

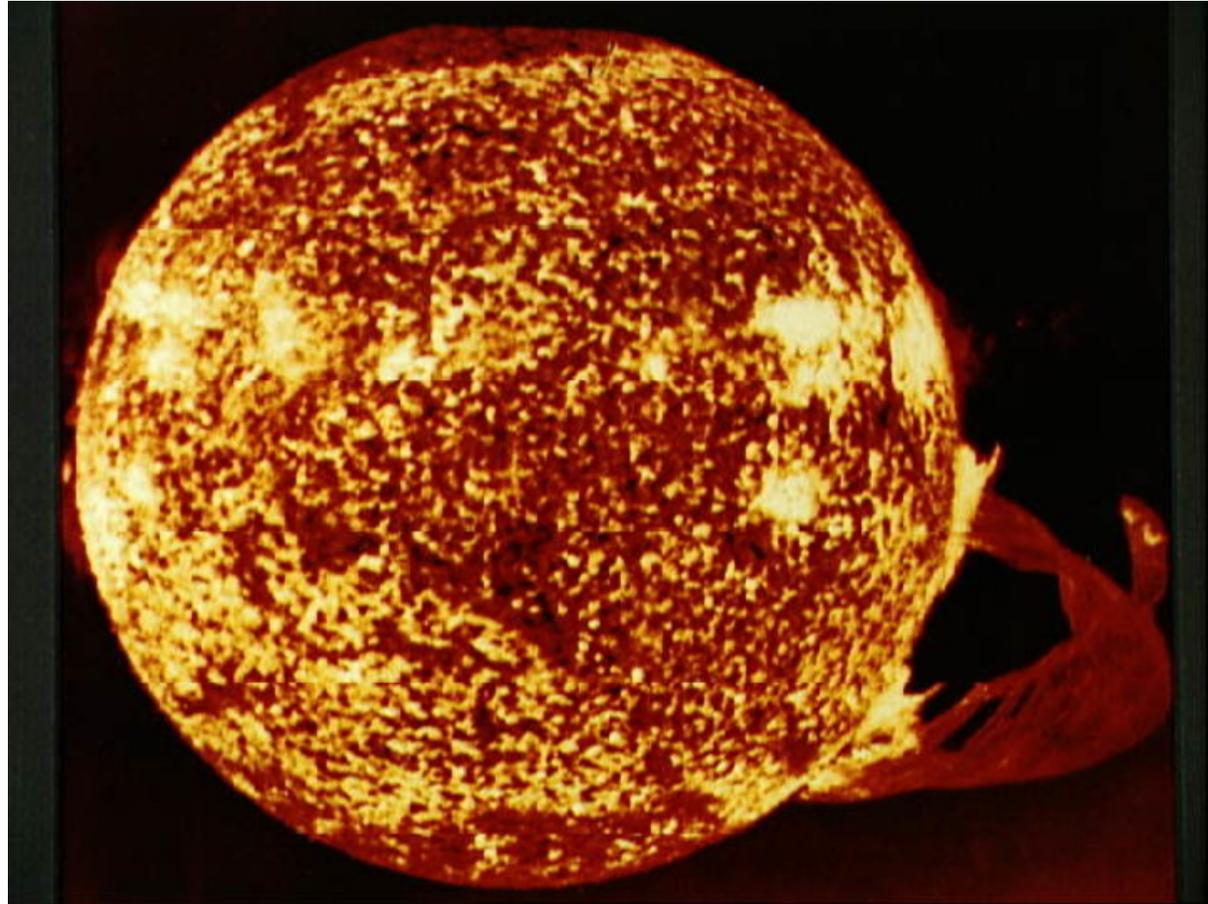
Family Law in Conversation: An Essential Update with Mena Ruparel MCIArb and OurFamilyWizard

Webinar Schedule

- 3.00pm – 3.30pm Mena Ruparel MCIArb
- 3.30pm – 4.30pm James Evans, OFW
- 4.30pm – 5.00pm Mena Ruparel MCIArb



The operation of the family court in a time of crisis



Family Court

- Good idea to sign up for email alerts from HMCTS
- The courts are either **Open, Staffed** or **Suspended** - list available on HMCTS coronavirus page
- Court Staff are still needed to go to Court to deal with cases, even if the Judge isn't at Court
- There is an attempt to reduce the amount of paper that is flowing to and from the court, the court isn't immediately equipped to deal with everything by email
- Staff numbers are down 40-60% depending on the court

Financial Remedies guidance

- Mr Justice Mostyn 17th March 2020
- First appointments to use the “accelerated “ paper only procedure
- Parties should be encouraged to use private FDRs
- Other hearings should be conducted by Skype for Business or telephone
- Physical hearings should only take place where unavoidable
- Ebundles should be “virtually” mandatory

Covid 19 – The President’s guidance (19/03/2020)

- The default position should be that all Family Court hearings should be undertaken remotely
- Where it is safe to conduct a hearing at court and it is necessary in the interests of “fairness and justice”; a physical court hearing should take place
- Para 8 deals with the categories of hearings that are suitable for a remote hearing

8. The following categories of hearing are suitable for remote hearing:

- a. All directions and case management hearings;
- b. Public Law Children:
 - i. Emergency Protection Orders
 - ii. Interim Care Orders
 - iii. Issue Resolution Hearings;
- c. Private Law Children:
 - i. First Hearing Dispute Resolution Appointments
 - ii. Dispute Resolution Appointments
 - iii. Other interim hearings
 - iv. Simple short contested cases

Page 2 of 9

- d. Injunction applications where there is no evidence that is to be heard (or only limited evidence).
- e. Financial Cases [see the guidance issued for the Financial Remedies Court by Mostyn J on 17th March at Appendix B below].
- f. Appeals.
- g. Other hearings as directed by the judge concerned.

