the Court of Protection

(i) Introduction

(ii) When should a fact-finding hearing be conducted ?

(iii) Relationship between fact-finding and local authority safeguarding duties

Bethan Harris, Garden Court Chambers

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Introduction

- The Court's decision on the best interests (under s 4 MCA 2005) of a person lacking capacity (P) requires a factual foundation. If material facts are not agreed, a fact-finding process may be necessary.
- The facts in issue may carry serious implications for P's safety and welfare, and for persons against whom they are sought in terms of future of family relations and reputational damage.
- Typically, findings are sought by a public body in relation to an individual connected to P or sought by one family member against another family member.
- Examples from the case-law referred to in these slides of findings of fact sought: assault inflicted on P, parental plans to marry P to a person abroad, family member speaking to P in a critical and derogatory way/ stating that P suffers from numerous conditions the overwhelming majority of which are not true/unable to work with professionals concerned with P/keeping P away from other family members in order to get her hands on P's benefits.
- There may multiple allegations and hearings can be long: e.g. *A Local Authority v M [2014] EWCOP 33* – hearing lasted 20 days, 32 witnesses, litigants in person; *AB v HT & LB Hammersmith & Fulham [2018] EWCOP 2* – 5 parties, allegations and cross-allegations, Scott Schedules running to over 100 pages.

Introduction (continued)

- The court will decide at the case management stage of the case whether the case should be listed for a fact-finding hearing.
- The court will determine the scope of the factual enquiry in the fact-finding hearing (which allegations will be dealt with), under its duty to decide which issues require a full investigation and hearing and which do not and the procedure to be followed in the case (COP Rules r 1.3(3)(f); *LBX v TT* (above) (para 10)).
- The findings of fact that the court makes in a fact-finding hearing will be treated thereafter in the proceedings as the basis on which further decisions and assessments will be made (*LBX v TT & Ors* [2014] EWCOP 24, para 10).
- It is wrong for the judge to make findings of fact beyond the case that was advanced in the fact-finding hearing (see for example the family case *SS, DB v A Local Authority & Ors* [2020] EWCA Civ 1680: the first instance judge had erred in making a finding of fact beyond what the local authority had been seeking; the parents had not adduced any evidence on the issue and had not been cross-examined on that basis).

Introduction (continued)

- **One hearing/split hearings?** A fact-finding hearing may be heard at the same time as a hearing of the evidence on best interests in the same hearing. However it is more likely the court will list a separate "best interests" hearing at a later date.

- If hearings are split, after the completion of the fact-finding hearing the case is part-heard. Therefore, the case must be listed before the same judge at the next stage (*LB Enfield v SA & Others [2010] EWHC 196 (Admin)*).

When should there be a fact-finding hearing?

Whilst the answer to the question requires a principled approach**, pragmatism** and the **desire to reach an agreed solution** are often highly relevant to the advice a lawyer may give their client.

Charles J highlighted how a fact-finding hearing can help or not help in the endeavour of preserving relations for the future:

> "*...in this type of litigation, which is concerned with human relationships, an agreed solution is likely to be beneficial in the short, medium and long term. In some cases, it* ***may be easier to reach agreement if the disputes of fact have not been defined and the "battle lines" of the litigation thereby set*** *because to do so would be likely to increase confrontation on the ground and harm future relationships concerning the care of P. But the definition of issues can also...be of assistance in reaching a negotiated solution, particularly if it shows that a case for moving P from home, or keeping P away from home, is based on difficulties that now exist and is not based on past care ..*" (emphasis added)
>
> *A Local Authority v PB and P [2011] EWHC 502 (COP),* Charles J, para 39

When should there be a fact-finding hearing – the core principle

In Re S (Adult's Lack of Capacity: Care and Residence) *[2003] EWHC 1909 (Fam), [2003] 2 FLR 1235,* paras 18 - 20, (cited and adopted in ***Re AG*** *[2015] EWCOP 78),* Wall J stated the following principles in relation to the best interests jurisdiction in the High Court:

- If there are disputed issues of fact relevant to the evaluation of the options for P the court may need to resolve them if *their resolution is necessary to the decision as to what is in P's best interests;*
- There will be cases that are very fact specific;
- There will be others in which the principal concern is the future, and the relative suitability of the plans each party puts forward for the care of P;
- There are dangers in too relaxed an approach to historical issues;
- However, there is no rule beyond the principle that the approach to best interests; must be evidence based; exclude irrelevant material and include all relevant material.

When should there be a fact-finding hearing – ***Re AG***

For a comprehensive discussion of the principles see ***Re AG [2015] EWCOP 78:***

Facts: AG had moderate learning disability and autistic spectrum disorder. She lived at home with her mother until in her early twenties moved to her own flat with care package, living partly there and partly with her mother. In March 2011 AG alleged her mother hit her (without details). The mother alleged AG attacked her. Mother said she was finding it difficult to care for AG and there were tensions. The Local Authority (LA)'s safeguarding investigation was "inconclusive". After that AG continued to live at her own flat with care package; further allegations were made that mother was abusive physically and emotionally to AG and verbally abusive to a care worker, and that AG had assaulted a care worker, AG saying she did not want to visit her mother; care providers terminated the care contract. In November 2011 the local authority moved AG to a new placement under DOLS (in respect of which the appeal court observed a court order ought to have been sought beforehand (para 56)). The LA applied to the COP 2 days later.

Re AG (continued)

At a hearing in November 2012 the first instance judge decided whether or not there would be a fact-finding hearing. The LA did not want one. The mother did, wanting to clear her name of the allegations against her.

The first instance judge held:

- the court would not devote disproportionate time and court resources to an investigation of what had gone on in the past;
- although the past would feature to some extent in the background, even if some additional factual clarity would have emerged it would not materially have affected his overall approach to the case;
- "we must start from where we are now and look to the future";
- the allegations being strongly denied by the mother, he held, "I do not hold them in the background as it were by way of a suspicion lurking over (the mother)".

Re AG (continued)

The preamble to the court order made at a pre-trial review in July 2012 had recorded:

Upon the local authority's indication that it does not consider it necessary to seek findings of fact against (the mother) or any other member of AG's family in order to determine her best interests in terms of residence and contact

AND UPON the court noting that the effect of that indication is that the allegations made against the family have not been proven and therefore they cannot be the basis for the decision-making in respect of AG

Re AG (continued)

- At the final hearing in September 2013, the first instance judge heard from the social worker, mother and an independent social worker. The order made confirmed the move to supported living and decided that contact with mother would be under the LA's plan: supervised with gradual increase in frequency and decrease in supervision (as recommended by the independent social worker).

