

FAMILY COMMITTEE

To: All members of JCS,

Date: 20 September 2024

Hearings conducted by legal advisers in the Family Court

In many areas of the country Legal Advisers are scheduled to conduct case management hearings in the Family Court, (typically FHDRAs/DRAs) without a bench. This may be as part of a regular pattern of courts or when a list is converted due to lack of justices. This short guidance reminds legal advisers and staff preparing rotas of the legal requirements for hearings without a bench and sets out best practice to be followed when dealing with these courts.

Legal framework and requirements for legal adviser hearings

Only legal advisers who have been duly authorised by their Head of Legal Operations (HOLo) may conduct hearings without a bench. It is not legally permissible for an unauthorised legal adviser to exercise judicial functions they don't yet have, even if they purport to be exercising that function under the supervision of someone who is duly authorised.

Likewise, it is not possible under the scheme of authorisation for powers to be "delegated" to another legal adviser or for decisions to be made by an unauthorised legal adviser in the name of a legal adviser who is duly authorised.

Both the legal framework under Part 6A of the Courts Act 2003, and the [Bangalore Principles of Judicial Conduct](#), require the person making the decision to be duly authorised and to exercise judicial independence when making that decision.

Best practice

Informing the parties.

Parties should be told if their case is, or might be, listed without a bench so that they can make appropriate representations/applications about the composition of the court. For scheduled legal advisor courts this should be included on the notice of hearing or listing directions. If adjourning a hearing in court, this should also be explained to the parties in the courtroom.

A suggested form of words that could be used for adjournment notices is

The next hearing [will be heard by a Justices' Legal Adviser] or [will be listed in court which may be heard either by Justices (magistrates) or a Justices' Legal Adviser.] Justices Legal Advisers act as case managers and help magistrates apply the law. They are able to make decisions about the next steps in your case. They can make agreed orders provided Cafcass say that would be safe. They cannot make orders which are not agreed.

Converting courts to legal adviser hearings

Where the court which expected to be before a bench has been converted to a legal adviser court at short notice, e.g. due to judicial cancellations or sickness, the office should do its best to inform the parties, particularly where parties are represented so that appropriate applications can be considered and unnecessary legal costs avoided. It will ultimately be a matter for the court, not the parties, whether the matter remains listed.

Explaining your role

Legal Advisers should explain their role at the start of each hearing. This is especially important where either of the parties is a litigant in person. A form of wording along these lines should be used.

My name is [Mr/Ms ----]. I am a Justices' Legal Adviser. I am a qualified lawyer/solicitor/barrister. My job is to give legal advice to the magistrates in court. I can also deal with cases on my own without magistrates. Part of my job is to manage cases and make decisions about the next steps. I can make orders, including final orders, provided they are agreed and Cafcass has advised that it is safe to make an agreed order. I can also make a wide range of case management decisions, even if they are not agreed. What I cannot do is make rulings on factual disputes or make orders which are not agreed. There are also a small number of case management decisions that must be made by the magistrates. The purpose of today's hearing is to see if the issues in your case can be agreed or narrowed with a view to the application being finalised today by agreement. If, if that isn't possible or appropriate, I will need to decide what steps are needed to progress the case to the next stage.

Issued by jcs@justice.gov.uk

Justices' Legal Advisers and Court Officers' Service (formerly Justices' Clerks' Society)

JCS provides independent support for the lawyers who advise magistrates and is part of Her Majesty's Courts and Tribunals Service