

Parents in England and Wales involved in remote family court hearings due to coronavirus had poor legal representation and unjust and unfair hearings

Consultation with parents involved in remote hearings September 10-30, 2020

Overview of consultation

The timescale for the consultation was very tight. We were able to do some informal engagement prior to the start of the 21-day consultation period but could not widely advertise until the consultation was announced. This set some limitations on how many parents could participate.

In total, we have had contact from 53 parent participants who contacted PFAN. Some made contact by email but the majority by phone. We initially planned to hold focus groups using Zoom and to have parents sign up and give some basic information and their permission using an on-line form. This approach did not work as some parents signed up and for various reasons did not attend groups – some had social workers who set up meetings at short notice which they felt obliged to attend. Others failed to sign up and we realised that many had difficulties accessing or using the internet. Others seemed unable or did not want to engage on-line. We therefore started to do individual interviews by phone with two interviewees. Many parents seemed more comfortable engaging in this way.

We have been able to hold focus groups and individual interviews with 21 parents, with 11 in three small focus groups and 10 individual interviews. One of the facilitators took hand-written notes in interviews and focus groups and, in some cases, parents gave permission for recordings to be made. These recordings were used to aid recall and check accuracy.

At the beginning of the consultation, we were contacted by 7 parents who had hearings cancelled due to covid-19 restrictions. We sought clarification on whether they could be included in the consultation, however, on replying to request they join us, the parents felt that there was little they could say and did not choose to participate.

Parents felt that many of the issues around the court process and key decision making occur before court and particularly in their relationships with social workers. Thus one Mum said, “This is stupid. Social work has all the power and wrecked our lives before we even get into court, but nobody cares about that.” Another said “I had one social worker that was great, she earned my trust, we had ups and downs, but then the social worker changed. ... I went through 23 social workers since I was 9 weeks pregnant ... They are saying about us trusting them, you can’t trust everyone, I had a social worker smiled when my kids were getting taken, don’t do it, it’s not good practice.”

There were several parents who contacted PFAN in crisis. These parents were not in a stable enough emotional situation to participate and this highlights the lack of support that is available to parents. In searching, there is no available helpline to call and parents do not have a clear point of contact for support in such challenging times. We offered telephone support and helped them to find support services and in some cases to engage a legal representative.

One of these mothers called just five days after her son was removed from hospital post-birth. She received this news by telephone from the social worker, after a hearing had taken place. She had not received any paperwork to tell her that a hearing was going to take place, and she did not have any legal representation or support. The baby was taken just hours after the mother received the news from a social worker, who the mother said wasn't even the social worker she spoke to before.

This mother did not know who to call or where her baby had gone. After we encouraged the mother to contact the social worker, the social worker told the mother that she was the baby's social worker, not the mother's and could not help the mother. PFAN's coordinator for the consultation advised the mother that she should be allowed to call and ask for an update on how her baby is doing and that the social worker should, at least, be able to answer questions about what is happening and about contact. The mother never had the opportunity to speak with the judge or to take advice. The mother's immediate family were not notified. This mother spoke to us at length in a very traumatised state and as such, our focus was on establishing support around her and we did not engage her in a focus group or interview.

Two other parents made contact while in a very vulnerable state of mind. Both confessed that they were suicidal, and both felt there was no hope. Both parents had experienced remote hearings over the phone. These parents did not have any support after the hearings to help them process the information they received. The parents were not entirely clear on what had happened at the hearings. One parent felt they didn't know how to find out what had been written in the court order. These issues are common for parents involved in remote hearing as illustrated in the summary below. These two parents were offered individual interviews which they did not feel able to attend.

These 3 parents, as well as 9 others, were put into contact with mental health advocacy services and we provided ongoing support.

We also spoke to 1 grandmother whose first language was not English. She was very distraught and confused. It seems there was a hearing in early September. She did not know what had happened except that the children were removed from her daughter. She was there with her daughter who had a phone hearing. Her daughter is angry and humiliated will not speak to us further. The grandmother did not understand about legal aid and did not feel able to access legal advice.

Details of the people involved in interviews and focus groups

- P1 A mother who had four hearings since March none in person with a mixture of telephone and video sometimes she was a little litigant in person and sometimes represented
- P2 A mother who had a hearing delayed due to Covid-19
- P3 A mother who had a 3-day hearing and was represented
- P4 A father who had an in person private law hearing in March. He was represented by a client of his business on a pro bono basis after he had spent £40,000 in legal fees and had a period as a litigant in person. His child is also on a supervision order
- P5 A mother of a 14-year-old daughter in care. Her hearing was a hybrid hearing and it went ahead without her in attendance. She had no legal representative. In hospital because of her mental health, she wished to participate and was not provided the facilities to do so. There are restrictions on phone and internet use.

