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WORKING REMOTELY WITH CLIENTS DURING THE COVID-19 PANDEMIC AND BEYOND



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OVERVIEW

- Context
- The impact of the pandemic
- Practical and safeguarding issues and increasing client engagement in interviews
- Representing vulnerable clients in remote hearings
- The future

CONTEXT

CONTEXT

1. Social distancing measures associated with the Covid-19 pandemic are likely to remain with us for some time
2. 'Remote working' has allowed us all to keep working, but is it an effective safe, and ethical way to practise?
3. We work in a wide range of legally aided settings, some issues impact on us all
4. Remote working does not just impact on our clients

TYPES OF REMOTE ASSESSMENT

TYPES OF REMOTE ASSESSMENTS

- Some form of video-link technology
 - Court video-link booth
 - Vodafone Bridge
 - CloudVideo Platform (CVP)
 - Commercially available platforms (e.g. Skype, Zoom, MS teams)
- Telephone
- The client may be in the community or a secure setting

THE IMPACT OF THE COVID-19
PANDEMIC ON CLIENT
ENGAGEMENT

THE IMPACT OF THE PANDEMIC

- **Physical Health**
 - Loss of life, illness, long term health impact
- **Economy**
 - Unemployment, loss of earnings, debt, poverty, hunger, homelessness
- **Society**
 - Increases in IPV, child abuse, substance misuse, social isolation, loneliness
- **Mental Health**
 - Large increases in people presenting with anxiety, depression, self-harm etc

Evidence that the the pandemic is impacting disproportionately on the vulnerable, disadvantaged and marginalised

COVID-19 RELATED BARRIERS TO CLIENT ENGAGEMENT

- They may have very little motivation to engage
- They may present as sad, anxious, distracted, unable to concentrate
- They may be hungry
- They may be physically unwell
- They may not have the resources required (e.g. a laptop, smart phone, phone credit, phone)
- They may not have a suitable venue to talk to you
- They may cancel or miss appointments
- They may be prevented from attending appointments

PRACTICAL AND SAFEGUARDING CONSIDERATIONS
WHEN INTERVIEWING
HOW TO INCREASE ENGAGEMENT

PRACTICAL CONSIDERATIONS FOR INTERVIEWING

- Discuss potential options for interview with your client (face to face, remote, not at all)
- Ask them about resources
- Take client preferences into account
- Do they need a run through/support with IT?
- Check the confidentiality of both settings
- Check your own setting and background
- Confirm an audio or video recording is not being made
- ID checks, related to circumstances

SAFEGUARDING

- Use of video technology may reveal risks that you might not have anticipated
- Are you sure they are not being influenced?
- Interviews can be distressing and less support is likely to be available currently - make sure support is in place or can be put in place
- Think through and talk to your client about what you would do if there was an acute emergency during the assessment. What would you do if they disappeared?
 - how would you manage it?
 - who would you contact?

ENGAGING YOUR CLIENT IN A REMOTE INTERVIEW

- Eye contact, look at the camera!
- Acknowledge the difficulties / limitations
- Building rapport may take longer
- You may need to take more breaks / have shorter sessions
- What about clients with mental health, learning, neurodevelopmental or personality issues?
- Adaptations to interview style
- Share your screen
- Check understanding by asking them to summarise/ reflect back
- Check retention at next session

All of this is much more difficult over the telephone.....

REPRESENTING VULNERABLE CLIENTS IN REMOTE COURT HEARINGS

PITFALLS

- We are all learning new skills and ways to adapt



GENERAL POINTS

- NB primarily from family law perspective
- Vulnerable clients are already in personal crisis.
- Pandemic is global crisis.
- Many individuals including Lawyers, Judges and Court staff are also under extra stresses
- Key is preparation and practical thinking.

PROBLEMS AND CHALLENGES

- Tech – Availability of devices and stress of having to work it.
- Client's relationship with their advocate.
- How does the client communicate with the advocate (and intermediary) during the hearing, particularly if the client does not have a multiplicity of devices.
- Lack of emotional and practical support – client sitting in a car park on his phone, client who has not eaten.
- To what extent does the vulnerable client understand the gravity of the situation?
- Victims of domestic abuse – how to incorporate PD12J and avoid (re) traumatising client further

THE JUDGE

- Try to help your Judge as much as possible (as with all advocacy).
- Your Judge may be lonely, stressed about the tech, stressed about the Court administration as the system is collapsing around them.

