



# Transparency Project

MAKING FAMILY JUSTICE CLEARER

**REMOTE HEARINGS FOLLOW UP SURVEY**

**RESPONSE OF THE TRANSPARENCY PROJECT**

**SEPTEMBER 2020**

## About us

1. The Transparency Project is a registered educational charity operating in England and Wales, whose charitable objects are:
  - i. To advance the education of the public in the subject of family law and its administration, including the family justice system in England and Wales and the work of the family courts, in particular but not exclusively through the provision of balanced, accurate and accessible information about the work of family courts and the facilitating of public discussions and debates which encompass a range of viewpoints.
  - ii. To promote the sound administration and development of the law in England and Wales, in particular, family law, by encouraging and contributing to the transparency of processes in the family justice system, contributing to public legal education concerning family law and matters of family justice, enhancing access to justice in matters of family law and by such other means as the trustees may determine.

In short, our objectives are to make family justice clearer.

2. This is our response to the FJO's follow up survey concerning remote hearings in the Family Court.
3. We prepared a response to the original rapid consultation which can be found here : <http://www.transparencyproject.org.uk/press/wp-content/uploads/FJO-on-remote-hearings-April-2020.pdf>.

## Blog posts and other relevant activity

4. We set out in our initial response a list of relevant blog posts we had published on our website written concerning remote hearings. Since our initial response we have published a range of further blog posts, many having been made possible through the legal blogging pilot (PD36J). In particular we draw attention to the following posts :

- a. When Remote Justice Works, Celia Kitzinger, 4 May 2020 :  
<http://www.transparencyproject.org.uk/when-remote-justice-works/>;
- b. Transparency and Risk Assessments – A Covid Catch 22, 22 May 2020 :  
<http://www.transparencyproject.org.uk/transparency-and-risk-assessments-a-covid-catch-22/>;
- c. Illusory Open Justice – a Kafkan Attempt to Observe Magistrates Courts in the Time of Covid, Tara Casey, 27 May 2020 :  
<http://www.transparencyproject.org.uk/illusory-open-justice-a-kafkan-attempt-to-observe-magistrates-courts-in-the-time-of-covid-19/>;
- d. Legal Blogging a Phone Hearing – Not Remotely Difficult (So Far), Alice Twaite, 1 June 2020 : <http://www.transparencyproject.org.uk/legal-blogging-a-phone-hearing-not-remotely-difficult-so-far/>;
- e. Attending the Court of Appeal Remotely, Julie Doughty, 4 June 2020 :  
<http://www.transparencyproject.org.uk/attending-the-court-of-appeal-remotely/>;
- f. How to Observe Remote Hearings in The Court of Protection, Celia Kitzinger, 7 June 2020 : <http://www.transparencyproject.org.uk/how-to-observe-remote-hearings-in-the-court-of-protection/>;
- g. Legal Blogging a Remote Family Court Hearing on the HMCTS platform of choice (CVP) – Something of a Collaboration in the End, Alice Twaite, 24 June 2020 :  
<http://www.transparencyproject.org.uk/legal-blogging-a-remote-family-court-hearing-on-the-hmcts-platform-of-choice-cvp-something-of-a-collaboration-in-the-end/>;

- h. A Remote Private FDR in an Ordinary Case, Anonymous contributor, 15 July 2020 : <http://www.transparencyproject.org.uk/a-remote-private-fdr-in-an-ordinary-case/>;
  - i. Family Court Stat Spike Due to Covid? Not remotely so, Jo Edwards, 30 July 2020 : <http://www.transparencyproject.org.uk/family-court-stat-spike-due-to-covid-not-remotely-so/>;
  - j. Messing About on the River (Or, CoP-Celia, You're Breaking My Heart...), Lucy Reed, 19 August 2020 : <http://www.transparencyproject.org.uk/messing-about-on-the-river/>;
  - k. Has the Revolution Happened? Can We Ever Go Back?, Paul Magrath, 25 August 2020 : <http://www.transparencyproject.org.uk/has-the-revolution-happened-can-we-ever-go-back/>;
  - l. Legal Blogging the Lay Justices, Lucy Reed, 30 August 2020 : <http://www.transparencyproject.org.uk/legal-blogging-the-lay-justices/>;
  - m. In addition, we published a number of explanations / summaries of the various first instance and appellate judgments published during this period, which touched on best practice and the correct approach to hybrid and remote hearings during the pandemic.
5. In May our chair was a signatory to an open letter concerning open justice during the covid 19 emergency (see: <http://www.transparencyproject.org.uk/open-letter-from-ngos-and-academics-on-open-justice-in-the-covid-19-emergency/> and response here <http://www.transparencyproject.org.uk/hmcts-response-to-letter-on-open-justice-in-the-covid-19-emergency/>).
6. In June, at the invitation of the President of the Family Division we drew up and published a **Guide to Remote Court Hearings for litigants in the Family Court** (see: <http://www.transparencyproject.org.uk/remote-court-hearings-guidance-note/>).
7. Around the same time, following the publication of various posts on our blog, Celia Kitinger set up the Open Justice Court of Protection Project along with Gill Loomes-

Quinn, which encourages public access to the court by raising awareness of the rights of Public Observers (see: <https://openjusticecourtprotection.org/>).

