



## The Impact of Covid-19 on Family Courts in Northern Ireland

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# **The Impact of COVID-19 on Family Courts in Northern Ireland**

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L. Royal-Dawson and P. Yarnell**

December 2020

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All errors within this report remain the responsibility of the authors.

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## Executive Summary

The lockdown and continued public health measures necessitated by COVID-19 affected the ability of the Northern Ireland Courts and Tribunals Service (NICTS) to operate courts at their normal capacity. This survey reviews the impact of COVID-19 on family courts in Northern Ireland where there has been limited capacity for face-to-face court hearings and a move to remote (telephone or video-enabled) hearings as an alternative. From 23 October to 11 November 2020, online questionnaires were completed by 63 litigants and 125 practitioners.

The findings of our survey show that remote hearings are better than not having any hearings but are not yet able to deliver access to justice. The indicators of access to justice that are relevant to this survey – fairness, participation, accessibility, inclusion, timeliness – are not evident in the experiences of our respondents and the administration of justice is seen as being let down by the technology in the court system.

### *Fairness*

Over two-thirds of the litigant respondents (69%) said their case was not being dealt with fairly. In contrast, two-thirds of the practitioner respondents (65%) felt cases were being dealt with fairly but they still saw remote hearings as a poor substitute for face-to-face hearings.

Fairness was linked to the issues of delay in getting court hearings and contact with children and to the difficulty of participating in remote hearings.

### *Participation*

Remote hearings were seen as inhibiting participation because of difficulties in replicating the interaction that would normally take place at face-to-face hearings. The inability to build rapport between judges and parties was seen not just as making it more difficult to reach solutions but as indicating a loss of humanity in the proceedings. The difficulty in responding to, misinterpreting or missing visual clues in a remote hearing was also seen as an increased risk to effective participation.

The flow of video and phone hearings is stilted, both for practitioners and for litigants, potentially impacting on the fairness of the outcome. Hearings were felt to be rushed, with judges moving the discussions on quickly. This could leave litigants feeling they were not getting a chance to speak or to be heard, and struggling to follow the proceedings. Practitioner respondents found it more difficult to present their case. They found it difficult to make full and fluid submissions, particularly where there was no opportunity to read the judge's body language. Some judges were reported to be cutting off submissions abruptly.

Practitioners were concerned about being able to support clients during remote hearings, to help them understand the proceedings or to deal with the consequences of the judge's decisions. For litigants in person, who are more likely to find court proceedings difficult to follow, further confusion in remote hearings was caused by not being able to tell who was speaking during the hearing and struggling to hear what was being said.

### *Accessibility*

Public information on changes to court operating procedures was provided via the website of the Office of the Lord Chief Justice. For litigants, there were mixed views on how useful the information was on what was happening with court hearings, although the information on attending their individual hearings was seen as useful.

Practitioners were generally content with being able to keep informed about court procedures, but there were problems with the use of the internal NICTS database – ICOS (Integrated Court Operation

System) – as a way of keeping abreast of case progress. This was particularly problematic for barristers who were not able to access the system, who were consequently missing some of their hearings.

Notifications on when hearings would be were inconsistent and often with very little notice, and court practice on accepting documents was also inconsistent, with some court offices and judges accepting online documents while others required paper versions.

The ability to access remote hearings required being able to get the correct link to the right hearing, having reliable internet or phone connections, and having the space at home to focus on the hearing. Remote hearings where there were dedicated timeslots for each case had the advantage of participants not having to travel to court buildings and wait for their case to be called. The disadvantage was where remote hearings attended from home were felt to be intrusive or intimidating, described by one litigant as being similar to having ‘people in my living room.’

### **Inclusion**

There was consideration at the outset of NICTS planning for the inclusion of Litigants in Person (LIPs) through the provision of LIP-specific court forms, guidance and calling LIPs about hearings. The fact that LIPs still struggled with understanding how to complete and submit the forms, however, suggests the materials themselves were insufficiently clear. Broken links and incorrect email addresses along with inconsistent approaches by different courts meant operational delivery undermined the policy intent to support LIPs.

Practitioner respondents reported that it was difficult or impossible to take client instructions during remote hearings and that this was also difficult in physically distanced face-to-face hearings. Practitioners were concerned that this not only meant they might not be acting in their client’s best interests but that the inability to enable client participation had a negative impact on the fairness of the case outcome.

There was agreement that some hearing types were not suitable for remote hearings. This was seen to be the case for contested, fact-finding and final hearings, and where the gravity of the issue at stake was high. Video-enabled hearings were seen as preferable to phone hearings.

### **Delay**

Two-thirds (63%) of our litigant respondents stated that their case hearing was adjourned for more than three months, with a quarter (25%) having had their hearing delayed for eight months. Delays in getting court hearings are being exacerbated by the corresponding backlog of work for Court Children’s Officers. This has impacted on how litigants see the fairness of how they have been treated by the court system. Parents felt frustrated where delay meant a lack of contact with their children. Both practitioner and litigant respondents believed that some parents were using COVID-19 as an excuse to prevent contact, and that this abuse of the inevitable delay in getting a hearing – either to obtain or carry out a contact order – was made worse by the inability to get enforcement or contempt hearings. This was also perceived as the justice system not taking contact issues seriously. This concern about family cases not being taken seriously was echoed by practitioners, reflecting the views of their clients.

The practicalities of progressing cases are also now more time consuming. Scheduled meetings are required for before and after case hearings with other professionals associated with the case. These discussions could previously have been dealt with by speaking to parties on the day of the hearing in the court building. Settlement of cases was also seen by practitioner respondents as being more difficult and so creating further delay in the disposal of cases.

### **Technology**

The technology, while it is now more familiar to many, remains problematic: connectivity, sound and vision problems, time delays, and getting locked out of hearings were issues reported by both litigant

and practitioner respondents. This led respondents to state that courts were being let down by poor technology.

The move to remote justice was a necessity rather than a choice and many of the limitations summarised here are a product of the need to make urgent changes to manage the impact of COVID-19. This survey highlights the challenges of enabling effective participation in remote hearings. Ten months into the COVID-19 pandemic, we should now be past the watershed point of unreliable technology. The focus should no longer be on how to ensure access to a hearing, but on how the courts can deliver access to justice in the current circumstances.



## Chapter 1: Introduction

Following the outbreak of the COVID-19 pandemic, and the introduction of social distancing measures, the courts in Northern Ireland were required to respond to the necessity of protecting public health. The first lockdown in March 2020 resulted in the closure of most court buildings and vastly reduced capacity in those that remained open.

Prior to the COVID-19 pandemic, the Northern Ireland Courts and Tribunals Service (NICTS) had developed business continuity plans for a flu pandemic but this did not include the emergency public health measures that were out in place in March 2020 by the Northern Ireland Executive to 'Stay Home, Stay Safe'.<sup>1</sup> The heavy reliance on paper-based systems used in the court offices and the requirement for staff to work from home meant the courts were not able to maintain their normal operating capacity. Four court hubs remained open throughout lockdown,<sup>2</sup> but criminal and custody cases, along with urgent Non-Molestation Orders and Care and Protection Orders, were prioritised. Meanwhile, rapid action was taken to provide laptops with cameras to staff working from home, conduct COVID-19 risk assessments in the court estate and obtain additional licences to use commercially available software (Webex and Sightlink) for remote hearings. Some NICTS familiarity existed with Sightlink for people on remand or in custody to appear remotely at hearings, but not for holding private family hearings with multiple participants joining from multiple locations.

With the exception of three courts where the room capacity was too small to adhere to social distancing requirements, all courts were open by September 2020. At the time of writing (December 2020) capacity reduction in court buildings remains as a public health measure and hearings are being dealt with through a combination of face-to-face, telephone, video and hybrid hearings. This survey reviews the effect of these measures in maintaining the ability of family courts in Northern Ireland to function effectively through the pandemic, building on existing work in England and Wales.