- The mother appealed on grounds that included failure to make findings of fact in relation to events in 2011 that had triggered the proceedings (and in relation to the supervised contact arrangements). She argued the allegations were serious and she ought to have had an opportunity to be heard on them and to defend herself.

Re AG (continued)

On the appeal, Sir James Munby held:

- The trial judge's approach was fully justified by reference to the principles articulated by Wall J in *Re S* ;
- The judge had spelt out the legal consequences of there having been no fact-finding hearing;
- There was nothing to show that this was not in fact the approach the judge took at the trial;
- The decision not to have a fact-finding hearing must be looked at in its context: matters had moved on since the events of 2011 and by the time of the hearing the court was faced with a different landscape; the judge was looking at the present position and looking to the future; ***the level of enquiry undertaken was sufficient to inform the decision as to future planning***;
- There was nothing to suggest that the ISW's analysis and recommendations were adversely influenced by the allegations; In any event the appeal should have been against the decisions in November 2012 and July 2013, so this aspect of the appeal was brought too late.

Re AG (continued)

Sir James Munby added the observation:

"Local authorities also need to appreciate and take appropriate steps to minimise the understandable distress and anger caused by someone in (the mother's) position when initial relief obtained from the court on the basis of the allegations which are not thereafter pursued." (para 57)

Local Authority Safeguarding duties and Fact-finding in the Court of Protection

- The main statutory duty is in s 42 Care Act 2014 requiring (in summary) that where an adult is experiencing or at risk of abuse or neglect, the local authority must make enquiries in order to decide whether any action should be taken and if so what and by whom. There is detailed guidance on adult safeguarding in Chapter 14 of the Care and Support Statutory Guidance.
- Public bodies also have underlying duties to take safeguarding measures derived from ECHR (see for example *Dordevic v Croatia*, Application no. 41526/10; (2012) 15 CCLR 657 and *The Mental Health Trust & Ors v DD [2015] EWCOP 4*).
- An application to the Court of Protection is required to authorise significant interventions involving interference with Article 8 rights of a person lacking mental capacity to consent to the step, requiring justification under Article 8.2, most notably the removal of a person from their home in a situation of contention, or a restriction on contact with another person. It follows that if the factual basis that underpins the intervention is contested those facts should be determined by the court.

(*LBB v JM, BK&CM*, Court of Protection, 5 February 2010, Hedley J, para 8; *LBX v TT & Others [2014] EWCOP* 24, paras 41 and 51).

Local authority safeguarding duties and fact-finding in the Court of Protection

- There are (of course) no threshold criteria equivalent to s 31(2) Children Act 1989 (child is or is likely to suffer significant harm) that must be met before the Court of Protection can make a decision to authorise a course of action in the best interests of a person who lacks capacity to make the decision themselves;
- Urgent interventions : a local authority's assessment of the situation may be that urgent intervention is necessary to protect P from harm before a full safeguarding enquiry can be conducted, typically orders authorising P's immediate removal from the family home; (Obviously great care must be taken to assess the evidence that is available and to provide full and frank disclosure in such applications.)
- However it will be vital that the local authority carries out the further appropriate investigations it can and takes stock of the evidence expeditiously after commencing the proceedings, if it has not been able to do this before commencing the proceedings because of the emergency.

Safeguarding duties and fact-finding- need to conduct proper enquiries before bringing proceedings

A Local Authority v HS & Others [2013] EWHC 2410 *(COP), DJ Eldergill*

The local authority commenced proceedings in the Court of Protection and sought a fact-finding hearing. 3 months later it acknowledged the lack of evidence to support its allegations and withdrew the allegations such that the scheduled 3-day fact finding hearing was unnecessary. On an application by other parties for an order that the local authority pay their costs the judge considered the state of the evidence when the case was brought to court.

The allegations were serious: that the brother of P (HS), a young woman who had Down's Syndrome, had sexually abused her. The court identified how the local authority's safeguarding investigation prior to the commencement of the proceedings was flawed in circumstances where the local authority had had plenty of time to come to a position. This had not been a case requiring urgent removal of a person where a difficult and immediate decision had to be made as to what weight to give to a yet-to-be investigated allegation.

Whilst the court acknowledged that the local authority was not expected to investigate and analyse the evidence to the same high standard as its barrister had done later in the case, nevertheless it held that it should have weighed *and rejected* the abuse allegations prior to the issue of proceedings. (para 93)

Safeguarding duties and fact-finding in the COP – the need to conduct proper enquiries before bringing proceedings

A Local Authority v HS & Others - continued

- District Judge Eldergill held**:**

  "There was a prolonged failure on the local authority's part to recognise the weakness of its case. The allegations were vague and insufficiently particularised. The 'evidence' in support was manifestly inadequate. It was internally inconsistent and unreliable. The truth of what was alleged was assumed without any proper, critical, analysis." (para 188)

- The judgment in the case is recommended reading as a reminder of what constitutes an erroneous approach to safeguarding enquiries in relation to concerns raised in respect of a person lacking mental capacity.

Safeguarding duties and fact-finding in the COP – the need to promptly investigate and consider the strength of the evidence

Somerset v MK (Deprivation of Liberty : Best Interests Decisions : Conduct of a Local Authority) [2014] EWCOP B25 *(6 July 2014)* HHJ Marston

The local authority removed P from the family home because of bruising found on P prompting a safeguarding investigation. Six months later it brought proceedings in the Court of Protection. 3 months after the issue of the proceedings it indicated it was unlikely to pursue findings of fact in relation to the bruising. It was held P had been unlawfully removed from her family and that

"*the local authority had a duty to investigate the bruising but I find that a competently conducted investigation would have swiftly come to the conclusion that no or no sufficient evidence existed to be able to conclude P's safety was at risk by returning her home. This conclusion should have been reached within a week or so after the family asked for her back.*"

Fact-finding in the Court of Protection

(i) Preparation

(ii) Evidence

(iii) Disclosure

Helen Curtis, Garden Court Chambers

23 March 2021

Introduction

This section will follow on from the principles outlined by Bethan

- Preparation
- Evidence: burden and standard of proof; what is admissible; hearing from P
- Disclosure

