



PRACTICE DIRECTION No. 2 OF 2020

COVID 19: GUIDANCE FOR THE FAMILY DIVISION

25 MARCH 2020

1. This Guidance, which is issued by the Chief Justice, is intended to be followed with immediate effect in the Grand Court Family Division.
2. The aim of the Guidance is to 'Keep Business Going Safely'. There is a strong public interest in the Family Justice System continuing to function as normally as possible despite the present pandemic. At the same time, in accordance with government guidance, there is a need for all reasonable and sensible precautions to be taken to prevent infection and, in particular, to avoid non-essential personal contact.
3. The government guidance is, however, primarily aimed at the social setting, rather than the business/work environment. Depending on the circumstances there may be the need, and no harm involved, in having a number of people present in court for an oral hearing.
4. Taking these competing factors together, whilst the default position should be that, for the time being, all Family Division hearings should be undertaken remotely either via email, telephone, video or Zoom, etc ['remote hearing'], where the requirements of fairness and justice require a court-based hearing, and it is safe to conduct one, then a court-based hearing should take place. The Court will ensure that the appropriate distancing measures set out in the Family Division protocols are put in place.

Practice Directions and Guidance

5. Grand Court Practice Direction No.2/2004 “Proceeding By Way of Video Conferencing Civil or Criminal” and the accompanying “Video Conferencing Guide” were issued by the Chief Justice on 26th May 2004. The use of remote hearings in appropriate cases is consistent with the Court’s duty under the Overriding Objective to deal with every cause or matter in a just, expeditious and economical way. Video conferencing has been used in the Grand Court for a number of years. The Family Division has in appropriate cases held hearings and received evidence by telephone or by using any other method of direct oral communication. In the current circumstances where facilities are available to the court and the parties, the Court should consider making full use of technology, including electronic information exchange and video or telephone conferencing.

Remote Hearings

6. There is no category of case that may be listed in the Family Division which necessarily requires the physical attendance of key participants in the same courtroom. The determination of whether or not a remote hearing is to take place will not therefore turn on the estimated length of the hearing, but upon other case specific factors.
7. The following categories of hearing may be suitable for remote hearing:
 - a. All directions and case management hearings;
 - b. Public Law Children:
 - i. Emergency Protection Orders
 - ii. Interim Care/supervision Orders
 - c. Private Law Children:
 - i. First appointment Hearings on Family Mention Days
 - ii. Other interim hearings
 - iii. Simple short contested cases
 - d. Injunction applications where there is no evidence that is to be heard (or only limited evidence).
 - e. Financial Cases

- f. Appeals.
 - g. Other hearings as directed by the judge concerned.
8. Where a case in one of the categories listed in paragraph 7 above has already been listed for a hearing at which the parties are due to attend court then, if it is possible to make arrangements for the fixed hearing to be conducted remotely, then the hearing should go ahead remotely without any personal attendance at court. **A draft directions order is at Appendix A below.**
9. It is possible that other cases may also be suitable to be dealt with remotely. As the current situation is changing so rapidly, the question of whether any particular case is heard remotely must be determined on a case-by-case basis.
10. Where a case cannot be listed for a remote hearing as matters stand then any existing listing should be adjourned and the case must be listed promptly for a directions hearing, which should be conducted remotely. The primary aim of the directions hearing should be to identify the optimal method of conducting the court process in order to achieve a fair and just hearing of the issues but, at the same time, minimising as much as possible the degree of inter-personal contact between each participant. In appropriate cases, this may involve the use of a remote hearing where it is possible to conduct the court process in a manner that achieves a fair and just consideration of the issues. Although consideration may be given as to whether it is possible to conduct a complicated extensive multi-party hearing using the Zoom system, in such cases it may be necessary for the personal attendance at court, for some or all of the hearing, by some or all of the participants.
11. At any directions hearing to discuss the future hearing arrangements, judges should also require the parties to focus on the realistic options that are currently available to meet the child's welfare needs during the present straightened circumstances.

Urgent Cases

12. Even where a case is urgent, it should be possible for arrangements to be made for it to be conducted remotely. The default position should be that the hearing is conducted remotely. Where a case is genuinely urgent, and it is not possible to conduct a remote hearing and there is a need for pressing issues to be determined, then the court should endeavour to conduct a face-to-face hearing in circumstances (in terms of the physical arrangement of the court room and in the waiting area) which minimise the opportunity for infection.