- P6 A mother who had an online hearing and in person hearing she was a litigant in person and had a McKenzie friend
- P7 A mother who had two telephone court hearings
- P8 A mother who had an online hearing and was legally represented
- P9 A children's advocate who works with children with special needs. She has also been in the system as a mother but came as an advocate to two autistic children in an online hearing.
- P10 A mother who had a hearing on the phone because of problems with contact with her daughter in foster care. She was legally represented.
- P11 A mother with autism had a Hybrid hearing, she was at court with her barrister and her intermediary (because she is autistic), the LA barrister was there and everyone else was online. A final care order was made at the hearing.
- P12 A mother involved in several hearings by phone and had legal representation. Her 3 children were made subject to Care Orders at a hearing held by phone, the youngest remaining at home and 2 older siblings in foster care. Decisions also made at previous telephone hearing for these siblings to be placed into separate placements.
- P13 A mother with ADHD with children in care who were adopted. She had legal representation at 2 hearings
- P14 A father who was legally represented in 7 remote hearings, the first one was telephone and the subsequent ones were skype.
- P15 A father who was represented in 6 hybrid hearings since March the last in late July.
- P16 A mother had two phone hearings regarding placement and contact with her children in care she was a litigant in person
- P17 Husband of P16 who joined his wife in the focus group part way through and was a litigant in person alongside his wife
- P18 Mother two court hearings with legal representation applying to change contact and discharge the care order on her child
- P19 A mother whose children are placed with her sister-in-law, the court is considering a special guardianship order and contact. She had legal representation
- P20 A mother involved in private law proceedings and legally represented has participated in a telephone hearing for directions. Initially the full trial was planned to take place over the telephone, but now this has been postponed for several months.
- P21 A mother involved in several phone hearings. She had legal representation and could not attend court because of shielding due to her son's respiratory illness.

The participants had hearings across the country covering the following regions

East England	1
North West	4
South East	7

South west	6
Wales	1
West Midlands	1
Yorkshire	1
Unknown	1

Representation

Almost all the parents felt that their legal representation was compromised by the Coronavirus restrictions and that this detrimentally affected the court outcomes. Some people had severe difficulty in accessing their representation or engaging with them effectively before or between hearings. Parents who could not meet their legal representative face to face found it very difficult to properly represent their case. Within the hearing parents were not able to engage with their representatives. Many also felt this was compounded because the remote hearing meant that they were invisible in the process:

One parent taking part in two hearings by telephone summed up all these aspects:

P18- “So my last two hearings I didn't meet my barrister. The last hearing, I didn't get to brief my barrister ahead of the hearing. The Judge has never seen me, she can't see what person I am. I'm not allowed to speak so she can't hear what kind of person I am. My barrister said things that were incorrect and I wasn't allowed to put my hand up quickly and correct her. Then the local authority said that contact was going to be for 3 hours and in a contact centre. I felt like saying, hang on a minute, we don't have our contact in a contact centre, we have it out in the community, that's the way it has always been. They were allowed to say that they were going to keep it like this until the restrictions. All that got said and you can't challenge it because you are on the blooming telephone. And for your barrister when they say something wrong you can make a noise and jump up and down a bit in your chair and get their attention and correct them.”

Accessing legal representation before and between hearings

Parents felt their ability to present their case was compromised because of lack of access to legal representatives and because they were unable to engage with them on a face to face basis:

P10 “I didn't know what was coming from the LA before I got into the hearing because I couldn't talk to my barrister face to face before the hearing.” And “The biggest influence of COVID on my hearing is that it denied me speaking with my barrister face to face.”

P8 “Rather than asking someone things in person you have to send an email and you need to wait five days and you still haven't heard. Even my statement. I had to give an initial statement in response to the first care report or something. It was such a nightmare I had to email my solicitor to tell her what I want and she sent me back a draft and it was really confusing trying to say what you want to say but doing it through an email and not being able to have the conversation back and forth.”

P15 – “So we got to Court and I was doing alright because I was providing evidence. The thing I can do is write, I'm pretty good at writing so I was providing counter evidence. So I was countering all their claims and they were pretty good counters you know. So when we went into Covid all that fell apart. Because I couldn't see my legal team properly. I could only contact them over the phone. We went into lock down, working from home, it was hard to get in contact with anybody. So the well-built case started to fall apart.”

P1 - “in some respects solicitors are getting back more quickly.... But communication in general was a problem”

Lack of support and access to legal representative during hearings

Parents felt unsupported during hearings due to being unable to be physically with their legal representatives. Some felt largely ignored and excluded:

P18 – “When my barrister said I don't know about something, I know that if we were sat in court, I would have made a little squeek sound and put my hand up. Barristers are usually looking around to see, she would have looked around at me. None of that happens, you get very little. ... if there is anything said in court that you are not happy with, you have no chance to either correct your barrister or challenge the local authority.”

P20 – “I was not able to talk to my barrister – just about fine for directions hearings but it is crazy to do final hearings by telephone!”

