

The Financial Remedies Court – The Way Forward

A Paper to consider the future use of Remote Hearings in the FRC

May 2021

Index

Chapter	Page Nos
1. Introduction	3 - 4
2. The Surveys	5 - 6
3. Executive Summary	7 - 9
4. Remote hearings	10 - 50
5. E-bundles	51 - 57
6. Which platform?	58 - 73
7. Technology	74 - 84
Annex A Members of the Group	85
Annex B Survey Results – Judges	86 - 94
Annex C Survey Results – Lawyers	95 - 103
Annex D E-Bundle protocol	104 - 106

Chapter 1 - Introduction

The National Lead for the Financial Remedies Court (“FRC”), Mostyn J, decided that there should be a consideration of how the Court should continue once the pandemic is finally over and parties are free to attend Court buildings. Should remote hearings play any role in the future? If so, then which type of hearings are appropriate to be heard remotely and how should they be conducted? These are issues that are being considered throughout the Justice system, but it was decided that there are distinct issues that apply to the FRC that merited independent investigation.

It was further decided by Mostyn J that this would be an appropriate opportunity to consider whether the processes and procedures that are in existence in the FRC may be improved and that this should be considered alongside the function that remote hearings may have to play in the future. This report is limited to the issue of remote hearings and the role that they should play in the FRC in the future, as well as suggestions as to how this should occur. A further report will follow as to any suggestions on procedural changes in the FRC.

A group was set up, chaired by me, to decide how this task should be approached. The group comprised 11 members and included a High Court Judge, 2 Circuit Judges (both Lead Judges within the FRC), 2 District Judges, a Recorder, a Deputy District Judge, 2 Solicitors and 2 Barristers. The group is geographically diverse to ensure that the views of all were taken into account. There is also experience within the group of all levels of FRC case, from the High Net Worth cases to those involving litigants in person and low level assets. The full list of group members is attached at Annex A.

The group prepared a survey to be conducted of the judiciary and practitioners, in order to ascertain their views on a range of issues. The responses from the practitioners included the views of their clients. The group has ensured that any suggestions that are made take into account litigants-in-person by appointing a member of the group to act as an “access to justice

champion” who considers each suggestion made to ensure that vulnerability points are taken into account at all times.

There has been a consideration of all of the feedback from the surveys as well as the views of others which has been fed back into the group including from all of the Lead Judges in the FRC.

I am most grateful to all of the members of the group who have fully contributed to this task. They have spent many hours considering the survey results, analysing the responses, drafting and re-drafting the various chapters. They have also attended various remote meetings to debate the matters to be agreed. This has all been done in their own time. Their contributions have been truly impressive whilst also juggling their busy lists and practices. I am only sorry that I cannot reward them any more than by stating my appreciation of all of their efforts.

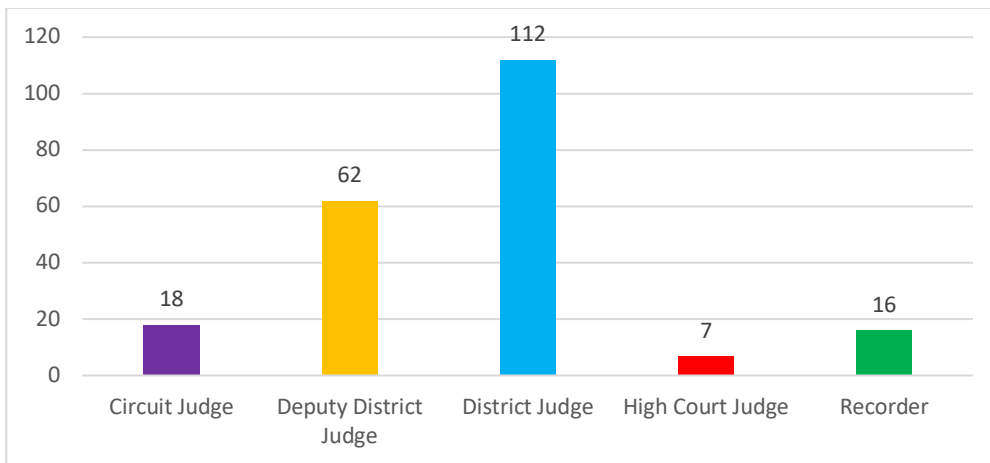
May 2021

His Honour Judge Stuart Farquhar

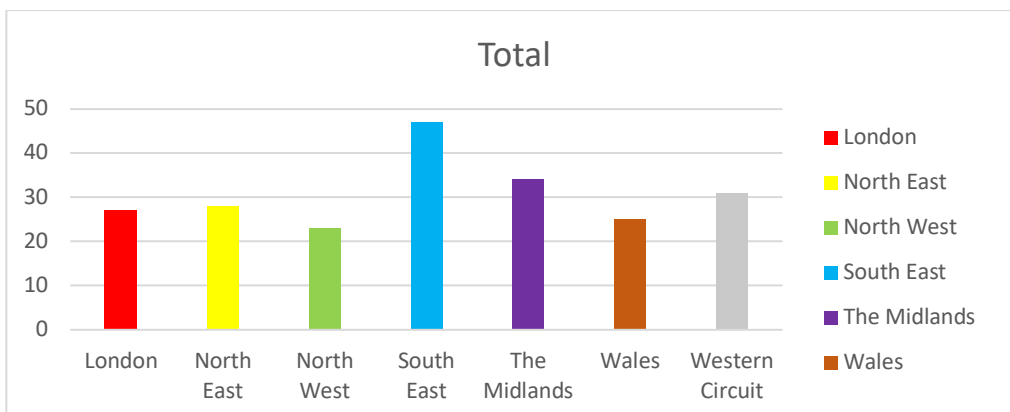
Chapter 2 - The Surveys

2.1 Survey of Judges

The survey that was sent to the judiciary requested their views on remote hearings, e-bundles, and preferred platforms for remote hearings as well as questions concerning the equipment and training with which they were supplied. There was a total of 215 responses from all levels of the judiciary as follows:

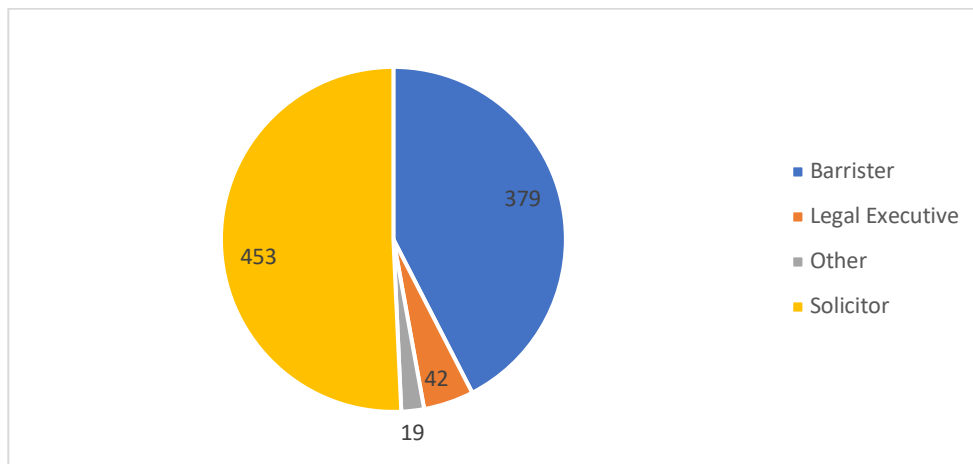


The responses were evenly spread geographically. The results will not be set out here but will be referred to throughout the report.



2.2 Survey of Practitioners.

The survey for the lawyers was distributed through The Law Society, Resolution and the FLBA. It asked similar questions to those asked of the judiciary but also included questions as to how their clients viewed remote hearings. There was a total of 893 (now 896) responses which were broken down as follows:



The surveys included multiple choice questions by which raw numerical data could be obtained as well as questions requiring a narrative answer. All of the narrative answers have been considered and a large number are set out within the body of the report. It was considered important to set out the full range of views that have been reported in order ensure that it is understood that the suggestions that are set out within the report are not simply garnered from the views of the members of the group but that they enjoy wide support from the judiciary and practitioners, albeit with some vociferous opposition.

One error has been pointed out within the survey. The question asked which, if any, hearings should be held remotely. Unfortunately, by mistake, there was not an option to state that no hearings should be held remotely in the future. However, we have taken this into account in reviewing the responses as the narrative provided makes it clear where the Judge or lawyer was opposed to any form of remote hearing.

The summary responses to the surveys are set out in Annexes B and C

Chapter 3 - Executive Summary

3.1 Remote Hearings. It is considered that the advantages of continuing with the use of remote hearings outweigh the disadvantages and as such there should be a number of hearings that should continue to be heard remotely. The pandemic has brought forward, by many years, the advent of remote hearings. There were few supporters of these hearings in March 2020 but the FRC (in line with the Family Court as a whole) has continued to perform surprisingly well in the past 14 months and there now exists a good understanding of the benefits and disadvantages of remote hearings. These have been referred to by many of the responses to the surveys and are summarised in this table:

Comments on Remote Hearings	
Pros	Cons
Avoids time and costs of travel	Some parties do not have access to technology
Avoids waiting time at Court	Technical difficulties causing parties to drop out
Hearing time limits more closely observed	Clients wish to be with their legal team
Reduces Client's anxiety	The solemnity of Court is lost
Improves practitioner's work/life balance	Never going to Court can be a soulless experience
Easier for parties with caring responsibilities to attend	Greater opportunity for outside influence
Helps retain women lawyers - can balance work with childcare	More difficult to take instructions from clients
Better facilities available for advocates than at Court	Clients can feel overwhelmed by distress and isolation
Email communication with Judge simpler than through Usher	Lack of training and technical support for Judges
Avoids acrimonious parties meeting at Court - reduces conflict	Harder for negotiations to take place
Better for the environment	Authority of the Court can be undermined
Improves access to hearings for disabled lawyers and parties	More difficult to assess credibility
Reduces footfall in Court improving facilities for those who attend	Remote hearings are generally more tiring - more breaks required
Arguments considered to be more focused	Increased poor behaviour of litigants
Easier for overseas witnesses and parties	
More efficient for evidence of experts	
Fee paid Judges can work nationally	
Fee paid Judges have greater ability to receive papers	

3.2 Which Hearings are to be heard Remotely? The majority of hearings at which no evidence is to be given should be heard remotely. The exceptions to this will be FDRs, enforcement hearings where the liberty of the individual is at risk and appeals. It is further considered that due to their importance and nature that hearings for MPS and LASPO applications should be attended. All final hearings are to be held at Court. It is considered that the following should be the default positions in relation to different types of hearings:

Attended	Remote
MPS and LASPO applications	First Appointments
FDRs	Without Notice Applications
Final Hearings	Interim Applications – no evidence
Appeals	Expert Evidence
Enforcement hearings – liberty at risk	Overseas witnesses/Parties
	Pre Trial Reviews
	Enforcement Hearings – liberty not at risk

3.3 How should parties attend Remote hearings? There are a number of problems that have been highlighted with remote hearings. Two of the major issues are inability to connect/dropping out and inability for a party to provide a quick response to their legal team. These issues could be reduced if the parties attended the hearing from the same venue as their representative where there would hopefully be the availability of reasonable technology. This would mean that the parties and lawyers would have to do some travelling but it is usually more convenient than having to go to Court and the surroundings would, in general, be preferable. This is a matter for the parties and their legal team, if represented, to consider.

3.4 Process for considering which hearings are to be remote. The default position for each type of hearing is set out above. If any party wishes to apply for the default position to be varied then this must be by way of formal application. If it were otherwise there would be the risk of confusion and a deluge of informal applications to be considered by (in the main) District Judges who are already under severe pressure of work. Each application will be considered on its own merits but the type of issues that are likely to be persuasive include lay parties or litigants in person without the appropriate facilities/equipment to conduct a remote hearing; to avoid parties in the same household attending remotely from the same location; where an interpreter is required if this cannot be managed otherwise; or where a litigant has a disability which makes remote attendance more difficult for them.

3.5 E-Bundles. All hearings which require a bundle will use electronic bundles unless specifically ordered otherwise. This is to be the case whether a hearing is remote or attended. It is vital that all bundles comply with the Protocol and are paginated, searchable and bookmarked. There must be more rigorous use of PD27A paragraph 12 which states that a failure to comply may result in a Judge removing the case from the list or the making of adverse costs orders.

3.6 Which Platform? The only experience that most lawyers and Judges had of remote hearings prior to March 2020 were telephone hearings, mostly conducted by the District Bench. The only regular use of video hearings was in terms of evidence of experts and connecting to litigants in prison. We all have extensive experience now of various platforms. Telephone hearings are considered as the most remote and are only to be used if all else fails. In terms of video platforms, the 3 main options are CVP, Teams and Zoom. The survey results indicated a preference for Teams over CVP, but those that had experience of Zoom preferred that platform. The conclusion that has been reached is that the best performing platform is Zoom and, although Zoom is not currently ‘supported’ by HMCTS, it is the recommended one to use.

3.7 Technology. It is axiomatic that all parties and the Judge involved in any remote hearing must have access to the appropriate technology. In particular all Judges, including fee paid Judges must have the use of a laptop and at least two screens as well as access to training/technical assistance whilst sitting.

3.8 Litigants-in-Person. Just as with lawyers and Judges, Litigants-in-Person cover the full gamut of digital ability and it is wrong to consider them separately to any other group of litigants. It is not considered appropriate to make any separate rules concerning those that represent themselves in remote hearings any more than it is at attended hearings. The vulnerabilities and ability to access justice of any litigant in person must be taken into account at all times.

Chapter 4 – Should remote hearings continue?

INTRODUCTION

4.1 Those who sit and practice in the FRC were not at all prepared for the suspension of attended hearings in March 2020. The use of electronic bundles amongst FRC practitioners was emerging but not widespread and Judges almost always required paper bundles. Most of us had not heard of Zoom and if we had multiple screens, they were not co-ordinated. That the Family Court has adapted so quickly and so well to remote hearings is commendable and a testament to the collective efforts of Judges, practitioners, other Court users and staff and the clear direction from the President and the successive versions of MacDonald J's *The Remote Access Family Court*.

4.2 Those who manage, use and decide cases in the FRC have done so almost exclusively remotely and many have practised/sat from home for over 12 months. Some practitioners continued to work from their offices/chambers and many Judges continued to work from Court where they would have access to the appropriate technology, facilities, equipment and practical support.

4.3 The transition has not been without its challenges and the respondents to the survey make several suggestions as to how the effectiveness of remote hearings can be improved. However, the success of the collective efforts can be measured by the survey data, which shows that over 90% of all respondents confirmed that it would be appropriate for at least some types of hearings to be conducted remotely post-pandemic, a position which was unthinkable in March 2020.

4.4 This section of the FRC Report will set out and analyse the survey results, categorise the relevant narrative responses, identify shifts in thinking and suggest improvements to increase the effectiveness of remote hearings across the range of FRC hearings. It concludes by recommending that, post-pandemic, the default position for First Appointments/Hearings, interim hearings dealing with directions only (even where those directions are disputed), Without Notice Applications, Pre Trial Reviews and for the taking

of evidence from overseas and expert witnesses is that these should be conducted remotely. The default position for all other hearings is that they shall be an attended hearing. A mechanism needs to be adopted for requesting a change to the default position (with a permissive view taken of those requests in the case of FDRs and any other hearing where the application is by consent) and suggestions for this are made at the end of this section.

4.5 Section 3 is divided into the following topics:

- A. SURVEY RESULTS – STATISTICS**
- B. SURVEY RESULTS – NARRATIVE RESPONSES**
- C. PROS AND CONS IDENTIFIED IN NARRATIVE RESPONSES**
- D. THE IMPACT ON LAY PARTIES**
- E. DISCRETION, AUTONOMY AND DEFAULT POSITIONS**
- F. FDR SETTLEMENT RATES AND USE OF PRIVATE FDRs**
- G. RESPONDENTS’ SUGGESTED IMPROVEMENTS**
- H. CONCLUSIONS**

A. SURVEY RESULTS - STATISTICS

4.6 There were 215 judicial respondents and 896 lawyer respondents to the surveys. The respondents were asked which, if any, types of hearings they considered appropriate to be heard remotely as opposed to an attended hearing and, further, were asked to state their depth of feeling for the three main hearings – the First Appointment¹, the FDR and the Final Hearing. The results are set out below:

Fig.1 – Survey statistics

Which of the following types of hearings, if any, do you consider appropriate to be heard remotely?
(Depth of feeling in support/against broken down for FAs, FDRs and Final Hearings)

		Suitable for RH	Very strongly	Strongly	Neutral	Oppose	Strongly oppose
First Appointments	Judges	88.37%	23.26%	30.23%	31.16%	10.23%	5.12%
	Lawyers	96.54%	58.93%	26.23%	10.49%	2.34%	2.01%
Without Notice Applications	Judges	80.00%					
	Lawyers	80.13%					
Contested Interim Applications	Judges	37.67%					
	Lawyers	46.21%					
FDRs	Judges	23.72%	8.37%	8.84%	11.63%	32.09%	39.07%
	Lawyers	41.85%	16.18%	20.31%	18.64%	25.56%	19.31%
Pre Trial Reviews	Judges	81.86%					
	Lawyers	82.59%					
Final Hearings	Judges	17.67%	3.72%	6.51%	14.88%	27.44%	47.44%
	Lawyers	20.20%	8.59%	7.25%	21.09%	30.13%	32.92%
Taking of expert evidence	Judges	55.81%					
	Lawyers	45.42%					
Taking evidence from overseas	Judges	72.09%					
	Lawyers	63.95%					
Appeals	Judges	22.79%					
	Lawyers	36.16%					
Enforcement hearings	Judges	31.63%					
	Lawyers	46.32%					

4.7 Broad analysis:

4.7.1 Judges and lawyers are overwhelmingly in favour of the use of remote hearings for FAs, Without Notice applications, PTRs and taking evidence from overseas witnesses.