### Other studies on the impact of COVID-19 on courts

The evidence gathering in England and Wales on remote justice during lockdown has been rapid and effective, focused on how lawyers, judges, litigants and lay participants were experiencing online and telephone hearings, setting an agenda for our initial understanding of how Covid-19 has impacted on access to justice. The Civil Justice Council, working with Legal Education Foundation, surveyed lay and professional users who had experienced a civil court hearing between 1 May and 7 May 2020.<sup>3</sup> Their report documented the fundamental changes that had been implemented to enable court business to continue and showed that the impact of these changes was different for all court users, with professional users able to adapt more easily than lay users for whom participation was often problematic. The report evidences that hearings which involved fact-finding or cross-examination were more difficult to conduct remotely than those based on legal submissions or disputes on points of law. The Public Law Project examined judicial review in the Administrative Court in England – which is defined in the research as a relatively 'law-heavy' jurisdiction – in April 2020, where technical difficulties were identified as being the main cause of concern.<sup>4</sup> In criminal proceedings, research by Fair Trials from March-May 2020

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<sup>1</sup> As reported by Peter Luney, Chief Operating Officer of NICTS, at the Ulster University Webinar on 'Access to Justice During Covid' on 3 September 2020.

<sup>2</sup> Out of an estate of 21 courthouses. These were in Derry/Londonderry, Laganside in Belfast, Dungannon and Craigavon (for Lisburn).

<sup>3</sup> N Byrom, S Beardon and A Kendrick, *The impact of COVID-19 measures on the civil justice system* (Civil Justice Council and Legal Education Foundation, May 2020), available at: <https://www.judiciary.uk/wp-content/uploads/2020/06/CJC-Rapid-Review-Final-Report-f.pdf>

<sup>4</sup> J Tomlinson, J Hynes, E Marshall and J Maxwell, *Judicial Review in the Administrative Court during the Covid-19 Pandemic* Public Law Project, April 2020), available at: <https://publiclawproject.org.uk/wp-content/uploads/2020/04/200420-JR-during-COVID-19-Research-paper-for-publication-final.pdf>

indicated defendants were receiving less effective legal assistance and participation in hearings, and were enjoying less opportunity to challenge information presented.<sup>5</sup>

For family proceedings in England and Wales, the research has been led by the Nuffield Family Justice Observatory (FJO) through two surveys. The Nuffield FJO's first survey, which ran from 14 to 28 April 2020, identified concerns around the fairness of remote hearings and the difficulty in ensuring the participation of all parties.<sup>6</sup> The overarching concern was around the transactional nature of online proceedings that blocked or reduced the capacity to read body language, be empathetic and ensure hearings were sensitive to the emotional issues at stake. Difficulties were identified in the communications between lawyers and their clients during online hearings, where there was no opportunity to consult or speak privately during the proceedings. Concerns over the impact of adjournments and consequential delays were also identified. Telephone hearings were seen as having some advantages in being simple and accessible for those without access to the technology required for video hearings, but the concerns over participation were evident including difficulties in knowing the extent to which participants understood what was happening in the absence of visual clues. Video hearings were regarded more positively where the technology and connectivity worked well but the difficulties in accessing data, Wi-Fi, phone credit and devices meant that parents could often not participate effectively. Particular concerns were identified that LIPs would struggle to participate effectively in the absence of professional support. The technical capability of the court administrative staff to support remote hearings could also be problematic but staff, judges and lawyers were adjusting rapidly, reducing the number and nature of technical problems. These improvements were supported by the view of professionals that moving to remote hearings also improved efficiency. Training, evaluation and further research were proposed as necessary measures to ensure access to justice could be provided remotely.

A second consultation by the Nuffield FJO, undertaken between 10 and 30 September 2020, followed up on this. Responses indicated that the system of telephone, video and hybrid hearings had bedded down well, with lawyers and judges more positive about how hearings were working, identifying the progress that had been made since the first lockdown in March 2020 and the successful efforts to keep family courts working.<sup>7</sup> Views on whether hearings were fair and just were more mixed and while there were many who felt justice was being done, there were concerns around procedural justice stemming from how parties perceived the fairness of their hearing, regardless of outcome. The concerns at how to embed empathy and humanity into remote justice processes remained consistent with the first survey. Serious concerns over the ability of litigants to participate also remained, with pre-existing difficulties for litigants in being able to follow proceedings exacerbated by the fact that litigants were unable to communicate with their representative during the hearing, see or identify who was speaking or access external support. This was compounded further where the litigant required support from an interpreter, or had sight or hearing difficulties, or whose first language was not English. Manifestations of the problems experienced by represented litigants were more acute for litigants in person, including lack of support, lack of information and lack of knowledge. Inequitable access to technology and IT support remained a constraint for lay and parental participation, not just in relation to the hearing itself but accessing electronic bundles and documentation. The follow-up consultation also identified concerns that remote hearings were seen as lacking gravitas, compared with face-to-face hearings.

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<sup>5</sup> Fair Trials, *Justice under lockdown (England & Wales): A survey of the criminal justice system in England & Wales between March and May 2020* (June 2020), available at: <https://www.fairtrials.org/publication/justice-under-lockdown-england-wales>

<sup>6</sup> Nuffield Family Justice Observatory, *Remote hearings in the family justice system: a rapid consultation* (May 2020), available at: [https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo\\_remote\\_hearings\\_20200507-2-.pdf](https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_20200507-2-.pdf)

<sup>7</sup> Nuffield Family Justice Observatory, *Remote hearings in the family justice system: Reflections and Experiences* (September 2020) available at: [https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/remote\\_hearings\\_sept\\_2020.pdf](https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/remote_hearings_sept_2020.pdf)

The perceived lack of professionalism – from struggling to connect parties online to the lack of court based support to disruptions to the process – was a contributing factor, along with what were seen as more lax attitudes to the formality of the court, particularly by litigants in person. Technical responsibility and administrative support for hearings continued to be variable or problematic.

## Northern Ireland

The reviews of remote justice in England and Wales focused not just on the technical difficulties of moving traditional face-to-face systems online, but on whether access to justice was being maintained. This focus remains vital. In Northern Ireland, judicial guidance from the Lord Chief Justice, Sir Declan Morgan, has stipulated that “[e]very] remote hearing should be planned and conducted in a manner designed to secure every party’s right to a fair hearing” and that the “overriding objective ... to deal with every case justly” remained.<sup>8</sup> The lack of comparative data, however, on how Northern Ireland courts were managing the transition to remote justice leaves open the question of how access to justice was being maintained.

In September 2020, the authors of this survey ran a webinar on remote justice in family proceedings in Northern Ireland.<sup>9</sup> Over 100 attendees joined the webinar at which five speakers outlined their experience of family proceedings since the March 2020 lockdown: the Chief Operating Officer of the Northern Ireland Courts and Tribunals Service, a High Court judge, a litigant in person, the Head of the Family Solicitors Association and the outgoing Chair of the Family Bar Association. The purpose of the webinar was to identify issues of concern and whether similar survey work would be useful. The common concerns were around lack of capacity to hear and dispose of cases both in terms of Northern Ireland Courts and Tribunals Service (NICTS) staff, judges and legal representatives having to work from home – particularly where access to court systems was not available – and the shortage of suitable court rooms to enable socially distanced face-to-face hearings. Additionally, there were serious concerns around the impact of significantly delayed hearings on litigants – particularly at the point where issues of contact had not been defined by the Office of the Lord Chief Justice as an urgent priority for court hearings – and consequently the impact on families, on solicitors’ and barristers’ ability to take instructions from clients and the suitability of remote hearings for fact-finding and establishing witness credibility.