Family Court priorities 14/April/2020

- HMCTS coronavirus updates gov.uk/hmcts
- HMCTS have split work into three categories –
 - **Work that must be done** (Public law. Private children urgent applications, Child Abduction/Court of Protection (CoP))
 - **Work that will be done** (Gatekeeping and allocation (care and private children) other family care orders, documents/emails/CoP)
 - **Work that they will try their best to do** (other private law orders, documents, emails/Adoption/Divorce/Financial Remedy/CoP (property and affairs) Probate)

Can you make a new application?

- Yes – the preference is to use online portals where possible
- Divorce Online is working and they will do their best to process urgent cases and DA pronouncement (Not DN hearings- some issues)
- C100 applications can still be made, they prefer you use the online child arrangements service <https://apply-to-court-about-child-arrangements.service.justice.gov.uk/>
- If you need an urgent hearing (within 3 days) then contact your local court to arrange for a hearing
- Domestic Violence applications can be made on an urgent without notice basis

What will happen to an existing hearing?

- If the court is open, the court staff will get in touch with you and the parties about the hearing, this might happen very late in the day
- The President's guidance makes it clear that if the hearing doesn't go ahead remotely, it should be listed for a remote directions appointment
- If the court is closed to the public, then court staff will get in touch with parties and their solicitors to let them know which court will deal with matters
- Parties and lawyers have been asked not to contact the court to find out about these hearings

Technology (1)

- Judicial and HMCTS Guidance refers us to remote hearing either by SKYPE or telephone
- Para 16 of the President's guidance indicates that the following people are responsible for confirming details of the arrangements for the hearing to the other parties –
 - a. The local authority in a public law case;
 - b. The applicant, if legally represented, in a private law case;
 - c. The respondent, if legally represented and where the applicant is not, in a private law case;
 - d. The court where no party is legally represented.

Technology (2)

- The Judge needs to ensure that the only people at the hearing are those who would be permitted in the court room
- Para 18 President's guidance – file a PDF bundle compliant with PD 27A on the day of the hearing
- The Transparency project has blogged about the use of remote hearings from different perspectives, very useful insights
- HMCTS telephone and video hearings guidance – link available on OFW website resources
- Very detailed guidance on how to use and join either a telephone/video hearing

Technology (3)

- Cloud Video Platform (CVP) is being introduced
- Allows access via any laptop or video device
- No other video conferencing applications are supported at the moment
- Anecdotally, judges have authorised the use of hearings using Zoom
- Further detailed judicial guidance is available – [The Remote Access Family Court – Mr Justice MacDonald V3 \(50 pages\)](#)
- Covers a wide range of issues, remote issuing, E-bundles, Recording, use of Interpreters, Intermediaries, LiPs etc

Awaited

- Just before Easter weekend, a letter has gone out from the President and other senior judges to the judiciary
- Reminder to the Judges that listing decisions are theirs
- Judges should do as much as possible in the current climate
- “there may be real difficulties in taking hotly contested evidence by telephone or laptop.”
- Nuffield foundation - <https://www.nuffieldfjo.org.uk/news/rapid-consultation-remote-hearings>
- **Rapid Consultation on remote hearings, please take part – open until 28th April 2020**

Alternatives to Court

- **Mediation**, all mediators offering remote access mediation
- **Collaborative Law Practice** – practitioners able to offer this service remote access
- **Arbitration** – both financial and children arbitration schemes are available, for single issue decisions or contested matters
- <http://ifla.org.uk/> - two guides on Arbitration (practitioners and Public)
- **Private FDRs** mentioned by Mr Justice Mostyn in his guidance

Children Arbitration Scheme

- Any issue between parents or other persons holding parental responsibility or a sufficient interest in a child's present or future welfare
- Where a child should live including shared living arrangements
- Visiting arrangements including holiday time to be spent with a non residential parent
- Education
- Disputes concerning routine and non life threatening medical treatment
- Temp/Perm relocation cases can now be dealt with (certain jurisdictions)

Financial Arbitration Scheme

- Any financial and property disputes arising from family relationships including (but not limited to) disputes under:
 - Matrimonial Causes Act 1973
 - Inheritance (Provision for Family and Dependants) Act 1975
 - Part III Matrimonial Finance and Property Act 1984
 - Sch. 1 Children Act 1989
 - Trusts of Land and Appointment of Trustees Act 1996
 - Civil Partnership Act 2004
 - Married Women's Property Act 1882

Learning Objectives

1. Understand the operation of the family court in a time of crisis
2. How to conduct remote hearings and understand which hearings are suitable for remote hearings
3. Understand the priorities of the family court at this time
4. Understand the options available to the client if the court isn't able to meet their immediate needs



Mena Ruparel MCI Arb

 mena@menaruparel.com

 020 3390 2216

James Evans, OFW

 jevans@ourfamilywizard.co.uk

 077 8370 2112



(C) Mena Ruparel April 2020