P12 – “I did have contact with legal professionals during lockdown and virtual hearings over the phone, but had to do this over 2 phones, and without using partner's phone this wouldn't have been possible.”

P15 – “It disadvantages you when you need to communicate with people. It puts you a huge disadvantage in that scenario. The local authority's legal team are all able to speak in court, you can't overcome that. You can't interrupt them all and say that I want to be able to speak. There were 2 hearings where I didn't say a word. My barrister said 3 words in one hearing. I had a solicitor in another one and she said the same. I got fed up at the last hearing.”

P9 a parent advocate said - “The mother was alone in a room. Not really knowing what's supposed to happen next, she was not allowed any support.”

P3 couldn't communicate with barrister representing her in a blended hearing where she was in court and her barrister on Zoom – “On zoom giving evidence no chance to get a break” ... “Really stressful but had to put on brave face” and “Very hard not having someone with you as it's terrifying” and there was little support during the hearings “In court you can get a message to your QC or barrister and they can see how you're really doing to ask for a break”

P7 - “I was on the phone so I am just sitting alone in the kitchen all by myself I am not even with my barrister I can't have any conversations with her – we were texting in between but it wasn't the same like preparing and being beside her. We knew what we were about to talk about that day but his [the x husband] barrister just introduced a whole bunch of other stuff about my family - wanted to get a non-molestation order. So this is not anything that is pre-determined, this is not the reason for why we are there but it was accepted by the judge. I had the evidence and I quickly sent it to the barrister, and she shared it with all the lawyers but this was all by text.”

Lack of visibility to judges

Parents felt that they were not seen or heard by judges (particularly in telephone hearings) and that this led to them being disadvantaged:

P18 “The Judge has never seen me, she can't see what person I am. I'm not allowed to speak so she can't hear what kind of person I am.”

P12 – “... feel that the way the hearings were done affected the outcome. In person, judge made eye contact and engaged. With phone hearings, felt the judge felt less need to engage, hearings were very quick.” Her request for hearings to be “at least via video” rather than phone hearings was

refused. She had phone hearings leading to care orders on her 3 children. The final hearing took only 20 mins. "They need to see you to remember you are a human being. It didn't feel like this!"

P12 - "Hearings should be via video conference, not phone, otherwise parents can easily be excluded and forgotten. My ex-partner controlled how hearings went, e.g. he claimed to have no internet access, so had phone hearings, but then he wouldn't even turn up."

P17 - "We had the initial hearing in August and we weren't allowed to speak to the Judge. Just had our solicitors doing the talking. We weren't allowed to be seen, just all audios. So the judge couldn't even see us as people."

P7 - "My reflection on the telephone hearing is that it was just the lawyers talking beforehand and just a direction being agreed it didn't feel the same like in court where the applicants speak and then the respondent speaks and the applicants speaks and then the judge considers. It was all just a bit administrative, this is how I would describe it. That's my experience - inadequate. And disappointing. Not just because I feel falsely accused but because how can you have a judge that says I read most of the notes? Like read the notes! Look at the evidence. Ask the right questions."

Issues with court process

Most of the parents who had had hearings expressed concerns about how hearings were managed and problems with the process and their ability to engage on-line or by telephone:

P3 found that because of zoom the usual court process wasn't followed and you didn't know who was taking part at any time – "The social worker was zipping in and out ... and that wouldn't have happened in a court they would have had to be sitting there in silence."

P8 "I feel that no one really asked for my input, the solicitor called before but that's all."

P15 – "I've had experience of telephone hearings where you are just listening to people speak. No input from me at all. No data protection, didn't ask my date of birth or anything."

P18 – "Matching panel December, Mental health system said I was fine... court said they had enough evidence to say I had made a change.... Then coronavirus and it started going wrong, hard to connect yes online, with my ADHD, hard to understand if can't see faces, I was told to go on mute and it was like watching a TV show."

P7: "The hearing was an administrative and non-respectful experience. No real discussion."

P9 in a hearing involving autistic children "There was no structure to the hearing and that put a lot of stress on the children and the mother."

P13 "The remote hearings are horrible. Sat there like a lemon. You are meant to be on mute if you want to say a few words everyone hears it." And also discussed how the format meant she could not follow the proceedings "For big words I need clarification."

P18 – found it difficult to concentrate and hear – "I could hear a dog barking during my hearing."

P3 – This was not simply to do with the parent's personal circumstances - "Even as someone who, before all this, had a good job, computer equipment, internet; many friends and supporters etc. I had massive difficulties."

P15 – "When we had actually come to June, we had these hybrid hearings and I was really aggrieved with these hybrid hearings. I was the only one in court. The judge and all that were sitting behind

video screens safe in the sanctity of their own homes. I'm sitting in court on my own in the spotlight. I wanted to cross examine the social worker but I didn't get the opportunity because of Covid. Again, I didn't have very good communication from my solicitor so I couldn't get to speak to the social worker who had caused all the trouble. I actually said in front of the Judge that I would have liked to have called my old social worker to the stand. The judge said you have had ample opportunity to call whoever you want to the stand. I didn't even know that I was able to do that. The judge said I'm very sorry but it's too late in the day to do that now. In essence, I was the only one cross examined in the whole lot of it."