Following this, the Nuffield Foundation provided funding to the authors to enable a rapid survey to be conducted to understand the impact of COVID-19 on family proceedings in Northern Ireland.<sup>10</sup> This report outlines the findings from that rapid survey that ran from 23 October to 11 November 2020. From this, we identify the main themes that correspond with those highlighted in the Nuffield FJO surveys relating to fairness and justice, and highlight briefly how the findings sit with what our existing research tells us about effective participation, particularly for litigants in person, in court hearings. The state’s duty to ensure Article 6 ECHR compliance in court hearings means it is must now take this initial insight forward, establishing what works, for whom and in what ways before remote justice can be allowed to become an enduring and effective substitute for face-to-face hearings.<sup>11</sup>

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<sup>8</sup> Office of the Lord Chief Justice, *Guidance on remote hearings for all business heard in the County and Magistrates’ Court Tiers*, available at: <https://www.judiciaryni.uk/sites/judiciary/files/media-files/Guidance%20on%20Remote%20Hearings%20in%20the%20County%20and%20Magistrates%20Courts%20211020.pdf> [accessed 15 December 2020]

<sup>9</sup> This was part of webinar series on ‘Covid Conversations: human rights in a pandemic’ run by Ulster University Law School, the Human Rights Consortium and the Equality Coalition

<sup>10</sup> This funding has been provided as a supplementary grant to an existing award by the Nuffield Foundation to the authors, with Mark Potkewitz, on *Understanding and Supporting Legal Participation for Litigants in Person*: <https://www.nuffieldfoundation.org/project/understanding-and-supporting-legal-participation-for-litigants-in-person>

<sup>11</sup>The right to a fair trial under Article 6 of the European Convention on Human Rights, includes the obligation of the state to provide access to a court, without undue delay, and to ensure an equality of arms for those in a case. See: [https://www.echr.coe.int/documents/guide\\_art\\_6\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_6_eng.pdf)

## Chapter 2: Methods

Our survey on the impact of COVID-19 on family courts in Northern Ireland ran from 23 October to 11 November 2020 with two questionnaires – one for litigants and one for practitioners – and covered all types of hearings undertaken in both public and private family law cases. This chapter of our report sets out our survey methodology.

It is important to note at the outset that the number of respondents to either questionnaire is not sufficient to make representative claims about the impact of COVID-19 on all family proceedings cases. Indeed, in some instances where a question or situation is relevant to only a portion of the respondents, the findings are even less conclusive. The survey was not intended to provide representative or generalisable results: it focused on providing an initial and rapid review of how practitioners and litigants are experiencing the changes to the family courts in Northern Ireland that have been necessitated by COVID-19.

### Survey Design

The existing evidence on the impact of COVID-19 on courts in England and Wales, particularly in family proceedings, has evidenced that practitioners and litigants have different perspectives and experiences arising from the necessary adaptations to court practice, with practitioners more likely to feel things were working more smoothly, while parent-litigants were less likely to feel positive about how remote hearings were working for them.

On this basis, we felt it would be practical to develop two questionnaire instruments; one for practitioners and one for litigants, with each designed to allow us to collect data and deeper insights on their separate perspectives and participation. Naturally, there was a degree of commonality between the questionnaires and where possible the analysis presents the overall picture on the responses of practitioners and litigants across key issues and themes.

### The Online Survey

The scope of this survey was limited to on-going or new family proceedings cases in Northern Ireland since the end of March 2020; cases disposed of pre-March 2020 were excluded. The online questionnaires were hosted on the Litigant in Person project page of Ulster University, disseminated via social media, local media and through professional legal networks including the Law Society and Bar Council, and organisations that support parties through the legal process.<sup>12</sup> Particular efforts were made to encourage participation by parents, including litigants in person. Participants were provided with a link to further information on the survey and consent to participate was taken at the outset to confirm that participants had read and understood the purpose of the study and consented to participate. If participants did not consent, they could not proceed to complete the questionnaire.

### Characteristics of the questionnaires

#### *Litigant questionnaire*

The litigant instrument comprised an 84-item questionnaire across 11 sections which investigated a broad range of issues relating to the impact of COVID-19.<sup>13</sup> Sections 2 and 3 asked about the participants' involvement in family proceedings and how they had kept up to date with their case/s during the pandemic. Sections 4 to 7 asked for specific information relating to attending hearings during COVID-19. Sections 8 and 9 elicited information on access to and communication with legal

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<sup>12</sup> See project website at: [www.ulster.ac.uk/litigantsinperson](http://www.ulster.ac.uk/litigantsinperson).

<sup>13</sup> This included questions relating to consent and biographical details of participants, which were optional. Questionnaire format available at [www.ulster.ac.uk/litigantsinperson](http://www.ulster.ac.uk/litigantsinperson).

representatives or McKenzie Friends during hearings and section 10 asked about the impact of COVID-19 on the participant's case(s).

### *Practitioner questionnaire*

The Practitioner questionnaire comprised an 88-item questionnaire across 14 sections which likewise investigated issues relating to the impact of COVID-19.<sup>14</sup> Sections 2 and 3 asked about the participants' involvement in family proceedings and how they kept abreast of response measures. Sections 4 to 7 asked for specific information relating to communication and information about administrative practices and perspectives on hearings during COVID-19, including reasonable adjustments and unrepresented litigants. Sections 8 and 9 obtained information on communication with clients<sup>15</sup> and between litigants and third parties. Sections 10 to 12 asked about the use of technology, case management and overall perspectives on remote hearings and COVID-19.

### Ethical Approval

Ethical approval for the research was obtained from Ulster University's School of Law Research Ethics Filter Committee.

### Data Analysis

The questionnaire responses were received through the online Microsoft Forms platform in Excel files. All quantitative data were analysed at the aggregate level and qualitative at individual respondent level. Appropriate reporting procedures were used to ensure data remained confidential so no individual respondent was identifiable. The data were held securely in protected and secure storage on Ulster University cloud with access restricted to the research team and in full compliance with data protection and GDPR requirements and Ulster University's 'Code of Practice for Professional Integrity in the Conduct of Research'. Once analysed for the purpose of the study, all data files are stored in line with research quality control and Research Governance at Ulster University retains access to all data for audit purposes.

'At a Glance' tables are provided in Appendix 1 as a summary of the quantitative data.

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<sup>14</sup> This included questions relating to consent and biographical details of participants, which were optional. Questionnaire format available at [www.ulster.ac.uk/litigantsinperson](http://www.ulster.ac.uk/litigantsinperson).

<sup>15</sup> Unfortunately, due to a routing error in the practitioner instrument, most respondents were not routed to questions about communication with clients.

## Chapter 3: Findings

### Characteristics of the respondents

#### Who completed the questionnaires?

##### *Litigants*

The results of the online litigant survey are based upon 63 responses submitted during the live survey period. Two responses were excluded because they did not provide consent. The average time it took participants to complete the litigant questionnaire was 15 minutes.<sup>16</sup>

The litigants were:

- 54 parents
- 7 other relatives
- 1 McKenzie friend
- 1 relative of a litigant.

Table 1 shows the type of family proceedings that litigant respondents were involved in and when their cases started. The vast majority of survey participants (86%) were parents or legal guardians, and 14% 'other relatives/others'. Twelve respondents described themselves as not having representation in their family cases, while the rest, 51, were represented. The majority (78%) of the participants were involved in private cases, 14% in public cases and a small proportion of participants case related to both types of proceedings (5%). Nearly three-quarters (71%) of the litigants' cases started before March 2020 and 17 started since the pandemic.

**Table 1: Litigants: Type of case**

Questions	Parent / legal guardian			Other Relative/Other	All
	Legal Rep	No legal rep	All		
<b>Type of Case (n=63)</b>					
Private	32	10	42	7	49 (78%)
Public	7	1	9	0	9 (14%)
Both	1	1	2	1	3 (5%)
Not sure	1	0	1	1	2 (3%)
<b>Total</b>	42	12	54	9	63
<b>When did the case start (n=59)</b>					
Before End March	26	11	37	5	42 (71%)
Since End March	15	0	15	2	17 (29%)

Table 2 (below) contains a summary of the demographic characteristics of the litigant respondents. There were slightly more men amongst the litigant respondents at 53% than women at 45%. They all identified as British or Irish White apart from five people who identified as Other White or from an ethnic minority group. Slightly more of the respondents identified as White Irish (49%) than identified as White British (39%). Nearly half (48%) of the litigant respondents identified their religious background as Roman Catholic and about a third (33%) as Protestant and 12% not identifying as either. A further 87% of those who responded to the question on disability stated they did not have a disability, with 12% declaring a disability.