'Making findings of fact is a complex process which depends upon the judge's evaluation of the whole of the evidence presented and of the witnesses who appear before him or her. It is only when the whole jigsaw is assembled that the weight of an individual piece of evidence can reliably be determined'. [Black LJ in *W (Fact Finding: Hearsay Evidence*) [2013] EWCA Civ 1374]

'Faulty recollection or confusion at times of stress or when the importance and accuracy are not fully appreciated or there may be inaccuracy or mistake in recordkeeping or recollection….as memory fades a desire to iron out wrinkles may not be unnatural, a process that might inelegantly be described as 'story creep' may occur without any necessary inference of bad faith' [Peter Jackson J in *Lancashire County Council v C, M & F (Fact Finding)* [2014] EWFC 3]

Scope

- Where will the evidence come from? Social worker? Care worker? Family member? Police?
- Will it be admissible? If so, what weight to be attached to it?
- Professional or lay; source of their material; cross-reference with other documents or witness recollection in existence; interviews with others
- What has P said? Will there be information from P? May not be at court and will not be subject to cross-examination
- Look for corroboration from witnesses who can speak to the events communicated by P; check documents, logs, records over relevant period

Preparation

- Court bundle – Practice Direction 4B para 4.4 i.e. the Scott Schedule
- PD 3B Case Pathways para 2

- Party making the allegations provides a Scott Schedule which identifies the witnesses who will give evidence, the date and source of their evidence and the particulars of the allegations
- Response to the allegations if admitted in part/denied in full
- Reply to the response

- Scott Schedule refined – prompted by the court – so it is focused and proportionate
- Assessment of the evidence – a document which identifies agreed facts/admissions to highlight where and the extent of the factual dispute; witness template with timings; need for interpreters or other case management considerations which would affect hearing length

- Identify what conclusions the court is to be invited to draw; how many allegations are needed to be proved and if proved what are the potential consequences

Burden and Standard of proof

- **Burden** on party bringing the allegation must prove the facts which underpin it. This is not the same as the balancing exercise undertaken by the court when determining best interests.
- *Rhesa Shipping Co SA v Edmond and another: The Popi M* [1985] 1 WLR 948 - "how often have I said to you that, when you have eliminated the impossible, whatever remains, however improbable, must be the truth?“ – not the approach for fact finding!
- **Standard of proof** – on the balance of probabilities, no more, no less [*Re B (Care Proceedings: Standard of Proof)* [2008] UKHR 35. It either happened or it did not.
- *Lancashire County Council v D and E* [2010] 2 FLR 196 – no obligation on the respondent(s) to provide an alternative explanation.
- *A Local Authority v M* [2014] EWCOP 33, at para 84: Baker J quotes Baroness Hale in *Re B*: Neither the seriousness of the allegation nor the seriousness of the consequences alter the standard of proof to be applied.

Evidence - *LB Enfield v SA & ors* [2010] EWHC 196

- Allegation of abusive parenting against a LD woman, SA who denied she had been abused and repeatedly asked to go home.
- Is hearsay evidence admissible in the Court of Protection? *Yes* [para 30]
- Proceedings within CoP are 'civil proceedings' within the Civil Evidence Act 1995, s.11.
- Drama therapist's notes of weekly 30 minute sessions during which SA made 'disclosures' about 'feeling unsafe and frightened in her home environment'. Despite impressed by care/concern, there is a 'real need for caution when evaluating the evidential quality of [the drama therapist's] contribution to the case'. 120 sessions took place, extracts from nine formed the witness statement. The LA in possession of the notes, the drama therapist objected to their disclosure.
- Not inadmissible or automatically of no weight but caution as to the weight that can be attached to material originating from drama therapy sessions. [see para 70]

Evidence – R (on the application of DJ) v The MHRT [2005] EWHC 587 (Admin)

Munby J

'If the Tribunal is relying upon hearsay evidence it must take into account the fact that it is hearsay and must have regard to the particular dangers involved in relying upon second, third or fourth hand hearsay. The Tribunal must be appropriately cautious of relying upon assertions as to past events which are not securely recorded in contemporaneous notes, particularly if the only evidence is hearsay. The Tribunal must be alert to the well-known problem that constant repetition in 'official' reports or statements may, in the 'official' mind, turn into established fact something which rigorous forensic investigation shows is in truth nothing more than *'institutional folk-lore' (emphasis added)* with no secure foundation in either recorded or provable fact. The Tribunal must guard against too quickly jumping to conclusions adverse to the patient in relation to past events where the only direct evidence is that of the patient himself, particularly where there is no clear account in contemporaneous notes of what is alleged to have happened. In relation to past incidents which are centrally important to the decision it has to take the Tribunal must bear in mind the need for proof to the civil standard of proof'.

Evaluation of evidence

"*Evidence cannot be evaluated and assessed in separate compartments. A judge in these difficult cases must have regard to the relevance of each piece of evidence to the other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.*"
Baker J in *A Local Authority v M & Others* [2014] EWCOP 33

London Borough of Islington v AA & others [2018] EWCOP 24
AA returned to live with her mother and brothers without her husband and children. She was diagnosed as suffering from schizophrenia, admitted under the MHA and then discharged to a nursing home with the family's agreement, returning to the family home for contact. Social services intervened when the family failed to return AA to the nursing home for several days. AA then disclosed to a psychiatrist and social worker that her brothers abused her which they denied. Subsequently a brother took AA out for a walk from the nursing home and did not return her there. The LA issued proceedings seeking findings of fact namely financial, neglect and physical/verbal abuse. Some, not all, were found proven.

Evaluation of evidence – *London Borough of Islington v AA & others* [2018] EWCOP 24

Allegations of neglect initially from care co-ordinator.
HHJ Hilder found:

43. I am not satisfied that the first allegation is made out on the evidence. I accept Ms. Jordan's account of AA's presentation in August 2014 but also BA's account of having been given no social work support up to that point. I am satisfied that there was a crisis situation at the time when Ms. Jordan first became involved but not that there was "severe neglect" continuing until June 2016. I accept Ms. Jordan's own account that there was improvement seen when a care package was introduced.

44. I am satisfied that, despite initial improvement, AA's care needs were not being adequately met in the family home in February 2015. Although I approach the specifics of the description set out in the e-mail with caution because it is unsigned, unsworn and untested, I accept that that carers were raising significant concerns.

