



Response to the President of the Family Division's Rapid consultation on remote hearings

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Consultation questions in **bold**, followed by the answer:

Have you had direct experience of a remote hearing?

No

If yes, what sort of hearing was it, which court centre was involved, through which remote method was it conducted and what was your role?

N/A

What factors worked well?

N/A

Did you have any concerns?

N/A

If you have concerns, do you consider that this way of working was justifiable in the short term?

N/A

How could the experience be improved in dealing with the current crisis?

N/A

Have you had any direct feedback from lay clients or third parties (intermediaries/interpreters/experts) as to their experience of the remote hearing?

Rights of Women is a charity that provides free legal advice to women over the telephone from qualified women lawyers. Our family law advice line advises roughly 1,500 women each year. The women calling our advice line can be at any stage of their legal problem from women seeking advice about what will happen if they decide to leave their relationship to women many years separated seeking advice about new issues that have arisen years later.

Most of the women that we speak to have experienced domestic abuse and are managing arrangements or going through legal proceedings with an abuser. They are also largely unrepresented. As a result, we have a great deal of insight into the experiences of unrepresented parties trying to navigate the justice system and the many difficulties they experience.

Since the Covid-19 pandemic, our staff are all working remotely and we have managed to keep our services open. However, we have had to reduce the opening times of our family law advice line as we do not currently have the infrastructure necessary for our volunteer lawyers to work remotely. Despite this, our family law advice lines have been open for 14 hours per week since the lockdown and we are working on increasing capacity within the next few weeks.

Most of our callers are dealing with private law issues and as far as we can tell, their hearings have largely been adjourned with some exceptions. Of those women who have called and who had hearings coming up, they expressed several concerns about how a remote hearing would work. We have summarised below what we believe to be the biggest problems with remote hearings at the moment some of which is from our service users and some from our experience generally as a group of lawyers who support unrepresented parties who have experienced domestic abuse. We conclude with some thoughts on lessons we may take from this experience that, after reflection, could improve women's experiences of the family court.

Telephone vs video hearing

In general, we do not believe that telephone hearings are appropriate for unrepresented parties in any hearing other than hearings which are short and urgent. We have highlighted some of the specific reasons for this in the sections below. However, the key reason why they are insufficient is because of the inability to pick up on other forms of communication beyond what is said. Unrepresented parties do not know what to expect from the court. They do not know what they can ask the court to do and what they cannot ask. They do not know the rules about how hearings are conducted or when they can speak and when they should wait. They do not know whether they should raise something they want to say or not. We often receive calls from women who do not understand what happened during a hearing and are not clear what order the court has made or why it was made. We are worried that unrepresented parties are often unable to properly present their cases and issues are missed because of this.

Telephone hearings have little structure or formality and the normal indications to the parties of how things are going to be conducted are completely lacking. A judge is unable to pick up from a party who is silent on the phone whether that is because they do not have anything to add or they are too scared to do so. We have concerns about a judge's ability to do this in person when a party appears in court by themselves against an abuser as behaviour is often misunderstood. But over the telephone, a judge is completely blind to any of the normal cues that a party may be struggling to make the points they think are important.

Although a video hearing will not solve these problems in their entirety, they are certainly better than telephone hearings.

Clear barriers to engaging in a remote hearing

We will not go into any detail in relation to what we consider the obvious barriers to engaging in a remote hearing – disability, cognitive impairment, or mental health issues – we believe other organisations will be better placed to highlight these clear barriers. We recommend reading the interim report of the [Equalities and Human Rights Commission, Inclusive justice: a system designed for all](#). Although the focus in this report is on the criminal justice system, the lessons and recommendations are as applicable in the family court as the criminal court.

We would add to the list of clear barriers those who do not speak English as a first language. Some people who do not speak English as a first language but would get through a hearing in person well without the need for an interpreter may struggle to understand everything when that hearing is over the telephone or video conference in a way they wouldn't struggle to in real life. For those who do require interpreters, the court should not underestimate the importance of body language and tone that can be easily picked up while in a court room but may be lost while listening to an interpreter over technology.

One of the key issues we would highlight from the interim report from the EHRC is the problem of identifying parties that fall into this category. The issues that would prevent a fair hearing from taking place remotely are often ignored in private law proceedings in the family court. Parties with mental health issues are frequently representing themselves without support. They may not be issues the parties are willing to identify themselves for fear of the effect on the proceedings or because they do not want to admit for many other personal reasons that they will struggle with remote hearings. When parties are unrepresented, we are concerned that some of the clear examples of barriers to justice will not be identified in the first place.

Digitally excluded people

We would highlight that parties who are digitally excluded are not limited to those who do not have the technology to take part in a remote hearing and would highlight concerns as follows:

1. The only technology available is a smart phone which is not appropriate for video hearings where an unrepresented party is expected to make their own representations and manage documents

2. The only technology available is a smart phone but the party has to pay for data to take part in a video conference which can be extremely expensive even for short hearings
3. Wi-Fi/internet access is available, but the signal is weak
4. Victims of abuse may be digitally excluded because of safety concerns about an abuser gaining access their information
5. The only technology available is old and slow meaning it will be very difficult for the party to follow the hearing, toggle between screens or even manage documents on screen at all
6. E-bundles are best navigated using expensive software. Managing an e-bundle on the free version of Adobe is difficult. The ability to 'mark-up' an e-bundle on the free version and follow comments requires computer skills beyond what most of the population have. For an unrepresented party to do this while advocating for themselves would require someone who is already comfortable with the technology. We consider the current approach to unrepresented parties where a bundle is not prepared to be inadequate. It is confusing for unrepresented parties who assume the judge will have thoroughly read all of the documents sent to the court before a hearing. Where parties are unrepresented, HMCTS should make arrangements for e-bundles to be prepared and sent to parties in cases without a lawyer. If requested, HMCTS should print and send the bundle in the post.