P20 was frustrated feeling her case was pushed through: "With COVID the courts are even less interested in justice – just want to clear a backlog and push cases through"

P17's first of two remote hearings went well – "I think I am one of the lucky ones here to be honest. I put in for my first court order and stuff and had my first hearing on the [Mid] July. That was by phone and to be fair, it was okay. My ex-partner wasn't opposing contact we just couldn't agree the when and where and all that. So the first hearing went well."

Technical issues

Technical issues caused added stress for parents and made it difficult to follow what was happening. It seemed to some that the impact of these problems was not effectively taken into account:

P11 – "A lot of technical problems. It wasn't clear who was actually in the room. Some people didn't have headphones on, some had terrible back noise, there was a lot of screeching. I struggled to even focus on what was going on. I had to take breaks when there was the screeching noises [because P11 is autistic]. I think that some of the other advocates were not able to speak at times and raise things but that didn't really affect fairness to me. I think that because I was in the courtroom things were better for me. But it was really hard because everything took so long because of the phones - people were coming in and out of the discussion, people couldn't hear. All this was very stress inducing. Not knowing exactly what's happening and who is speaking. How did they think its ok that when the expert witness was speaking you couldn't hear some of the words he said? They were constantly having to repeat it, there was a constant feedback noise."

P3 - giving evidence in court - "There was terrible feedback on the audio and I was managing whether the sound was coming out of my laptop, or out of his [the judge]. Whose speaker was on. They couldn't hear the barrister very often for the local authority. Those things are quite frustrating when you are being asked quite difficult questions and being accused of something that was really awful .. and actually you're trying to smile and you're trying to be nice"

P3 - On another hearing in which P3 was involved by phone - "The use of technology was rubbish ... At one point I had a hearing where my barrister had his phone next to the speaker so I could hear"

Parent 5 – "The second hearing was last week, [mid] September. I represented myself, video link to start off with. That didn't work on the day, so the court clerk sent another video link. But that didn't work so we went to a telephone hearing then. That was a bit of bad signal which led to a bad hearing for me. I was allowed to speak but I didn't hear anything. But I got contact ... But I still don't know exactly what the court order looks like. Because when the judge was reading out her final decision, I couldn't hear what she was saying. When the judge was speaking she was asked to speak 3 times to reiterate what she said and she got annoyed to be honest with you." And later "I asked for a final hearing as well, a face to face one. I asked the judge because of the poor communication and the signal breaking up. She overruled me."

P14 – “I had 7 hearings through Covid. Some of them were adjourned because technology didn't work. So it was a bit of a mess.”

P7 - “All of the lawyers phoned the wrong number and mistakenly phoned a bank. It sounds absurd but then they all joked about that mistake. And I was thinking this is my life! My children. I don't care about the fact that you called the wrong number instead of the court and now you are wasting fifteen minutes of the time that we have.”

P1- felt disadvantaged at one hearing “All the other parties were on video but I was on the telephone because of poor Internet connexion at my parents' home.”

Breeches of protocol or difficulties affecting remote hearings

In some cases the nature of on-line hearings meant there were breeches of protocol or difficulties affecting parents view of the fairness of the proceedings and ability to present their case:

P1- “ it's easier for court protocol to be followed in person. The judge can control who speaks when, but online people keep butting in and the judge has difficulty in control.” She described an incident when “my husband's barrister laughed at an awkward moment, when the judge questioned this she said she was uncomfortable.” P1 didn't think this would have happened in a face to face hearing. The same barrister laughed again at another point in time in the hearing when details of the allegations she was making against her husband were being made.

In other hearings P1 was a litigant in person and on one occasion her husband's QC, following the court hearing, said that he had used voice dictation software to make a copy of the hearing. She complained about this because she had been told not to make a recording: “QC had made recording with voice dictation software ... I raised it with the judge ... But feel that as a litigant in person it had been swept aside.” In response to the lack of action taken on her complaint that she thought the QC was taking a recording “I feel like there are different rules for them and it feels like they're just trying to trip me up.” Overall regarding this incident P1 said: “ it doesn't fill me with much confidence that the judge didn't know what the rules were” and overall “ they need to think about these things”

P8 did not attend one hearing - “It was really frustrating. During the COVID the solicitor calls in the morning and asks if there is anything I want to say and then they do it over zoom or I don't really know how to be honest, I just get sent a cover letter with an attachment of the order.”

P14 – “My social worker was caught drinking tea on the camera and got told off by the Judge who said you wouldn't be drinking tea in the court room. She was so unprofessional.”