4.7.2 Lawyers are more supportive of remote hearings than Judges in every category of hearing save for the taking of evidence from expert or overseas witnesses.

4.7.3 Less than a quarter of all judicial respondents considered it was appropriate for an FDR to be heard remotely: 71.16% are opposed or strongly opposed to it.

¹ Which will include by default the first hearing of any application under the fast-track procedure (FPR 2010, 9.18)

- 4.7.4** Almost 42% of lawyer respondents considered it was appropriate for an FDR to be heard remotely.
- 4.7.5** Less than 18% of Judges and just over 20% of lawyers consider it is appropriate for final hearings to be conducted remotely: about 75% of Judges and almost two thirds of lawyers are opposed or strongly opposed to it.

B. SURVEY RESULTS – NARRATIVE RESPONSES

4.8 Wholly negative responses

A very small handful of respondents indicated in their narrative responses that they did not support remote hearings at all, by way of example:

4.8.1 Negative lawyer responses

All should be in person unless exceptional circumstances. government restrictions are unnecessary and killing life. Question 4 is mandatory to submit this form even though there is no option that says "NONE". Please record my answer as none (North West Solicitor, less than 25% FRC work)

My personal view is that no hearings should be heard remotely by default, but the form is set up so you must select one option! (London Solicitor, 75-99% FRC work)

I chose first appointments at question 4, but only because I had to choose an option to submit this survey! I think all hearings should go back to in person asap. (South East Solicitor, 50-75% FRC work)

The q said which hearings 'IF ANY', then didn't provide an option for none. I don't believe any should be remote. (North West Solicitor, 25-50% FRC work)

4.8.2 Negative judicial responses

I am very strongly resistant to remote hearings. Full stop. However there have always been some exceptions which include evidence from overseas witnesses (not necessarily from a party). (High Court Judge)

I cannot submit the form without answering this question but "none" is not an option so I filled in the first in the list. (Deputy District Judge, North West)

I do not consider any are appropriate in reality. (District Judge, Wales)

4.9 Positive responses

A considerable number of respondents acknowledged a shift in behaviour as a result of the developing success of remote hearings over the course of the last 12 months. By way of example:

4.9.1 Positive lawyer responses

As matters have progressed this year, and people have become more and more au fait with the technology, hearings have become more and more efficient conducted remotely. I have done two ten day trials conducted remotely so far in 2021 and both have been extremely efficient. The ability to conduct hearings remotely is transformational for wellbeing at the bar as it gives people options. It is particularly helpful for retaining women as it assists with balancing work and childcare. (London Barrister, 100% FRC work)

As the Covid experience has taught us, if the technology is reliable and all parties have access, there is no reason why the financial remedies process cannot continue to be efficiently run on a remote basis. (London Barrister, 100% FRC work)

Having spent over a year doing all sorts of remote hearings I believe that they all can be done remotely with an option to go into court for any cases that the court feels based on the cases individual circumstances would benefit from being in court building, such as LIP's, vulnerable people etc. (Midlands Solicitor, 50-75% FDC work)

Having never considered that remote hearings could work, I have seen since March 2020 that they work very well. At first I thought that we would never cross-examine as efficiently but my experience has been no different than at in person hearings. All interim hearings can easily be done remotely. I accept that there is an argument for hearings with evidence to be in person. (London Barrister, 100% FRC work)

I have both advocated and sat as arbitrator and private FDR judge during the pandemic. My experience over the last year is that, with the various forms of video conferencing now on everybody's computer, ipad etc, it is only the giving and receipt of oral evidence that is noticeably improved by its taking place in person - and then, I think, principally because that is what we are used to. (London Barrister, 75-99% FRC work)

I believe that the transition to remote hearings over the last year has been positive. It has increased productivity and efficiency and saved the time that is often wasted in travelling to and attending Court hearings, which therefore allows you to better service the clients. (London Solicitor, 75-99% FRC work)

Having worked remotely exclusively for a year now I have been impressed with the efficiency of the remote hearings. Often we are placed in a list of 4 or more hearings all listed at 10am and can be made to wait all day to be called. (London legal executive, 25-50% FRC work)

The last year has shown that there isn't any type of hearing that is not suitable for remote hearing. Whether it is 'most desirable' or most effective is a different matter... For me, all types of hearings are 'appropriate' for remote hearings, it will just be a question of which should presumptively be heard remotely and which presumptively in person (but with the option to elect for remote hearing if necessary/desirable). (North East Barrister, 75-99% FRC work)

My experience over the last 12 months has been that, subject to the video technology working, the clients being able to utilise the technology, and there being proper thought given to ensuring witnesses have access to the bundle material, all hearings can be conducted effectively remotely. This includes final hearings. (Wales Barrister, less than 25% FRC work)

Experience over the last year has shown that almost all cases can be conducted remotely without any obvious impact on the administration of justice. (Midlands Barrister, 100% FRC work)

I have appeared in almost all of the above types of hearings over the last year and my experience is that they have all been suitable to be heard remotely. Save for the occasional technical issue I have not encountered difficulties in conducting hearings, including where oral evidence is given. The profession has done a remarkable job to

adapt to the current circumstances and my view is that remote hearings have worked far more effectively than anyone could have anticipated. (London Barrister, 50-75% FRC work)

After the experience of the last 12 months I believe that almost all hearings can be conducted remotely in a fair and satisfactory way. (London Barrister, 75-99% FRC work)

Having worked for almost 12 months now, mostly remotely, with the right equipment nearly all hearings can be managed successfully with the vast majority of clients feeling satisfied that they've had a fair hearing (Western Circuit Barrister, 25-50% FRC work)

The experience of the last year has demonstrated clearly that there is no need for the parties or advocates to have to travel to and wait at court for anything other than final hearings. Even then, there are some Final Hearings where the issues concerned will not require much oral evidence under cross examination. (North West Barrister, 75-99% FRC work)

In my experience, the Bar has embraced remote hearings and it is possible for ALL hearings to be heard remotely. There is a consensus amongst those that I have spoken to that the option should remain open moving forwards. Whilst some hearings may be better attended in person, that will depend on the case, not the type of hearing. (London Barrister, 75-99% FRC work)

Having experienced most of the above hearings remotely I no longer see any real distinction between attended and remote hearings. (North West Barrister, 25-50% FRC work)

I have had no experience in the last year where I have thought an attended hearing would have been better for the case generally or my client particularly - remote hearings are equally effective for all hearings save for final hearings where oral evidence from parties is being heard (albeit much of the time these are suitable to be conducted remotely too). (London Barrister, 75-99% FRC work)

The use of video technology has worked extremely well. Financial Remedies and the surrounding matters are wholly suitable for remote hearings which have worked extremely well throughout the pandemic. They can be contentious but with judicial

direction and control and time for negotiation there is very little which requires a decision over "credibility" which would enhanced at an in person hearing. (Western Circuit Barrister, 25-50% FRC work)

The 'trial' during the pandemic has worked and saves significant costs for clients. (Midlands legal executive, 25-50% FRC work)

Remote hearings have worked well during the pandemic. They are efficient and involve less cost to clients. The experience - save for some early technical glitches - has been overwhelming positive for financial hearings... (London Solicitor, 75-99% FRC work)

Given the success of all types of remote hearings being conducted during the pandemic, I feel it would largely be a good thing they continue, unless there is a specific reason in a particular case to warrant otherwise. (Wales Solicitor, 75-99% FRC work)

4.9.2 Positive judicial responses

In my experience sitting in both Civil and Family, there is very little that cannot successfully be done remotely. I have dealt or sat-in remotely not only in FRC, but also Children public and private law and civil work. There will always be individual cases that require attendance, but my experience is that properly managed (e.g. screen time breaks, etc), remote works well. (Recorder, Wales)

The use of remote hearings has to my mind both as a Recorder and as a member of the Bar been a huge leap forward in terms of efficiency. As practitioners have become more adept and familiar with the new technology it has demonstrably improved the fair and proper disposal of all range of cases. I have only excluded the two categories above because I have had no direct experience of either and cannot therefore comment from first hand knowledge. The initial concerns that hearings with 'contested evidence' could not fairly be conducted remotely have almost all evaporated provided there is no defect or inadequacy in the equipment being used. (Recorder, North West)

There is no compelling reason for them to be heard in person - in my view, hearings generally ought to continue to be remote unless there is a good reason for them to be in person. (District Judge, North East)

C. PROS AND CONS IDENTIFIED IN NARRATIVE RESPONSES

4.10 Breakdown of pros and cons: General, First Appointments, FDRs and Final Hearings

4.10.1 There were several common themes when commenting on the appropriateness of remote hearings generally, as summarised below:

Comments relevant to remote hearings generally (lawyers)	
Pros	Cons
<p><i>Avoids time and costs of travel for parties and lawyers</i></p> <p><i>Avoids waiting time at Court</i></p> <p><i>Hearing time limits are more closely observed</i></p> <p><i>Reduces clients' anxiety</i></p> <p><i>Improves practitioners' work/family life balance</i></p> <p><i>Easier for parties with caring responsibilities to attend hearings</i></p> <p><i>Helps retain women lawyers - can balance work with child care</i></p> <p><i>Less stressful for the advocates: can set up in advance rather than rushing at court</i></p> <p><i>Avoids adjournments to take instructions: they can be taken more flexibly</i></p> <p><i>Instant email communication between advocate and judge easier than via busy usher</i></p> <p><i>Avoids acrimonious parties meeting at Court; reduces conflict</i></p> <p><i>Minimises effects of last minute changes to listings/Judges not being available</i></p> <p><i>Less travel is good for the environment</i></p> <p><i>Improves access to hearings for disabled lawyers and parties</i></p> <p><i>Allows Court to deal with a greater volume of urgent work if presence not required</i></p> <p><i>Frees up coveted conference rooms for necessarily attended matters</i></p>	<p><i>Distractions caused by technical difficulties</i></p> <p><i>Not all clients have sufficient tech ability/equipment</i></p> <p><i>Clients want to be with their legal teams</i></p> <p><i>It becomes a soulless existence if you never go to Court</i></p> <p><i>Opportunity for outside influence or exploiting vulnerability at home</i></p> <p><i>Taking instructions is easier when all in same room</i></p> <p><i>Client's feelings of distress and isolation can be overwhelming</i></p>

Comments relevant to remote hearings generally (judges)	
Pros	Cons
<p><i>Avoids times and cost of travel for parties and lawyers</i></p> <p><i>Natural efficiency with fixed time hearings – with represented parties everyone is prepared on time</i></p> <p><i>Less hanging around in the court building</i></p> <p><i>Arguments tend to be more focussed</i></p> <p><i>Easier for witness overseas, for professionals and vulnerable people to participate</i></p> <p><i>Avoids acrimonious parties meeting at court</i></p> <p><i>Taking expert evidence remotely is far better</i></p> <p><i>Fee paid judges have a greater ability to receive papers the day before</i></p> <p><i>Safety from Covid-19</i></p> <p><i>For fee-paid judges, increased ability to work nationally</i></p> <p><i>Increased access to justice, including in relation to disabled and vulnerable parties</i></p> <p><i>Staff do not need to be present throughout the hearings, so long as they can be contacted</i></p> <p><i>More focus by the lawyers and parties on the issues in advance of the hearing</i></p> <p><i>Better for the environment, including less travel time and reduction in paper usage</i></p>	<p><i>Poor technology, including for fee paid judges</i></p> <p><i>Lack of support from trained staff</i></p> <p><i>Legal representatives don't also take the judge's cue</i></p> <p><i>Taking evidence is harder</i></p> <p><i>Lack of human interaction; impersonality</i></p> <p><i>Wholesale move to remote hearings will be bad for judicial moral and judicial recruitment</i></p> <p><i>Advocates do not confer as much pre-hearing; less narrowing of issues pre hearing</i></p> <p><i>Inability or difficulty of advocates speaking with clients mid-hearing</i></p> <p><i>Harder for negotiation to take place</i></p> <p><i>Authority of the court is sometimes undermined</i></p> <p><i>Remote hearing are generally more tiring than in person hearings</i></p> <p><i>It is harder to assess credibility in remote hearings</i></p> <p><i>Poor behaviour of litigants</i></p> <p><i>Difficulty in managing court lists; eg, putting the case back, recalling a case, wasted time if a case goes short</i></p> <p><i>Difficulty in cases where a party requires the assistance of an interpreter</i></p> <p><i>Less engagement in the process by parties</i></p> <p><i>Cross-examination can be slower</i></p> <p><i>Rise in remote hearings may be used to justify further reduction in the court estate</i></p>

4.10.2 The comments in relation to First Appointments specifically are summarised below:

First Appointments (lawyers)	
Pros	Cons
<p><i>Expensive and time consuming to attend court for an administrative hearing</i> <i>Less pressure on clients</i> <i>Much can be agreed in advance which narrows issues</i> <i>Lawyers work harder to narrow issues in advance</i> <i>Opportunity for settlement is slight</i> <i>Generally uncontentious</i></p>	<p><i>Important to get the advocates together to narrow the issues</i> <i>Orders can be drafted at Court and issues dealt with</i></p>

First Appointments (judges)	
Pros	Cons
<p><i>Generally uncontentious, not contested and largely administrative</i> <i>Generally shorter</i> <i>No evidence is taken</i> <i>More convenient for the parties and lawyers; personal attendance is disproportionate</i></p>	<p><i>Reduces opportunity to settlement at the FA</i> <i>Difficulties with cases involving LIPs</i> <i>Opportunity to narrow issues can be lost</i></p>

4.10.3 The comments in relation to FDRs specifically are summarised below:

FDRs (lawyers)	
Pros	Cons
<p><i>More cases are settling at remote FDR</i> <i>Parties are far more focussed and there is less time wasting</i> <i>Easier to have discussions in private; lack of privacy at Court is an issue</i> <i>Nervous clients can be with their team, but they do not need to be at Court</i> <i>Counsel do not interrupt each other during remote hearings</i> <i>Clients and legal teams could attend together from same office</i></p>	<p><i>Make it easier for a party/counsel to ignore the judge's views</i> <i>Easier to negotiate back and forth at Court</i> <i>Very time consuming; no end point; can go on into the evening</i> <i>Hampered if representatives not able to communicate with one another easily</i> <i>Do not have 'all day' access to Judge</i> <i>Family members get involved: can pose obstacles to settlement</i> <i>Difficult to keep to judge's times when managing other channels with others</i> <i>Easier for judge to juggle his list if everyone at court</i> <i>Remote negotiation is very draining</i> <i>Clients do not feel part of the process</i> <i>Risk clients may subsequently change their mind, saying felt confused or railroaded</i></p>

FDRs (judges)	
Pros	Cons
<p><i>No evidence is taken</i> <i>Experience of private FDRs and other negotiations suggest parties do not need to be in the same place</i> <i>More focused submissions</i> <i>Remote FDRs can work where parties have access to and are able to use</i></p>	<p><i>Personal connection between judge and a party can be important at an FDR; more difficult to 'connect' with a party if remote</i> <i>Easier to engage and empathise with parties if face to face</i> <i>Impetus to settle is reduced or lost when all parties and representatives are not in the</i> <i>Easier for parties to disengage</i> <i>Lower settlement rates</i> <i>Inflexible lists do not lend to settlement; more difficult for the case to be recalled</i> <i>Remote FDRs can be very difficult in cases involving LIPs</i> <i>Difficult for instructions to be taken as between parties and lawyers</i></p>

4.10.4 The comments in relation to Final Hearings specifically are summarised below:

Final Hearings (lawyers)	
Pros	Cons
<p><i>Cross-examination is just as effective remotely</i> <i>Judge can get better view of facial expressions on screen</i> <i>No travel, no waiting to get at court</i> <i>Simpler final hearings of 1 day or less could be remote</i></p>	<p><i>Sense of occasion/solemnity is lost</i> <i>Easier to manage Court time if a witness goes short</i> <i>Easier to manage Court time if a number of witnesses</i> <i>Judge benefits from seeing and hearing witnesses</i> <i>Issues with family members being in the same room</i> <i>Justice must not only be done but must be seen to be done</i> <i>Problems with witnesses accessing papers and using their own notes</i> <i>Difficult to manage witnesses talking over questions</i> <i>Can respond to points raised more quickly if attended</i> <i>Can provide support the client needs</i> <i>Tiring to sit at a computer screen for the length of a final hearing</i> <i>Not everyone has suitable internet to allow for final hearings</i> <i>Clients do not feel engaged</i> <i>Difficult to take instructions during trial</i> <i>Bundles can be difficult to negotiate remotely</i> <i>Does not allow for 'door of the court' negotiations</i></p>

Final Hearings (judges)	
Pros	Cons
<p><i>Expert evidence can properly be taken remotely</i> <i>Evidence from witnesses abroad can properly be taken remotely</i> <i>Can work if parties are properly prepared and represented</i></p>	<p><i>Judges benefit from seeing and hearing a party and/or witnesses in person</i> <i>More difficult to assess credibility if remote</i> <i>Cross-examination can take longer</i> <i>Difficulties with negotiating bundles during a remote hearing</i> <i>Litigants' access to technology</i> <i>Unreliable technology can interfere more with longer hearings; significant issues with connectivity</i> <i>Less opportunity for the case to settle on the morning of the final hearing</i> <i>Difficult for instructions to be taken as between parties and lawyers</i> <i>Easier to engage and empathise with parties if face to face</i> <i>Last minute documents are more difficult to receive if remote</i> <i>Tiring, particularly if the judge is putting questions on behalf of LIPs, taking notes and managing the hearing</i> <i>Longer time estimates due to need to take breaks more often</i></p>

4.11 Comments about other hearing types: contested interim hearings (MPS etc); without notice applications; PTRs; taking of expert evidence; taking evidence from overseas witnesses; appeals and enforcement hearings

