

Remote Family Hearings: updated ways of working

1. Following the publication of National Guidance published by the President of the Family Division on 19 March 2020 (which can be found here: <https://www.judiciary.uk/announcements/covid-19-national-guidance-for-the-family-court-message-from-president-of-the-family-division/>) and a significant increase in remote family hearings this documents sets out the how the Family Advocacy Scheme (FAS) will operate. The document will be updated on a regular basis as further issues emerge.

Arranging remote hearings, conferences and meetings

Who is responsible for arranging a remote hearing and how will the costs be covered?

2. HMCTS have produced guidance which can be found here: <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>
3. It is a matter for the judiciary whether to hold a hearing via telephone or video conferencing. If it's a teleconference, then HMCTS staff will set it up using the BT Meet Me and there is no cost to other participants. If an advocate or client incurs any costs in joining a remote hearing this can be claimed as a disbursement.
4. If it's a videoconference then HMCTS staff will set it up, they are currently using Skype for Business, in addition to the existing JVS video conference system. The choice of conferencing platform is a matter of judicial discretion. HMCTS are considering additional conferencing platforms and they will update their guidance as necessary.
5. HMCTS staff, when instructed by a judge, will send the notice of the telephone or Skype hearing to all parties. This will advise you how you will be invited to the call and provide information for the hearing to be effective.
6. If somebody requires a reasonable adjustment or an interpreter, HMCTS staff will make sure this is considered and actioned when arranging the hearing. All telephone and Skype hearings will be recorded, even if this is not normally the case.

Who is responsible for arranging a remote advocates meeting or conference and how is this funded?

7. The advocates will decide who should arrange the meeting and set up the telephone or video conference facilities.
8. Where possible advocates should use free services such as Skype or Zoom. Where this is not possible the cost of setting up a teleconference and dialling into the meeting are a claimable disbursement.

Advocates meetings

How many advocates meetings are allowed?

9. Annex 2 to the cost assessment guidance which covers the payment of FAS fees, sets out how many advocates meetings would be expected.

10. Paragraph 14.18 states that although it would usually be expected that two advocates' meetings would take place in accordance with the Public Law Outline (PLO), provided that the advocates' meeting is held as directed by the Court and in accordance with the PLO there is no limit to the number of these fees that may be claimed. In the current circumstances there may be an increase in the number of advocates meetings.
11. Paragraph 14.19 makes clear that the definition of advocates' meeting includes meetings held by video conference, webcam or telephone where this appropriate in the circumstances.

What evidence is required?

12. The evidence required by the LAA is an endorsed brief and a copy of the approved order listing the advocates meeting. The brief can be endorsed digitally without the need for a physical signature.
13. Advocates meetings may now be arranged through email rather than court order. The provision of email evidence from the court and/or the judge will be treated as the same as providing the order. The LAA will also accept retrospective recording of advocates meetings in orders which follow such a meeting.

Payment

*Paragraph 6.4 of the Civil Finance Electronic Handbook
Paragraph 4.15 of Annex 2 to the Cost Assessment guidance*

14. An advocates meeting can take place on the same day as an interim hearing but it may be claimed only if the meeting takes place outside of any time period that is taken into account in calculating the fee for the interim hearing
15. If the advocates meeting leads to an agreed order, with no need for a hearing and a self-employed advocate has undertaken at least 30 minutes of preparation for the hearing, they are entitled to claim a payment for a one-hour hearing (hearing unit 1) if the cancelled hearing was an interim hearing, or half of the final hearing fee if the cancelled hearing was a final hearing.

Hearings

What evidence is required that a hearing has taken place?

*Paragraph 6.5 of the Civil Finance Electronic Handbook
Paragraph 4.18 of Annex 2 to the Cost Assessment guidance*

16. The guidance sets out that a hearing may take place by any method directed by the court e.g. by either video or telephone conference without attendance at court. If the court directs an alternative method of hearing then the advocate will receive the appropriate fee as if the hearing had taken place.
17. An advocate's attendance form will not be available in hearings undertaken by video or telephone conference.

18. Where a court order sets out all the information that is required i.e. the names of each of the advocates that participated in that hearing, the start and finish times for the hearing (including lunch breaks) and bolt-ons that would be acceptable evidence. If the court order does not have all the required information then we will require an attendance note as well.
19. Bolt-ons may be claimed for telephone/video hearings if appropriate. As there will be no Advocates Attendance Form, notes of the hearing will need to be recorded and the claim justified on CCMS, the CLAIM 1A or the CLAIM 5A.

How are hearing fees calculated?

20. The hearing time will start from the time that the telephone call/videoconference was ordered by the judge. There may be initial discussions which can happen on a conferencing platform which is different to the hearing itself. This time will be counted towards the hearing time. If the judge attends to ensure everyone is present then absents themselves for pre- hearing discussions and then re-joins the telephone hearing that time will be counted.
21. The guidance currently states we expect telephone hearings to be under an hour but this may no longer be the case.
22. An advocate's meeting can take place on the same day as an interim hearing but it may be claimed only if the meeting takes place outside of any time period that is taken into account in calculating the fee for the interim hearing.
23. Advocates may also need some time after the hearing is finished to finalise the terms of the order. Time spent on the phone/videoconference finalising the order can be included in the calculation of hearing time. These discussions may be on a conferencing platform different to the one used for the hearing.
24. The President's National Guidance says that remote hearings may also be conducted by way of an email exchange between the court and the parties. How such hearings are conducted will vary from case to case. Some cases may be resolved in a few emails whilst others may only be resolved after many emails. The time spent by advocates may therefore vary from case to case. We will accept a court order that's sets out the start and finish time of the hearing and the names of the advocates. If this information is not on the court order then advocates would need to self-certify the amount of time spent reading and responding to emails. We would expect to see copies of emails and a copy of the court order with the advocate's name recorded.

Conferences

What evidence is required?

25. Conferences can currently take place by video-conference or by telephone. The LAA requires an endorsed brief and a note of the conference. Provided the brief has the start/finish times (especially if it's the same day as a hearing) then only a summary of the notes is required.