45. Shortly afterwards, AA was detained under Mental Health Act powers. After her discharge, I am satisfied that there is no evidence at all to substantiate the allegation of continuous severe neglect. The care notes provide a different picture. I place greater weight on the detailed and contemporaneous records than on generalised account.

Evaluation of Evidence – *AB v HT & others* [2018] EWCOP 2

- Court concerned with M: whether to make findings on allegations and cross-allegations made by HT (M's aunt), AB (M's father) and MS, the man with whom M participated in a religious ceremony of marriage. AB alleged to police that HT kidnapped M for financial gain. HT made an allegation to police of M's forced marriage.

Baker J found (paras 168 – 170)

- Not satisfied that M did not want to marry MS on the date of the ceremony;
- In the light of M's vulnerability to influence at the date of and after the ceremony and her *current (emphasis added)* lack of capacity, I am not able to make any finding as to her current wishes and feelings concerning MS;
- Although the marriage was arranged entirely by AB and MS and M was unquestionably married under the influence of her father, I am not satisfied that she was coerced into the marriage;
- Re LA's allegation that HT found M locked in the house which was unclean and M begged HT to take her back to London. Thought carefully about the absence of corroboration but… I have reached the conclusion that this does not undermine the credibility of HT's allegations about M's poor physical condition and in a distressed state – satisfied on the balance of probabilities her account is true.

Evaluation of Evidence

'With every day that passes, the memory becomes fainter and imagination becomes more active. The human capacity for honestly believing something which bears no relation to what actually happened is unlimited. Therefore, contemporary documents are always of the utmost importance' – *Lancashire County Council v R* [2013] EWHC 3064 Fam Mostyn J

Mostyn J – the assessment of credibility generally involved wider problems than mere 'demeanour'....contemporary documents are always of the utmost importance.

'On 29 February 2012, I directed that an expert report be prepared, dealing with HS's understanding of sexual matters; her use of vocabulary relating to sexual matters; the meaning attributable to the words reported by MB; the extent to which HS is suggestible and whether reactions from professionals has reinforced her perception of inappropriate behaviour on the part of her brother [B/26]'. *A Local Authority v HS (by her litigation friend the OS) and BS and HLS* [2013] EWHC 2410 (COP), District Judge Eldergill, para 174

'I found the content of the ABE interview to be helpful and illuminating as to SA's personality and presentation. It is not material upon which the LA wish to rely but it nevertheless provides important information to the court and enables some direct observation of SA's general demeanour' – *LB Enfield*

Information from P

'It would seem counter-intuitive if, as a matter of law, the CoP was incapable of receiving as potential factual evidence reports of what a person, who may qualify for and need protection, may have from time to time complained about'
[MacFarlane J in *LB Enfield v SA* para 33]

- COPR 2017 para 14.2(e), the court may 'admit, accept and act upon such information, whether oral or written from P, any protected party or any person who lacks competence to give evidence as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule'.

- *A County Council v AB, BB , CB* [2016] EWCOP 41 – LA and parents opposed P attending or providing information. Decision for LF, not to be micro-managed by the court.

- Real question is what weight is then attached to that hearsay evidence in particular case.

Disclosure – *LB Enfield v SA and others* [2010] EWHC 196 (Admin)

'The apparent difference in the approach to disclosure as between the family courts and the Court of Protection may well arise from the fact that the rules for the latter are based upon ordinary civil litigation with the expectation that disclosure will be based on whether documents 'adversely affect [a party's] own case' or 'support another party's case' [COPR r133(2)(b) – now COPR, r16.2(2)(b)] whereas the approach of the family court is that there is a duty to give the court all relevant material'. [para 57]

- COPR r1.4 imposes a duty on the parties to help the court to further the overriding objective which includes being 'full and frank in the disclosure of information and evidence to the court' (r1.4(2)(f)

- Tribunal Procedure Rules 2008 r14(7) 'unless the Tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public'

Disclosure: ABE dvd

- Where the subject of Court of Protection proceedings has been interviewed by police in an 'Achieving Best Evidence' interview, are the fact of that interview and a copy of the DVD recording of it matters to be disclosed to the parties and to the Court?

Most definitely, yes. See para 58

- Where police propose to interview a person who is the subject of pending incapacity/best interest proceedings in the Court of Protection, are the police and/or the applicant local authority under a duty to disclose the proposal to the court and parties in the Court of Protection and how is the issue of P's capacity to consent to the interview to be addressed?

Again yes, permission to be sought where there are live proceedings – potentially not on notice save for to P's litigation friend

- Capacity to consent to be assessed

Disclosure and Confidentiality

- Disclosure for categories of documents e.g. from the local authority who is a party to the proceedings, provided to P's litigation friend and then onward disclosure to other parties

- Third party disclosure from organisation or individual not a party to the proceedings (eg previous care provider, police, GP records)

- Police seek disclosure of psychologists' reports of P – *Re AB (by his litigation friend, the Official Solicitor) v A Police Force and WLCCG* [2019] EWCOP 66

- If disclosure ordered, question as to limit extent of disclosure or provide in redacted form

Disclosure - scenarios

- What happens to documents if X, joined as a party and driven as he or she is for P's welfare threatens to go to the press about the perceived injustice of P's situation? As a party, X is in receipt of highly confidential material

- Where previous convictions for offences of sexual touching on a child under 13 years are disclosed in respect of the subject of P's affections, what considerations apply

- P emails his litigation friend or solicitor and copies in the social worker *Court of Appeal in Civil Aviation Authority v R (on behalf of the application of Jet2.com Ltd)* [2020] EWCA Civ 35 – email correspondence

Vulnerable persons and participation in court proceedings

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23 March 2021

Vulnerable witnesses and the Court of Protection

Application of the Civil Procedure Rules and Family Procedure Rules

2.5.

(1) In any case not expressly provided for by these Rules or the practice directions made under them, the court may apply either the Civil Procedure Rules 1998(**1**) or the Family Procedure Rules 2010(**2**) (including in either case the practice directions made under them) with any necessary modifications, in so far as is necessary to further the overriding objective.

(2) A reference in these Rules to the Civil Procedure Rules 1998 or to the Family Procedure Rules 2010 is to the version of those rules in force at the date specified for the purpose of that reference in the relevant practice direction.