The following are examples from the narrative comments about the other specific hearing types:

4.11.1 Contested interim applications (lawyers)

All of the above that I have ticked in Q4 have worked well remotely. I do not see any reason why submissions-based hearings (typically First Appointments, without notice applications, contested interim applications, PTRs, and enforcement hearings) need to be attended. They all work well remotely... (London Barrister, 75-99% FRC work)

First Appointments - No issue with these being conducted remotely and saves a huge amount of time WN Applications - By their nature, it makes it much easier to have the option of conducting hearings remotely. Contested Interim Applications - Depends on the application, but generally ok to be remote... (London Solicitor, 75-99% FRC work)

Contested interim applications MPS, LSPO etc are listed for a short amount of time. Very rarely is there live evidence. Dealt with on submissions. No reason this can't be done remotely by video. (Western Circuit Barrister, 75-99% FRC work)

4.11.2 Contested interim applications (Judges)

I have some uncertainty about contested interim apps. A case could be made for them to be attended. The key point is that hearings should be attended if they might lead to settlement in full or part of the issues between the parties. (High Court Judge)

Anything procedural or interim is suitable. (District Judge, South East)

When the focus is on achieving a final outcome or oral evidence is to be received (ie FDR & final hearing) the full participation of the parties is more likely to be achieved with personal attendance. The same applies (with less force) to contested interim applications and appeals when the default position could be an attended hearing with a case management decision being taken to hear remotely, if appropriate. (Circuit Judge, The Midlands)

Main advantage is that in interim and initial hearings its easier to list and the case can be dealt with swiftly in the time allotted provided the time estimate is accurate. Often such hearings settle before the hearing date or parties agree directions, which, if the court approves enables the hearing to be vacated or the time estimate reduced. (District Judge, The Midlands)

In my experience conducting all of the above types of hearings [including interim contested applications] remotely via CVP or Microsoft Teams is eminently workable as long as there is sensible listing to accommodate the particular vagaries of these types of hearings in contrast to face to face hearings. (District Judge, London)

4.11.3 Without Notice Applications (lawyers)

Without notice applications are usually made because of urgency/ emergency and therefore it may well be easier for all involved to attend remotely as it saves time and allows a party to make a without notice application even when abroad (London Solicitor, 75-99% FRC work)

Hearings that are largely administrative in nature such as first appointments or where there is only one party in attendance e.g. without notice. This would also help reduce client's costs in attendance of lawyers at court...(North West Solicitor, 50-75% FRC work)

Similarly without notice applications, though the relief sought may be serious, should not have to be in person. (London Barrister, 100% FRC work)

Without notice applications: Should always be remote because only one party attends anyway (London Solicitor, 75-99% FRC work)

...without notice applications lend themselves very well to the process of remote hearing... (South East Solicitor, 75-99% FRC work)

Without Notice applications may need to be made urgently so remote assist with this... (London Solicitor, 50-75% FRC work)

Taking evidence from overseas witness would be done remotely in any event. In relation to the other hearings ticked - First Appointments are usually agreed timetabling save and except for consideration relating to questions allowed on Questionnaires - so relatively simple. Without notice Applications are usually urgent and supported by application and witness statement and no other party is in attendance. Pre Trial

Reviews are case management and can usually be agreed in advance. The boxes not ticked are more complicated and generally would require evidence except in relation to FDR's which may require discussions with other advocates/client's and negotiation (North East legal executive, 50-75% FRC work)

4.11.4 Without Notice Applications (Judges)

Urgency of without notice application justifies remote hearing. (District Judge, London)

Without notice applications are also largely on paper and/or do not require personal attendance. (Recorder, Western Circuit)

Without notice hearings largely dealt with on submission and the papers. (District Judge, North West)

A without notice application can often be urgent, a formality and/or evidence does not have to be tested. (Deputy District Judge, Wales)

Without notice applications one sided, not trying to be alive to dynamic between parties, in person return date to be listed v shortly thereafter anyway. (District Judge, The Midlands)

Without notice hearings will usually be about a discreet issue and will generate a quick on notice return date, that ideally would be attended. (District Judge, North East)

I believe that some without notice applications can be properly heard remotely on the basis that there will be a return date for the evidence to be examined and that would not be remote. (Deputy District Judge, London)

4.11.5 PTRs (lawyers)

..Short interlocutory stuff (directions, First Appointment, LSPO, MPS, PTR etc) should definitely stay remote, probably as the default position... (London Barrister, 100% FRC work)

FDA and PTR are essentially case management hearings, which are more than capable of being heard remotely (London Barrister, 50-75% FRC work)

All directions hearings (including FDAs, PTRs) should be conducted remotely, it saves clients and their legal team considerable travel time and cost, plus removes the costs caused by delays to being heard (some of which is inevitable). (London Barrister, 75-99% FRC work)

PTRS - on the assumption that everything is ready for trial, it makes sense for these to be done remotely. If it is going to be complicated then perhaps it should be an in person hearing... (South East Barrister, 100% FRC work)

Hearings which are more procedural in nature (FDAs and PTRs) lend themselves to remote hearings. (South East Barrister, less than 25% FRC work)

4.11.6 PTRs (Judges)

Pre-trial reviews usually do not raise issues which justify the increased cost of physical attendance. (District Judge, London)

Pre trial reviews generally only involve trial counsel, and tend to be short housekeeping exercises. (District Judge, Western Circuit)

FDAs and PTRs usually largely procedural and the connection of face to face interaction is less important. More convenient for parties. (District Judge, The Midlands)

I consider that all hearings prior to the final trial where there is the prospect of settlement, or at least some preliminary discussions, should be in person. That includes, therefore, First Appointments and PTRs where the judge can encourage negotiations as robustly as is appropriate. The final hearing should invariably be attended. (High Court Judge)

4.11.7 Taking of expert evidence at final hearing (lawyers)

Better use of expert time not to have to travel and less costly... (North West Barrister, 75-99% FRC work)

The option for remote hearings should be available for every case. It won't be suitable for all, but remote trials can be dealt with fairly and effectively for some cases, so shouldn't be ruled out. That is especially true of expert evidence - it is far quicker and more efficient online. (London Barrister, 100% FRC work)

It makes common sense logistically for overseas experts to give evidence remotely.... (Midlands Barrister, 50-75% FRC work)

Expert evidence - this is based upon XX of one aspect of case with professionals who should be used to giving evidence. It can be done more cheaply than the expert attending court (South East Barrister, 100% FRC work)

Ease for experts and overseas persons to attend court via video link. (Midlands Solicitor, 50-75% FRC work)

4.11.8 Taking of expert evidence at final hearing (Judges)

Common sense dictates that expert oral evidence is more proportionately heard via video link. Equally for persons abroad that are non-parties. (District Judge, Wales)

Expert evidence can be adequately heard remotely and this promotes the availability and proportionality of expert involvement. (District Judge, South East)

Expert evidence, weighing up the benefits, might get better experts and better availability if they don't have to travel, hang around court, etc, against advantage of in person overseas, obvious. (District Judge, The Midlands)

4.11.9 Taking evidence from witnesses overseas (lawyers)

Having experts/overseas witnesses give evidence over video platforms is in my view acceptable on balance and has a costs savings benefit that should not be ignored. (Western Circuit Solicitor, 100% FRC work)

I am on the fence with overseas witnesses. Of benefit when looking at convenience/availability of witness and costs but adequately assessing credibility could be an issue? Should be an option for the court/ parties to consider on a case by case basis. (North West Solicitor, 50-75% FRC work)

Unfair for overseas witnesses to have to travel. (Midlands Solicitor, 75-99% FRC work)

In terms of evidence from overseas witnesses and experts, this has worked well remotely and is far more cost effective than requiring them to physically attend court... (North West Solicitor, 100% FRC work)

Expert / overseas evidence by video-link have long been generally accepted exceptions to the general practice of evidence being heard in person in court for reasons of cost and practicality. They should remain exceptions and not become the rule. (South East Barrister, 50-75% FRC work)

4.11.10 Taking evidence from witnesses overseas (Judges)

Taking evidence from a witness abroad clearly justifies appearance remotely. (District Judge, North West)

Evidence from overseas witnesses: proportionate arrangement in light of the costs of personal attendance. (Circuit Judge, London)

Taking evidence from overseas witnesses is generally justified on the grounds of saving costs. (District Judge, London)

Experience shows that expert evidence is most efficiently done remotely and overseas witnesses obviously don't have to travel while international links seem to work better than getting a connection to eg Leeds! (Recorder, Western Circuit)

Expert evidence saves time and expense of experts attending Court Ditto for overseas witnesses. (Deputy District Judge, Wales)

4.11.11 Appeals (lawyers)

...I would distinguish the position regarding enforcement and appeals as whilst they flow from the process the consequences for the parties and the potentially draconian orders that could be made merits the tribunal seeing the parties in person. (London Barrister, 100% FRC work)

Appeals - it is just much more difficult to read the court and adjust if done remotely. (South East Barrister, 100% FRC work)

Appeals - again no evidence from parties. Judge's will already have skeleton arguments. No reason why this can't be done remotely. Court of Appeal appear to have no problems whatsoever. (Western Circuit Barrister, 75-99% FRC work)

My experience of appeals is that they work perfectly well remotely too. (Western Circuit Barrister, 25-50% FRC work)

Appeals: where these are required quickly, I see no reason not to allow them to be done remotely to save time (Western Circuit Barrister, 25-50% FRC work)

4.11.12 Appeals (Judges)

As a CJ, my main experience is in appeals for FR. I have conducted about six of these remotely in the past 12 months. The main advantage has time efficiency. It is much easier to fit an appeal in around my other work if conducted remotely. (Circuit Judge, North West)

Appeals, in my opinion, must be attended. (District Judge, London)

When the focus is on achieving a final outcome or oral evidence is to be received (ie FDR & final hearing) the full participation of the parties is more likely to be achieved with personal attendance. The same applies (with less force) to contested interim applications and appeals when the default position could be an attended hearing with a case management decision being taken to hear remotely, if appropriate. (Circuit Judge, Midlands)

I have ticked first appointments and appeals but with a proviso. In relation to both, whether a remote hearing is appropriate depends on whether the parties are represented. If the case involves a LIP, I am of the view that a court hearing is preferable; first appointments require some work in advance and a decent bundle; appeals with LIPs are haphazard and, again, can spin out of control without a proper bundle and an understanding of the issues. (Recorder, London)

4.11.13 Enforcement (lawyers)

I consider that all hearings can be conducted remotely, save for enforcement hearings. However, I expect that it will only be those enforcement hearings that concern the liberty of the individual that require an in person hearing. (London Barrister, 100% FRC work)

All of the hearings listed above can be dealt with remotely provided that there is proper time available and also effective use of IT with proper access to facilities. Without proper access to IT then remote hearings are not effective. The only reason I have separated enforcement hearings is in relation to the seriousness of any enforcement hearings, particularly committal. (Wales Barrister, less than 25% FRC work)

Enforcement hearings (save for those where there is a real possibility of someone going down for a long stretch) can all be heard remotely. (London Barrister, 75-99% FRC work)

Enforcement hearings could be dealt with fairly by remote means too, but since they are in open court, then again it may be preferable for them to take place in person. (South East Barrister, 50-75% FRC work)

4.11.14 Enforcement (Judges)

All hearings in FR cases save those involving the liberty of the subject are suitable for remote hearing. (Circuit Judge, London)

Enforcement needs to be in person as it reinforces the consequences of breach of court orders; otherwise people just don't take the process seriously. (District Judge, Western Circuit)

Enforcement hearings can get very bad tempered indeed and should be attended. (District Judge, London)

Enforcement hearings - again largely procedural and can be effectively done remotely preferably by Teams. (Deputy District Judge, Midlands)

On the other hand, an enforcement hearing is very likely, by its very nature, to warrant attendance at court but again that depends. (Deputy District Judge, South East)

I think enforcement should be done in court so the judge's message is clear and the parties have a better opportunity to negotiate. (District Judge, Western Circuit)

D. THE IMPACT ON LAY PARTIES

4.12 The take up of respondents to the lay parties' survey was poor. The following information is instead drawn from the lawyers' survey, which asked: *What has been the experience of your client of remote hearings?*

4.13 The responses were as follows:

Very Positive	15.29%
Positive	39.51%
Neutral	26.23%
Negative	11.16%
Very Negative	2.12%
Do not know	5.69%

4.14 The number of 'do not know' responses was low. Even assuming their experience was negative, almost 55% confirmed their clients' experience was positive or very positive and fewer than 19% of those experiences were negative or assumed negative.

4.14.1 Positive responses

I have not had a single client complain that the quality of the hearing was adversely affected by it being remote. Delays due to technical difficulties are nothing compared to the kind of delays that clients experience in physical court buildings due to lazy listing practices or hearings going on for much longer than their time estimate. (London Barrister, 100% FRC work)

Provided they are well looked after by their legal team and everything is explained in good time, I think clients are generally happy to appear remotely. (Western Circuit Barrister, 50-75% FRC work)

Less anxiety, more comfortable, better value, less waiting around. I talk to them at least twice before the hearing, I have yet to have a client say they feel disadvantaged or

uncomfortable because they are not a court. In fact they usually say the opposite, more relaxed and at ease in their own home. (North West Barrister, 25-50% FRC work)

In one case, it permitted parties to join from India which might otherwise have been difficult if not impossible. (London Barrister, 75-99% FRC work)

Clients are very happy not to attend - it's more than just neutrality. It allows them to feel relaxed in their own environment and they are much better able to instruct throughout the hearing, by text. I always have long conferences directly before and after the hearing and tell them they can call me later that same day if they have a new idea that they forgot to mention; they give the impression of feeling more tended to than I have experienced face to face in the past. They report to my I.S. that the whole experience was less stressful.

Clients who have experienced abuse from the other side in the past are overjoyed not to have to be in the same room as them.

Clients with childcare issues are relieved as they can get a relative to mind the smaller child in the next door room or have a teenager tucked away upstairs, and then return straight to their child when they want to.

Clients with simultaneous interpreters have valued the interface.

Clients generally feel very strongly about Covid security and are happy to keep safe at home. (London Barrister, 25-50% FRC work)

A lot have been happier especially Domestic abuse cases (North East Solicitor, 25-50% FRC work)

Not having to take entire days off work or find child care, travel to poorly connected/located court buildings. Less waiting around and therefore becoming increasingly stressed. (London Barrister, 25-50% FRC work)

I have found that as long as clients get the IT help and support they need, they find the process effective. I have found that I am still able to build rapport and engage effectively with clients via video conferences and clients appear to feel similarly. (London Barrister, 50-75% FRC work)

I have had no client express negative views. Most are entirely neutral or positively enthusiastic. Most are so familiar with home schooling/zoom social lives/working from home that it is not daunting. They like being in familiar surroundings, it avoid child care issues, the expense of travel and the hanging around in not very pleasant and NEVER private court hearings. They can have as much time with their lawyers in advance and after hearings more easily. (London Barrister, 100% FRC work)

4.14.2 Neutral/Varied responses

Feedback varies depending on how well the technology has worked for a hearing. (South East Barrister, less than 25% FRC work)

It has varied hugely. Clients with good tech have been fine albeit it has felt very remote. There have been real issues where parties are still cohabiting which as a result of Covid seems to have increased. It has also been negative where there have been issues around tech, internet, children being at home or coming home, where alleged domestic abuse has taken place in the very place where the party is giving evidence from, where Special Measures have amounted to a post-it note over the alleged perpetrator's face during hearings. (London Barrister, 25-50% FRC work)

They don't know any different as most of them haven't experienced actual hearings (South East Solicitor, 50-75% FRC work)

I have answered as "neutral" because for some clients (mainly technologically literate clients with the money for a good screen set up), remote hearings have worked brilliantly. I have also found that for clients who might be worried about attending at the same building as the other party (often in cases where there has been domestic abuse), the remote set up is reassuring and secure. However, for some clients, they have struggled with the technology, are left feeling "shut out" of the process and it is difficult to build a rapport over video link. (London Barrister, 50-75% FRC work)

4.14.3 Negative responses

Client's feel less involved in the hearing if it is remote, which is fine if they get what they want but very challenging if they don't as the process seems less fair. (Midlands Barrister, less than 25% FRC work)

Generally feel less important & engaged if difficult or complex points being determined & especially if they're giving evidence. (South East Barrister, 50-75% FRC work)

They feel less involved in the process - feeling of remoteness from life changing decisions. (London Barrister, 75-99% FRC work)

Clients can feel isolated during remote hearings especially if they are at home without their legal team. (London Solicitor, 75-99% FRC work)

Lay clients feel distanced from hearing - mere spectators on their own case rather than participants. Lack of immediacy and direct contact with own representatives. So much prefer to have them in same room (socially distanced) during any hearing if possible. (London Barrister, 50-75% FRC work)

They like to hear the words of a Judge in person. They have less respect for a person on a screen. (South East Solicitor, 75-99% FRC work)

Clients have been frustrated but they often are at hearings as it is a stressful time for them. Most clients hadn't had the experience of both in person and remote hearings to compare and accepted that remote hearings were necessary due to COVID. Some clients expressed a wish to be with their legal team in one room so at least all of their team are together and going forward that should not be an issue for remote hearings post COVID. (London Solicitor, 50-75% FRC work)

Nervous, worried about the technology, lacking the technology, unable to be heard appropriately or properly. (Midlands Solicitor, 75-99% FRC work)

Totally depends on the client and judge. Some have had good experiences - others have been awful. The biggest issue is clients feeling the judge has not been able to assess the other party properly and making findings as to credibility which are simply wrong. (London Solicitor, 75-99% FRC work)

E. DISCRETION, AUTONOMY AND DEFAULT POSITIONS

4.15 Some respondents recognised that, whether or not there is a default position, the parties should be able to choose and/or apply to the Court to determine whether or not a hearing should take place remotely/attended. Examples include:

