

A View from The President's [Remote] Chambers

COVID 19

1. It is now some 7 or more weeks since the COVID 19 pandemic first began to impact significantly on the work of the Family Court. Much has happened since then as all involved have endeavoured to keep the business of the court running safely and fairly, insofar as it has been necessary and possible to do so. Throughout I have been conscious of a 'can do', positive mind-set that has been evident at every turn. I am extremely grateful to you all for the part that you have each played in this extraordinary endeavour which has, and continues, to serve the community by delivering Family justice where it is possible to do so despite the current unprecedented restrictions. In expressing my appreciation, I wish, if I may, to single out the court staff and the district judges who, in circumstances where absolutely everyone has worked well beyond capacity, have, I believe, experienced the negative impact of all this most.
2. Although we have been moving towards becoming digital, that goal has not yet been achieved and we remain largely a paper-based system. For some, particularly those working in London and the bigger cities who depend on public transport, this has no doubt meant taking some personal risk of infection just to get to work. At work, because of absence through illness or a need to self-isolate to protect family members, those attending will have found that some of their colleagues were unable to join them. On top of this, it has been necessary for the staff to learn new skills and processes very quickly to support remote working. They have also had to cope with a substantial increase in telephone and email traffic from those who wish to know about their hearings, have difficulties or other reasons to contact the court. Others in the staff team will have had to learn to work remotely from home, which, as many of us have learned, is not an easy option. The whole experience will have been, and is, entirely out of the norm, stressful and, no doubt, very tiring. It is for these and other reasons that I wish to 'take my hat off' and cheer a hearty 'Thank You!' to

all of the HMCTS staff who have done so much to keep the Family Court going for the past two months. It is simply stating the obvious to say that we could not have done it without you.

3. The District Bench, which was already carrying a substantial number of vacancies and having to work at capacity every day before the crisis, has been required to undertake the heavy lifting imposed by remote working. The much-reported early experience of seamless video hearings in the High Court will not have been replicated for the district judges. The task of undertaking a list with multiple cases, differing, and at times sub-optimal, technology, often over the phone with emotionally charged lay parties, day after day has proved to be much more tiring and difficult even than normal working. The district judges have had a very hard time and I continue to look to ways to relieve the pressure on them.
4. More generally, I have been extremely impressed by, and grateful for, the way in which the Family judiciary at all levels and the professions have risen to this most unwelcome challenge. Armed with some knowledge of what is going on in Family courts elsewhere in the world, it seems clear that we have been able to keep the flow of urgent and pressing cases going in a way that has not been replicated elsewhere.
5. Moving on, it is now even more clear that we are, as I have frequently said, engaged in a marathon and not a sprint; indeed, more than a marathon, it is a long-distance run for which there is currently no end in sight. It is therefore important to pace ourselves and to take stock of how things are going. I am therefore very pleased to be able to publish today a [report from the Nuffield Family Justice Observatory](#) whose small team of researchers [Lisa Harker, Mary Ryan and Sara Rothera] have, from a standing start on 9th April, produced a rich and thorough report into the evidence and submissions that they received from over 1,000 individuals during the past two weeks on the issue of remote working in the Family Court. This is a very impressive and professional piece of work and has proved, if proof were necessary, the value to the Family Justice system of having the Observatory as an independent research body which is focussed on

our needs (both long and short term). We should all be grateful for the funding that the Nuffield Foundation has made available so that the Observatory can function in this way.

6. I am confident that all who are interested in Family Justice at this time will read the FJO report. I believe that it is an important and potentially dynamic document in its own right. The process of research has held a mirror up to what we are currently doing. I hope that its publication will stimulate informed discussion and debate. The process of reading the document, and seeing what is said there, may well act as a corrective for future hearings – either by identifying occasions when a remote hearing may have been less than satisfactory, or by flagging up suggestions for improvement – in a more subtle and effective manner than any formal guidance might achieve.
7. It is my intention to use the period of the next 10 days or so, following publication of the report, to discuss widely with judges, the profession and others whether there is a need for any further national ‘guidance’ on remote hearings in the Family Court at this time. I understand that some believe that further guidance will be issued. I need to manage expectations by saying that I will only issue further formal guidance if I am satisfied that there is a need to do so.
8. I have, in a manner that might impress the cast of the Cirque du Soleil, bent over backwards to stress that the decision whether or not to proceed with a remote hearing is a matter for the individual judge concerned, and should not be the subject of blunt ‘do or do not’ national guidance based upon the length of hearing, the issue before the court, whether there is to be oral evidence or some other characteristic. The downside of that approach is, I accept, that there may be a lack of consistency from case to case, judge to judge and maybe court centre to court centre. Consistency would, however, come at a price as it could only be achieved by reducing the number of remote hearings to a low common denominator, as the alternative of saying that all hearings in a particular category must be heard remotely is not tenable. Imposing consistency could only be achieved by deploying a very blunt instrument, which would not take account