## **Survey**

8. The Transparency Project has been running an **online survey** asking parents and family members who have been involved in remote family court hearings about their views and experiences since early April 2020. Our questions were drafted before the Nuffield FJO consultation began, so are different, although some seek similar information. We are happy to share our results with the FJO, if this would be useful. No personal or identifying data has been collected. Some quotations below have typing errors, which we have not corrected.
9. We gave a summary of the responses received to 28 April in our earlier response. Since then we have received a further 44 responses (to 20 September), making a total of 94. The survey remains open.
10. There are some similar themes coming through in the second batch of responses, there are some differences between the pattern of responses in the second period, compared to the first.

## **The responses**

11. 58% of the responses to 28 April were directly from parties (mostly parents / former partners) and the rest were completed by someone supporting a party (lawyer, family member, mckenzie friend etc). In the second period responses were more likely to come directly from a party (88%), and thus were not so likely to be mediated via a professional.
12. Whereas 58% of all responses in the first period were completed by lawyers, this fell to 6% in the second period, with 80% of the 'supporter' responses being completed by a person who identified themselves partner or family member. This is likely to be because

in the initial period much of our social media 'reach' was with lawyers, whereas over time parents and others have shared the link to the survey on social media, for example in Facebook parent support groups.

13. Compared to the first period, there was a small increase in the proportion of hearings described as hearings to make a final order (from 12% to 16%), and in the proportion of respondents reporting evidence was taken, consistent with the fact that when our initial summary was provided many final hearings were being adjourned to await clarification of how long the pandemic might last, whereas since that time courts have resumed taking final hearings. Also not unexpected was a drop in the proportion of hearings being taken by phone – from 75% to 58%, and an increase in the proportion of video hearings being taken by MS Teams compared with other platforms. The proportion of respondents who said they did not know who everyone was or could not see everyone was higher than the proportion of video hearings, suggesting that some litigants may be joining video hearings by audio only or that there is a need for advocates and judges to identify themselves more clearly each time they speak during telephone hearings. The proportion of respondents who said they could be seen by everyone rose in the second period, but did not keep pace with the increase in the number of video hearings, suggesting some parties are either electing to keep their cameras off or were unable to join by video.
  
14. The number of respondents joining on a phone via an app or browser rather than by simple voice call rose from 7% to 24%, but 89% of all respondents in this period still relied upon their phone in one shape or form to join the hearing. This is consistent with the increase in the use of video hearings, but it does demonstrate that many parents do not have access to a more user friendly device with a larger screen from which to participate in a hearing, such as a tablet or laptop (whilst 19% joined by laptop in the second period this was not a significant increase on the figure for the first period 15%, and the numbers of parents joining on a tablet remained negligible). Although only a small proportion of respondents reported difficulty joining regardless of period, the proportion of those reporting it was 'very easy' to join did drop in the second period,

suggesting that whilst litigants are managing to connect to voice hearings this is not quite as simple as waiting for an incoming phone call from the judge.

15. Of concern was a rise in the second period in the proportion of respondents who said they participated in the hearing without access to the court papers. It is difficult to say, but this might be a product of the number of responses in the first period having been completed by lawyers on behalf of the party in question, perhaps because they had not appreciated their client did not have access to the papers. Either way 63% of respondents in the second period were reporting no access to papers, whilst 21% had a paper bundle and 16% had an electronic copy of papers on their computer. No respondent in either period reported any advocate sharing their screen with them so that they could see the relevant papers.
16. These issues around access to papers and to suitable devices on which to properly view a video hearing screen are matters of concern. Both will affect the experience of the litigant and their ability to follow what is going on and to participate effectively.
17. There was a significant drop in the rates of satisfaction with the outcome of the hearing when comparing the first with the second period (65% to 28%), which may be an indication that lawyers completing the survey in the first period were perhaps not fully in tune with how their clients were left feeling or may be a consequence of there being more final outcomes.