Short interlocutory stuff (directions, First Appointment, LSPO, MPS, PTR etc) should definitely stay remote, probably as the default position (London Barrister, 100% FRC work)

[FAs, WN, PTRs expert/overseas evidence] These are the ones I am fully sure would be suitable for a default position of a remote hearing, with an option for in person depending on the circumstances of the case. I am not opposed to remote hearings for the other categories, but I think they should be default in person, with option for remote depending on the circumstances of the case (South East Barrister, 75-99% FRC work)

Remote has been shown to work very well in most cases. Face to face should be reserved for exceptional cases and remote remain the default. (London Barrister, 50-75% FRC work)

Clearly, there will always be cases where 'in person' hearings are more effective and will need to be considered on a case by case basis (I don't find that remote hearings involving interpreters are effective, and obviously 'in person' lay party evidence is always better to assess). (London Barrister, 25-50% FRC work)

Submissions based hearings [can be heard remotely]. I do not include FDRs but certain FDRs could be dealt with remotely and that requires a case by case consideration. (London Barrister, 100% FRC work)

For me, all types of hearings are 'appropriate' for remote hearings, it will just be a question of which should presumptively be heard remotely and which presumptively in person (but with the option to elect for remote hearing if necessary/desirable). (North East Barrister, 75-99% FRC work)

I make a distinction between hearings where evidence is taken and those where it is not. One can take evidence remotely but it is right that litigants have the opportunity to

address the court in person. I should qualify my answer by saying that if they elect to remain remote then they should not be compelled to attend in person. (London Barrister, less than 25% FRC work)

Post pandemic, it would be more productive to have negotiation style hearings in person where it is safe to do so and where the parties elect to do so. (North West Solicitor, 75-99% FRC work)

As a basic approach I would suggest that remote hearings should be the default option for hearings that will be dealt with on submissions only and attended hearings where detailed evidence is needed. FDR's are probably the exception with negotiations being easier at an attended hearing. (Circuit Judge, Western Circuit)

No need for live evidence in interlocutory hearings. FDRS : negotiations are likely to have a better chance of success with person to person contact. Expert evidence is already heard remotely with great success. Evidence from overseas witnesses: proportionate arrangement in light of the costs of personal attendance. Remote hearings could be the default position, which could be altered if particular circumstances demand it. (Circuit Judge, London)

When the focus is on achieving a final outcome or oral evidence is to be received (ie FDR & final hearing) the full participation of the parties is more likely to be achieved with personal attendance. The same applies (with less force) to contested interim applications and appeals when the default position could be an attended hearing with a case management decision being taken to hear remotely, if appropriate. (Circuit Judge, The Midlands)

For procedural matters/non-contentious directions with both sides being represented, remote hearings should become the default position. They avoid excessive travel and clogging of the courtrooms. (Deputy District Judge, South East)

For routine hearings and where just submissions eminently suitable. (District Judge, The Midlands)

[For FAs] I think the default should be attended (although parties a distance away should be able to attend FAs (and possibly FDRs) remotely. I start preparation for FDR

at the FA, and it is important to convey what the real issues are, which can be done more effectively in person. (District Judge, Western Circuit)

I have found all those hearings [all hearings save Final Hearings] work well as remote. So too do many FDRs but on balance attended FDRs may be more likely to lead to settlement but I would like to have discretion to allow for a remote FDR. Parties should attend for final hearings. The general rule for experts should be remote. It works well in public law and should also do so in FR cases. (District Judge, South East)

I would suggest that no evidence to be taken from witnesses in remote hearings unless there is no exceptional circumstances - contested final hearings should be in Court. (District Judge, South East)

F. FDR SETTLEMENT RATES AND USE OF PRIVATE FDRs

4.16 Respondents were asked specifically about the use of private FDRs, how the settlement rates compare with Court FDRs and, with regard to Court FDRs, whether the settlement rate was higher or lower when conducted remotely. The responses are as follows:

Fig.1 In how many cases have lawyers been involved in/Judges have ordered private FDRs in the last year?

	Lawyers	Judges
None	46.88%	61.40%
Between 1 and 5	35.38%	30.23%
Between 5 and 10	11.27%	5.58%
More than 10	6.47%	2.79%

Fig.2 Change in the number of private FDRs lawyers involved in/ordered by Judges in the last 12 months?

	Lawyers	Judges
An increase	38.73%	19.07%
No change	57.48%	80.47%
A decrease	3.79%	0.47%

Fig.3 How does the settlement rate compare with Court FDRs (lawyers only)

	Lawyers
Higher	63.17%
The same	32.51%
Lower	4.32%

Fig.4 In relation to Court FDRs, settlement rate higher or lower with remote hearings?

	Lawyers	Judges
Much higher	2.90%	1.60%
Higher	7.92%	5.12%
About the same	52.12%	40.00%
Lower	30.02%	44.65%
Much lower	7.03%	9.30%

- 4.17** There are some anomalies in the statistics relating to FDRs. 52.12% of lawyers say that the settlement rate of remote Court-led FDRs is about the same as attended Court-led FDRs compared to only 40% of Judges. Almost 55% of Judges considered a remote Court-led FDR had a lower or much lower chance of settling than an attended Court-led FDR, whilst only 37% of lawyers believed this to be the case.
- 4.18** This might be accounted for by any number of factors but given some lawyers report that remote FDRs continue well beyond the end of the judicial day, it may be that some remote FDRs are leading to settlement after the hearing. It may also be due to the number of cases before Judges that involve litigants in person on both sides which will be invisible to lawyers and do not have a high settlement rate. If the FDR Judge has already given directions and onward listed for final hearing, a later consent order may not be placed before her for approval.
- 4.19** Lawyers are reporting that private FDRs are happening in greater numbers than is reflected in the judicial responses, but some private FDRs take place outside of the structure of Court hearings and may not be reported to the Court if consent orders are filed electronically.
- 4.20** Judges were not invited to specifically comment on the use of private FDRs in their narrative responses. Three Judges made specific reference to them in a positive way, one Judge considered that it increased parties' costs to pay a third lawyer to do judicial work "less well" and one Judge commented that Court-led FDRs provided a specialist FRC Judge for free.

G. RESPONDENTS' SUGGESTED IMPROVEMENTS

4.21 Respondents were asked for suggestions to improve the success of remote hearings. The suggestions are categorised as set out below.

4.22 There is a significant amount of overlap between the lawyer and Judge responses and they will be consolidated in the 'Conclusions' section.

4.23 Suggested improvements (lawyers)

4.23.1 Technology, training and remote hearing platforms:

- a. Provide better technology for Judges' use
- b. Provide training for Judges in managing e-bundles
- c. Improve CVP and/or consider use of other platforms e.g. Zoom
- d. Provide training for professionals on use of technology and communicating with clients effectively during remote hearings
- e. Use video only (no telephone hearings)
- f. Require attendees to wear headphones of some type to stop sound feedback between speakers
- g. Develop a 'tweak' that, in appropriate cases, allows the Judge (but not the other party) to see the witness
- h. Waiting/breakout rooms should be developed to allow discussions between advocates and with respective legal teams
- i. Ensure clients have technology and equipment readily available to them including a decent internet connection.
- j. Make it easier to share documents.

4.23.2 Bundles:

- a. Provide a second screen to Judges for viewing bundles
- b. All bundles to be agreed in advance, to be PD compliant and to be fully searchable
- c. Consider use of centrally paginated Court file instead of fresh bundles for each hearing
- d. Consider a common platform for sharing bundles with the Court and advocates
- e. Ensure a paper bundle to be provided any lay client giving evidence directly to assist them

4.23.3 Prior to the hearing:

- a. Court should send out confirmation of nature and format of hearing 2-3 days in advance to avoid confusion about whether a hearing is to be remote or attended
- b. The link for the hearing should be sent out in good time (more than 15 minutes in advance of the hearing)
- c. Insist upon an advocates' meeting to discuss the case/narrow issues in advance where possible to avoid delay
- d. Improve the process for making sure advocates' submissions and other documents are received by the Judge
- e. Where parties are known to live in the same household, consider whether to require them to be in separate locations for the hearing

4.23.4 During the hearing:

- a. Legal teams could meet with clients in Solicitors' offices or counsels' chambers to improve their use of the technology, calm their anxieties and improve their sense of engagement
- b. Wider appreciation is needed of how intense remote hearings can be and the need for regular breaks
- c. Do not start FDRs after 12noon as run out of time
- d. Judges should have an online clerk available to manage the hearings; ensure parties are reconnected if connection drops and to keep parties informed when hearings will start late
- e. Emphasise the need for each team to have their own Zoom/Teams running through the day of any hearing to communicate with their own client
- f. For FDRs specifically:
 - i. have a further 'slot' in the afternoon so that parties/advocate can advise of progress
 - ii. Impose a cut-off point to avoid advocates feeling pressured to continue to negotiate long into the evening

4.24 Suggested improvements (Judges)

4.24.1 Technology, training and remote hearing platforms:

- a. All Courts to have dedicated, trained staff to operate the equipment, manage the technology and to join parties and lawyers to the hearing
- b. Training for Judges in the use of technology, including the various platforms
- c. Hearings to be conducted by video platform rather than telephone
- d. Better Wi-Fi
- e. Better access to technology and devices for fee paid Judges, who often have to utilise their own equipment (including computers and telephones even when sitting at the Court building)
- f. Breakout rooms to enable instructions to be taken or the case to be stood down
- g. Improve CVP and/or consider use of other platforms e.g. Zoom
- h. More CVP (or other platform) licenses for HMCTS
- i. Additional screen to view bundles and documents

4.24.2 Bundles:

- a. Electronic bundles should be limited to 350 pages (to bring them into line with paper bundles) unless otherwise directed
- b. Page references should be to the PDF number rather than A26, D89 etc
- c. Navigable, linked and bookmarked bundle
- d. Bundle in one PDF nor several PDFs
- e. Fee paid Judges to be able to access the e-file, precedents and shared drive (eg FamilyMan)
- f. Training on use of e-bundles

4.24.3 Prior to the hearing:

- a. A meeting of the advocates to narrow issues and refine areas of disagreement for determination
- b. Guidance / protocol to be created as to how a hearing will be conducted
- c. Better listing practices to enable Judges greater time to prepare for hearings
- d. More realistic time estimates for hearings

- e. Ensuring in advance that all parties and representatives have the requisite IT and devices and Wi-Fi bandwidth to participate in the hearing
- f. In appropriate cases having a test tech call with the Court IT team and parties 14 days before the hearing
- g. Improve the process for making sure advocates' submissions and other documents are received by the Judge

4.24.4 During the hearing:

- a. Coat of arms to be displayed as the backdrop / background
- b. Hearings to always be recorded by HMCTS, and not the responsibility of parties' lawyers
- c. The litigants should usually attend at their Solicitor's offices to avoid any issues about technology and to ensure that instructions can be taken swiftly
- d. Where there are interpreters, some Judges query whether there can be a standard arrangement whereby interpreters have a direct line to the client
- e. Building in of breaks
- f. **For FDRs specifically:**
 - i. Have a further 'slot' in the afternoon so that parties/advocate can advise of progress
 - ii. Impose a cut-off point to avoid advocates feeling pressured to continue to negotiate long into the evening

H. CONCLUSIONS AND RECOMMENDATIONS

First Appointments, Without Notice Applications, Pre Trial Reviews and any hearings dealing with directions only (including where directions are disputed)

4.25 First Appointments, Without Notice Applications, Pre Trial Reviews and any hearings which deal with directions only (including where directions are disputed) **should be listed by the Court as remote hearings by default** and heard by way of video link (save where the First Appointment is dealt with by way of the accelerated procedure)². This will:

4.25.1 Avoid any confusion to the parties or lawyers as to the mode/format of hearing

4.25.2 Further the Overriding Objective by

- (i) Saving expense (travel to Court for parties and lawyers and the cost of lawyers' waiting times at Court)
- (ii) Allotting to those hearings an appropriate share of the Court's resources (freeing up valuable conference rooms at Court for attended hearings)

4.25.3 Improve the wellbeing of lay clients, permitting them to attend short hearings without having to make alternative arrangements to cover caring responsibilities or other work

4.25.4 Improve the wellbeing of lawyers for much the same reasons

4.25.5 Allow a better use of judicial time as it is reported that hearings which take place remotely are more likely to adhere to listed time limits.

4.26 This should not require amendment to FPR 2010: FPR 2010, Rule 2.8 already gives the Court the discretion to deal with a case at any place that it considers appropriate. Parties

² Use of the accelerated 'paper' procedure for First Appointments is beyond the scope of this section but in general terms, increased knowledge and use of the accelerated procedure would accord with the overriding objective and is to be encouraged

are to attend the First Appointment personally *unless the Court directs otherwise* (FPR 2010, 9.15(8)). A default direction for a remote hearing would be such direction otherwise.

- 4.27** An application by one or both parties to personally attend a default remote hearing should, save in exceptional or urgent cases, be made within 14 days of the Notice of Remote Hearing. Any such application should be determined by the Court on paper. A Judge may, at any time prior to any remote hearing, use their case management powers to decide that a particular hearing should be attended.
- 4.28** The Notice of Remote Hearing should set out the ability to apply for an attended hearing to avoid confusion³ and consideration should be given to attaching a general guide for the conduct of remote hearings to assist lay parties (equipment and facilities, how to join video hearings, must be alone and not recording etc).
- 4.29** Although an application to personally attend a default remote hearing will be considered on a case by case basis, the narrative responses to the survey by both lawyers and Judges give an indication of the types of reasons why an attended hearing may be appropriate including but not limited to: lay parties or litigants in person without the appropriate facilities/equipment to conduct a remote hearing; to avoid parties in the same household attending remotely from the same location; where an interpreter is required if this cannot be managed otherwise; or where a litigant has a disability which makes remote attendance more difficult for them.
- 4.30** Any deficiencies in the equipment or facilities of represented lay parties would be ameliorated by each legal team attending with their client from the same location e.g. Solicitor's office/counsel's chambers/other suitable venues. This would also assist with any concerns about lay parties' lack of engagement/need for emotional or practical support during the hearing. Travelling to an agreed, mutually convenient venue to attend

³ Sample direction "*This is a remote video hearing. The Applicant is responsible for providing the Court with the remote contact details for all parties on the attached form which should be completed and emailed to [insert] not less than 7 days prior to the hearing, The Court will send out the remote hearing link 24 hours in advance of the hearing. Any application to attend the hearing personally must be made within 14 days of the date of this Notice.*"

a remote hearing at a fixed time would still likely allow for the flexibility and costs savings afforded by remote hearings for both lay parties and lawyers.

4.31 It is clear from the responses that lawyers have fewer difficulties than Judges with the technology and equipment required to ensure the effectiveness of remote hearings. There has been substantial support from the FLBA for Barristers in the use of e-bundles and remote platforms. Solicitors have also accessed this training and also there has been other training provided including their own in-house training. Lawyers have now equipped themselves to conduct remote hearings (two screens minimum – one for the hearing and one for the e-bundle). Similar training and equipment should be made available to all Judges if the level of support for remote hearings is to improve and to address the responses relating to low judicial morale.

4.32 All remote hearings would also be supported by the following:

4.33 Technology, training and remote hearing platforms

4.33.1 Improving CVP to allow breakout rooms and screen sharing and/or consider more widespread use of other platforms e.g. Zoom⁴

4.33.2 Courts to have dedicated, trained staff available to operate the equipment, manage the technology and to join parties and lawyers to the hearing if the Judge requires this support

4.34 Bundles⁵:

4.34.1 All e-bundles to be in one e-document, contents agreed in advance, be PD compliant, fully searchable, bookmarked and with documents linked to the index

4.34.2 The index should include references to the electronic page number as well as A26, D89 etc (unless the electronic page numbers match the bundle page references)

⁴ The choice of video platforms is to be covered in greater depth elsewhere in this report

⁵ The use of e-bundles is to be covered in greater depth elsewhere in this report

4.34.3 Fee paid Judges to be able to access the e-file, precedents and shared drive (eg FamilyMan)

4.34.4 Consider a common platform for sharing bundles with the Court and advocates

4.34.5 Lawyers should consider providing a paper bundle to their client if they are giving evidence

4.35 Prior to the hearing:

4.35.1 Encouragement of advocates' meetings to discuss the case/narrow issues in advance where possible to avoid delay

4.35.2 Improve the process for ensuring advocates' submissions and other documents are received by the Judge

4.35.3 Realistic time estimates for hearings should be given to allow for judicial reading to avoid a delay to the fixed hearing start time

4.36 During the hearing:

4.36.1 Coat of arms to be displayed as judicial backdrop (if the Judge is not in the Court building) to reinforce the solemnity of the hearing

4.36.2 Hearings to be recorded by HMCTS, not lawyers

4.36.3 Wider appreciation of how intense remote hearings can be and the need for regular breaks (this should not apply to the shorter, proposed default remote hearings)

4.36.4 Online clerk available to manage the hearings; ensure parties are reconnected if connection drops and to keep parties informed if hearings will start late

4.36.5 Imposing a time limit for when the order is to be lodged following the hearing

4.36.6 Ensuring all future hearings are listed before the hearing concludes

4.37 There is scope for some **enforcement** hearings (i.e. those where liberty is not at stake) to be included in the default remote hearing category, but it is not clear if the Court staff are in a position to differentiate between the various enforcement applications and this will require further consideration. This can be conducted by the Judge hearing the enforcement application. There are often many hearings in such applications and the Judge dealing with the matter (continuity is important) is best placed to decide if it is necessary to order that subsequent hearings should be attended.

4.38 Taking of evidence from overseas/experts

4.38.1 The use of video link for taking evidence from overseas/expert witnesses should be the default position. This is already provided for at FPR 2010, Rule 22.3. This can be dealt with as part of general case management at the First Appointment, PTR or at the conclusion of the FDR and any application for the Court to direct otherwise can be considered then.