P18 – “... the social worker was late. So all the parties essentially must have a pre court discussion. That never happened because the social worker was late. So their legal team stood up and said that I must have 3-hour contact from now on to make up for all the lost contact during the lock down and it was wrong. I just got told afterwards what the legal team said was wrong because the social worker had gotten on the phone late. And had turned up late for the conference or whatever. It was 10 o'clock in the morning. It wasn't 8 o'clock in the morning. It was really unprofessional.”

P14 – “The inconsistency in providing evidence. In one moment, the judge was trying to adjourn it because he needed to see my partners face. Obviously it is difficult in the court room because she was asking for a screen. But when it comes to that online, you don't have that facility. You need to turn your camera off and that's it. So he was saying we need to adjourn this final hearing because we need to see my ex partners face. Then there was a change of mind in the next hearing during the

Covid period, we will list this hearing to be seen and she can turn her camera off. Just unbelievable really and they kinda made it up as they went along.”

P18 – “Yeah you could be anyone. You could get your friend to hang on the end of the phone. How do they know it’s you. They ask do you have anybody else in the room with you, I could have 10 people for all they know. I just say no I don’t. No way of verifying who I was.”

P14 – “I think they recognised that in my last hearing because they wanted my ex-partner to turn her camera on so they could verify it was her. They didn’t do that before so I think they are changing their tactics so they can identify these people when they are online.”

P1- said there was no discussion with the parties about what would happen to video recordings or other recordings of the hearing. People were warned “that they were not allowed to record or make screenshots” but there was no discussion of what would happen to the video record or how it could be used in future.

Problems with information

Parents faced many issues in accessing important, and at times even basic, information. Some felt deeply excluded throughout the whole process because of these problems with the information provided to them:

P15 – “Mine [the judge] didn’t have the court bundle and the judge said the local authority hadn’t sent her the bundle. They were laughing like the keystone cops or something. You are in there fighting for your kids and they are having a laugh.”

P18 “In court on the day for the final hearing, it didn’t have the position statement either so I had to send that whilst I was trying to get the video link to work. I think it led to a poor hearing really.”

P3 - “Immediately when people started shielding and so forth ... Basically the doors shut on me in terms of my access to information” and “There were loads of failings, loads of paperwork not provided”

P3 - Police witnesses had no access to bundles or other information they needed for the case and this caused long delays in their evidence – “It took up a whole day”

P3 - “My neighbour gave evidence. She only had a phone. ... She struggled and I could see how nervous she was” and “She was asked about the papers but couldn’t look at them on her phone ... There is no excuse, papers could have been delivered”

P7 said that the judge was not prepared for the hearing: “My experience is that this was in front of a district judge and he didn’t have the time to read the bundle which I am astonished about considering how much it costs to pay for a banister, how much preparation goes into it and often the judge’s comment was I read “most” of the notes. But he never even read the bundle. And I think that’s just not ok. You can’t just read most of the notes – there’s no evidence heard, there’s no fact finding, there’s no establishment of anything I have done wrong.”

P12 – Had care orders made on her three children in late July “Still not got the notes from any of these hearings, or the final judgement. Do feel this has been impacted by Covid. It leaves you wondering, without the final judgement, still waiting for this.”

P20 – “Lots of confusion and lots of difficulties with paperwork and technology”

Providing support in the hearing

In a small number of cases the judge or the local authority had attempted to provide support but this was in some cases nullified by the nature of on-line hearings:

P11 had an intermediary because of mental health problems and this helped "For me, because I was at court with a wonderful barrister and intermediary, they would never let me into court without speaking with them. My experience is very different because I had an intermediary so it was mandatory that my barrister will be with me. However, my barrister had difficulties getting everybody else and she had to struggle to get the other advocates."

P18 – Although children's services had helped by paying for an advocate because of her mental health problems the remote hearing nullified this "I did [have an advocate]. But what was the point of it? My advocate was hanging on the phone; she can't say anything. She thought it was rubbish. It was a waste of her time, what was the point of having her being there. No-one can see her. I can't see her. How does it support me? ... But it doesn't work when you have got a remote hearing. Not certainly one by telephone. No point in her being there. Nothing she can do to help."

For P3 whose barrister was at her hybrid hearing remotely whilst in court the judge had made arrangements for support during in person evidence by asking a pupil barrister to attend. However this did was felt to be ineffectual. "The Judge had asked for a pupil barrister to come, so I had someone who was technically there, but she did not know details of the case and she was there as a sort of socially distant hand-hold"

Understanding what is happening in court

Parents had difficulty in following the proceedings and understanding what was happening in the court, often compounded by a lack of support as identified above:

For P3 a blended hearing took place in criminal court with the judge sat on high and others participating on zoom. "This made it really difficult to follow both the screen and what was happening in court. There was my ex-partner and his barrister and the local authority representative and most of the rest including my barrister on zoom." And "I had no idea who else was there ... because I couldn't see the list of participants"

P8 - "Compared to a regular hearing it was so much more difficult, to get a clear idea of what's going on."