### **The narrative responses**

18. Below we have extracted a selection of comments of note.

- A MOTHER told us that her hearing lasted 45 minutes, she didn't have a copy of the papers and she didn't give evidence. She said :
  - “My son was moved residence after I was cut off from the call. I was then sent the order by a bailiff. I was then arrested. I am being bullied by the judge”

- “My son was at home. He kept coming in. They were reading long documents and not allowed to comment.”
- “I have been in medical isolation for 5 weeks. They had no grounds for change of residency. All they had to do was reinstate the order. Suggesting a change of residence following a breach of an existing order, apparently seen as the final straw after some earlier history of proceedings.”
- A GRANDMOTHER responding on behalf of her daughter said :
  - “Was given no paper work, no bundle, was given 1 wks notice there was even a case, no Time to get a solicitor, ask for copies of case was ignored by courts and caffcass o one would tell me anything and was not given the opportunity to prove it was all lies”
  - “It was a joke there will be no justice ,it was based on heresay and lies from The other party that can easily be proven to be lies, every Time my daughter tried to get a solicitor a bricks Wall comes up, it is corrupt unfair and no one puts The children First the whole process is a joke there is more going off with this system from outside influence and this should not be happening. Weather you win or lose your case depends on weather you support a one World government or not.”
- In what looks like a second response relating to a hearing in the same case the GRANDMOTHER respondent said :
  - “Cafcass was refused access to the children, police report only one side nothing my daughter reported was mentioned, rape ACCUSATIONS never investigated by anyone, all one sides section 7 report, still do not know what my daughter is accused for it what evidence there is to support the claims that lost her the children, not one scrap of my daughters evidence has been seen by anyone, all police investigations stopped, my daughter is harrassed by the other family and the police ailiated from her kids and Both her and her children are abused daily no one will stop this.”
- A RESPONDENT TOLD us :



- ‘Terrible - my evidence blocked without notice prior to hearing so much side wasn’t heard or considered. Children removed to father against residency order from 3rd Dec. Active criminal case for Domestic Abuse - Article 6 breached - PD12j ignored - children or myself not spoken to by cafcass. No fair hearing. Contact blocked for resident parent (me) for the last 11 weeks, against children’s wishes. No law was followed correctly. Judge said he couldn’t access email for paperwork”
  - (In response to the question whether anyone was present with him/her during the hearing) “I was and am alone”
  - (In response to the question ‘Please tell us about any difficulties getting a quiet, private space to take part in the hearing.) “None that’s all I have now”
  - “What can I say. Victims of domestic abuse are ignored. Evidence blocked and ignored. Children ignored. Nothing worked as it should”
- ONE LITIGANT reported being severely phone phobic and unable to participate in a telephone hearing, which went ahead without her.
  - ANOTHER LITIGANT described a phone hearing as a “terrible” experience and said
    - [it was] “Hard to distinguish voices of the judge and my ex’s solicitor, not able to see facial expressions, not knowing what was going on or when it was ok to speak...’ she didn’t have access to papers and said she would have preferred a video hearing.”
    - “There is an expectation during a pandemic that women are able to manage children at home whilst doing court hearings. The court hearing itself was fine and less intimidating however little progress was made in my case - however this is not unusual anyway I have had a lot of face to face hearings where little to no progress is made. The judge in this case was fairly reasonable but a new judge - we have had 7 so far and two sets of magistrates. Where the judge is continually changed there is no consistency and no one is able to identify the pattern of sporadic engagement with the process from the applicant father - not showing for hearings, not doing

statements, not engaging with the necessary services to manage his issues etc. One thing was that my ex didn't show up to the remote hearing - his barrister was able to blame this on technical issues but it isn't the first hearing he hasn't shown for."

- A PARENT participating in a final hearing in a care case which took place by telephone hearing in mid June told us
  - [the outcome was that] "the court made Care orders for 3 children. 2 in long term separate foster care. 1 at home.
  - From their response it was apparent that the youngest child was at home during the hearing, and that the social worker and guardian had given evidence but the parents did not.
  - "I do not believe telephone hearings are fair, they take away the humanity of what's happening, my heart breaks for parents permanently losing children this way knowing there will be no support or meaningful farewell contact. I believe serious cases when likelihood would be permanent separation should have been paused. Human interaction with the judge is essential for parents to feel closer and that the case has ended as it should. I personally felt like the judge had forgotten I was a living breathing person with a huge amount of grief to deal with from the hearing. It felt cold and disconnected compared to a in hearing person where the judge regularly addressed us as parents and showed he was hearing our views in a fair way."
  