Managing a hearing while at home

We are very worried about our service users during this period of lockdown and the risk of harm they are facing while being at home with the abuser. We anticipate there will be an increase in applications to the court after the current restrictions are lifted. As a result, the court will be managing a significant backlog of cases. We would not want to see remote hearing measures continue to be used in the same way as they are now without a period of reflection following this time to consider what worked well and what did not.

While we are waiting for the restrictions to be lifted and women are managing hearings from home, there are several problems that would lead to an unfair hearing if not taken into account by the court:

1. It will often be the case that the woman at home is caring for the children who are also subject to the proceedings. Even if they are not subject to proceedings, it is not safe for them to be in a position where they may be able to overhear the hearing. For unrepresented parties, this is not simply about being able to provide childcare but also about being able to advocate for themselves. If you are representing yourself, you need to be able to speak freely about the issues in the case. Even if headphones mean that children in the same home will not be able to hear the hearing, they will still hear what the woman is saying. Primary carers would need quite a big home and older children who do not require a great deal of attention to be able to attend a hearing where they must represent themselves.
2. At the moment, women advocating for themselves are largely at home by themselves. Although some may have family living with them, the family members

that live with them may not be very supportive. For anyone, the end of a hearing will require reflection and space; it would be extremely difficult to move from a family court hearing straight back to caring for children without any support.

3. Women who live in small homes will struggle to find a private location to attend court while at home.
4. Some of the women we support are living at home with the abuser while in court proceedings. This is particularly true of non-molestation order applications where the court has refused to grant a without notice occupation order having to attend return dates with the abuser and women going through divorce and financial arrangements who experience controlling and coercive behaviour and are informed that the abuse is not serious enough to obtain an occupation order.

Victims of domestic abuse

Although a victim of abuse going through court proceeding will experience the same problems identified above for all court users, it must be recognised that they are experiencing court proceedings that are likely to be traumatic and induce anxiety in a way that does not apply to parties who are not facing proceedings against an abuser (in private law cases) There are some additional issues that we would highlight specifically relevant to victims of domestic abuse as follows:

1. We have already heard of an abuser using telephone contact to be abusive to the other party in the proceedings. An abuser who becomes abusive during a hearing is a lot harder for a judge to manage via telephone than video conferencing. In fact, the ability of the judge to mute a party during video conferencing is one of the advantages of video conferencing over a hearing in person. If an abuser becomes abusive during a court hearing in person, the judge can mute them immediately. This is not the case with telephone hearings where it is very easy for the abuser to become abusive. We have concerns that the informality of hearings in this way may also lead to more abusers being willing to become abusive compared to those who know that when in court they need to behave themselves. The consequence of having to speak to an abuser on the telephone may trigger a traumatic response in victims of abuse.
2. While hearings are taking place in people's homes or over the telephone, the court needs to be mindful that this is a big step away from a formal public location into a private space. For many of the victims of abuse that we have spoken to – whether about remote hearings or remote contact – their homes are a safe space and having the abuser see into their homes or simply being virtually present in their homes is intrusive and can trigger anxiety and trauma. This is something that needs to be carefully considered and, in our view, a victim who does not consent to remote hearings because of concerns about this should not be forced to have a remote hearing.
3. The final factor that is particularly important for victims of abuse is the support available around a hearing. Domestic abuse support services often provide support in the form of McKenzie Friends or attending the court building for emotional support. At present, victims are isolated and managing the consequences of traumatic hearings by themselves. Sometimes with children

in the next room and no other adults in the home. Women in this situation are not able to have a fair hearing.

Opportunities for the future

We consider there is a place for remote hearings to improve the special measures available to victims of abuse. If both parties attended a remote hearing via video conference, it would be possible for the court to implement virtual special measures in a much more effective way than they currently can by using screens. However, there are some important caveats to this:

1. Preparation and planning would be a necessity. Work must be done in advance to make sure parties are properly prepared for the hearing and are not experiencing the technology for the first time during the hearing. Trial hearings should be arranged well in advance and the victim should be given information about how the hearing will be conducted and how the technology works.
2. Support being available for victims of domestic abuse would be a requirement to ensuring a fair trial. Ideally, courts could work with their local domestic abuse support services to put the technology in place that would enable the victim to attend the domestic abuse support workers office or other suitable location and the abuser can attend a different location so that support is available for the victim and the victim and abuser are not attending the same location. Both parties should attend by video to ensure they are on an equal footing.
3. Hearings should take place via video, not over the telephone. Ideally the judge would be able to see both parties, but the parties not be able to see each other, as with screens (but they can hear each other).
4. The judge has the capability to mute both parties so that when one is speaking, they know they will not be interrupted. We would hope this would help the victim feel more confident in making any arguments they wish to make. The court will also be able to mute abusers if they become abusive during the hearing.
5. This would only be appropriate for directions hearings and not substantive hearings in the case.

Are you happy to be contacted for further questions?

Yes

**Rights of Women
28th April 2020**