P8 - "I didn't get to say anything. They just talk. Then hang up, and I don't really understand what happened."

P7 - "You can't see anybody and that's really difficult."

P10 - "There was lots of background noise. My social worker had a few dogs in her background barking constantly, the LA barrister had quite a big echo on his phone so I couldn't always make sense of what he was saying"

P13 - "I didn't know who was on the remote hearing, a student came in, I said I don't want you here as a spectator."

P18 – "They are calling out the act of ????, and they just disconnect you are left stranded."

Lack of support for parents placed under enormous stress

Parents shared experiences of being placed in deeply distressing situations with little consideration for this or its impacts on them or other family members:

P5 had a mental health problem and was in hospital when the hearing was held. The local authority wanted to move her daughter, who is in care and has been groomed on-line whilst in care, to Scotland from London due to a lack of available placements. P5 wanted contact reinstated but was unable to attend the hearing because the hospital has restrictions on phone and internet use. She felt she didn't get any input, especially as she didn't have a solicitor. "I have to do everything by myself and I still need to be there for my daughter." And "They just leave me alone to rot."

P13 a mother who had mental health problems and who became pregnant following a rape by her ex-partner "I made an application to court for contact to start, try and look professional, but when someone tells you can't see your kids it is very personal, remote hearings are not the right thing for parents." And in the hearing she was faced with deeply personal questions "I was on 2 types of contraceptives because of ADHD and I got pregnant, the local authority solicitor said why didn't you have an abortion, I had an ectopic pregnancy. It was an emergency, my contraceptive didn't work."

P3 had 2 children in an adjacent room and needing to be looked after when giving evidence. On the day the decision was made "he [the judge] made his judgement and obviously I'm a complete mess ... and I knew that I had to step out of that room and then pretend that I was OK for my two other children and obviously there was no support "

P19 – "Being without the kids, and it's destroying my mental health." And "Social work do not return any calls." She sits alone in the dark for days, "mourning her children." Thus "I stay in my bedroom all day."

Child care

Parents often had children to care for under the covid-19 restrictions whilst hearings were planned or taking place:

P14 – "I heard my son crying in the background during mine. It was difficult."

P3 - "Arranging child care for my two sons at home under lockdown conditions was very difficult ... As a single mother there's no mindfulness that I've still got two children here in lockdown that I'm sole parent for"

P9 – acting as a parent advocate but with long experience as a child advocate said – "I don't think children are taken into account in online hearings. The mother was in the living room, we were on the phone and the children were up in the bedroom."

P1– "The first hearing in April I had my three children in my care it was scheduled to have been a three day hearing ... I had arranged for my mother to come to care for the children, but when covid restrictions came down she couldn't come to do that ... My children were 12, 10, and seven and looking after them for three days whilst in a hearing would have been impossible."

However, for various reasons the hearing did not go ahead and was replaced by a one hour hearing.

P1 – "Looking after my children for an hour was okay but I've been accused of telling them too much about the case and worse ... I was worried about them creeping up to listen ... It was challenging" On the day of the this hearing P1 was represented by a barrister: "I had a 2 hour conference call with him before the hearing so had been absent as a parent for most of the day"

Wider impact of Covid-19

The Covid-19 restrictions contributed to disputes that were already part of the hearings and sometimes created the requirement for hearings, as parents' access to their children was restricted. The parents had little contact with social work. The restrictions also impacted on parents' ability to engage with things necessary for their court hearing including having contact with their children:

P18 – “The impact of Covid has been that it is kind of getting worse for me even though the restrictions are less and we're not in lockdown any more. They made me do contact via face time so I only saw my son 30 minutes a month when before I was seeing him for 2 hours. They are letting me now see him face to face but I have to wear complete PPE. So I had to chat to him tonight with my face all covered up. He's autistic. He doesn't want to see me dressed like that and it doesn't make him very relaxed.”

P15 – “But the situation with Covid and everything left me with a new social worker who wasn't able to update the parenting assessment. So we headed into the courts with a social worker who had spent 20 minutes with me and the children for the parenting assessment.”

P15 – “Also I think I contracted Covid somehow. So the children were going into respite care because I wasn't well. One of the judges picked up on that and got the respite care for the children. March 26, I thought I had sepsis as I have had sepsis before. That is what caused all these troubles because they got a social worker involved when I had sepsis. Because I thought I had sepsis again contributed to Covid, that weekend we went into lock down. So social services said that they would hand the kids back when I cleared whatever it was. I said fair enough, I'm not well at the moment but I want them back as soon as I am well but they hung onto them until the end of March when we had another hearing. The Judge just went along with it at that stage.”