<sup>16</sup> The survey was an online open survey and there may be a risk of self-selection and response bias although non-response generally does not distort comparisons between subgroups of participants.

**Table 2: Litigants: Summary of demographic characteristics**

<b>Sex (n=58)</b>			<b>Ethnicity (n=61)</b>		
Female	26	45%	White - British	24	39%
Male	31	53%	White - Irish	30	49%
Prefer not to say	1	2%	Other*	5	8%
<b>Age (n=57)</b>			Prefer not to say	2	3%
18-25	2	4%	<b>Community Background (n=58)</b>		
26-35	20	35%	Protestant	19	33%
36-45	15	26%	Roman Catholic	28	48%
46-55	18	32%	Neither/Other*	8	14%
56-65	1	2%	Prefer not to say	3	5%
66+	0	0%	<b>Political Background (n=60)</b>		
Prefer not to say	1	2%	Nationalist	13	22%
<b>Marital Status (n=61)</b>			Unionist	7	12%
Married	13	21%	Neither/Other*	28	45%
Not married /Civil partnership*	39	64%	Prefer not to say	12	20%
Prefer not to say	9	15%	<b>Urban/Rural (n=63)</b>		
<b>Disability (n=61)</b>			In a city or town?	37	59%
No	53	87%	In a village	14	22%
Yes	7	11%	In rural area	11	17%
Prefer not to say	1	2%	Prefer not to say	1	2%
<b>Dependants &amp; Care (n=61)</b>					
No	11	18%			
Yes	48	79%			
Prefer not to say	2	3%			

\*denotes categories with small counts combined together to avoid disclosure

### Practitioners

The results of the online questionnaire for practitioners are premised on 125 questionnaires submitted during the live survey period. One survey was excluded as consent was not provided. The average time it took participants to complete the practitioner questionnaire was 22 minutes 34 seconds.

We received 125 responses to the practitioners' questionnaire:

- 3 judges
- 62 solicitors
- 36 barristers
- 9 court staff
- 4 Guardians ad litem
- 3 Court Children's Officers
- 3 other types of social workers
- 2 McKenzie Friends
- 1 support worker, 1 legal executive and 1 contact centre staff member<sup>17</sup>

Table 3 provides breakdown of the practitioners' family proceedings involvement. Three quarters (74%) of the practitioner respondents were involved in both private and public law cases since the end of March 2020. The remaining 26% were evenly divided between being involved in private-only or public-only cases.

<sup>17</sup> In the subsequent analysis and discussion, the Guardians ad litem, Court Children's Officers and the social workers are sometimes grouped together as Children's Professionals; and the support worker, the legal executive and contact centre staff member are sometimes grouped together as Others.

**Table 3: Practitioners: Types of cases**

Question	Qualified Legal Professionals			Court Staff	Children's professionals	Others	All
	Solicitor	Barrister	Judge				
<b>Type of Case (n=125)</b>							
Both	52	27	3	9	1	1	93 (74%)
Private	7	4	-	-	3	2	16 (13%)
Public	4	5	-	-	6	1	16 (13%)
<b>Total</b>	63	36	3	9	10	4	125

Table 4 below contains the demographic background of the practitioner respondents. As might be expected in the family justice sector, the majority (86%) of the practitioner respondents were female, with a relatively small number of male practitioners (13%). The vast majority of the practitioners who replied to the question about ethnicity were white, with 85 (71%) identifying as White-Irish and 29 (24%) as White-British. The remaining 5% identified as White-Other or preferred not to say. This reflects the small proportion of individuals in Northern Ireland from an ethnic minority group. Almost two-thirds (62%) of the practitioner respondents identified as coming from a Roman Catholic background, 21% from a Protestant background and 8% from neither or none. Around two in five of the practitioners (39%) who identified their political background said they were from a Nationalist background and only 9% said they came from a Unionist background. The remaining respondents (52%) did not identify with either background or preferred not to say.

**Table 4: Practitioners: Summary of demographic characteristics**

<b>Sex (n=112)</b>			<b>Ethnicity (n=120)</b>		
Female	96	86%	White – British	29	24%
Male	15	13%	White – Irish	85	71%
Prefer not to say	1	1%	White – Other/Prefer not to say*	6	5%
<b>Age (n=110)</b>			<b>Community Background (n=118)</b>		
18-25	0	0%	Roman Catholic	73	62%
26-35	29	26%	Protestant	25	21%
36-45	36	33%	Neither/Other*	9	8%
46-55	32	29%	Prefer not to say	11	9%
56-65	12	11%	<b>Political Background (n=121)</b>		
66+	0	0%	Nationalist	47	39%
Prefer not to say	1	1%	Unionist	11	9%
<b>Marital Status (n=121)</b>			Other/None*	37	31%
Married	85	70%	Prefer not to say	26	21%
Not married/civil partnership*	29	24%	<b>Urban/Rural (n=124)</b>		
Prefer not to say	7	6%	In a city or town	82	66%
<b>Disability (n=122)</b>			In a village	11	9%
No	117	96%	In rural area	24	19%
Yes / Prefer not to say*	5	4%	Prefer not to say	7	6%
<b>Dependants &amp; Care (n=121)</b>					
No	39	32%			
Yes	80	66%			
Prefer not to say	2	2%			

\*denotes categories with small counts combined together to avoid disclosure

### Identifying respondents in the report

Throughout this report, we have used the written responses of respondents to the online questionnaires to illustrate points or findings. We have used codes to identify them using letters to show their role followed by their unique identifying number:

Litigants: P = Parent, P-LIP = Unrepresented Parent, R = other Relative. All of the 'Relative' respondents were represented.



Practitioners: S = solicitor, B = barrister, CA = Court Administrator, CCO = Court Children’s Officer, GAL = Guardian ad litem, J = judge, MF = McKenzie Friend, LE = legal executive, SW = Social Worker

### Had the survey respondents taken part in remote hearings?

Remote hearings were defined as those that took place by phone or video link, and hybrid hearings were defined as those that involved some participants in the court room while others joined by phone or video link.

#### Litigants

Hearings had taken place in the family cases of 35 litigant respondents, with half of them having had more than one hearing since the end of March 2020 – see Table 5. Reviews and directions and/or case management hearings were the most common hearing types taking place - see Figure 1 which shows the proportion of the different types of hearing that took place in litigants’ and practitioners’ cases. Four litigants had had a fact-finding hearing, three had had a final hearing (one of which was adjourned) and one LIP had had an appeal hearing.

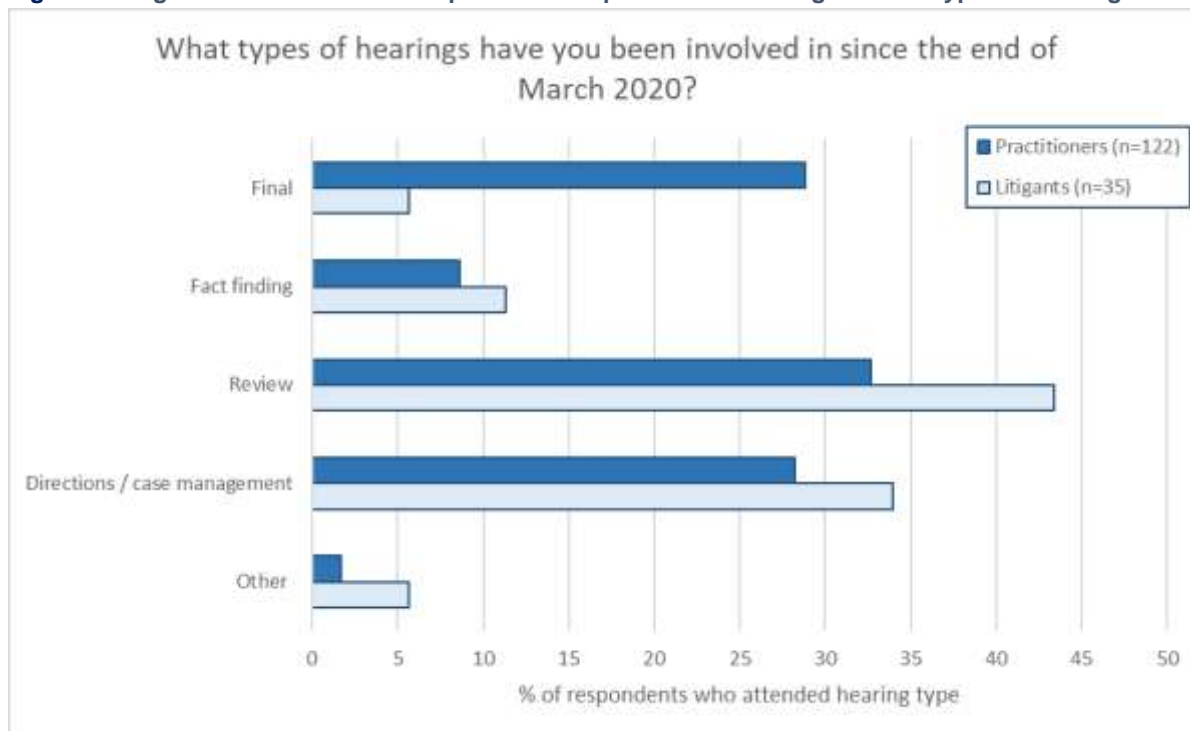
**Table 5: Litigants: Prevalence of hearings and attendance**