4.39 Contested Interim Hearings (not including contested directions hearings), FDRs, Final Hearings, Appeals and Enforcement hearings where liberty is at risk.

4.39.1 The default position, post-pandemic, is that these hearings should remain as default attended hearings. It is important not to forget the role that actually attending a Court hearing in a Court building plays in the understanding and acceptance of the serious nature of the proceedings.

4.39.2 However, there is substantial support - in varying degrees for the different types of hearing - for the *opportunity* to allow a default attended hearing to be conducted remotely. Parties should therefore be permitted to apply, where appropriate, for the attended hearing to be heard remotely, with the Court taking a permissive approach to such applications where (a) the applications are by consent, or (b) the application relates to the FDR.

4.40 MPS and LASPO

4.40.1 There has been much debate as to whether these hearings should be remote or attended by default. The conclusion that has been reached is that due to their importance to the parties and the overall conduct of the proceedings as a whole, as well as the fact that they often involve considerable negotiations at the time of the hearing itself that the default position should be that these are attended hearings.

4.41 Appeals

4.41.1 It is accepted that nearly all appeals are considered without hearing any evidence. However, they can also be the final hearing in any proceedings and the consequences of the outcome is highly significant. It was for this reason that it is considered that the default position should be that these are attended hearings. There may be many appeals where this is not required and this is a matter that can be considered by the appeal Judge at the permission stage as well as if any application is made.

4.42 Specific considerations in relation to remote FDRs

4.42.1 There is a greater level of support amongst lawyers than Judges for remote FDRs but naturally, full time Judges may have less/no direct experience of successful private FDRs which have been conducted remotely by parties' choice even when an attended private FDR could have taken place.

4.42.2 If the Court agrees to conduct a remote FDR, the following additional points should be considered when listing:

- (i) All FDRs should be listed before noon, to allow sufficient time for negotiation;
and
- (ii) A further, brief time slot should be made available in the afternoon so that parties/advocate can advise of progress.

4.42.3 The Court should encourage the use of private FDRs in appropriate cases as well as other forms of non-Court dispute resolution in accordance with Part 3 FPR 2010.

Chapter 5 – E-bundles

5.1 Introduction

5.1.1 The Covid pandemic has led to the use of e-bundles in the Family Court – previously a rarity – becoming the norm. The process has without question been a steep learning curve for many, both in understanding how to construct e-bundles, how to work with them and use them in preparation and hearings, and what to expect from a well-constructed bundle.

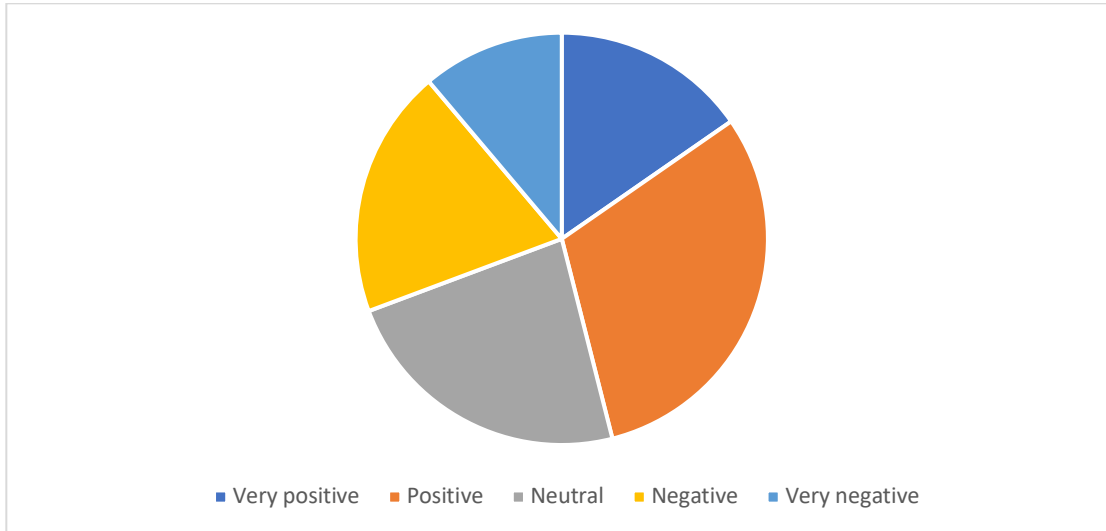
5.1.2 Herein we consider the results of our survey, to consider the current guidance, and to make recommendations to enhance their future use.

5.2 Survey results

5.3 Judges

5.3.1 215 Judges responded to our survey. In response to the question “How have you found the use of Electronic Bundles?” the results were:

Very positive	33	15%
Positive	66	31%
Neutral	50	23%
Negative	42	20%
Very negative	24	11%
Grand Total	215	



5.3.2 Overall 69% of judicial respondents were neutral or positive regarding e-bundles. It is noteworthy that the vast majority of negative comments are from District Judges and Deputy District Judges. The number of negative views from District Judges totalled 50 from a total response of 112 (45%) and the equivalent number amongst DDJs is 12 out of 62 (19%). The figures for other levels of the judiciary were significantly lower. District Judges are the mainstay of the work performed in the FRC and consequently their dissatisfaction must be taken seriously.

5.3.3 Typical comments in support of e-bundles include:

E-bundles are much quicker to navigate (once you have the knack) and it is a joy not to have broken files sent in piecemeal fashion.

Saves trees! easy to use online, amend etc.

It was a culture shock but managing without transporting and storing paper bundles is ultimately easier. Bookmarking and searchability in bundles is essential. This is addressed in the PD.

Electronic bundles are great if they are bookmarked, and OCR'd so that they are searchable. They are then better than a paper bundle

Proper indexed and paginated hyperlinked bundles are better than paper.

5.3.4 However, a significant number of Judges remain unhappy with e-bundles.

5.3.5 There appeared to be broadly two areas of concern. The first, an ongoing and recurring complaint throughout our survey responses was of poorly constructed e-bundles, not complying with the e-bundles protocol and/ or PD27A. This accounts for over half of the negative / very negative responses, and is a common comment on many positive responses:

Bookmarking and searchability in bundles is essential

Bundles consisting of multiple email attachments are worse [than paper]- and are not acceptable.

Solicitors have been slow to comply with the protocol. There is also an ongoing problem in that they are less likely to be truncated to under 350 pages as its easier for the Solicitors to simply put every document in the bundle.

The e-bundle protocol is good but needs to be followed more religiously by parties.

What I have often received is a non indexed bundle with hundreds of pages that I have to scroll through, often made up of many attachments in several emails.

5.3.6 The second area of concern appeared to relate to poor IT and/ or a lack of training or confidence:

Whilst I may be considered a judicial fossil, I find electronic bundles much more difficult to work with compared to paper. Information needed to prepare for hearings is more difficult to locate and harder to assimilate, it takes longer to do.

I decline to use e-bundles. I was brought up with underlining and yellow stickers. I do not use a computer in Court. Full stop. Even when I am sent e-attachments, I print them off if they are at all important.

Nothing improves the position on paper bundles

5.3.7 There are also concerns regarding:

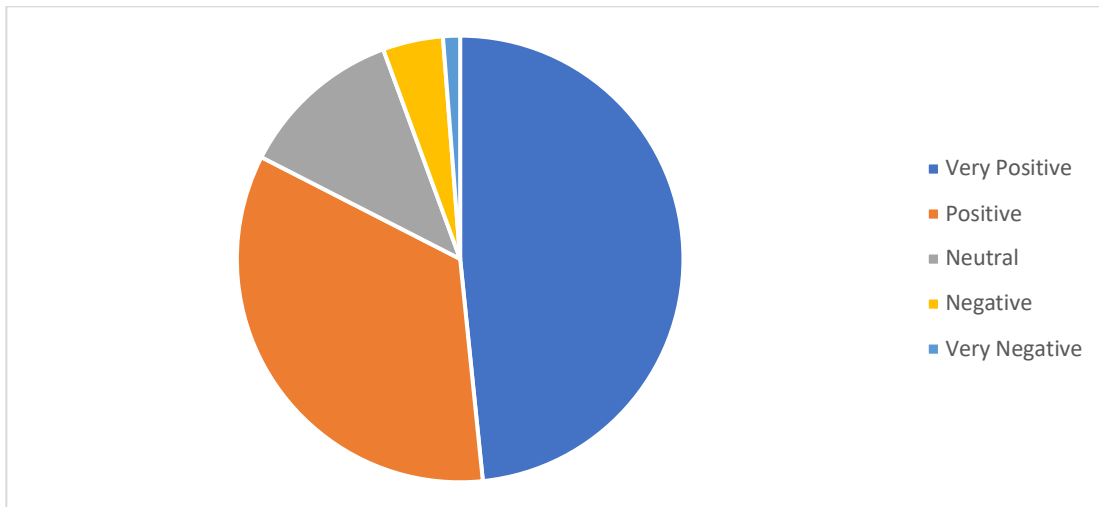
- a. late filing of electronic bundles;
- b. no clear way for Judges to find the bundles, particularly for fee paid Judges;
- c. difficulty with hardware – multiple monitors are required;
- d. difficulty with software.

5.4 Legal professionals

5.4.1 The response from the 893 legal professionals who responded to our survey was overwhelmingly in favour of e-bundles, with 82% of responses being positive / very positive, and 95% neutral or positive:

How have you found the use of Electronic Bundles?

Very Positive	432	48%
Positive	305	34%
Neutral	106	12%
Negative	39	4%
Very Negative	11	1%
Grand Total	893	



5.4.2 Practitioners favoured e-bundles due to their portability, the fact that they saved paper, and printing and distribution costs.

5.4.3 However, many made the same comments as noted above: that the bundles were not being properly prepared, were not searchable, and not in accordance with the protocol and PD.

5.5 Analysis and recommendations

5.5.1 The key guidance relating to bundles is contained in:

- a. PD27A, which among other requirements stipulates a bundles size of no more than 350 pages; and
- b. The e-bundles protocol prepared by Mostyn J dated 3.3.20 to be found at <https://www.judiciary.uk/announcements/financial-remedies-courts-e-bundles-protocol/> - the protocol is reproduced at Annex D.

5.5.2 The respondents to our survey repeatedly made the same point: that neither of these protocols is being complied with. As one Judge noted:

The protocol is good and the bundles are good if it is complied with.

5.5.3 Our **key recommendation** is that PD27A and the e-bundles protocol must be complied with. We consider that compliance ought to be required: legal professionals have now had over a year of working with e-bundles, and teething problems ought to have been ironed out.

5.5.4 In order to encourage and require compliance we would **further recommend** the use by the Court of the sanctions in contained in paragraph 12 of PD27A:

12.1 Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a 'wasted costs' order or some other adverse costs order.

5.5.5 In particular:

- a. That Courts consider removing cases from the list where a bundle is not filed in time, or in the correct format;
- b. That Judges consider adjourning cases and/ or making wasted costs orders against legal professionals where bundles do not comply.

5.5.6 Further, we note that Judges have already given these warnings: *Re X and Y (Bundles) [2008] 2 FLR 2053, FD*; *Re L (Procedure: Bundles: Translation) [2015] 1 FLR 1417, FD*; *Seagrove v Sullivan [2015] 2 FLR 602, FD*.

5.6 We would make the **following further observations** in relation to the preparation and distribution of e-bundles:

5.6.1 There is a developing practice of providing a “core” bundle and a “disclosure” bundle. This often causes the whole bundle to exceed 350 pages. The disclosure bundles often includes most or all of the disclosure within the case, rather than relevant disclosure. This bundle should only be filed with the Court if permission is given. Otherwise the parties shall identify the relevant documents prior to the hearing and ensure that they are available to the Court at the hearing.

5.6.2 If further documents are provided after delivery of the final bundle to the Court, the further documents only should be provided, by way of update, rather than an entire new bundle.

5.6.3 If no party has legal representation, then the Court may direct that a paper bundle is filed.

5.7 We would make the following **further observations** to support Judges and legal professionals as highlighted in Chapter 7:

5.7.1 Proper IT ought to be available to Judges in Court. As a minimum, this is likely to require 2 monitors;

5.7.2 Further training and support is made available to assist Judges who are not confident in using e-bundles;

5.7.3 Legal professionals are encouraged to access further training to assist them in constructing compliant e-bundles.

Chapter 6 – Which tech platform should be used for remote hearings?

6.1 INTRODUCTION

6.1.1 It is to be noted that this is approached through the lens of the user. We are lawyers and Judges and as such we do not profess to be technical experts on the intricacies of the alternative systems. The exercise that we have conducted is purely a reflection of how each platform performs the task of conducting Court hearings.

6.1.2 The three most regularly used platforms for remote hearings are CVP, Zoom and Microsoft Teams. For telephone hearings, BT Meetme is also used.

6.1.3 Skype for Business (the Microsoft package which pre-dated Teams) is now being phased out, and Lifesize is used infrequently other than by certain Chambers, so those platforms are not discussed.

6.2 SURVEY FINDINGS – FIGURES

6.2.1 215 Judges responded to the question ‘*If hearings are to be held remotely in the future then which platform do you consider to be the best option for such hearings*’ and were told that only one option could be selected. The results of the survey were as follows:

● Bt Meetme	8
● CVP	59
● Teams	122
● Zoom	19
● Other	7



6.2.2 896 Solicitors and Counsel responded to the same question with the following results:

● Bt Meetme	34
● CVP	250
● Teams	326
● Zoom	275
● Other	11



6.3 SURVEY FINDINGS – SOME KEY QUOTES

6.3.1 JUDGES

MS Teams (122 votes)

“Parties can set up the hearing. It works (contrast CVP). It provides for breakout rooms. It enables parties to dial in by telephone (and me to dial out by telephone if required). It puts me in control and I am not dependent on a member of court staff to manage the hearing. It enables me to share my screen (very useful for sharing a page of an electronic bundle so that the witness can see it on screen)”

“Teams is very accessible, user friendly and robust”

“Easy to navigate for court and parties, allows for video but parties can also be dialled in if connection poor”

“My experience of MS Teams is that it is a robust platform with a wide range of easily accessible options. Important features are ease of access, wide range of options to control the hearing such as use of mute button, clarity of picture and sound, reliability”

“Accessibility for litigants. Quality of audio and video. Security of recording. Ease of joining...”

“There is background option and when working from home this is important. This is not available on CVP”

“It needs to be video and Teams seems to be the most user friendly and is secure”

CVP (59 votes)

“CVP works very well for me. it can be managed by the clerk so that the judge is able to concentrate on judicial matters”

“CVP is supported by HMCTS. What I want from a platform is stability, reliability, good sound and vision and easy for me to operate if things go wrong!”

“CVP isn't perfect, but it is improving and I am used to it now. Side rooms for interpreters/taking instructions are important. It is important that participants cannot record the hearing”

“CVP has had many problems with sound quality, parties not being able to join, being disconnected”

“Control by the judge is vital - being able to mute; maximum security (ie no disclosure of judicial email); something which works consistently well with court IT systems. In my court CVP has consistently worked the best”

“I prefer CVP because it is easier to manage and every participant can see each other. It is therefore easier for each person to see when another is speaking. Litigants do not feel so distanced from the Judge and advocates”

“CVP is not stable - it can work one hour and not the next. CVP picture quality is terrible”

“CVP does not work reliably and the sound quality in particular is often unacceptably poor”

“CVP has many difficulties”

“CVP is not the most reliable platform. It is also not user friendly and is not compatible with internet explorer or standard internet platforms”

Zoom (19 votes)

“Zoom works very well. Everyone is used to it. CVP is far more pedestrian and gives greater risks of things going wrong. As a judge I am very digitally aware and perfectly happy to operate zoom whereas court based video has to always go through the court clerk which can cause problems if for instance one party loses connection. Many other reasons why CVP is not satisfactory and good enough”

“I do not like CVP or any other platform where I cannot see all of the parties with a decent sized screen of them. With CVP, I can see the two advocates but in effect I cannot see the parties. In the initial period of the remote hearings I conducted cases by zoom for about three months. I could see the parties closely, in some ways more closely than in a courtroom. I could see their reactions to what their Barrister or Advocate was saying and what the opposing Advocate was saying. I feel that without a video platform where I can see the parties at all times I have the risk that I’m so-called flying blind. It’s not proper justice.”

“It is easy to navigate and reliable. Most people are now familiar with it. All participants appear in the same way throughout the hearing, not changing in size when speaking”

“Zoom allows the court to control the venue, it can more easily be conducted without court staff. It allows the option of placing the parties in their own "sound proofed" conference rooms and then calling them back in. MS Teams is second best but Zoom is superior because of the breakout room option”

“I would also choose Zoom for its break-out rooms.”

“Parties know how to use zoom; the sound quality is better and the ability to have all parties on screen in an equal size is a luxury not provided by Teams or CVP. Telephone hearings are almost never appropriate”

BT Meetme (8 votes)

“I have attempted many FDRs by Teams and each and every time I have had to abort it and use BT Meet Me. usually because one party or counsel has inadequate bandwidth or is using a mobile telephone to attend the hearing. This is a rural area and bandwidth is a real issue. In other proceedings, I have had to abandon multi day hearings owing to the failure of video technology having made several attempts all available platforms”

“Telephone hearings can be accessed by all and for FDAs there is no advantage in being able to see the parties”

“I am able to dial in and so do not need any admin staff support for BTMM hearings. I have experienced fewer technical problems with BTMM. The technology and the equipment required for other forms of remote hearing can be an obstacle to a LIP”

“Telephone better for uncontentious administrative hearings as judge controls the timing of the hearing and the time of court staff is not taken up rounding up participants on video which can be problematic if bandwidth etc is poor”

“Case Management type hearings are very effective by BT Meet Me... If there were to be a contested issue, this should be by video.”

