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*Vulnerable parties in  
hearings where Domestic  
Abuse is an issue: new  
Guidance for the new  
normal*

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19th November 2020



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Last week, the President issued his ["Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings" Guidance, produced by the FJC's Domestic Abuse Working Group](#). The guidance applies to all family proceedings where domestic abuse has been proved or may be an issue and supplements the protocols for remote and hybrid hearings contained in 'The Remote Access Family Court'.

Do we need more guidance? The thoughts of the FJC are very helpful in highlighting important practical aspects of arranging and conducting hearings where Domestic Abuse is an issue. Careful thought is required so that the needs of vulnerable parties are properly catered for in our "new normal" court system. Additional prompts and suggestions should always be welcomed.

This document summarises the key aspects of that guidance in the view of the writer.

### **Covid-19 impact**

The guidance starts that that 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. That said in the writers experience some Court buildings are now less equipped to provide the support required: some have no conference rooms as they do not provide for the necessary social distancing, let alone in sufficient number that they can be reserved. There is also an incorrect presumption that victims of domestic abuse would prefer a remote hearing when this was not the norm pre-March 2020, or that their needs will automatically be met in such a format. For some victims, participation in a video hearing can be invasive, (re)traumatising and endangering.

The MoJ in its June 2020 Final Report *"Assessing Risk of Harm to Children and Parents in Private Law Children Cases"* highlighted the need for resources in order to meet these needs. Their recommendation on this aspect, and of a revised CAP, is still to be ratified and implemented. Delay remains prejudicial to the welfare of children and every effort should be made to conduct hearings as rapidly as achievable having regard to the need to provide a safe and fair hearing. Until additional resources are made available, greater proactive planning in advance of any hearing, involving consideration of risk and support, will be necessary to promote the physical and emotional safety of all participants.



## Arranging the hearing

Hearings now regularly take place either in a courtroom in person, or by telephone or video. 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 as to their preferred mode of participation. We should not assume that victims would prefer to attend by remote means.

- Consultation with the client regarding the type of hearing they would prefer needs to be sensitive and facilitative and should include consideration of children's welfare/childcare before, during and after the hearing.
- Consultation needs to be undertaken sufficiently far ahead of the hearing to enable appropriate arrangements to be made; 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 so be cautious when considering sending emails to multiple participants.
- Provision for special measures/participation directions should be included in the case plan for any hybrid hearing.
- When arranging a contested hearing think ahead to the Judgment being delivered: the parties may wish to organise for someone to be on hand to debrief with them afterwards.

## Video hearings

The victim and perpetrator should never be put in a situation where they are alone together, and that includes in a remote hearing.

- Lawyers should join the hearing link first.
- The court/lawyers should provide information on how participants can blur their background or use a generic background if the platform being used enables this.
- 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.
- 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.

## Hybrid hearings

- 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).
- 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.



## Attendance

- 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.
- The court should ordinarily allow either party to be accompanied in any hearing by a supporter (whether or not the party is legally represented) who should not be directly involved in proceedings (e.g. a domestic abuse support worker or friend), but 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.

## Delivering the court's decision

- The court should consider how its determination will be expressed verbally and communicated in writing.
- This 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 childcare responsibilities immediately after the hearing.

## 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 should still be borne in mind and a precautionary approach should be adopted.
- Without notice hearings may effectively be dealt with on the papers.
- Applicants should not be required to attend telephone hearings on without notice applications if they are represented.

## Fact-finding hearings

- 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.



## Conclusion

The writer would urge that, if representing a vulnerable party, or you are representing an alleged perpetrator where the alleged victim may be unrepresented, the Guidance set out in the FJC's document and summarised above be applied. Our new ways of working in 2020 risks, with greater physical distance from vulnerable clients, lawyers overlooking the overwhelming gravity of the task of a victim facing their perpetrator, even though not always doing so in the same room or building.

In addition to the above, the writer would suggest lawyers:

- Contact the Court in advance to address what special measures are available e.g. separate entrance, separate waiting area, effective screening, and ensure these are put in place where possible by pre-booking/reserving conference rooms;
- If either is unrepresented, ensure written questions are required to be submitted in advance for the Judge to consider;
- Don't assume remote hearings are a fail-safe way of protecting the vulnerable; if not an attended hearing, can a hybrid or remote hearing be facilitated to achieve safe evidence and full participation of the vulnerable party?



# Contact Us



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