Questions	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Did you have hearings in your case (n=62)</b>					
Yes	22	9	31	4	35 (56%)
No	19	3	22	5	27 (44%)
<b>Have you attended any hearings (n=35)</b>					
Yes	7	9	16	2	18 (51%)
No	15	0	15	2	17 (49%)
<b>Had participated in a remote or hybrid hearing (n=63)</b>					
Yes	6	8	14	2	16 (25%)
No	36	4	40	7	47 (75%)

Only 18 of the litigant respondents had actually attended any hearings, and 16 of these had attended via video or phone. The other two had attended face-to-face hearings – a review and a directions hearing, respectively. This means 47 (75%) of our sample had not attended a remote or hybrid hearing. While reviews and directions and/or case management hearings were the most commonly attended types of remote hearing, one litigant had attended a fact-finding hearing remotely and two had attended final hearings remotely. Amongst the 16 who attended remotely were eight LIPs.

The litigants who did not attend any hearings said it was because their lawyer was attending on their behalf or they had been told their case would be decided without them in attendance. This included three of the fact-finding hearings. Worryingly, two represented litigants said they did not know a hearing on their case was taking place and another said she felt under pressure not to attend.

**Figure 1: Litigants & Practitioners: Proportion of respondents attending different types of hearing**



Not all litigants wished to be at their hearing and, for some, non-participation appeared to be preferable, such as when the other party was going to be present:

‘Much prefer counsel to attend, video link means I cannot attend, and no physical hearings mean I don’t have to attend in the presence of the other party.’ (R5)

‘meant I didn’t have to continually face my abuser in court and outside court room and his family.’ (P31)

When those who wished to attend were unable to do so, a sense of frustration was often noted. A represented litigant felt excluded from participating in his hearing:

‘The judge deemed that as these were only reviews, he didn’t see it necessary for me to attend either in person or over the phone. I wanted to see what was going on within my review and also to see the judge’s reply to my barrister asking why my in-person hearing keeps getting adjourned due to clerical errors.’ (P10)

There were 27 respondents who had not had any hearings in their cases. This included 16 litigants whose cases had started before the pandemic, 12 of whom were represented. That means for these 16 litigants, no hearings took place between March 2020 and October/November 2020, when they completed the survey – a delay of up to eight months for cases that were in the system pre-pandemic. The 27 respondents who had no hearings cited several reasons for this.

Delay and adjournments were cited most frequently and several stated they were unsure about what was happening in their cases. Confusion and frustration was common:

‘It takes forever to get orders, correspondence from the judges. When I call the court they just say they are waiting on judges to make decisions.’ (P-LIP9)

‘Dates keep moving. I’m just told due to high demands and backlogs, yet surely court is operational? Sounds like they just don’t care.’ (P12)

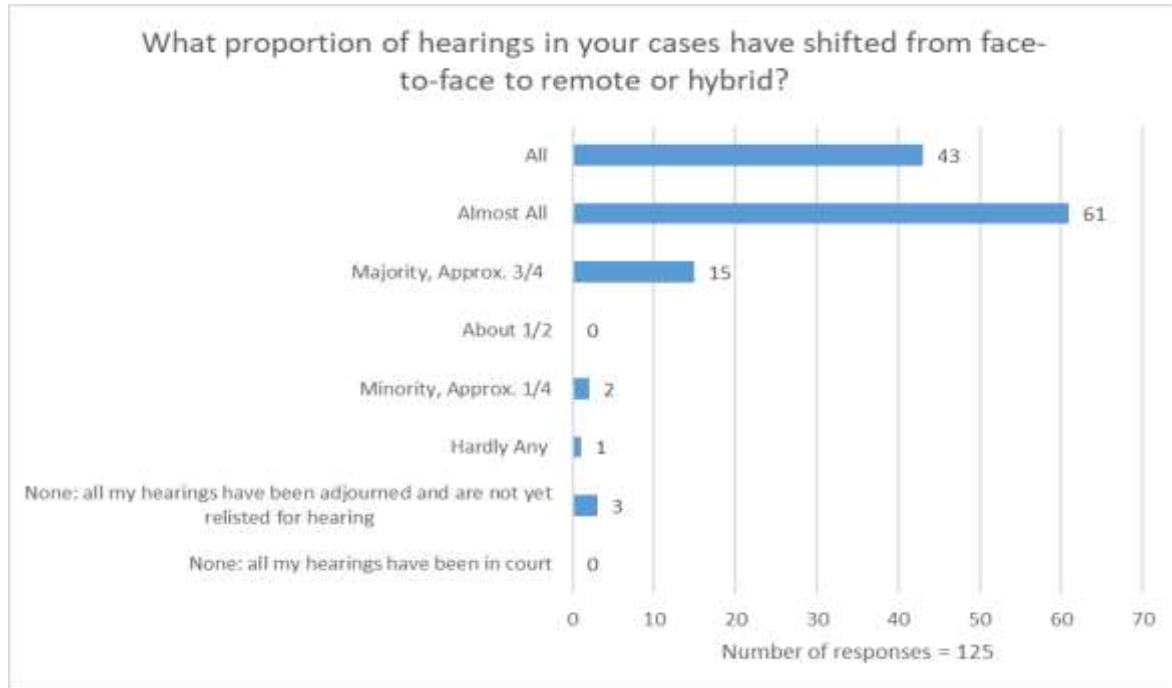
Some practitioners had noted their concern for clients not being in attendance in their remote hearings, where the clients then have to be kept up to date by the practitioner after a hearing takes place:

‘Serious issues for clients in terms of transparency. They generally are not in attendance on the link. Counsel/solicitor then has to advise what has happened.’ (B1)

*Practitioners*

For the practitioners, the majority of hearings they have been involved in, regardless of their role, have shifted to remote or hybrid (see Figure 2 below). Only three of the practitioners – two solicitors and one barrister – had not attended a remote hearing, due to all of their hearings having been adjourned and not yet listed. None of the three judges had conducted any case management hearings over the phone with one commenting that he would not be in favour of it.