Power of court to control evidence

14.2. The court may—
(a)control the evidence by giving directions as to—
(i)the issues on which it requires evidence;
(ii)the nature of the evidence which it requires to decide those issues; and
(iii)the way in which the evidence is to be placed before the court;
(b)use its power under this rule to exclude evidence that would otherwise be admissible;
(c)allow or limit cross-examination;
(d)admit such evidence, whether written or oral, as it thinks fit; and
(e)admit, accept and act upon such information, whether oral or written, from P, any protected party or any person who lacks competence to give evidence, as the court considers sufficient, although not given on oath and whether or not it would be admissible in a court of law apart from this rule.

PD1A Amendment to the Overriding Objective - 6 April 2021

The Courts and Tribunals Judiciary website says this about the new rules –

"amends the CPR's Overriding Objective, following the recommendation in the report by the Civil Justice Council on Vulnerable Witnesses (published in February 2020) in civil proceedings. The amendment makes it clear that dealing with a case justly includes ensuring that the parties can participate fully, and that parties and witnesses can give their best evidence. It also deals with the costs (not Fixed Recoverable Costs) provision for additional work or expense incurred due to vulnerability of a party or witness."

Family and Criminal Jurisdiction

- Family cases the focus is the welfare of the child
- Criminal cases focus is on whether the defendant is guilty or innocent
- Burden of proof
- Whether the vulnerable adult is a party
- Hearing in public or private
- Jury trials
- The use of ABE interviews and pre recorded evidence
- Statements of written evidence

Family Proceedings

- On 23 October 2017, the Family Procedure (Amendment No 3) Rules 2017 (SI 2017/1033) were made and came into force on 27 November 2017. They amend the Family Procedure Rules 2010 (SI 2010/2955) (FPR), to introduce new Part 3A and Practice Direction (PD) 3AA on vulnerable persons' participation in proceedings and evidence.

Guidelines in Relation to Children Giving Evidence in Family Proceedings

- These Guidelines were produced by Lord Justice Thorpe's Working Party. This Working Party was set up following a request to the President of the Family Division by the Court of Appeal in ***Re W* [2010] Civ 57,** a case we are all familiar with, which considered the issue of children giving evidence in family proceedings. The case later went to the Supreme Court as ***Re W* [2010] UKSC 12.**

- In November 2017 the Family Procedure Rules were amended to include specific provisions in relation to vulnerable witnesses: **Practice Direction Part 3A and 3AA.**

- Vulnerable witness are not the same as protected parties - Protected parties: Capacity adults. See Practice Direction 15B

Re W (Children) (Abuse: Oral Evidence) [2010] UKSC 12, [2010] 1 FLR 1485

- The judgment held that there ought no longer to be a presumption, or even a starting point, against children giving evidence in family proceedings but instead guides judges to, weigh up two considerations:
    - Limb 1: the advantages that calling the child will bring to the determination of the truth; and
    - Limb 2: the damage it may do to the welfare of this, or any other child.

  Also see the guidance from the Family Justice Council (Guidelines in relation to children giving evidence in family proceedings (December 2011)).

Family Courts – Special Measures

In the family courts, there was a recognition that “special measures” such as the use of screens, intermediaries, giving evidence via video link can be used for vulnerable witnesses. However, due to the nature of family proceedings, the issue of vulnerable witnesses was often only seen through the prism of child witnesses, to the exclusion of other types of witnesses and parties in family proceedings.

This was especially so with regards to the needs of and questioning of vulnerable adult witnesses.

Criminal Proceedings

In the crown court, the special measures regime is well established and formalised.
The special measures available in the crown court for vulnerable and intimidated witnesses are set out in sections 23-30 of YJCEA 1999 and include:

-Screens
-Giving evidence by live link
-Giving evidence from a private location
-Evidence being given via pre-recorded video interview;

Vulnerable witnesses and parties should be consulted about the proposed additional measures.

- As revised, Section 28 cases provide for the use of intermediaries, pre submitted cross examination questions and pre-recorded cross examinations protocol.

Statutory prevention of cross-examination in certain circumstances

Criminal Law by reason of s 38, YJCEA 1999 but despite numerous calls from the bench no such jurisdiction exists in the family courts.

The levels of self representation in the family courts are much higher than in the criminal courts.

In 2017 the President of the Family Division pointed out that an alleged perpetrator could still cross-examine an alleged victim in person; something which, in relation to rape or other sexual offences, would be prohibited in a criminal court. In May 2015 in Re K and H (Children) [2015] EWCA Civ 543, [2015] 1WLR the Court of Appeal held that the Family Court did not have the power to order that the Court Service provide funding for legal representation out- side the legal aid scheme for an unrepresented party to cross-examine a child in family proceedings. The court had to respect the boundaries drawn by Parliament for public funding of legal representation and suggested possible case management orders 76 to deal with cross-examination and suggested that consideration be given to a statutory provision enabling payment out of central funds.

See clauses 65 and 66 of the Domestic Abuse Bill 2020.

Statutory prevention of cross-examination in certain circumstances

October 2017, Practice Direction 12J of the Family Court rules (which covers fact finding hearings in private law contact disputes), was revised and now states77 that the fact-finding hearing or other hearing can be an inquisitorial (or investigative) process, which at all times must protect the interests of all involved and that:

"*The Judge should be prepared where necessary and appropriate to conduct the questioning of the witnesses on behalf of the parties, focusing on the key issues in the case*".

FPR 3A.3, 3A.7(a)-(j) and (m) and paragraphs 2.1 and 3.1, PD 3AA.)

- When considering the vulnerability of a party or witness, other than a protected party, the court must consider:

  • The impact of actual or perceived intimidation towards the party or witness by their own family, or by another party or witness to the proceedings, or by members of the family or associates of that other party or witness.

  • Whether the party or witness suffers from a mental disorder or otherwise has a "significant" impairment of intelligence or social functioning, has a physical disability or disorder or is undergoing medical treatment.

FPR 3A.3, 3A.7(a)-(j) and (m) and paragraphs 2.1 and 3.1, PD 3AA.)

- The nature and extent of the information before the court.

- The issues in the proceedings, including any concerns about abuse, which includes:
    - domestic abuse as defined in PD 12J;
    - sexual, physical and emotional abuse;
    - racial or cultural abuse or discrimination;
    - forced marriage or honour-based violence;
    - female genital or other physical mutilation;
    - abuse or discrimination based on gender or sexual orientation; and
    - human trafficking.