SOLUTION AND TIPS

- Advocates should always put the needs of their clients first. What is best for that particular client with those particular needs? Spend time in preparing for the hearing. Consider practicalities and where will everyone be on each particular day?
- In family cases look at the guidance and insist on a hybrid hearing if necessary. Judges will generally be open to this.
- Most vulnerable clients will need to be with their advocate in person. Will this be in Counsel's chambers, solicitor's office or Court? Consider necessary risk assessment. Do not accept pressure for client to be with you in the office if this is not safe. Do not agree to Counsel appearing remotely if your client is physically in Court.
- Intermediaries will continue to be involved.

SOLUTION AND TIPS

- Manage your client's expectations as much as possible, and prepare them for how a remote hearing might work, and what might happen, including tech problems. "PUT YOURSELF ON MUTE!"
- Do not be afraid to ask for time with your client in the middle of the hearing, i.e. "Can I turn my back to take instructions?" Judges are usually happy to you dropping out of the CVP hearing and then re-joining.
- Be alert to see whether your client has left the hearing for some reason. If so, tell the Judge as soon as possible.
- When your client is giving evidence, ensure that the other parties and advocates (save for the advocate who is (cross) examining them), have their video turned off.
- Consider whose video should be turned off – e.g. perpetrator of domestic abuse.
- If your client does not really believe that it is a proper Court hearing, consider sending them hard copies of the Orders in the post. Refer to the Court hearing and the Judge as much as possible in correspondence to impress upon them that they are "real" Court hearings where real Judges are making decisions e.g. about their family.

GUIDANCE FOR VICTIMS OF DOMESTIC ABUSE

<https://www.judiciary.uk/announcements/safety-from-domestic-abuse-and-special-measures-in-remote-and-hybrid-hearings-report-published/>

The checklist of considerations for proceedings in which domestic abuse is an issue is a useful checklist for all cases.

- In what environment will the victim be appearing?
- In what environment will the victim be preparing themselves for and dealing with the aftermath of the hearing?
- What will be visible to the court and any other parties pending the proceedings?
- What will be visible to the victim?
- What kind of environment and level of visibility is necessary in order to ensure physical and emotional safety for the victim and any children involved?
- What kind of environment and level of visibility is necessary to enable the victim to give their best evidence?
- What kind of environment is necessary to enable the victim to prepare themselves mentally and emotionally for the hearing and to cope after the hearing?
- What kind of environment is necessary for the court to deal justly with the case having regard to any welfare issues involved?

GUIDANCE FOR VICTIMS OF DOMESTIC ABUSE

- The guidance provides for victims of domestic abuse to “always be consulted (via their legal representative if they have one) as to their preferred mode of participation”.
- Preparation is always key. Parties should provide relevant details to the court at least 48 hours before the hearing to enable the judge to make a decision as to format and to set up the hearing.
- Remember that contact details for remote hearing may need to be kept private. Do not copy in the other side to your email to the court.
- The victim and perpetrator should never be put in a situation where they are alone together, including on a telephone line or in a video conference.
- Participation in a video conference may be invasive, (re)traumatising and endangering.
- Advice may need to be given to the client as to how to blur their background or use a generic background. This advice can in theory be given by the court. Advice should be given to the victim as to how to cover their screen to avoid having to see the perpetrator if his video is on. DOES THE COURT PROVIDE ALL THIS ADVICE?
- The victim can be excused from the hearing as they are represented and they are not giving evidence.

REMOTE WORKING MOVING FORWARDS

POSITIVES OF REMOTE WORKING

- Clients who are not vulnerable and have good access to tech may find remote hearings to be preferable.
- Remote hearings work well for professional clients such as Guardians.
- Financial hearings have many advantages even FDRs. Negotiations can be more efficient and remove the stress of running around the Court building trying to find waiting rooms, and seeing the ex-spouse.
- Removal of the stress and expense of travelling to a Court building.
- More hearings on the papers (is this a positive or a negative?)

POSITIVES OF REMOTE WORKING

- Vulnerable clients are often quite confused and alienated by the need to turn up to Court for directions hearings where the discussions will all be about the need for prior authority for an expert and there is no real discussion about their child.
- We all believe / suspect, that remote hearings will be the way forward for a lot of directions hearings in the future.
- Remember to build in pre-hearing discussions at least an hour before the hearing and give yourself time to go back to your client to take instructions and then go back to the advocates



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