Remote Hearings: technical matters

13. Remote hearings may be conducted using the following facilities as appropriate to the individual case:
 - a. By way of an email exchange between the court and the parties;
 - b. By way of telephone using conference calling facilities;
 - c. By way of the court's video-link system, if available;
 - d. The use of Zoom;
 - e. Any other appropriate means of remote communication, for example Skype or FaceTime.

The Court IT Department will assist make the arrangements for Zoom and will provide advice to participant about to use Zoom.

If you are unfamiliar with Zoom here is the help page from Zoom

<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>

and further guidance and video <https://learninginbloom.com/use-zoom/>

14. The Judge may require certain hearings to be recorded. Where Zoom is used, there is a facility within the software for the digital record of the hearing to be recorded (this is not the same as a typed transcript but may suffice for most purposes).
15. The responsibility for making technical and other arrangements for a remote hearing and for confirming the details of the arrangements for the hearing to the other parties no later than 24 hours prior to the remote hearing taking place is to be undertaken by the following party liaising with the court:

- a. The Department of Children and Family Services in a public law case;
 - b. The applicant, if legally represented, in a private law case;
 - c. The respondent, if legally represented and where the applicant is not, in a private law case;
 - d. The court where no party is legally represented.
16. When conducting a remote hearing, there is a need for the judge to use their best endeavours to ensure that only those who would be allowed into the court room for an oral hearing are privy to the remote hearing and that all parties understand that the system used by the court will record the proceedings and that no other recording is to be made by any of the parties.
17. On the day before a remote hearing the applicant must electronically file a PDF bundle which complies with Practice Direction No. 11/2014, and which in any event must include as a minimum:
- a. A case summary and chronology;
 - b. The parties' positions statements;
 - c. The previous orders that are relevant to the remote hearing;
 - d. All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
 - e. A draft order;

Final Observation

18. These are exceptional and unprecedented times. The situation is changing daily. This Guidance is intended to deliver a very significant change of direction in the method of working within the Family Division, whilst at the same time enabling the Court to continue to operate and to meet the pressing needs of those who turn to it for protection and justice.

Hon Anthony Smellie
Chief Justice

25 March 2020

APPENDIX A

In the Grand Court
Family Division /
~~The Family Court~~

No: _____

IN THE MATTER OF _____

AND IN THE MATTER OF _____ CHILDREN

BEFORE _____ SITTING AT _____ ON _____.

UPON the Court determining that in the exceptional circumstances of the current public health emergency this case is suitable for hearing remotely ('remote hearing') by means of [video link]/[Skype]/[telephone]/[other].

BY ITS OWN MOTION / BY CONSENT IT IS
ORDERED THAT:

1. All hearings in this matter shall take place by way of remote hearing unless the court directs otherwise.
2. The parties and their representatives shall attend all hearings by way of [video link]/[Skype]/[telephone]/[other].
3. No unauthorised person may be present at this hearing. When asked, each legal representative must be able to confirm that no unauthorised person is in attendance or able to listen to the hearing.
4. This matter shall be listed for a remote hearing on _____ at _____ before _____ sitting at _____ with a time estimate of _____.
5. The parties shall arrange and attend remotely an Attorneys Meeting no less than 48 hours before the hearing listed above.
6. The [applicant / respondent] shall be responsible for arranging with the Judge's Personal Assistant/The Court IT Department the necessary facilities to conduct a remote hearing, allowing sufficient time for any necessary testing to take place. This will include

provision to the court of the necessary contact details for the parties and their representatives where these are needed to facilitate the remote hearing.

7. The [applicant / respondent] must confirm the details of the arrangements for the hearing to the other parties by no later than 24 hours prior to the remote hearing taking place.

8. The applicant shall by 1600 hrs on the day before the hearing electronically file a PDF bundle, which must include:

- (a) A case summary and chronology;
- (b) The parties positions statements;
- (c) The previous orders that are relevant to the remote hearing;
- (d) All essential documents that the court requires to determine the issues that fall for determination at the remote hearing;
- (e) A draft order;

9. [Further Directions].../

Dated _____