FPR 3A.3, 3A.7(a)-(j) and (m) and paragraphs 2.1 and 3.1, PD 3AA.)

- Whether the matter is contentious.

  • The party or witness's age, maturity, understanding, domestic circumstances, religious beliefs and ethnic, social and cultural background.
  • Questions the court is putting or causing to be put to the party or witness (section 31G(6), Matrimonial and Family Proceedings Act 1984).
  • Any characteristic of the party or witness that is relevant to any participation direction that may be made.

  • Any other matter set out in PD 3AA, including the ability of the party or witness to:
    - understand the proceedings, and their role, when in court;
    - put their views to the court;
    - instruct their representative before, during and after the hearing; and
    - attend the hearing without "significant" distress.

PD1A

3. A person should be considered as vulnerable when a factor – which could be personal or situational, permanent or temporary – may adversely affect their participation in proceedings or the giving of evidence.

4. Factors which may cause vulnerability in a party or witness include (but are not limited to)—

i. Age, immaturity or lack of understanding;

ii. Communication or language difficulties (including literacy);

iii. Physical disability or impairment, or health condition;

iv. Mental health condition or significant impairment of any aspect of their intelligence or social functioning (including learning difficulties);

v. The impact on them of the subject matter of, or facts relevant to, the case (an example being having witnessed a traumatic event relating to the case);

vi. Their relationship with a party or witness (examples being sexual assault, domestic abuse or intimidation (actual or perceived));

vii. Social, domestic or cultural circumstances.

PD1A

5. When considering whether a factor may adversely affect the ability of a party or witness to participate in proceedings and/or give evidence, the court should consider their ability to—
(a)understand the proceedings and their role in them;
(b)express themselves throughout the proceedings;
(c)put their evidence before the court;
(d)respond to or comply with any request of the court, or do so in a timely manner;
(e)instruct their representative/s (if any) before, during and after the hearing; and
(f)attend any hearing.

What measures can the court direct?

• Prevent the party or witness from seeing another party or witness.
• Allow the party or witness to participate in a hearing by giving evidence by live link. (That is, a television or other live link, permitting a party or witness who is absent from the courtroom, to see and hear and be seen and heard by others who are present in the courtroom.)

• Provide for the party or witness to use a device to help them communicate.

•Provide for the party or witness to participate in proceedings or be questioned in court with the assistance of an intermediary. (An intermediary communicates questions put to and answers given by the party or witness, and explains the same insofar as that is necessary for them to be understood by the party or witness or the person asking the question. An intermediary may for example include a lip-speaker who is a hearing person trained to repeat a speaker's message to a lipreader accurately, without using their voice.)

• Encompass anything else permitted under PD 3AA.

What measures can the court direct?

- It is important to remember that FPR 3A and PD 3AA must be applied to the circumstances of each individual case.
- For example, there is no precedent that an intermediary must be appointed where a party to proceedings has a
- learning disability and the final hearing is to proceed as a hybrid hearing (Re S (Vulnerable Parent: Intermediary)
- [2020] EWCA Civ 763).

Funding

Some measures, such as the provision of an intermediary will require funding. However, the rules do not authorise the court to direct that public funding be made available to provide a measure (FPR 3A.8(4)). The provision of intermediaries falls within the scope of the Lord Chancellor's general duty to ensure an efficient and effective system to support the carrying on of court business (section 1, Courts Act 2003).

Where it appears that the only way that a party or witness can properly participate in proceedings, or be questioned in court, is with the assistance of an intermediary, the court should be invited to direct:

- An assessment to determine the nature of support that should be provided through an intermediary in the courtroom.
- Funding for that intermediary by Her Majesty's Courts and Tribunal Service (HMCTS).

HMCTS may then provide funding if there is no other available source of funding. However, there is no specific or express statutory requirement for HMCTS to fund an intermediary or intermediary assessment in family proceedings

Re C (Lay Advocates) (No.2) [2020] EWHC 1762 (Fam).)

Keehan J clarified that:
(I) A lay advocate does not provide legal services;

(II) A lay advocate is not a McKenzie Friend;

(III) A lay advocate is not an intermediary (albeit an individual may be qualified to act as an intermediary and as a lay advocate);

(IV) the term 'lay advocate', for the purposes of this judgment, means a person who is qualified and/or has experience of assisting and supporting a party in proceedings who has an intellectual impairment or learning difficulties which compromises their ability to process and comprehend information given to them. The function of the lay advocate is to ensure that the party does understand the information provided and is able to respond to the same and thereby, is enabled to participate effectively in the proceedings. This assistance and support will be required both in court during the proceedings and out of court for the purposes of taking instructions and preparing the party's case for the court proceedings.

Re C (Lay Advocates) (No.2) [2020] EWHC 1762 (Fam).)

- Keehan J remained of the view that the appointment of a lay advocate for this mother and this father was and is essential to ensure their Article 6 rights are not infringed and to ensure that they are unable to participate fully and effectively in the public law proceedings.

- The December 2019 judgment and order were varied to provide that HMCTS will fund the provision of a lay advocate in appropriate circumstances for a party at court hearings and that the Legal Aid Agency will fund the provision of a lay advocate, if satisfied that it is a justifiable and reasonable disbursement, to support and assist a party in communicating with their solicitor and counsel out of court.

Re C (Lay Advocates) (No.2) [2020] EWHC 1762 (Fam).)

16. The SSfJ agreed, on behalf of HMCTS and the LAA, the following:

i) payment for lay advocates at hearings is a matter for HMCTS; and

ii) payment for lay advocates to assist with communication between the client and their solicitor out of court is, in cases benefitting from legal representation funded by civil legal aid, a matter for the LAA subject to the LAA being satisfied that it is a justifiable and reasonable disbursement in the course of the legal representation provided.

17. It was agreed further that:

i) HMCTS would pay the costs of the lay advocates to date in the sums of £448 in respect of mother's lay advocate and £887.90 in respect of the father's lay advocate; and

ii) The LAA, applying the test as to whether a disbursement is justifiable and reasonable, would consider any further applications for the funding of lay advocates in this case that the solicitors of the 2nd and 3rd Respondent should choose to make (on the basis that an application for prior authority is appropriate where the disbursement being sought is unusual in its nature) to assist with communication between the client and their solicitors out of court.