“BTMeetMe is not a medium I would not want to use for any financial remedy hearing. I think that it is important for the parties to see the judge and feel engaged in a judicial process. In my experience this is more difficult to achieve when conducting a hearing by telephone”

Other (7 votes)

“Teams is an option but not always available to the lay parties. The judge should have the discretion to select the most effective platform taking into account the issues in the case, the nature of the hearing, the technology and views of the lay parties”

“Different platforms are suitable for different hearings. Case Management is appropriate for a BTMM hearing, this has been the position in the civil jurisdiction for years, so why should FR case management hearings be treated differently. For Hybrid hearings, I prefer CVP, although I have not yet done a hearing without technical issues. FDR's I prefer to be in court, they are more time invasive as a remote hearing, many parties are happy to do these as a telephone hearing but if they are video then I would use CVP”

6.3.2 LAWYERS

Teams (326 votes)

“Teams and Zoom are the most robust platforms but the court, in my area, will not use Zoom so the advocates take on the responsibility of recording the proceedings, whereas with Teams the court (rightly) takes on the burden”

“I think that Teams and Zoom are equally good, specifically with regard to screen sharing and being able to see all participants”

“The Teams platform is generally more stable, the video windows of the parties are larger and it is easier for clients to access without the complication of lengthy emails about Google chrome etc. It is a commercial app which is available and they can use”

“It works well for High Court hearings. CVP is clunky. Zoom is also good and is the preferred choice for private FDRs”

“Reliability - although Zoom has useful functionality too. The break out rooms are useful, especially for FDRs”

“I think Teams works very well and is a stable video platform. Zoom is also very effective, and now has good security in place.”

“On Teams it is often difficult to see the people who need to be speaking”

“This seems to be the medium with fewest problems and one which most clients seem to be able to access easily. I would include Zoom in this list as well”

“I don't have a particular preference as between Zoom and Teams however what I would like to see is Special Measures functionality so that a judge / tribunal can see all parties and hear all parties but where it is possible for lay clients in need of special measures to aid participation to not have to see the alleged perpetrator or to be seen by them”

“Teams is efficient, has easy access for Clients who are used to using it. Teams is secure, allows easy recording and allows documents to be shared easily”

Zoom (275 votes)

“I think Zoom is universally acceptable and appears to be the platform of choice for lay people. Teams are used by professionals more often, but I think we should be client focussed”

“It is the most stable and has best quality”

“Zoom is the most ‘modern’ platform and most effective”

“Zoom is by far the easiest platform to use and the most reliable. Zoom also has the best 'add on' features such as break out rooms”

“Zoom is a much better quality than the rest and easier to use. CVP is very poor”

“In my experience Zoom has proved to be the most user friendly of the platform and the most reliable. It is also the most familiar to lay clients”

“It appears to work more efficiently than other platforms”

“Zoom is easily the best video platform and the best audio and picture quality”

“Break out rooms, waiting room, clear and fewest technical issues I have experienced”

“The quality and reliability of Zoom is vastly superior to the others”

CVP (250 votes)

“CVP seems to work and no doubt will be constantly improved. It is the formal court system and can be made bespoke for court hearings (unlike say Zoom). It can be accessed by most people using Google Chrome for example. It also cost the taxpayer millions of pounds to develop...”

“It’s different to Zoom in that it is clearly for professional use. The simultaneous translation option is also important”

“CVP has not worked well in my experience. The platform must be easily accessible, easy to use”

“CVP is an easy to use platform administered securely by HMCTS”

“CVP has worked well and allows the court to tailor its platform”

“I find CVP prone to the freezing of sound and vision”

“CVP is struggling under the pressure of hearings volume - some mornings no one can connect”

“CVP has become a lot better. It's main benefit is it's over the internet and not via a particular application”

“CVP is controlled by the court”

“Clients have struggled with CVP and are more familiar with Teams and Zoom - of these two Teams to be more secure”

“The main advantage of CVP over other platforms is that not only is it secure but that the recordings are owned by the HMCTS”

BT Meetme (34 votes)

“This is the platform I have most commonly encountered in the past year and I have never encountered any issues. The most important feature is reliability. I have had clients experience challenges with remote hearings on CVP, they have struggled to access this and we have had to find another means at short notice”

“Have had better experiences with these hearing and less likely to be technology issues”

“More reliable than the others”

“I consider that shorter hearings such as first appointments, can be dealt with satisfactorily by way of telephone hearings”

“Easy for all to use, video meetings can be confusing for unrepresented parties who are not familiar with such technology”

“Less intimidating for clients”

“If it is a procedural hearing there has been less time spent resolving issues with technology when the hearing has been via bt meet me rather than say video platform”

“Easier communication and less IT issues than video facilities”

6.4 AN ANALYSIS OF THE OPTIONS

6.5 CVP

- 6.5.1** 27% of Judges and 28% of lawyers prefer using CVP.
- 6.5.2** The tech set-up and administration of CVP hearings is within the Court's control. The platform is preferred by some Judges for this reason, whereas others find going through the Court Clerk, in order to circulate a new CVP link, for example, to be time ineffective.
- 6.5.3** CVP hearings can be carried out via the Court TVs and cameras. This is helpful for 'hybrid' hearings, however there are report that this is a lengthy and sometimes "glitchy" process to set up. Courts have supporting technical equipment, such as a dual cameras to assist remote parties to see the physical proceedings and Court TVs for the Judge and physical parties to view the remote parties. CVP is also currently the only platform on which a prisoner can attend because prisons use CVP.
- 6.5.4** The survey presents significant negative feedback about CVP. Due to Covid, CVP was released and widely used before its testing and development period was complete. This may have contributed to the initial issues which have been experienced with CVP but the criticism has been ongoing.
- 6.5.5** Much criticism relates to CVP's instability. Members of the Court and parties alike have complained of issues such as excessive dropouts, connectivity issues, poor image quality / freezing images, sound cutting out, parties not being able to join, issues with Court TVs, and CVP Control Panel issues. Lawyers cite countless examples of CVP hearings being abandoned and swiftly moving to other platforms for these reasons. Some Judges also commented that whilst they could see the two advocates on CVP, they could not see the parties which was considered to be a significant impediment to justice.
- 6.5.6** There is an argument that using an unfamiliar and Court-specific platform is also intimidating for parties and litigants in person in particular, making the whole process more complex and inaccessible. Some may argue that to put Court hearings on a "popular" platform such as Zoom or Teams is not true to the formality of a

Court hearing, however these platforms are now widespread for a range of formal events, conferences and meetings.

PROS:

1. Court-based technology, such as TVs, aligned with CVP for hybrid hearings;
2. Essential to connect with prisons who have CVP;
3. CVP hybrid hearings fully recorded by the Court; and
4. Merging uses with multiple CVP rooms, for example interpreters.

CONS:

1. Unreliable and unstable technology;
2. Adequate to weak connectivity resulting in poor sound and video performance;
3. Frequent dropouts of parties / parties unable to join;
4. Technical difficulties cause Court schedule disruption and admin must go through Court clerk;
5. Needs / prefers Google Chrome web browser access;
6. Dual echo sound for remote parties during hybrid hearings arising from active Court mic;
7. Judges not able to control their screen, this has to be performed by the administrative staff;
8. No ability to show the Coat of Arms behind the Judge if they are sitting remotely;
9. Lengthy set-up and then constant control required to manage dual Court cameras via panel;
10. Recordings are not accessible;
11. Occasional Cloudroom Manager glitches/bugs; and
12. Does not support international calls.

6.6 MS TEAMS

6.6.1 57% of Judges and 36% of lawyers prefer using MS Teams.

6.6.2 MS Teams was regularly commended in the survey for its reliability. It is familiar to Court members, lawyers and parties and is described as easy to join and user-friendly with good functionality. Its connectivity and performance are typically strong, resulting in a good user experience. It is robust, with few examples of sound feedback or parties dropping out and is now fully supported by HMCTS so Judges have been able to get the support they need in running the hearing on Teams. The screen can be controlled by the Court, with a simple interface and navigation. Teams offers the Court ease and simplicity in recording, saving, downloading and storing recordings.

6.6.3 The very significant downside of Teams is that when there are more than ten participants, not everyone will be visible on screen, and from four participants upwards their screen images vary in size. Whilst this can in theory be adjusted by the Court, the image sizes are not uniform so there will always be some compromise. The default position may leave one party in full view of everyone while the other side could remain invisible or only partially visible, which is unjust. Some survey responses indicated that Teams may be appropriate for shorter hearings, up to say one day in duration, but that Zoom is preferred for hearings of longer duration or where there is witness evidence / cross-examination, so that all attendees can be seen by the Judge.

6.6.4 Teams was developed with the aim of facilitating collaborative remote working as a 'Team', for example multiple contributions to one document, file sharing and internal communications / chat functions within an organisation. These features are not priorities for hearings and bring with them some complexity. Teams is less commonly used than Zoom for formal presentations, seminars or conferences.

PROS

1. Reliable, easy and simple interface and functionality;
2. Extensive user controls (transcript options, background effects, raise hand);

3. Strong technical and bandwidth connection to parties, little to no dropouts;
4. Quick to arrange;
5. Accessible recordings that can be downloaded (and unaffected when host leaves);
6. No video PIN required, only audio phone PIN; and
7. Supports international callers.

CONS

1. Limited in number of participants (performance cuts from 10+ users);
2. Screen images vary in size;
3. No function to restrict parties' visuals from each other;
4. Less able than Zoom to adjust to poor connectivity from one or more users; and
5. No break-out rooms.

6.7 ZOOM

6.7.1 9% of Judges and 31% of lawyers prefer using Zoom.

6.7.2 Zoom was also found by survey participants to be very reliable, robust and stable. Its technical performance is very strong and there are little to no dropouts. Some survey responses said Zoom has the best and most consistent picture and sound quality, which is least affected by the participants' WiFi and connectivity levels. Indeed, it appears to use less band-width than alternatives.

6.7.3 If there are numerous participants, Zoom is the only platform that provides an image for everyone, and Zoom's screen images are uniform in size no matter the number of participants. Zoom has a waiting room function that operates smoothly. Unlike Teams, which was designed for team-based collaboration, Zoom was designed primarily for external video conferencing which makes it well suited to Court hearings.

6.7.4 Zoom hearings are arranged by the parties themselves and not by the Court. It is often the most convenient way to arrange a hearing, particularly at short notice or as a result of a glitch in another system, due to its familiarity and accessibility to all. It is considered to be the easiest platform to invite participants to join. Litigants in person and lay clients will not need training in its use nor should any user require IT assistance.

6.7.5 The frequently voiced concern in the survey about Zoom was its security and privacy, which is obviously paramount for Court hearings. Zoom shot to prominence early in the pandemic when, much like CVP, it may not yet have had enough test-case scenarios to have identified and ironed out all of its issues. Stories of Zoom links being hacked and meetings ‘bombed’ were well documented in the press. However, Zoom has since worked hard to address and fix these problems. Joining a Zoom meeting with a password on a web browser is now very secure, and if added security is desired, two-factor authorisation has now been introduced for Zoom accounts.

PROS

1. Reliable, easy and simple interface and functionality;
2. Strong technical and bandwidth connection to parties, little to no dropouts;
3. Quick to arrange;
4. Accessible and familiar to all;
5. Best for large numbers of participants;
6. Everyone equally visible on screen;
7. Most consistent performance regardless of participants’ connectivity levels;
8. Functional recording to be shared with Court; and
9. Designed for external video conferencing and presentations.

CONS

1. Some may not feel comfortable using it due to legacy security concerns;
2. Outside of the Court’s administrative control;
3. Small delay in sharing Court recordings to the Court; and

4. Access to Zoom link requires contacting parties' point of contact (normally Judge's Clerk).

6.8 BT MEETME

6.8.1 4% of Judges and 4% of lawyers prefer using BT Meetme.

6.8.2 Judges and lawyers alike have expressed a preference for video hearings over telephone hearings in nearly every instance. BT Meetme was met with wide dislike, ranging from 'less preferable to video' or 'a stop-gap' to 'inappropriate' or 'unsuitable'. Occasional survey responses indicated BT Meetme may be appropriate for some First Appointments or mention hearings but no other hearing.

6.9 CONCLUSIONS

6.9.1 Overall, Teams was the preferred platform, but the results differed markedly for Judges and lawyers

6.9.2 For Judges, Teams was the clear preference and Zoom was not preferred. The detailed survey results suggest that this may have been in part a product of the security and privacy issues that were publicised early in the pandemic, although it is understood that these have since been addressed. It is also apparent that many Judges have not held any hearings using Zoom due to the fact that it is not a supported platform by HMCTS and consequently are not able to compare it to any other platform.

6.9.3 Some Judges preferred CVP as this was the only platform which they had used during the pandemic, but most Judges who chose either Teams or Zoom as their favoured platform commented that CVP had been actively problematic for them. Complaints about the reliability and functionality of CVP were raised frequently.

6.9.4 For Solicitors and Barristers, Teams was the preference with Zoom as the second choice and CVP third.

- 6.9.5** Teams and Zoom provide a similar offering in terms of reliability and functionality, although Teams is more commonly used. The recording functionality is understood to be marginally simpler on Teams than Zoom. The advantages of Zoom are the unlimited number of participants and consistent screen image size. The ability to use break-out rooms is an important feature which Teams has recently added.
- 6.9.6** The conclusion that has been reached is that the best performing platform is Zoom and, although Zoom is not currently 'supported' by HMCTS, it is the recommended one to use.

Chapter 7 - What tech is required by all Judges?

- 7.1 Survey Results.** The judicial survey asked about the access to appropriate technology if they are either sitting at Court or remotely at home. They were also asked as to whether they were satisfied with the technical support and training required.
- 7.2** The total number of Judges that stated that they were not satisfied with the technology at Court was 63 or 29% and whilst at home this rose to 71 or 33%. The breakdown of these figures is as follows;

Level of Judge	Dissatisfied at Court		Dissatisfied at Home	
High Court Judge	1	14%	1	14%
Circuit Judge	0	0%	1	5.5%
District Judge	30	26.7%	55	49%
Deputy District Judge	27	43%	12	19%
Recorder	4	25%	0	0%

- 7.3** It is noteworthy that the level of Judges that do the vast majority of the work in the FRC, namely the District Bench, were the least satisfied with the provision of technology. Further the dissatisfaction of the full time District Judges was far greater when they were sitting at home. The opposite is true for the fee paid judiciary who were less dissatisfied with the technology which they used at home when compared to their experience in Court buildings.
- 7.4** Narrative responses concerning technology:

I would prefer two large screens at home. I have to use my laptop as the second screen but struggle moving between two different screen sizes. Whether in court or at home I use my iPad in addition to what has been provided for me and could not do without it. CJ

*I have to provide my own kit at home and struggled to get kit at court. Sometimes I get it. It is ridiculous that I have had to buy my own laptop to work from home..
Deputy District Judge*

Two screens required at all times. Deputy District Judge

I have never seen a pool laptop. Deputy District Judge

I would wish to have a pool laptop which will both work with the court monitors as designed and also access the diaries and servers et cetera. Deputy District Judge

Not every courtroom has an additional screen for the bundle, I had to unplug the screen in the retiring room and move it into the court room and back again several times during the week I was there. I have used my own screen at home when conducting remote hearings. District Judge

The problem is the software. The case management system is clunky and slow to operate. It was quicker for me 15 years ago with a Solicitors case management system. District Judge

The Wi-Fi at Court is not as good as it is at home and freezes. District Judge

I have no big screen in my court room and have to use a laptop. High Court Judge

- 7.5 The survey also asked as to the satisfaction with the training and technical support provided to the judiciary. The number of Judges that were dissatisfied was 72 or 33%. Those figures breakdown as follows:

Level of Judge	Dissatisfied with training/Support	
High Court Judge	0	0%
Circuit Judge	5	27%
District Judge	24	21%
Deputy District Judge	39	62%
Recorder	4	25%

7.6 The level of dissatisfaction is significant across all levels of judiciary save for the High Court bench. The figure for Deputy District Judges is extremely high which is significant as they carry a high percentage of the workload within the FRC and they must be appropriately trained.

7.7 Narrative Comments on dissatisfaction with training/support:

I have had no training. The staff cannot help much if the gear fails. They are very polite and do what they can. The full-back on phones if all else fails. - DDJ

I have had none at the moment -DDJ

I am a peripatetic Deputy District Judge so arrangements differ in the different courts, but having someone in the court staff as tech savvy would sometimes be helpful -DDJ

Any training would be welcome. I take part in the webinars but more hands-on local training at court would be helpful. The technical support is hampered by my using my own laptop and not being able to access the court system. DDJ

Deputy District Judges need access to the papers online. There should be no issues in contacting a DSO on the day if needed. If we are going to do remote hearings I would be better off staying at home and using my own multiple screen set up than attending court where our force to use only the small laptop screen if no one can connect me.

There appears to be scant technical support and no training for DDJs.

We have had to acquire a loss of skills and do self teaching. Better IT training for all Judges on bundles and IT in general would help. CJ

we should have tips on using the systems more efficiently as I only feel I know the basics. CJ

No real provision was made for teaching the use of teams, CVP, BTMM or other platforms or indeed how to use or operate electronic bundles. Online tutorials for all of this, plus handouts would have been of great assistance instead of having to research it and learn by trial and error. Handy tips and updates would also have helped. DJ

I would like to be trained within my working day, rather than be expected to self train after I have worked all day. DJ

Notification of proposed changes and introduction of new processes in advance. Training in advance of the introduction of change. An appreciation that training needs to be offered with sufficient notice to take account of our lists and we are given protected time for the training, or if done out of house given time in lieu. DJ

I have pieced together my own understanding of the IT over the past year. It is isolating and stressful. DJ

one to one training and the time to undertake training as opposed to trying to fit it around impossible lists. DJ

7.8 There is significant dissatisfaction in this area and the following is set out as a guide to what it is considered should be provided in order for all Judges to be able to have access to the digital Court and feel comfortable/knowledgeable whilst doing so.