of any variations from case to case or court to court. It would also not be agile, in comparison with individually exercised judicial discretion, to adapt to changing circumstances as we move gradually out of total lockdown and/or some courtrooms become available for safe working (as is already the case in two London Family Courts and elsewhere).

9. It has therefore been my firm resolve to respect and to trust the judgment of the individual judge who is to conduct a hearing to determine whether and how it should be heard and to keep that decision under review at all times. It follows that, unless I am persuaded that this approach is flawed, the result of the process of consideration and discussion of the Nuffield FJO Report over the next week or so is likely to be limited to highlighting lessons to be learned, or offering advice, rather than the issuing of any guidance which radically departs from the present approach.

Recovery

10. Planning for the 'recovery' phase that will follow the present lockdown is the most pressing and important matter in my in-tray. I strongly suspect that we will look back at the move to remote working as the easy bit, although it does not seem so at present. Whilst politicians have, understandably, spoken of the current endeavour in terms of a war, unlike a war it will not end suddenly on a particular day with a cessation of hostilities. Rather, we face a gradual and uncertain emergence from isolation, which will be staged and may play out over many months. Our capacity to hear cases will change and develop over time and is likely to require careful planning and management. I have therefore invited Lord Justice Baker to take on the task of advising on the way forward with 'Recovery' for the Family Court. Baker LJ has assembled a small group [Judd J, HHJ Chris Simmonds, DJ Charles Prest QC, Julia Steels JP, Hannah Penfold (Lead Legal Adviser) and Recorder Karl Rowley QC] who are currently meeting and taking soundings widely across the system. Other areas of jurisdiction have established similar groups which are coordinated, across the

piece, by Lord Justice Dingemans. Getting 'Recovery' right is absolutely crucial; we could live with our mistakes for a long time to come.

In Other News ...

11. A most frustrating consequence of COVID is that the work on implementing the recommendations of the Public Law Working Group Report, which has been prepared is currently on hold due to the current hiatus.
12. The Private Law Working Group has however published its 2nd Report on 2 April 2020 and will give consideration to the MOJ's Domestic Abuse Panel Report when this is available. This is important work as all involved in Family Justice are rightly apprehensive that the current lockdown may have heightened the need for our system to protect those who are the victims of abuse.
13. The Transparency Review continues with the final date for the submission of contributions of 11 May. The process is already providing a deal of material for the group to consider before we hold a day or more of oral 'hearings' conducted either remotely or, hopefully, face-to-face.
14. For some time, I have perceived the need for there to be a lead Family judge to deal with issues relating to the divorce process. This has always been an important matter, but with the move to digital working and the separate progress of the Divorce Bill in Parliament, the need for a 'go to' judge on Divorce has become more pressing. I am therefore very pleased that Her Honour Judge Lynn Roberts has accepted this important role with immediate effect.
15. It is with sadness that I must record the death some few weeks ago of Lady Brown, the wife of my predecessor Sir Stephen Brown. Pat Brown could not have been more supportive of Sir Stephen throughout his busy time as PFD. She was a very regular and most welcome attender at Family Law events and became a good friend to many of us. I and others have been in touch with Sir Stephen to offer our sympathy at this time.

And finally ...

16. In closing I just want to thank all those involved in Family Justice, in whatever capacity, for all that you are doing to keep the Family Court running. These are the most difficult, unusual, taxing and stressful times. We must not lose sight of the need to look after each other and ourselves. Well done for all that you are doing. Let us hope that we may begin the road to 'Recovery' pretty soon!