**Figure 2: Practitioners: Number of respondents whose cases had shifted from face-to-face to online**



When asked which type of hearings they had participated in, practitioners had experienced several types, with over 84% of them having participated in final, review and/or case management reviews (Figure 1). Final hearings were more common for the practitioner respondents than for litigants and fact-finding hearings were slightly less common. These types of hearings are part of the normal case load for practitioners but without data on pre-COVID day to day business we cannot report definitively whether there have been any changes in the frequency of the different types of hearing being held. However, several practitioners asserted that there are fewer fact-findings and final hearings taking place:

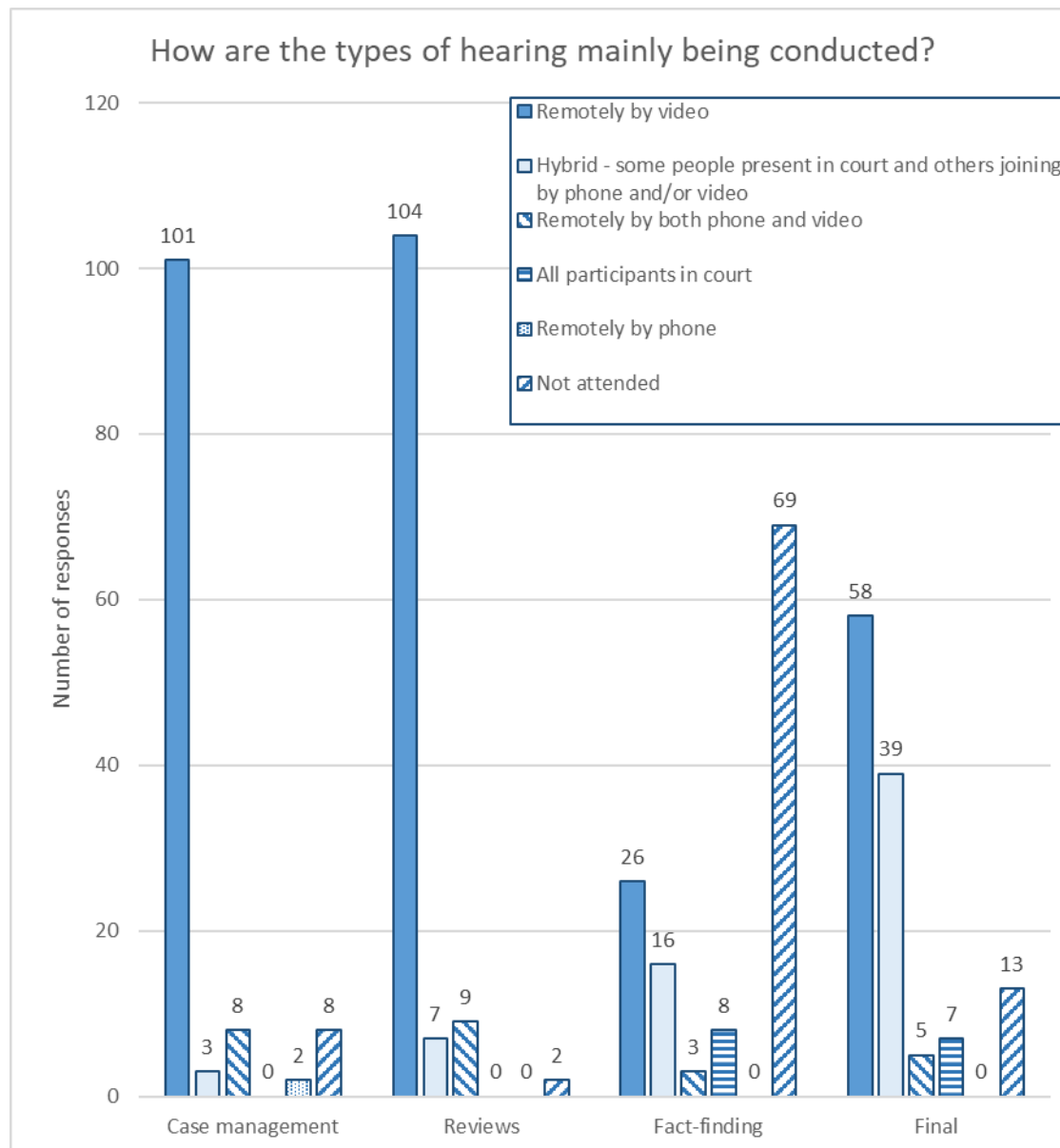
‘We are not getting cases dealt with by remote hearings – judges are refusing to list for hearing.’ (S35)

‘Judge reluctant to list full hearing.’ (S31)

How hearings are conducted has changed radically with the use of remote technology. In the experience of the practitioners, the use of video and absence of in-court format for case management and review hearings was now very common (Figure 3). Most final hearings were conducted remotely by video or in hybrid format with some in-court hearings. The fact-finding hearings, which were reported to take place less frequently, were conducted remotely, in hybrid hearings and in court. Phone hearings of any type were rarely experienced by our respondents. Again, without data on the frequency and means of conducting the different types of hearings, we cannot state whether there are fewer fact-finding hearings

being held due to COVID or whether the lower frequency is standard. It is possible that hearings with a heavier evidentiary load or ones where facts are contested are being postponed until they can be heard in court with all parties present. This point is discussed below in section called *Body language and assessing evidence*.

**Figure 3: Practitioners: Number of responses indicating how different hearings types were being conducted**



To get a picture of the dynamics of remote and hybrid hearing, we asked the practitioners to state how the different court actors participate mostly. In general, judges, court clerks and legal representatives are in court and legal representatives, CCOs, experts/witnesses are attending via video. The picture is less clear on how litigants – represented or not – McKenzie Friends, and other in-court supporters attend, with respondents giving different answers. This less clear picture may be down to a lack of experience or disparate practice in different courts.

## Access to information including about changes due to COVID-19

### Communicating change

Developing measures in the administration of family justice to prevent the spread of COVID-19 from March 2020 onwards fell to the judiciary and the NICTS. Reduction in the number of courts able to open safely, and the lack of infrastructure for staff to work from home took their toll on service provision. Business continuity and recovery were prioritised to reduce the backlog in the cases. Keeping practitioners and litigants informed of the measures that were continually under review only added to the workload of NICTS. We wanted to know how practitioners and litigants experienced being kept informed.

While inevitably there were difficulties, there was praise for the work of the court staff, recognising the circumstances that staff were working under, identifying their support as helpful and effective, with some describing it as excellent.:

‘Court staff have been thorough in ensuring that all representatives are given proper access to giving their views as per usual procedure.’ (SW3)

‘Court Staff are really helpful and will work with us to get cases heard or paperwork sorted.’ (S29)

There was also a recognition that delays in correspondence with practitioners was due to court service staff being under-resourced.

However, the impact of the staffing difficulties translated to a poor rating of how well the litigants’ communication with the court had been since the end of March (Table 6), with a mean rating of 2.32 for parent/legal guardians and 2.39 overall. Neither of these mean ratings reach the mid-rating in a scale of 1 to 5 where 1 is Very poor and 5 is Excellent.

**Table 6: Litigants: Communication with the court**

Question	Parent / legal guardian			Other Relative / Other	All
	Legal Rep	No legal rep	All		
<b>How good has communication with the court been (n=39)</b>					
Average rating (scale 1 – 5)*	2.39	2.43	2.32	3.00	2.39

\*1=Very poor and 5=Excellent.

In this context, one participant explained that:

‘I tried contacting the family court department at [court] on more occasions than I can even count and at no point did I get to speak to someone in that department and at no point did I ever receive a call back.’ (P35)

The practitioners’ rating of how good their communication with the court had been was slightly higher than the litigants with 72% giving it a rating of satisfactory, good or very good (Table 7).