Intermediaries

Consider whether a intermediaries is required when clients have:-

- a learning disability or a specific learning difficulty which makes communication challenging;
- a mental health condition particularly if it impacts on their ability to communicate under stress;
- are under 18;
- a physical disability which impacts on their communication or ability to manage stress.

An intermediary is required in every case.

Intermediary services will not accept that a client needs an intermediary on the basis of a report from another expert but will need to carry out their own assessment.

Raise it with the Judge at the earliest opportunity ideally before or at the CMH.

Intermediaries

"The use of intermediaries has introduced fresh insights into the criminal justice process. There was some opposition. It was said, for example, that intermediaries would interfere with the process of cross-examination. Others suggested that they were expert witnesses or supporters of the witness. They are not. They are independent and neutral. They are properly registered. Their responsibility is to the court …their use is a step which improved the administration of justice and it has done so without a diminution in the entitlement of the defendant to a fair trial.“

The Rt. Hon. The Lord Judge, Lord Chief Justice of England and Wales, 7 September 2012, at the 17th Australian Institute of Judicial Administration Conference in ‘Vulnerable Witnesses in the Administration of Criminal Justice’.

Guidance to family courts: payment for intermediaries and intermediary assessments

Internal staff guidance has been published by the Ministry of Justice setting out out how certain court-ordered measures including intermediaries and intermediary assessments may be paid for in family cases.

There is no statutory requirement for HMCTS to fund an intermediary or intermediary assessment in family proceedings. However, where it appears to the court that this is the only way a party or witness can properly participate in proceedings, or be questioned in court, the judge may order that there should be (i) an assessment to determine the nature of support that should be provided through an intermediary in the courtroom, and (ii) funding for that intermediary. HMCTS may then provide the funding if there is no other available source of funding.

Intermediaries are usually appointed to support vulnerable witnesses or parties to participate in or understand proceedings inside the courtroom. HMCTS can also if necessary fund the cost of an intermediary to assist with preparation work outside the court but only if this is directly relevant to matters to be dealt with in the court room and there is a judicial order to this effect. HMCTS is not able to fund the general provision of intermediaries outside the court room.

GROUND RULES HEARING (GRH)

Paragraphs 5.1-5.6, PD 3AA

Should consider the form of the person's evidence, for example, whether it should be oral or other physical evidence, such as through sign language or another form of direct physical communication

"Must" consider the best way in which the person should give evidence, including considering whether the person's oral evidence should be given:

- at a point before the hearing, recorded and, if so, transcribed; or
- at the hearing with, if appropriate, participation directions being made.

GROUND RULES HEARING (GRH)

"Must" consider whether to make participation directions where it is proposed that the person is to be cross-examined (whether before or during a hearing). This includes prescribing the manner in which the person is to be cross-examined. The court "must" consider whether to direct that:

- any questions that can be asked by one advocate should not be repeated by another without the court's permission;
- questions or topics to be put in cross-examination should be agreed before the hearing;
- questions to be put in cross-examination should be put by one legal representative or advocate alone, or, if appropriate, by the judge; and
- the taking of evidence should be managed in any other way.

"Must" consider whether the person has previously:

- given evidence, and been cross-examined, in criminal proceedings and whether that evidence and cross-examination has been pre-recorded (sections 27 and 28, Youth Justice and Criminal Evidence Act 1999); or
- given an interview which was recorded, but not used in previous criminal or family proceedings.

Questions

Did mum tell you to tell the police that Mr K did bad things to you?
Advocate wants to suggest that mum has put her up to telling a story.

She may think this means: "did mum tell you to tell the police officer all about the sexual abuse that happened" and of course the answer would be "yes, mum told me I had to tell the police all about Mr K and that he did bad things."

Alternative

We are talking about Mr K.
Has anybody asked you to say things about Mr K that did not happen?
Who told you to say things about Mr K, which were not true?
What exactly did they tell you to say?

Resources

Toolkit 10. Identifying vulnerabilities.
Grounds Rules Hearing Checklist
http://www.theadvocatesgateway.org/images/toolkits/ground-rules-hearings-checklist-2016.pdf

This is the updated checklist and should be read in conjunction with the overarching principles set out in Toolkit 1:

Toolkits 1-Ground Rules Hearings and the fair treatment of vulnerable people in court 2016 **Appendix 9**
http://www.theadvocatesgateway.org/images/toolkits/1-ground-rules-hearings-and-the-fair-treatment-of-vulnerable-people-in-court-2016.pdf

https://www.icca.ac.uk/wp-content/uploads/2019/05/20-Principles-of-Questioning.pdf
Addressing Vulnerability in Justice Systems

Fact-finding in the Court of Protection

(i) Fact finding during Covid-19 – remote and hybrid hearings

Rachel Schon, Garden Court Chambers

23 March 2021

Introduction

- Today is the one year anniversary of England going into the first national lockdown in response to the Covid-19 pandemic.
- On the same day, the Lord Chief Justice issued directions to the judiciary in respect of hearings in County and Family court, stating that no in person hearings were to take place until further notice, unless there was '*genuine urgency and no remote hearing is possible*'.
- On 31st March 2020 Mr Justice Hayden published '**Remote access to the court of protection guidance**' which stated that the same approach was to be taken in the CoP.
- The guidance invited '*imaginative ideas… to ensure that P participates in their proceedings where they are able to do so safely and proportionately*'.
- The guidance also noted that '*the culture of the COP is one of transparency and I am determined to maintain this insofar as possible*'.
- At the time this document was published, few people would have foreseen the current situation, where England has been in a full national lockdown for 195/365 days, or 53% of the last year.

Key Cases - The Jurassic Park Principle – **Re P**

- **Re P: (A Child Remote Hearings) 2020 EWFC 32** – a family law case concerning allegations brought by the LA against the Mother for falsely fabricating or inducing illness in her seven year old child.
- Although in the family court, principles are equally applicable to the CoP.
- This case had been listed for a 15 day fact finding hearing, however the Mother in this case had fallen ill with Covid-19 prior to the hearing and also struggled with her internet connection. She was unable to give instructions and/or receive advice during the hearing.
- The President of the Family Division ruled that the case should be adjourned and could not proceed remotely.
- He stated at paragraph [8]:

'Establishing that a hearing can be conducted remotely, does not in any way mean that the hearing must be conducted in that way'.