7.9 Wi-Fi

7.9.1 Access to Wi-Fi is obviously important but it seems the provision by the Court service of judicial Wi-Fi has overcome any issues. Concerns have been expressed about bandwidth made available to Courts, and this has not yet been tested, as so much work is being done by Judges from their homes. This is an issue that needs to be kept under review, as a failure of the Court's network to deal with the work asked of it, which could include every Judge in the Court building logging on to an online video hearing, would be significant. It is noted that some responses do make adverse comment about wifi access in certain Courts.

7.10 Computers / Laptops

7.10.1 All salaried Judges are provided with a laptop that runs Windows 10. The laptops come in 2 configurations, specifically open build, or DOM1.

7.10.2 DOM1 computers provide access to the Court services servers, so direct access to stored electronic documents is possible. However, a DOM1 computer has significantly restricted customisation. A Judge could not, for example, connect a Bluetooth keyboard to such a computer, or load software that they might find useful.

7.10.3 Open build computers, on the other hand, gives the Judge much greater flexibility and subject to being satisfied as to security the Judge can configure their computer and upload appropriate software as necessary.

- 7.10.4** The use of DOM1 must be looked at, with a view to removing it as a necessity for judicial use. Judges in the criminal Courts do not use or need it, and they have access to very sensitive material.
- 7.10.5** The position is different for fee paid Judges. Whilst the Court service has previously made laptops available to fee paid Judges, that provision was usually fraught with difficulties using the Court-provided computer because of the need for complex passwords to access the DOM1 network.
- 7.10.6** Therefore, fee paid Judges would make use of their own computers and rely on HMCTS to transfer any documents to them by email to their e-judiciary address, or transfer any file through Microsoft OneDrive, which is available to all fee paid Judges through the provision of a Microsoft 365 licence.
- 7.10.7** It is not clear what HMCTS took into account when deciding what laptop would be supplied to Judges. Whilst the laptop provided to the Judges recently is of a type often used by businesses, it seems that portability has been chosen over screen size. It is not known how many judicial laptops are taken from the Court buildings to Judges' homes, but they will be transferred from chambers to courtroom, where necessary. Many District Judges conduct most of their hearings in their chambers but will need to move from time to time.
- 7.10.8** In practical terms, dealing with the array of documents provided to a Judge in any FR case, the Judge requires the use of additional screens, as the laptop screen is not sufficient.

7.11 Screens

- 7.11.1** Screens are hugely important for Judges to access documents and other information needed for the purpose of carrying out their role. In addition, many Judges take their notes using their computer. The present provision by HMCTS is 2 separate screens, mounted on articulated arms. There is no consistency in the provision of these screens; their location has been decided on the individual preference of the main user of the courtroom or chambers, or they have been installed without any consultation at all.

- 7.11.2** Judges must be able to configure the position of their display equipment to meet their own individual needs, and therefore screens should not be installed in Courts unless they are on articulating stands, so their position can be adjusted, or if necessary moved out of the way.
- 7.11.3** The requirement for a good quality screen in FR work is particularly acute given the importance of spreadsheets so often provided by parties' representatives and the need to have a clear view of what is being presented.
- 7.11.4** The provision of two screens provides Judges with the option of rotating one screen so they may better read A4 portrait documents. This is a necessary provision, and screens should not be provided which do not have this feature.
- 7.11.5** Given the purpose of the screen is to present an electronic facsimile of a real document, it is surprising the resolution of the provided displays is not the highest that is available. Many laptops and tablets have improved the pixel density of the display such that the individual pixels cannot be differentiated by the user, thus improving the quality of the image. That approach is not reflected in the displays provided by HMCTS for judicial use. Many displays are less than 1920 x 1080, where the screen will have a width of 1,920 pixels while the height of the screen will be 1,080 pixels. Current provision is less than that, at 1680 x 1050.
- 7.11.6** 4K displays (4K displays come with 3840 x 2160 pixels; 4 times 1080 displays) provide a much better quality image for the user. Computers provided to the judiciary are capable of driving such displays. It is proposed that HMCTS be asked to provide the very highest quality resolution displays so the best possible image of any document can be before the Judge. This is particularly important where small text is being used and, whilst it can be expanded on screen, the purpose of having the screen is to present to the Judge that which would have been seen on paper.
- 7.11.7** The size of the screens (the physical distance edge to edge / corner to corner) of the presently provided displays is adequate.

7.11.8 Screens cannot be discussed without also considering the display screen equipment regulations (The Health and Safety (Display Screen Equipment) regulations 1992 etc).

7.11.9 All HMCTS staff are required to comply with the regulations, and the Court service is required to ensure staff comply. The purpose of the regulations is to avoid musculoskeletal disorders and any upper limb disorders caused by working practises using display screen equipment. There should be no difference in the requirement to comply with the regulations between HMCTS staff, and the judiciary.

7.11.10 Long term continual use of display screen equipment poses a risk to the health of the user; that is why the regulations exist. The provision of any display screen equipment to the judiciary must reflect the regulations and their individual needs.

7.11.11 Whilst display screen equipment audits are presently offered to all salaried Judges for their work at their Court buildings (but not their homes), it seems no such provision is provided to part-time Judges.

7.11.12 In complying with the regulations, best practice is for the screen to be directly in front of the user at eye level. This is simply impossible to achieve in a Court room, where it is necessary for the Judge to have their additional screens off to side, where it can only be looked out by a significant turn to the left or right.

7.11.13 Further, requirements to have appropriate breaks is not reflected in anyway in the practice of Judges hearing cases. With a greater reliance upon information technology and the need by Judges to work with that technology, it is suggested that this issue be examined specifically to identify how the health and safety requirements will be applied to Judges.

7.12 BYOC (bring your own computer)

7.12.1 Many fee paid Judges will come to Court and bring their own computer. Whilst some would prefer that a computer be provided for them, anecdotal evidence suggests that many fee paid Judges would continue to use their own computer even if they had a choice.

7.12.2 It is an issue for fee paid Judges using their own computers if they are not able to connect their equipment to that provided for judicial use by HMCTS. Accordingly, the use of proprietary connectors (e.g. Microsoft Surface laptop, now being provided to some Judges and Court staff) makes connection to screens and other peripherals very difficult for fee paid judges, unless separate provision for connection is made. It is common to find fee paid Judges coming to Court with a Macintosh laptop and then being unable to connect to the peripherals, unless a USB connector is available. Whilst Court rooms and chambers continue to have the Dell Docking station D3100, then it will allow all Judges to use screens, keyboards and mice, as it is a USB connected device, and the software is available for windows 10 and mac OS. If a proprietary connector is used, then this will not be possible.

7.13 Software

7.13.1 Microsoft 365 licences puts the core applications (Word, Excel etc) on the computers of all Judges. PDF Software is also available to salaried Judges.

7.13.2 In time, documents supplied to Judges by HMCTS will be available online, and the move away from paper to electronic filing takes place.

7.13.3 It is understood that the move will be to web-based systems; access is through a web browser, rather than some proprietary software. If this were not the case, Judges using systems other than windows 10 are excluded, with a disproportionate effect on fee paid Judges, many of whom use Macs.

7.13.4 It is hoped that whatever provision is made, it will be web based, including software for generating orders, which has previously been made available in a MS Windows PC format only.

7.13.5 The use of any device must of course comply with the document “The Responsibilities of the Judiciary IT (Security) April 2021”

7.14 Support

7.14.1 At the moment most Judges rely upon Digital Support Officers (“DSOs”) or Information Technology Liaison Judges (“ITLJs”) together with telephone support to manage problems with their computer. Fee paid Judges can ask DSOs and ITLJ’s for help and support but there is no external provision particularly if the user is using a Mac rather than a Windows PC.

7.14.2 Issues with support relate to the availability of staff acting as DSOs, and their technological knowledge, and the time for response by the telephone support service.

7.15 Remote hearings

7.15.1 Over the course of the pandemic FRC Judges have become skilled at using online video platforms to conduct hearings, and it is now expected that this will continue. In conducting remote hearings, it is important that Judges are presented in the best light over whatever video platform is being used. The Nuffield Family Justice Observatory report “Remote hearings in the family justice system” reported concern that the relative informality of video hearings meant that lay parties were not taking the Court as seriously as they would if the hearing were taking place in person. This needs to be reflected in Judge’s practice. In the responses to the online consultation one respondent suggested separate webcams be made available for Judges. This would make it possible to place the camera directly in front of the Judge at the appropriate height with little difficulty and without great expense, improving how they are seen online. Further, Judges using their laptop containing the camera within the display bezel should have laptop stands provided, so they can lift the camera to the appropriate height to avoid parties literally seeing up the Judge’s nose.

7.15.2 Judges should be provided with a choice of appropriate judicial virtual backgrounds, and any video platform Judges are expected to use must make provision for this.

7.16 Judicial control

7.16.1 Sometimes it is necessary to mute or exclude a party from a hearing due to their behaviour. The controls to do so must be available to the Judge at all times, so they can be used immediately if necessary

7.17 Hybrid Hearings

7.17.1 Hybrid hearings will continue to be an important part of the ways of working and the Court service should work with the judiciary to identify appropriate equipment that meets the needs of the individual courtrooms in which hearings are being heard. Such hearings require the use of a videolink in the courtroom and whilst the number of these has been increased, they are not available in many courtrooms.

7.18 Seating

7.18.1 All Judges must have seating when carrying out remote hearings that allows them to sit in comfort in the same spot for periods of time. This is unlike a face-to-face hearing where, if the Judge moves from one position to another, that is of no consequence to the parties, who may not even notice. However, if the Judge is on camera, that can have a significant impact on the hearing, including whether the Judge remains in frame or not

7.19 Lighting

7.19.1 Lighting is of obvious importance for video hearings. Some Court chambers have windows behind the Judge which creates challenges for video hearings. Judges should be offered appropriate blinds and if necessary, a screen as a background to ensure that they are properly lit. The Judge cannot be a silhouette.

7.20 Document viewer

7.20.1 Sometimes, particularly with hybrid hearings, parties attend with documents that need to be looked at. This is more of an issue where parties are in person and they have failed to comply with disclosure directions or where a document has simply been brought to light at the last minute through nobody's fault. At present, there is

no equipment available to the judiciary for them to show a document using a separate camera. Provisions should be made in all courtrooms for such equipment.

7.21 Plugs

7.21.1 One of the consequences of lots of computers is the need to power them. Many Courts have now run out of places in which equipment can be plugged given part timers now bring their own equipment in more plugs are required

7.22 Translation

7.22.1 The need to use interpreters is one that Judges will be familiar with. The usual approach to translation can potentially double the length of the hearing where everything said has to be repeated directly afterwards in the appropriate language. Given that Courts are to be provided with cameras and transmission devices and microphones, these should be used to provide real time translation, which might take place away from the Court centre. Some Courts are being provided with radio devices so the translator can provide real time translation, but it requires them to be sitting in the courtroom. Whilst this might be effective in a large courtroom, it is completely ineffective in a District Judges chambers.

Annex A - FRC Recovery Group Members

Chair/CJ	Stuart Farquhar	Brighton
High Court Judge	Robert Peel	London
Circuit Judge	Martin O'Dwyer	London
District Judge	Louise McCabe	Midlands
District Judge	Ranjit Uppal	North East
Recorder	Christopher Felstead	Wales
Deputy District Judge	Deborah Dinan-Hayward	Bristol
Solicitor	Helen Robson	Teeside
Solicitor	Caroline Park	London
Barrister	Samantha Hillas QC	Northern Circuit
Barrister	Emily Ward	North East Circuit

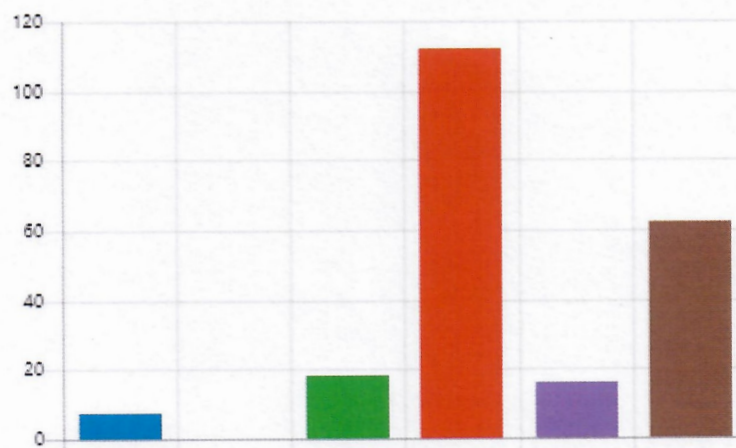
Annex B – Survey Results – Judges

Financial Remedies Court: The Way Forward

215 Responses 26:25 Average time to complete Active Status

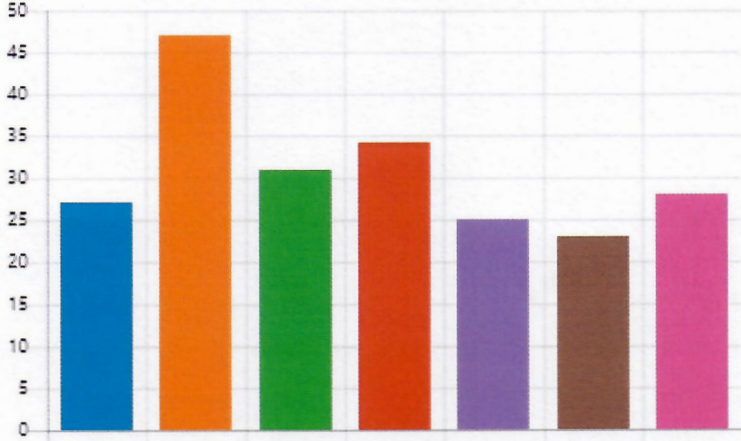
1. What level of Judge are you?

● High Court Judge	7
● Deputy High Court Judge	0
● Circuit Judge	18
● District Judge	112
● Recorder	16
● Deputy District Judge	62



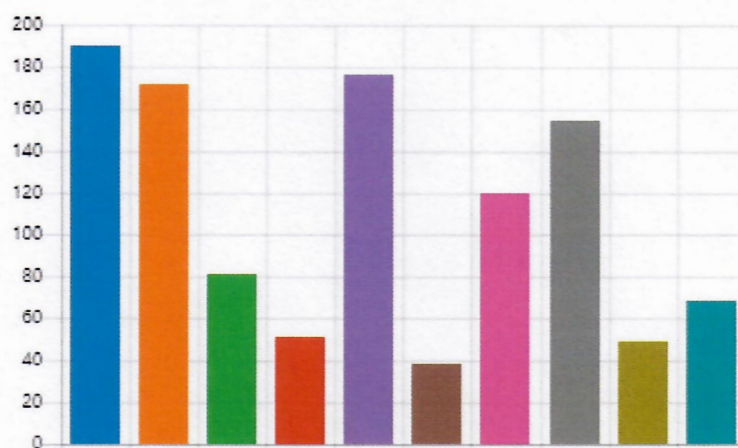
2. In which Region do you normally sit? Just select one.

● London	27
● South East	47
● Western Circuit	31
● The Midlands	34
● Wales	25
● North West	23
● North East	28



3. Which of the following type of hearings, if any, do you consider appropriate to be heard remotely in the future as opposed to an attended hearing. You can select multiple options.

● First Appointments	190
● Without Notice Applications	172
● Contested Interim Application...	81
● FDRs	51
● Pre Trial Reviews	176
● Final Hearings	38
● Taking of expert evidence at fi...	120
● Taking evidence from oversea...	155
● Appeals	49
● Enforcement hearings	68



4. If you have selected one or more from question 2, why do you make the distinction for that type of hearing?

179
Responses

Latest Responses

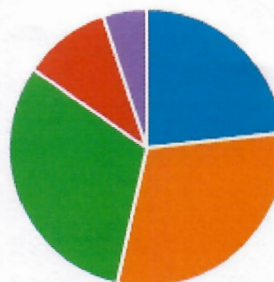
"They do not require the taking of evidence and further prev...

"I have no issue with case management being heard remotel...

"All hearings in FR cases save those involving the liberty of t...

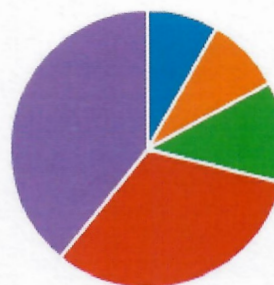
5. How strongly would you wish to see future hearings proceed remotely rather than in the court building for First Appointments?

● Very Strongly	50
● Strongly	65
● Neutral	67
● Oppose	22
● Strongly Oppose	11



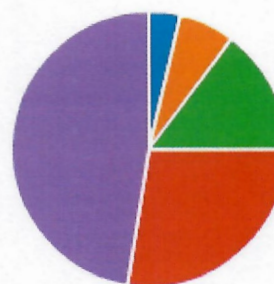
6. How strongly would you wish to see future hearings proceed remotely rather than in the court building for FDRs?

● Very Strongly	18
● Strongly	19
● Neutral	25
● Oppose	69
● Strongly Oppose	84



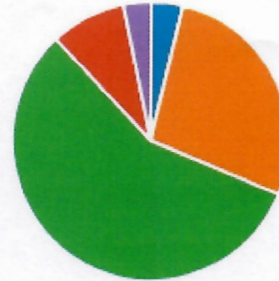
7. How strongly would you wish to see future hearings proceed remotely rather than in the court building for Final Hearings?

● Very Strongly	8
● Strongly	14
● Neutral	32
● Oppose	59
● Strongly Oppose	102



8. If hearings are to be held remotely in the future then which platform do you consider to be the best option for such hearings? Only one option to be selected.