P17 – “When Covid hit in March, we were meant to have a conference then and we were excluded for that and we were also excluded from another meeting with the social worker. That was the start of the downward trend and they kept us in the dark from since then. It has been very difficult. We had our initial conference in January and we were meant to have a review conference in April. Initially we were told that we were going to be invited and then a few days before they said that we weren't going to be included. It was just going to be professionals only. I did complain about that and write a complaint but they wrote back and said it was just due to Covid. We were also excluded from core group meetings as well.”

P6 - “Didn't see my child since Mother's Day because she [the grandmother who has the child on an SGO] is at risk of COVID and says she will get sick if he [P6's son] meets me. I am only allowed to see him play tennis but I can't have contact with him even though the judge increased my contact in September. She is hiding behind COVID and telling my child that, if I come around, she will catch COVID. He is going to tennis lessons; he is going to school; so why is it me he can't meet? Yet the CAFCAS are playing along and pandering to her. No one will listen.”

P10 – “Had to order a section 34 for contact because foster care refused any contact with parents even though my girl was going to school and to her - to south Ireland a couple of weeks ago. I got the order to see my daughter for 90 minutes each week in the community.”

P12 - “Youngest child [now 15 months old] not seen siblings since he was 9 months old. ... Seems lockdown has been used as 'a bit of an excuse' by social workers. Didn't get on with foster carer, foster carer was meant to be investigated (agreed by the court), but children then separated, this felt like an excuse to me to do as they wanted, the investigation didn't happen.”

P12 – also “contact has been dramatically reduced during lockdown to just phone calls, not even video calls. This has been very difficult. Want to see my girls, see they are OK, but can’t do this. The process has been hard.”

P7 - “During lockdown, one of the things that was disturbing is that the therapeutic assessment one suggested that all of us will be interviewed as part of that, post the CAFCAS report showing that there was parental alienation using the CAFCAS framework, but she recommended that we all have a therapeutic assessment in order to restore the relationship with me. So he [the therapeutic assessor] said that because of COVID he will interview the children by zoom and I felt very strongly that that wasn’t a neutral space, because they were with their father, isolated for so much time, not only from me but from all their extended family, so I fought for that for them being seen face to face in a safe way [social distancing] and they actually accepted that.”

P1- CAFCAS were unable to get in touch with school where teachers had come to the mother saying that they saw that her child was sad and which she felt was important corroboration of her case but there was no contact with school - “all she [CAFCAS officer] could get was phone calls with me and the children and the husband”

P12 – “Video contact [with child] should be mandatory, loss of direct contact and cuddles has had a big impact.”

P19 – “My children are living with my ex-partner’s sister. Dad gets to see the children every day, regardless of the court order stating limited contact, and it being his violent/ drunken behaviour which brought social work into our lives. I have very limited contact, but I haven’t been allowed to see the children for 6 months ‘due to covid19’”

P18 – “But the local authority said it court that my contact was going to be 3 hours long and immediately after the hearing they cut it down to 1 hour. They just do the hell they like and they use Covid. You know I turned up to contact and my son usually likes to play cricket outside. They said you can’t go outside because its been raining and wet out there. I said to my son, have you been outside at school today, oh yeah he said. So if he has been outside with school today, why can’t he go outside with me at the contact centre? Anything to make my life difficult because I am trying to get my son back. I had no contact during these hearings.”

P21 – said the CAFCASS worker did her assessment during the pandemic and the recommended children live with father. She did not attend the father’s property, assess the home environment or meet the children, even though the children said consistently that they wanted to live with mummy and visit daddy and father’s home very overcrowded. “The Judge, CAFCASS and social worker were all [unchallengeable] and have powers to wreck life”.

Delays and uncertainty

Parents facing the stress of a hearing had this exacerbated by delays and uncertainty:

P3 ’s hearing was to regain custody from her children’s father: “I was basically given the option – we can go ahead or we’ll have to put it back and it will be next year some time ... and to be honest when I was told that in the beginning of the year when it first went to the high court I just couldn’t have coped with that. ... But, when you’re told it could be another year, and as a parent you’re watching every minute, every hour, every day, every person you see with another child ... you kinda want to push ahead with stuff. But actually it led to a hearing that was quite unprepared”

P6 - "An assessment, CAFCAS and social worker, was supposed to be done in January but they used Covid as an excuse although they were involved from February so they had a month. I only spoke with the social worker for twenty minutes and the CAFCAS for another 20."

P4 a father had an in person hearing regarding contact in March. He had to get a mental health assessment which he was able to do quickly but unfortunately, due to covid-19, he has no idea when he can take his case back to court. He is in limbo. 'Don't worry about me. Worry about my daughter.' And 'I am fine going to work and I have friends and family. My daughter, she's not even the same child, she's being abused and needs saving.' And later 'I am very patient, I can wait. But I think it will have affected my daughter badly by the time the court handles this.'

P8 - "Everything is delayed because people can't be reached because of the COVID, I need a lot of mental health reports but it's impossible to get people together and I can't reach them so it's all delayed."