Key Cases - Whether there should there be a remote hearing– ***Re A***

Re A (Children) (Remote Hearing: Care and Placement Orders) [2020] EWCA Civ 583 – at paragraph 9 the Court of Appeal set out factors to consider:

> *'i) The importance and nature of the issue to be determined; is the outcome that is sought an interim or final order?*
> *ii) Whether there is a special need for urgency, or whether the decision could await a later hearing without causing significant disadvantage to the child or the other parties;*
> *iii) Whether the parties are legally represented;*
> *iv) The ability, or otherwise, of any lay party (particularly a parent or person with parental responsibility) to engage with and follow remote proceedings meaningfully. This factor will include access to and familiarity with the necessary technology, funding, intelligence/personality, language, ability to instruct their lawyers (both before and during the hearing), and other matters;*
> *v) Whether evidence is to be heard or whether the case will proceed on the basis of submissions only;*
> *vi) The source of any evidence that is to be adduced and assimilated by the court. For example, whether the evidence is written or oral, given by a professional or lay witness, contested or uncontested, or factual or expert evidence;*

Key Cases - Whether there should there be a remote hearing– ***Re A***

Re A (Children) (Remote Hearing: Care and Placement Orders) [2020] EWCA Civ 583 – at paragraph 9 the Court of Appeal set out factors to consider:

> *vii) The scope and scale of the proposed hearing. How long is the hearing expected to last?*
> *viii) The available technology; telephone or video, and if video, which platform is to be used. A telephone hearing is likely to be a less effective medium than using video;*
> *ix) The experience and confidence of the court and those appearing before the court in the conduct of remote hearings using the proposed technology;*
> *x) Any safe (in terms of potential COVID 19 infection) alternatives that may be available for some or all of the participants to take part in the court hearing by physical attendance in a courtroom before the judge or magistrates.'*

Key Cases – application of these principles– ***A Local Authority v Mother and others***

- *A Local Authority v Mother and others* [2020] EWHC 1233 (Fam)
- Mr Justice Williams was required to consider whether a FFH taking place during long running care proceedings was to continue following the conclusion of expert evidence, and if so, in what form in circumstances where the mother was required to self-isolate. He applied the principles set out previously from **Re A**.
- The Judge stressed that in the vast majority of cases '*the credibility of a witness and the truthfulness of their account…is reliant principally upon the evaluation of the content of their evidence rather than the evaluation of their demeanour. That is not to say there may not be rare cases where demeanour may be of some importance, particularly where there is no or little contemporaneous or other evidence which bears upon their account.'* (para [42]).
- The Judge assessed that this case fell into that rare category where there was little contemporaneous evidence for the court to go on and therefore, if in person attendance could be facilitated within a reasonable time period, then this would be preferable.

Practitioner Experiences

- Over the past year members of the Garden Court CoP and Family teams have become used to appearing in remote or hybrid fact-finding and final hearings, and dealing with the various issues that arise.
- Hybrid hearings are becoming more common, and often the lay parties and their lawyers will attend court while professional witnesses and lawyers will attend remotely.
- In preparation for this seminar, we asked the team for any practical tips or thoughts they might have. Comments included:

- *the importance of ensuring that all witnesses have a paper bundle, as they would in court*
- *Witnesses need access to a Holy Book if they want to swear on that, otherwise they will need to affirm*
- *The need to have a reliable means of communication with lay clients so that instructions can be taken during the hearing – WhatsApp is often preferred*
- *Where an interpreter or multiple interpreters are necessary, it can be easier and save time to have the interpreter call the party directly (with both on mute) and simultaneously translate proceedings in this way*

Transparency

- One accidental benefit of the transition to remote hearings has been that it is more easy for observers to attend, with associated benefits for increased public understanding of the work of the CoP.
- Celia Kitzinger and Gill Loomes-Quinn have established the 'Open Justice Court of Protection Project', see https://openjusticecourtofprotection.org/about/
- They encourage public access to the court by raising awareness of the right to attend CoP hearings and providing information about how to do so.
- In a recent blog post, Kitzinger reflected on 'how being watched changes how justice is done', bringing together perspectives from lawyers, expert witnesses and lay parties. She listed five significant changes to CoP hearings as a result of observers:

  - Barristers are increasingly opening cases with introductory summaries for observers

  - Lawyers/ Judges are having to explain to P and P's family that observers may be present and may write about the case

  - Lawyers clarify and highlight key legal concepts for observers

  - Blogs create an opportunity for self reflective learning

  - Observation means lawyers are "on best behavior"

Other Benefits

- Many have reflected that remote hearings have made it easier for P to attend, and to feel comfortable and included in proceedings.
- It is more cost/time effective to have experts appear remotely, and could relieve pressure on the health/social care system
- For busy practitioners, remote hearings have meant less time is expended commuting or waiting to be called on at court.
- Lay parties may feel more comfortable giving evidence from the familiar surroundings of their own homes

Drawbacks

- Internet connectivity has been a problem in many hearings, leading to disruption. If this happens during a party's evidence it can be especially off-putting and stressful.
- Hearing cases remotely can have implications for a Judge's ability to get a 'feel' for the case and see how parties interact in the court room.
- There is concern that remote hearings, with lawyers/the Judge possibly attending from home, can have an impact on the 'gravitas' of the court and ultimately the respect given to legal proceedings.
- Where parties are especially vulnerable this can impact their ability to give their best evidence remotely or be able to give instructions to their lawyer. In these circumstances a hybrid or in person hearing is often preferable.

What's Next?

- Last week on the 17th March, the Lord Chief Justice issued a message regarding 'Courts Recovery', stating:

'during this time, we have seen that technology has many advantages but, in some circumstances, it can also have the effect of slowing down work. Over the next few weeks and months as the number of people who have been vaccinated…increases and restrictions begin to ease… it will be possible and desirable to increase attendance in person where it is safe and in the interests of justice. This will be important to maximise the throughput of work…. Remote and hybrid hearings will still play their part in managing footfall in courtrooms and public areas.'

- Just as we could not have predicted the events of the last year and their effects on the court system, it is difficult to say to what extent remote or hybrid hearings in the CoP might be with us for the 'long haul'.
- However, it is certainly the case that they have brought a unique mix of benefits and challenges, and it is to be hoped that those benefits will not be lost going forward.

Thank you

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