● Bt Meetme	8
● CVP	59
● Teams	122
● Zoom	19
● Other	7



9. Please set out your reason for choosing a particular option. What features do you consider are important for any platform?

195
Responses

Latest Responses

"It works from home !!"

"I have selected other because different platforms are suitabl..."

"CVP works very well for me. it can be managed by the clerk..."

10. How have you found the use of Electronic Bundles?

● Very Positive	33
● Positive	66
● Neutral	50
● Negative	42
● Very Negative	24



11. Please give reasons for your previous answer. What was hard, easy, difficult or an improvement over paper bundles? What are the essential features required in an E-Bundle? Are you broadly content with the ebundles protocol of 3 March 2020 (<https://www.judiciary.uk/announcements/financial-remedies-courts-e-bundles-protocol/>), or would you wish to see it amended?

199
Responses

Latest Responses

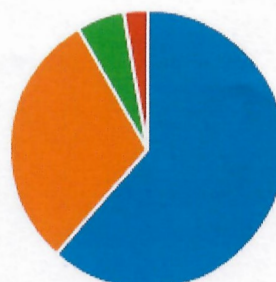
"Sometimes they are not very easy to navigate"

"As of yet I have not used an electronic bundle as parties con..."

"Electronic bundles are an essential tool in the management..."

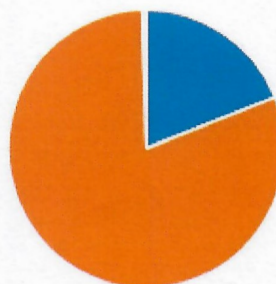
12. In how many cases have you made an order for there to be a Private FDR in the last year?

● None	132
● 1-5 cases	65
● 5-10 cases	12
● Greater than 10	6



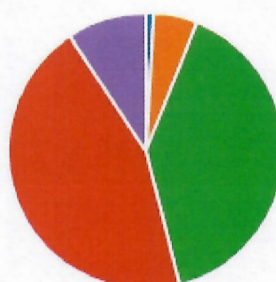
13. Has there been any change in the number of Private FDRs you have ordered in the last 12 months when compared with the previous 12 months?

● An increase	41
● No Change	173
● A decrease	1



14. In relation to FDRs, do you feel that the settlement rate has been higher or lower with remote hearings?

● Much Higher	2
● Higher	11
● About the same	86
● Lower	96
● Much Lower	20



15. In general what do you consider as the main advantages/disadvantages of remote hearings and what improvements could be made for them to succeed?

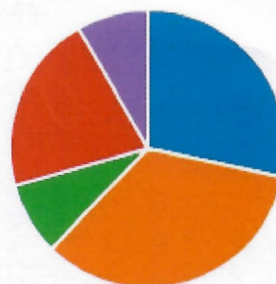
198
Responses

Latest Responses

- "Saves needless expense for the parties and waiting around c...
- "I feel they are more for the parties convenience than the J...
- "Huge advantage incl: court efficiency equal footing all have...

16. When sitting at Court I have access to the appropriate technology to conduct remote hearings?

● Fully Agree	61
● Partially Agree	73
● Neutral	18
● Partially Disagree	45
● Fully Disagree	18



17. When sitting at home I have access to the appropriate technology to conduct remote hearings?

● Fully Agree	65
● Partially Agree	59
● Neutral	20
● Partially Disagree	30
● Fully Disagree	41



18. If not fully satisfied as to access to technology, what further equipment would you wish to be provided?

159
Responses

Latest Responses
 "Court cameras and spare laptops for the witnesses"
 "It's OK now. working well."

19. Are you satisfied with the technical support and training provided whilst sitting?

● Fully Satisfied	41
● Partially Satisfied	69
● Neutral	33
● Partially Dissatisfied	45
● Fully Dissatisfied	27



20. What further technical support and or training, if any, would you wish to receive?

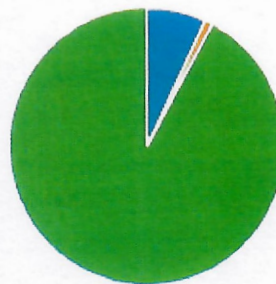
156
Responses

Latest Responses

"There needs to be fully equipped ready to go courts"
"Looking at videos in our own time is not the same as havin..."
"judges need one to one initial help on sample/real cases wh..."

21. Should the Financial Remedies court consider flexible sitting?

● Yes, in the late afternoon/even...	15
● Yes, at weekends	2
● No	198



22. Are there any other suggestions you wish to make to improve the process of conducting work in the Financial Remedies Court? This need not be restricted to issues relating to remote hearings but can encompass the whole of the process from start to end.

116
Responses

Latest Responses





"The whole process needs to be looked at again but include t..."
"The conduct of FR cases is an expensive scandal. it is shocki..."

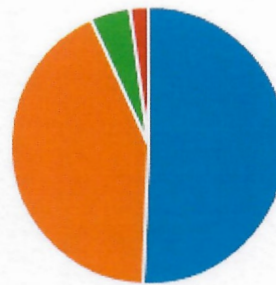
Annex C – Survey Results – Lawyers

Financial Remedies Court: The Way Forward






896 Responses 30:48 Average time to complete Active Status

1. Which of the following best describes you?

 Solicitor	454
 Barrister	381
 Legal Executive	42
 Other	19



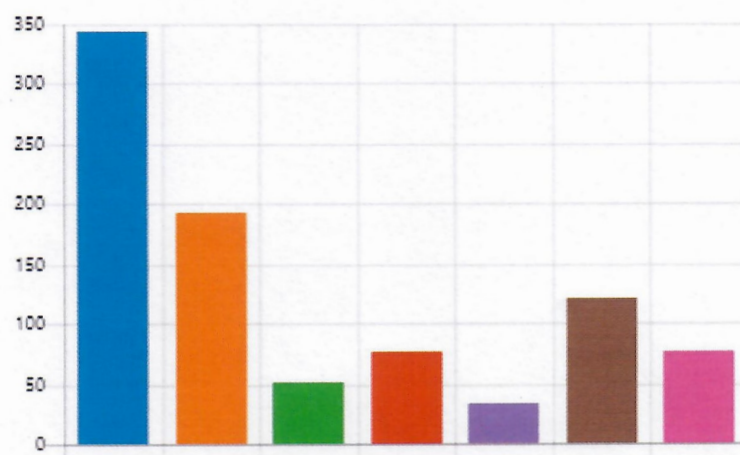
2. What percentage of your work is in the Financial Remedies Court?

 100%	98
 75-99%	291
 50-75%	283
 25-50%	136
 Less than 25%	88



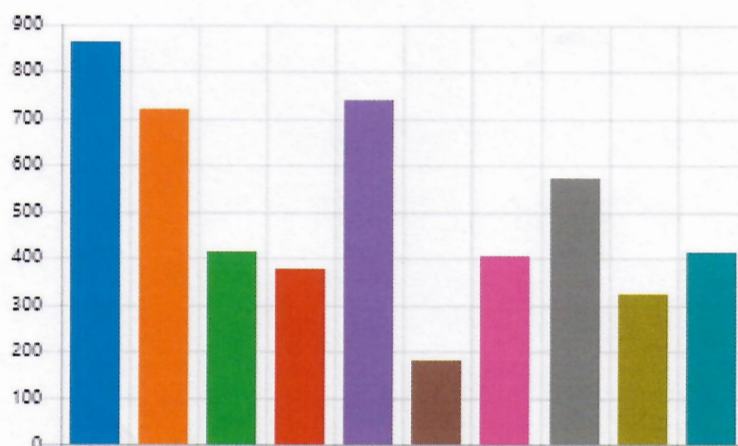
3. In which Region do you normally appear? Just select one.

● London	343
● South East	193
● Western Circuit	51
● The Midlands	77
● Wales	34
● North West	121
● North East	77



4. Which of the following type of hearings, if any, do you consider appropriate to be heard remotely in the future as opposed to an attended hearing. You can select multiple options.

● First Appointments	865
● Without Notice Applications	718
● Contested Interim Application...	414
● FDRs	375
● Pre Trial Reviews	740
● Final Hearings	181
● Taking of expert evidence at fi...	407
● Taking evidence from oversea...	573
● Appeals	324
● Enforcement hearings	415



5. If you have selected one or more from question 4, why do you make the distinction for that type of hearing?

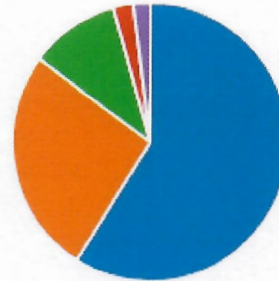
764
Responses

Latest Responses

"I consider all hearings can be heard remotely. The only hear...
"All those selected are essentially administrative or uncontes...

6. How strongly would you wish to see future hearings proceed remotely rather than in the court building for First Appointments?

● Very Strongly	528
● Strongly	235
● Neutral	94
● Oppose	21
● Strongly Oppose	18



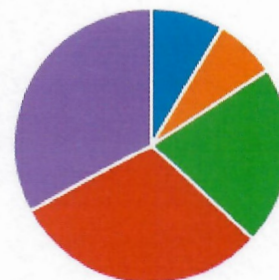
7. How strongly would you wish to see future hearings proceed remotely rather than in the court building for FDRs?

● Very Strongly	145
● Strongly	182
● Neutral	167
● Oppose	229
● Strongly Oppose	173



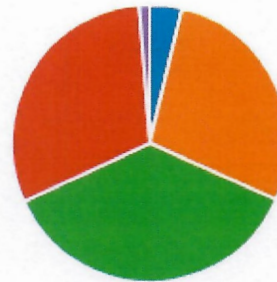
8. How strongly would you wish to see future hearings proceed remotely rather than in the court building for Final Hearings?

● Very Strongly	77
● Strongly	65
● Neutral	189
● Oppose	270
● Strongly Oppose	295



9. If hearings are to be held remotely in the future then which platform do you consider to be the best option for such hearings? Only one option to be selected.

● Bt Meetme	34
● CVP	250
● Teams	326
● Zoom	275
● Other	11



10. Please set out your reason for choosing a particular option. What features do you consider are important for any platform?

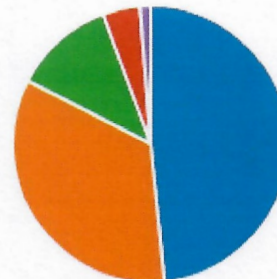
758
Responses

Latest Responses

"CVP or Zoom. They have different benefits. Importance is a..."
"Teams is reliable and easy for all participants to use. Reliabi..."

11. How have you found the use of Electronic Bundles?

● Very Positive	434
● Positive	306
● Neutral	106
● Negative	39
● Very Negative	11



12. Please give reasons for your previous answer. What was hard, easy, difficult or an improvement over paper bundles? What are the essential features required in an E-Bundle? Are you broadly content with the ebundles protocol of 3 March 2020 (<https://www.judiciary.uk/announcements/financial-remedies-courts-e-bundles-protocol/>), or would you wish to see it amended?

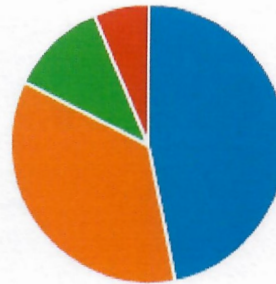
739
Responses

Latest Responses

"Essential features: searchable; book marking; hyperlinked in..."
"An electronic bundle is easier to navigate quickly, it is adap..."

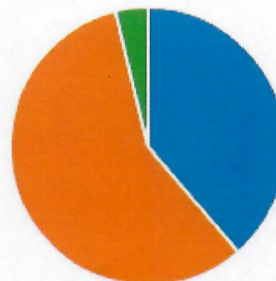
13. In how many of your cases has there been a Private FDR in the last year?

● None	420
● 1-5 cases	317
● 5-10 cases	101
● Greater than 10	58



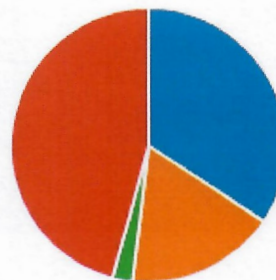
14. Has there been any change in the number of Private FDRs in your cases in the last 12 months when compared with the previous 12 months?

● An increase	347
● No Change	515
● A decrease	34



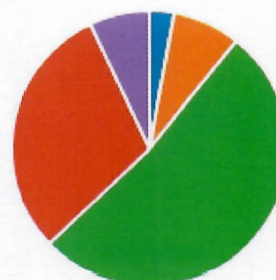
15. If you have been involved in any private FDRs, how does the settlement rate compare to a Court FDR?

● Higher	307
● The Same	158
● Lower	21
● Not been involved in Private F...	410



16. In relation to Court FDRs, do you feel that the settlement rate has been higher or lower with remote hearings?

● Much Higher	26
● Higher	71
● About the same	467
● Lower	269
● Much Lower	63



17. In general what do you consider as the main advantages/disadvantages of remote hearings and what improvements could be made for them to succeed?

735

Responses

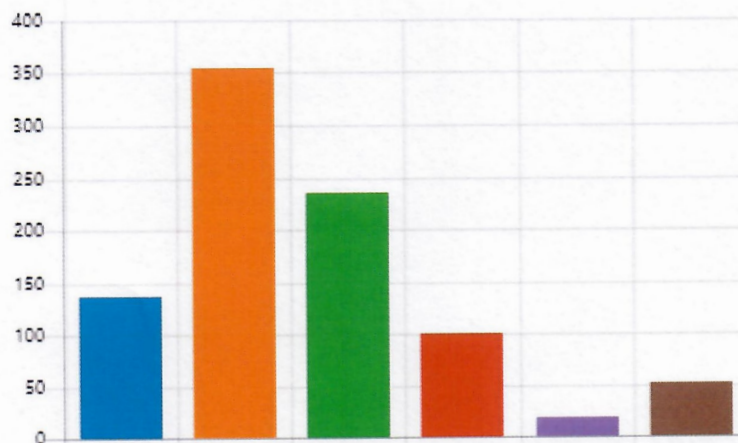
Latest Responses

"Advantages: parties do not have to face their ex-spouses; th...

"There is an advantage in reducing travel, stress on the clien...

18. What has been the experience of your client of remote hearings?

Very Positive	137
Positive	354
Neutral	235
Negative	100
Very Negative	19
Do not know	51



19. Please set out any information as to why your clients have the views that they state in relation to remote hearings.

566

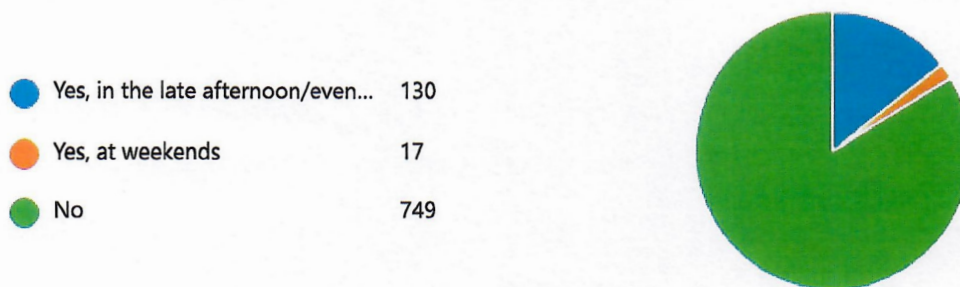
Responses

Latest Responses

"In the comfort of their homes and don't have to see ex-part...

"They do not feel as engaged in the process or that the heari...

20. Should the Financial Remedies court consider flexible sitting?



21. Are there any other suggestions you wish to make to improve the process of conducting work in the Financial Remedies Court? This need not be restricted to issues relating to remote hearings but can encompass the whole of the process from start to end.

424
Responses

Latest Responses

"There seem to me to be no reason why most first appointm...

Annex D – E-bundle Protocol

MR JUSTICE MOSTYN

**FINANCIAL REMEDIES COURTS
E-BUNDLES PROTOCOL**

1. The Financial Remedies Courts Good Practice Protocol of 7 November 2019 states at para 18 that “the FRCs will endeavour to adopt environmentally friendly processes. For example, where possible, parties will be encouraged to conduct hearings on a paperless basis”.
2. FPR PD27A para 2.5 permits the use of e-bundles in a hearing before a High Court judge with that judge’s permission and in other cases or classes of case as have been approved by the Designated Family Judge for the relevant area with the agreement of the President of the Family Division and in accordance with the local arrangements.
3. The necessary approvals and agreements for the use, in principle, of e-bundles in FRC Zones have been obtained and local arrangements are being established.
4. Where an e-bundle is to be used the following technical requirements should be observed:
 - a. PDF format is to be used;
 - b. All documents are to be contained, if possible, within one single PDF file;
 - c. The PDF file must be searchable;
 - d. Pagination must be computer generated within the PDF, not hand-written.
 - i. Original pagination must be by section and page number i.e. A1, A2, A3.... B1, B2, B3 etc;
 - ii. Insertions, after compilation of the original bundles, should be using ‘legal’ numbering (e.g. B13.1, B13.2, B 13.3 to be inserted between B13 and B14);
 - e. Each section of the bundle, and each individual document referenced in the index, should be separately bookmarked.
5. The e-bundle should be delivered via a cloud-based link (e.g. iCloud, OneDrive, Dropbox or Google Drive) rather than in a series of emails.
6. It is acceptable for a hearing to be partly paperless. For example, in a routine financial remedy case involving oral evidence it will be commonplace for a witness to work from a paper bundle, while the judge and counsel are paperless.
7. Nothing in this Protocol limits the parties from agreeing, with the consent of the court, to use an e-bundle service from a commercial provider.

For guidance on how to prepare and amend such a bundle on a Mac see
<https://www.youtube.com/watch?v=Ij2Q-2sq5iI&list=PLPs6vztSaEOgtpFB62vq6tGT6flcRdRof&index=3>

Hon Mr Justice Mostyn
3 March 2020