- ONE LITIGANT in person reported attending court for a hearing – with everyone present but cafcass (who apparently attended remotely). They said :
  - "Magistrates requested electronic bundle then didn't print it off, nor did respondent. Mine was passed around court and then left with magistrates. Why bother sending bundle if they don't print it off. I was left without my bundle at key points of trial"

- ANOTHER LITIGANT told us s/he could not brief his/her barrister in advance of the hearing (probably care proceedings), didn't have the papers, was 'fighting blind' and tried to talk to the magistrate and got refused ability to speak.
- ANOTHER LITIGANT IN PERSON at a case management hearing reported being told nobody could be present for support, they didn't have the papers, said cafcass had ignored their evidence and the hearing concluded with no contact to their child. They commented that :
  - "Its all corrupt cafcass, legal aid solicitors, judges social services its all run by the shadow government the labour party its corrupt to the core"
- AN AGORAPHOBIC LITIGANT told us that a remote hearing meant they could participate in the hearing.
- ANOTHER LITIGANT told us :
  - "Side view of judge only, I could either see him if he looked at the camera OR hear him if he looked at the microphone." They also said it was "moderately hard to wrangle the dogs" and that they "Got a free transcript due to the amateurish set up".
- A PARENT IN CARE PROCEEDINGS who had a child with complex needs at home during the case management hearing said they didn't have access to the papers, and wasn't sure who had attended.
  - "We think 1 of 2 social workers joined by phone only. It wasn't actually clear who was joined by phone as it didn't state this. All other parties had video."
  - "Easier to manage nerves on video call. No commute, less time taken off work."
  - "Couldn't confer with solicitor, although he and judge handled this very well."
  - "The joining instructions could be clearer - I use online conferencing daily for work but still had some troubles accessing. Aside from this, it's been a better

experience than we expected. I think a lot of this rests on how well our solicitor has prepared us though. Judge has been patient and accommodating throughout, he always pauses if anyone has audio problems and let us speak directly to him at one point, where we weren't able to talk privately with our solicitor."

- A MOTHER of a teenaged daughter said she
  - "Couldn't see my daughters barrister, social worker, people kept trying to enter who were not part often hearing, could not see a couple of other people and were not sure who they were, no one explained"
  - "And I couldn't have a screen so my ex husband was able to see into my home and I felt that he was constantly staring at me and at my home behind me.. it was distressing. I asked for help with a screen but wasn't helped"
  
- ONE PARENT told us the advantage of a remote hearing was
  - "I didnt feel so intimidated and was able to speak freely"
  
- Another said they were "less nervous" due to the format.
  
- ANOTHER RESPONDENT responded to the "what worked well" question with :
  - "It happened. didn't get the usual barrister laughter and chumminess where they don't respect families and severity of proceedings. Case should have been in March not July"
  - This respondent also said that the disadvantage was "Parties could hide" (having told us that some elected to switch their cameras off).
  
- A WORRIED PARENT involved in child arrangements case before the magistrates replied to the what didn't work question with
  - "The fact that people could be present and listening to the hearing and no one will know' and went on to tell us 'Remote hearings do not work, everything is being fast tracked and safeguarding checks are not being taken

seriously. Judges are making wrong decisions and putting people at risk of further abuse”

- A PARENT IN PRIVATE LAW PROCEEDINGS said the positive was “Didn't have to see” but the down side was “Couldn't see Judge reaction”.

## **Conclusion**

19. It remains likely that we have not captured the experiences of the most technologically disadvantaged or excluded parents, who may have been unaware of the survey or may have lacked confidence to complete it. As noted before, participants who were dissatisfied may have been more motivated to complete the survey than those who felt it went well (and the comments by some respondents certainly suggested this was the case).
20. Although this is a small self-reporting sample, the survey gives some insight into parents' experiences and some pointers to possible areas of concern.
21. We will continue to gather responses for the time being, and will analyse the results once we have a fuller picture.

## **Other feedback**

22. We are aware that in multiple court areas FHDRA appointments are being conducted ‘on paper’ without the input of the parties, and that in some instances safeguarding checks by telephone have been substituted with a survey sent to parents to complete in writing. Where cases are allocated to Magistrates level it also appears that many hearings (including FHDRA hearings) are being dealt with by two justices or by a Legal Advisor sitting alone. We are concerned that particularly in combination, there is a risk that safeguarding checks may not be as reliable as they might otherwise be (we note the concern in the MoJ Spotlight Review Report as to the inadequacy of safeguarding enquiries even where conducted by telephone), or that the ability of the court to

progress matters safely and efficiently without building in delay is likely to be adversely affected.

**The Transparency Project Team**

**20 September 2020**