P8 - "My main concern is that everything is going to be delayed. And that the process will be extended because people can't get things in on the deadline. We are supposed to have a safety plan for the transition of my daughter, but everything is just stuck and I don't know when things will happen."

P19 - "Case has been going on since, May 2019, and had hearing, an evidential hearing, cancelled due to Covid-19. My hope was to get more contact, and then the hearing was cancelled, and contact stopped. My solicitor has reorganised the court date for November."

PFAN Recommendations from consultations

These recommendations are based on the interviews and focus groups that PFAN parents and allies undertook with 21 parents involved in remote court hearings and the contacts PFAN had with a further 33 parents.

Recommendation 1

Remote hearings should only be held in circumstances where face to face hearings are impossible and the need for a hearing is urgent

The consultation showed how remote hearings, both with and without video, caused severe disadvantages to parents through a wide range of issues including problems with legal representation, information availability, technical issues, lack of visibility to judges, understanding what was happening and problems with court process. Families who were already under severe stress because of the need for a hearing were placed under further stress because of the lack of support for parents during and after the hearings causing harm to parents and children. Thus they should be a last resort. A hearing would be considered urgent where rulings are needed to protect a child from significant harm or where all parties agree the need for a hearing to prevent prolonged delays (see also recommendation 4 about timescales). The reasons for holding a remote hearing should be recorded and open to legal challenge.

Recommendation 2

No Family Court proceedings should be held with parents and/or children having only telephone access to proceedings

It is not possible to have fair and just proceedings based on telephone access. In these circumstances parents cannot: a) understand or properly participate in proceedings; and b) be effectively legally represented. The technology to allow this is readily available and inexpensive though many parents will need the help with internet access and equipment discussed in recommendation 3.

Recommendation 3

Where remote hearings are unavoidable a range of compensatory actions need to be put in place to ensure as just a process as possible

The following recommendations are intended to limit the potential for disadvantage and injustice caused by remote hearings – they cannot however eliminate them. The recommendations are written from the perspective of parents in the family court.

a) Access to internet and technology is made available both for the hearing and for legal consultation before and between hearings

Parents need to have adequate access to technology to take part in the hearing on the same basis as other participants. They also need similar equipment to engage with their legal representation before and between hearings. Parents should, where they do not have the resources, be loaned or given access to equipment to access court hearings on computers or tablets with a big enough screen and decent internet access should be provided. Parents may also need instruction in the use of this equipment and the software being used for hearings. Information and bundles may still need to be provided on paper.

b) The process of hearings should be adapted to provide better explanation of process and permit parents to have private discussions with their representatives

Parents need to know who is present at hearings and the roles they have in the proceedings. The expectations on all parties about participation need to be clear (e.g. muted microphones unless speaking). Because informal channels for parents to alert or be informed by their representatives are not easily available in on-line hearings, a process to allow more leeway for parents to discuss issues with their representatives in private (e.g. by using 'breakout rooms') during the hearing needs to be adopted.

c) Support for parents should be provided

Parents often had to provide care for their children sometimes in cramped conditions whilst also participating in hearings. Also, parents placed under considerable stress by the on-line hearing were often left to face the consequences of painful outcomes without anyone to support them. The court needs to ensure that there is a range of support available for parents and their children. This should include child care; access to a friendly secure space to take part in hearings if the parent's own accommodation is not suitable; and care for parents after hearings, particularly for those with mental health difficulties.

Recommendation 4

Covid-19 constraints require that courts change timescales and adopt new understandings of activities and treatments parents are able to undertake

The constraints placed upon parents and children because of covid-19 mean that parents' contact with their children and access to services have been severely restricted. In these circumstances timescales for decisions may need to be lengthened and expectations of what parents can achieve to demonstrate their ability to care for their child may need to be adjusted. Many parents reported that face to face contact was ended or severely restricted often against previous court rulings. Some agencies have blanket bans on contacts, for example some ban all video contact with young children, and such restrictions cannot take account of the best interests of individual children. Many parents felt these Covid-19 restrictions were being used as a means to reduce their chances of reunion with their child. Consequently, courts need to be responsive to challenges to restrictions on contact.

Afternote on Parent Advocacy

In some parts of the US many of the above requirements are met through a parent advocacy service in which trained and accredited parents whose children have been involved with the child protection services promote parent participation. In these programs parent advocates are employed in legal teams and in children's services helping parents to engage better with the system. This has reduced the number of children in care and improved engagement with the system to the benefit of many children. PFAN would support trials of parent advocacy in children's services in the UK.

Disclaimer

The opinions expressed in this publication are those of the authors representing the Parents, Families and Allies Network. They do not purport to reflect the opinions or views of the Nuffield Family Justice Observatory.

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The focus groups and interviews were carried out by the following parents and allies from the Parents, Families and Allies Network – Taliah Drayak, *** others missing here

Taliah Drayak also coordinated the consultation. The Analysis was carried out by Professor Andy Bilson.