

A Local Authority v Mother and Father and SX [2020] EWHC 1086 (Fam)

The issues considered

In April 2019, a two month old girl (AX) died from multiple injuries whilst in the care of her mother and father. Both parents denied culpability, though have not disputed the medical evidence. Following the death of AX, the local authority was granted an Interim Care Order with regard to the deceased's four year old sibling, SX, who has been in foster care since.

The question arose as to whether, faced with the realities of Covid-19, the care proceedings should continue via video link, or be adjourned until an eventual court-based hearing. Having heard medical evidence from six expert witnesses via *Zoom*, Lieven J adjourned proceedings to hear submissions on the viability of hearing lay evidence remotely. Though all parties were initially eager to proceed, the Father subsequently informed his lawyers that he was struggling with his mental health, and requested an adjournment on this basis. Lieven J permitted the Father to file a psychiatric report with a view to assessing his capacity to litigate and mental state.

Effectively, there were two main considerations for the court to take into account when determining whether the next stage of the trial should proceed remotely: 1) The 'routine' concerns regarding the use of technology to conduct an effective hearing, and; 2) the Father's mental capacity and ability to engage in proceedings.

The court decision

Acknowledging the need to adapt to the new realities presented by the Covid-19 pandemic and the challenging decisions it precipitates [15], the court held that the trial would be able to proceed remotely to a satisfactory degree, all circumstances considered.

Weighing the benefits between hearing lay evidence in a physical courtroom and remotely, the court concluded that generally, neither one option is definitively favourable [29]. Whilst the pressure of a physical courtroom may compel certain witnesses to tell the truth, others may feel less defensive and therefore more inclined to speak openly in a less formal setting (via video link) [28].

Bearing in mind the three "cardinal points" set out in the recent case of *Re A (Children) (Remote Hearing: Care and Placement Orders)*¹ [21] - which emphasised the wide discretion granted to the court - Lieven J considered in turn each of the ten factors laid out by the Court of Appeal in deciding whether trials should proceed remotely [30]. The importance of the issue for all involved parties was firmly established [31] as was the urgency of the proceedings, with SX due to start school in September as an additional incentive to decide care arrangements as soon as possible [32]. Faced with both the current public health concerns and the Mother's pre-existing health condition making it difficult for her to leave home, an adjournment could have resulted in proceedings being suspended for many months [37]. This outcome would be undesirable for all parties, and potentially detrimental to the wellbeing of SX.

¹ *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] EWCA Civ 583.

Following examination of the psychiatric report concerning the Father's ill-health, the court found that the Father had capacity to litigate within the meaning of the Mental Capacity Act 2005 [11]. As for his mental state, it was noted from the report that his emotional stress and consequential hesitation to participate were not specific to the technological aspect of the trial, moreover the nature of the trial itself [13]. An adjournment would therefore not abate this stress. However, Lieven J emphasised that she would continually review the situation and would not hesitate to suspend proceedings to ensure fairness [59].

Significance

The earlier case of *Re P*,² heard on April 16th, shared several factual similarities with the case in question. In contrast, however, the court in *Re P* held that remote proceedings would not be appropriate, and that the trial should be adjourned.³ The divergence exhibited in *A Local Authority* sheds light on how the courts will determine whether a trial should proceed remotely; there can be no standardised approach, and the court's decision will turn on the specific facts of each individual case.

With many families obligated to isolate together until further notice, there has been a notable spike in calls made to domestic violence hotlines⁴, and organisations such as The Children's Society have expressed concern over the closure of schools exacerbating the struggle for children living in abusive households.⁵ This considered, along with the inevitable backlog of trials noted by Lieven J [34], family courts are likely to face a significant number of cases over the coming months. The decision-making process in *A Local Authority* illustrates that - despite the unprecedented circumstances - ensuring that justice can be delivered efficiently and sensitively remains at the forefront of the court's priorities.

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² *Re P (A Child: Remote Hearing)* [2020] EWFC 32

³ *ibid*, para 29

⁴ UK lockdown: Calls to domestic abuse helpline jump by half' (BBC, 27 April 2020) <<https://www.bbc.co.uk/news/uk-52433520>> accessed 23 May 2020

⁵ Lucy Belcher, 'Being the eyes and ears: spotting signs of abuse and neglect during Covid-19 lockdown' (The Children's Society, 20th April 2020) <<https://www.childrenssociety.org.uk/news-and-blogs/our-blog/being-the-eyes-and-ears-spotting-signs-of-abuse-while-schools-are-closed>> accessed 23 May 2020