**Table 7: Practitioners: Communication with the court**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>How good was communication with Courts (n=117)</b>							
% satisfactory, good or very good	62%	80%	100%	-	70%	75%	72%

Some barristers, solicitors, CCOs, a GAL, a Legal Executive and a McKenzie Friend gave a rating of not good or not good at all, suggesting some practitioners have had difficulties. The difficulties for practitioners were particularly pronounced where there was an urgent issue:

‘The Court Offices are not taking phone calls and you can only communicate with them by email. This is problematic as you may need an instant response.’ (S34)

‘Not able to telephone court offices.’ (S10)

'Trying to get speaking to someone in court offices also even more difficult now. Email communication going unanswered for weeks upon weeks.' (S61)

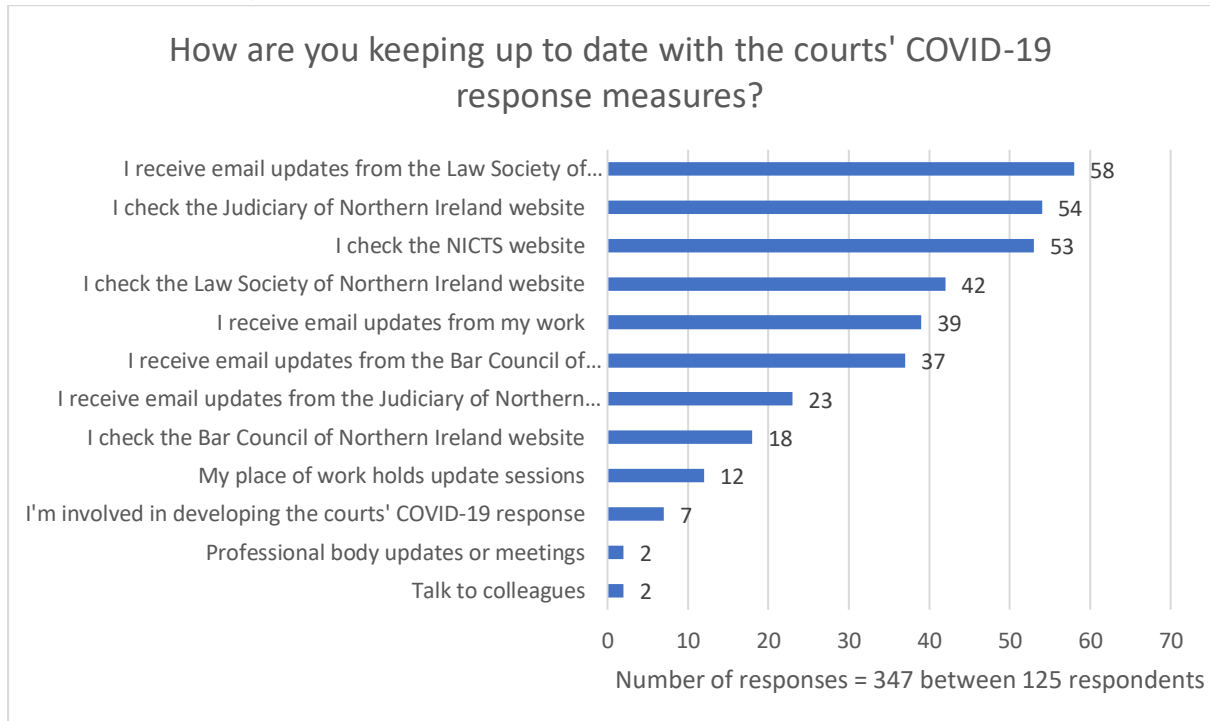
### Litigants

Most of the litigant respondents kept up to date with administrative changes due to COVID-19 with 53 of them either actively pursuing information or being informed by their legal advisor, with about a quarter doing both. Looking online was the most popular active searching method selected, with about 40% of the respondents doing it. Ten people said they did not keep up to date.

### Practitioners

Practitioner respondents kept up to date with the courts' COVID-19 response measures in a variety of ways with many of them checking two or more, and some up to six, sources (Figure 4). Seven respondents were involved in developing the court's response. One of the social workers remarked that 'there is very little updated information for social workers.' (SW2).

**Figure 4: Practitioners: Number of respondents who pursued different sources to keep up-to-date with courts' COVID-19 response measures**



### Information about hearings and their dates

#### Litigants

Most (86%) had been contacted about their case since March 2020, the majority by their legal representatives (Table 8). Of the 53 people who were contacted, most (85%) were contacted about dates of hearings and 40% were contacted about a delay in their case.

**Table 8: Litigants: Information about hearings**

Questions	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Contacted about case (n=62)</b>					
Yes	37	10	47	6	53 (86%)
No	5	2	7	2	9 (14%)
<b>Notified of hearing (n=62)</b>					
Yes	28	7	35	4	39 (63%)

No	13	5	18	5	23 (37%)
<b>Did you look for information about attending a hearing (n=61)</b>					
Yes	23	7	30	6	36 (59%)
No	18	4	22	3	25 (41%)
<b>Have you spoken to Judge directly without the other party present (n=63)</b>					
Yes	0	0	0	0	0 (0%)
No	42	12	54	9	63 (100%)

Nine of the 12 LIPs were contacted directly by the court. Four litigants who were not contacted were represented, suggesting some clients may not have been updated by their representatives:

'I haven't heard from my solicitor in several months. The last time we spoke, she was to ring me back the next day. I still have not received any phone call.' (R3)

'I never know what is happening. I get no updates.' (P36)

Of the 39 litigants who were notified about a hearing, 27 (69%) including all of the LIPs received information about it:

'My solicitor emailed me with the details of what was going to happen and what rules there are. Like not being allowed to move from my seat or not allowed to talk to my barrister at any time during the hearing.' (P9)

Whether it comes from the court service or the solicitors, the information appears to be arriving where it is needed in most instances, though not all. When asked to rate how useful the information was, more responses were negative than positive but most responses were the non-committal: 'neither useful or not useful.' This indicates that the information may need to be more effective if it is to be useful.

Sometimes contact about a hearing time came too late:

'One hearing was brought forward a few hours, as I wasn't physically attending, I missed the hearing and it just went ahead.' (P15)

More broadly, litigants found obtaining legal advice difficult due to COVID-19, including both represented litigants and LIPs, and said it was not easy to find guidance and support on how to deal with paperwork and that submitting documents requested by the court was difficult. It is difficult to tease out the extent to which these difficulties are attributable to COVID-19 in this instance, but evidence from McKeever *et al.* (2018) indicated that the lack of access to information was a major barrier to legal participation by LIPs.<sup>18</sup> That represented litigants are reporting similar problems suggests they are seeking information beyond that supplied by their legal representatives.

None of the litigant respondents had spoken directly and unilaterally to a judge about their case in the absence of the other party.

### Practitioners

Practitioners were asked how they are informed when hearings are going ahead. Most practitioners employ more than one method to verify hearing dates:

- Solicitors tend to check on the NICTS Integrated Court Operation System (ICOS), check with or are informed by the court or at court appearances
- Barristers tend to be in contact with the court or their solicitors.

<sup>18</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland, barriers to legal participation*, Ulster University, available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020].

- Court administrators check on ICOS, prepare the lists/decide the dates or find out from the court.
- CCOs check on ICOS, contact the court or are involved in deciding the dates.
- GALs are informed by the court, by a solicitor or may discuss dates with the legal teams.
- Judges decide the dates and check on ICOS
- Legal Executive is informed by the court or checks on ICOS
- Other social workers are informed by the litigant or check on ICOS.
- McKenzie Friends, Support worker and Contact Centre are informed by litigant

There is frustration among some barristers that they cannot check directly on ICOS. As one noted the effect is that they are then:

‘Emailing court clerks who don’t always have time to come back to us. It would be really useful if barristers could access ICOS.’ (B28)

There was very little consistency reported by practitioners about the amount of notice given that a hearing will be remote or hybrid ranging from less than one day to a month’s notice (Table 9)

**Table 9: Practitioners: Notice of hearings**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>How much notice of hearing given (n=113)</b>							
Average notice given (3=1 month, 4=1 week)	3.48	3.58	4	4.17	3	3.75	3.52

Some barristers were frustrated that they are not informed in advance or that they are made responsible for notifying the other parties of any changes:

‘We aren’t told hearings are listed, hearings are moved at the last minute to 5pm!’ (B9)

‘We aren’t told! Then hearings go on without us.’ (B9)

‘One Counsel may be notified of a listing or change of listing and just advised to tell everyone – a lot of responsibility put on one person. Court Service are meant to communicate the listing/change of listing to all parties.’ (B35)

A similar note was raised by solicitors who said they were not systematically informed of hearing times and dates:

‘It is very hit and miss, the lists are often not right, it’s a mixture of checking the ICOS, checking with your colleague and emailing the court.’ (S21)

Whether there is enough notice for legal representatives to then inform their clients of hearing times at short notice or for LIPs to be informed is not available in the data, but it is an important consequence of too much fluidity in fixing hearing times.

