

Guidance from the High Court on adjournments in care proceedings during the COVID-19 pandemic (A Local Authority v Mother and Ors)

27/05/2020

Family analysis: Liz Andrews, barrister at 1|GC Family Law reviews the judgment in A Local Authority v The Mother and others where Williams J was required to determine, in light of the guidance of the President of the Family Division alongside the recent decisions concerning adjournments during the coronavirus (COVID-19) pandemic, whether a fact-finding hearing taking place within long-running care proceedings was to continue following the conclusion of expert evidence and, if so, in what form, or whether the hearing should be adjourned to allow the lay parties to give evidence in person.

A Local Authority v Mother and others [\[2020\] EWHC 1233 \(Fam\)](#), [\[2020\] All ER \(D\) 109 \(May\)](#)

What are the practical implications of this case?

This judgment provides a comprehensive analysis of the President of the Family Division's guidance of [9 April 2020](#) and [27 March 2020](#) and the recent decisions regarding adjournments during the pandemic (paras [30]–[47]).

When determining whether to adjourn the fact-finding hearing or continue in person, remotely or in hybrid form, Williams J considered the ten factors set out by the Court of Appeal in *Re A (Children) (Remote Hearing: Care and Placement Orders)* [\[2020\] EWCA Civ 583](#), [\[2020\] All ER \(D\) 14 \(May\)](#) (paras [49]–[63]). This judgment consequently provides a detailed example of how the ten factors can be applied in other cases, which in turn makes clear that the decision of whether to conduct a remote hearing or adjourn very much depends on the particular facts of any given case.

Williams J also stressed that in the vast majority of cases 'the credibility of a witness and the truthfulness of their account...is reliant principally upon the evaluation of the content of their evidence rather than the evaluation of their demeanor' (para [42]). This implies that in many cases where a party is required to give oral evidence, their physical attendance at court may be of limited value and as such, the evidence may quite properly be given remotely. It will only be in exceptional cases where a party must be physically present in court to provide their oral evidence.

Such exceptional cases include cases such as this, where the oral evidence of the lay parties is likely to be determinative of the outcome and there is limited contemporaneous documentary evidence. In such circumstances, the court is likely to consider that a hybrid or in person hearing should occur, provided that this can be safely accommodated.

A further practical implication arises from Williams J's decision in respect of adjourning to accommodate leading counsel's availability. The court determined that while the presence of leading counsel in a sensitive family law matter was desirable, this was not essential. This issue falls within the in-depth evaluation the court undertook into the competing rights of the parties under Article 6 of the European Convention on Human Rights (ECHR) (right to a fair hearing), an evaluation which should be undertaken in every case when deciding whether to conduct a remote hearing or to adjourn until parties can attend in person.

What was the background?

Following the death of a three-year old girl, K, in April 2019, care proceedings were commenced by the Local Authority in respect of K's four siblings. Toxicology tests indicated that K's death was consistent with cocaine ingestion. In July 2019 a fact-finding hearing was listed, to commence before Williams J on 21 April 2020.

It was agreed between parties at the pre-trial review on 3 April 2020 that the case should continue remotely. However, by 21 April 2020, in light of the increased understanding of the potential difficulties which can arise when hearing oral evidence remotely, the parties' positions had shifted. Ultimately,

Williams J decided to proceed with the expert evidence remotely and once that had concluded, review the position in respect of continuing with the lay parties' oral evidence.

The expert evidence concluded on 1 May 2020 and had provided significant clarity on a number of issues which in turn would likely impact how all parties may wish to proceed with the hearing. In light of the expert evidence, the Local Authority sought to amend the threshold and a short adjournment was granted to allow for this. The amended threshold, while still making serious allegations, now contained allegations significantly less serious than before.

It transpired that the mother had assisted the maternal grandmother, who had exhibited coronavirus symptoms, with her medical equipment on 8 May 2020 and had therefore potentially been exposed to coronavirus. The mother would therefore be required to self-isolate for 14 days from the 8 May 2020.

Therefore the options before the court were to continue immediately, with the lay parties' evidence being given remotely or in hybrid form, adjourn to the end of June when the mother was no longer self-isolating so she may attend in person, or adjourn to September 2020 when it was hoped all would be able to attend in person. This included the mother's leading counsel, who fell within the category of persons required to shield until 30 June 2020.

The parties' positions were as follows:

- the local authority resisted an adjournment but, as an alternative, proposed the hearing continue at least to the point of hearing enough evidence to enable progress to be made in the assessments of parties
- the guardian proposed that the fact-finding hearing should conclude as soon as possible to enable assessment to commence. The guardian considered that this case was an exceptional one which could properly proceed in hybrid form, with the mother giving evidence remotely and the father and paternal grandmother giving evidence in person. The guardian relied upon the case of *A Local Authority v M and F* [2020] EWHC 1086 (Fam), [2020] All ER (D) 36 (May), in which Lieven J heard evidence of lay parties entirely remotely even though the allegations which had been made were of the utmost seriousness
- the mother sought an adjournment to the first available date after 30 June 2020 on the basis that a fair hearing compliant with the mother's rights under ECHR, Art 6 could only take place if she could attend court in person to give her evidence. Further, an adjournment to September 2020 would allow for the attendance of her leading counsel, which had wide ranging benefits for the mother
- the father was not prepared to attend court in person in the immediate future as he was shielding—he therefore sought an adjournment to the end of June 2020
- the paternal grandmother was willing to attend court in person and resume the hearing immediately
- the maternal grandmother supported the mother's position of seeking an adjournment

What did the court decide?

The court decided that the fact-finding hearing would be adjourned to the last week of June 2020. This would allow for the mother to participate in person, albeit without the presence of her leading counsel. While the absence of leading counsel would have some impact on how the mother's case is presented, this did not mean a fair trial could not be delivered. Further, the uncertainty regarding how the coronavirus pandemic would evolve over coming months meant that an adjournment to September 2020 may not in any event have the desired effect of allowing for in person attendance.

The seriousness of the allegations contained within the local authority threshold had reduced significantly. However, while the remaining issues were not complex, they remained of considerable importance. The children's future depended on the mother being able to prove her case of being able to resume caring for them. This was also a case with limited contemporaneous documentary evidence and therefore considerable focus would have to be placed on the oral evidence of the lay parties. It was therefore crucial in protecting the mother's ECHR, Art 6 rights, as well as ECHR, Art 8 rights (right to family life), to afford her the opportunity to give evidence in person.

The court considered that the parties had been able to effectively participate remotely during the expert evidence, the most complex part of the hearing, albeit the court recognised that sitting and listening to expert evidence was quite different to giving evidence and communicating instructions to counsel during a hearing.

In terms of providing a safe court environment for all individuals physically present when evidence was being given in person, the court considered that sufficient steps could be taken within the Royal Courts of Justice to ensure social distancing measures were complied with at all times during the hearing.

The mother sought permission to appeal. Permission was refused.

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