## Information about attending a hearing in a new format

### *Litigants*

Over half of the litigant respondents actively searched for information about attending a hearing during COVID-19 – see Table 10. Not all of them had hearings suggesting that litigants look for information even when they do not have a scheduled hearing. Unfortunately, only half of them found any information. The existence of good online resources can encourage self-reliance in information seeking



but the availability or ease of access to relevant resources relevant to Northern Ireland is limited. It appears the presumption is that legal representatives will keep litigants informed, yet it is clear that litigants also like to seek information independently. In this survey, the respondents who found information were not very positive about its usefulness: the mean rating on a rating scale of 1 to 5, where 1 is Not at all useful and 5 is Very useful, was 2.67, so below the mid-rating of 3 – see Table 10. Ten litigants rated it as Not at all useful.

**Table 10: Litigants: Information about hearing**

Questions	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Did you look for information about attending a hearing (n=61)</b>					
Yes	23	7	30	6	36 (59%)
No	18	4	22	3	25 (41%)
<b>How useful was the information (n=36)</b>					
Average rating (scale 1 – 5)*	2.71	2.46	2.67	2.46	2.67

\* 1=Not useful at all 5=Very Useful

### Practitioners

As attending hearings is a major part of most of the practitioner respondents' roles, we wanted to hear about how they were kept informed about the practicalities of attending hearings in light of the measures to maintain social distancing – how to join a hearing, how it would be conducted, how to use the technology and who would be present. Most practitioners heard directly from the court, either via email, letter, calling in or directly during a hearing. Barristers also heard from their instructing solicitors. Solicitors tended to hear from the court office or the Law Society. A few people attended information sessions, including barristers, solicitors and court staff.

When asked how useful the information was, they found it useful with a mean rating of 3.56, indicating an above average rating (Table 11). The less favourable ratings came from different role types: three barristers, a court administrator, two CCOs, a McKenzie Friend, a social worker and 12 solicitors, suggesting that negative reactions to the information were not role-specific but individual.

**Table 11: Practitioners: How useful was NICTS information**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>How useful was NICTS information (n=121)</b>							
Average rating (scale 1 – 5)*	3.57	3.65	4.5	3.63	2.9	3.75	3.56

\*1=Not useful at all and 5=Very useful

### Choice of hearing format

New 'COVID forms' have been developed to streamline cases and their hearings. A Hearing Request form (HR1) was instituted in September 2020 and replaced the Family Business continuity forms (known as FC11 for represented parties and LIPC11 for LIPs). It is for parties to complete collaboratively to, as it states on the form, 'provide information in relation to cases where a substantive hearing is to be or has been arranged, or where the parties have agreed a way forward and wish to request the court's approval.' It allows the parties, including LIPs, to request a remote, hybrid or in-court hearing.

### Litigants

We wanted to know whether this choice of format was relayed to litigants. Table 12 shows that 30 out of 39 litigants who were notified about a hearing did not receive a choice of format; six replied they had been offered a choice and three were unsure.

**Table 12 Litigants: Choice of hearing format**

Question	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Offered a choice about the format of hearing (n=39)</b>					
Yes	3	3	6	0	6 (15%)
No	23	4	27	3	30 (77%)
Not sure	2	0	2	1	3 (8%)

This suggests the choice of format was either not being relayed to litigants by their legal representatives or the courts were not offering a choice:

'Judge directed that it had to be a video link.' (R3)

Access to and availability of appropriate equipment, ability to use it and to participate effectively were all factors to take into consideration as the new modes of conducting hearings were being rolled out to court users. Varying levels of access and proficiency would make the new modes more or less effective for different court users. As these litigants indicate, practice was also evolving as the changes became more familiar and accessible:

'Initially I was provided with no option, but more recently given the option of hearing via sight link or in person.' (P-LIP1)

Being given the choice was important to some litigants and not to others. For example, one represented litigant was clear about the importance of being able to choose how the hearing proceeded, being afraid that a remote hearing would not do justice to the child involved:

'My preference is very important to me as an in-person hearing as this court case is for the future of my daughter. I want everything done right to ensure that our daughter gets what she deserves. I'm afraid that if it's not an in-person hearing, that there will be lots missed out within the case and wrong judgements will be made which will jeopardise our daughter's life.' (P9)

Some represented litigants had a clear preference for in person hearings because they provide the forum appropriate to the gravity of the case and they afford the opportunity to be seen and heard. Others preferred the remote format for its convenience. Only two people appeared content that they were not given a choice and were happy with the format of the hearing, but some were beyond caring how the hearing took place, so long as it did:

'Not important - just wanted it sorted out.' (R7)

'I would have taken any choice as I was shut out of my children's lives.' (P-LIP11)

Where the only alternative to a remote hearing is no hearing, it is difficult to describe this as a positive choice. Litigants should not be placed in the position where desperation overrides any other concerns about the effectiveness of the hearing. There is a need to place litigants in a better position where they can see both access to a hearing and access to justice being prioritised.

### *Practitioners*

Legal representatives use the HR1 form to request a hearing. Barristers were granted their request more frequently (86%) than solicitors (48%). Of practitioners denied requests, 60% said they were not provided with reasons (Table 13). When reasons were given, they were related to the over-burdened court system so needing to prioritise urgent or complex cases, lack of space for socially distanced in-court hearings, and long court lists.

**Table 13: Practitioner: Requests for hearings**

Questions	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>How often were type hearing requests granted (n=91)</b>							
% who said requests mostly granted	48%	86%	-	-	33%	-	59%
<b>Were reasons given for not granting requests (n=63)</b>							
Yes	33%	40%	-	-	33%	-	40%
No	66%	60%	-	-	67%	-	60%

Procedural and administrative difficulties related to the new forms have also stalled hearings, as described by this frustrated McKenzie Friend:

'The Court office would not accept the form and case initiation papers [for the LIP] by email. The court office initially said it would issue the summons but then 8 days later stated it could not accept the application and required 5 hardcopies of each form to be printed. The online guidance states all contact, including HR1 form, to be by email. The linked email address for the courthouse does not work either.' (MF1)

This is a point of concern, given that the policy intent behind creating LIP-specific forms that can enable applications to be made remotely is being frustrated by these operational limitations. Such basic errors and inconsistencies may have been understandable at the outset of the pandemic as systems were shifting from paper to online, but they are less in October/November 2020, as the successor forms are being implemented.

Several practitioner respondents noted that the HR1 form (and its predecessor FCI1) assisted the progress of the case as it helped to 'narrow the issues' (B17). One practitioner indicated that the HR1, in focusing the issues for the hearing, was having a positive impact on the efficacy of the hearing:

'The use of HR1 forms encourages outstanding issues to be concentrated upon prior to hearings and helps to obtain resolution as the judge can quickly identify remaining points at issue to be adjudicated on at that hearing.' (S43).

However, this assertion was not shared by everyone: some practitioners felt it increased their workload with no discernible benefit to the progress of the case:

'The use of both HR1 and FCI1 Forms and live link reviews for the same case which create an unnecessary double workload for already under pressure practitioners.' (B25)

'COVID forms are an absolute nightmare, every practitioner hates them, lack of information from the court. For example – does client need to be present in court? what documents are required to be in court? where do I send the documents (do I sent Craigavon documents to Lisburn because Lisburn is sitting?)' (S21)

The two McKenzie Friends in our survey felt that LIPs could be disadvantaged by not appreciating the legal consequences of narrowing their case in this way and that these forms were not conducive to collaboration to move a case forward when LIPs are involved:

'The HR1 form seeks to narrow the issues/seek areas of agreement and is meant to be completed collaboratively by parties before filing. In many instances the solicitor has filed first and then the LIP has been directed to respond in very tight timescales. This is bypassing potential agreement.' (MF1)

'Vocational lawyers are gaming the system, and have technical and practical advantages over personal litigants and those assisting them.' (MF2)

## Reasonable adjustments

A duty to ensure equality of opportunity in progressing a dispute in court remains regardless of the pandemic. We wanted to know how well reasonable adjustments that may be required to meet this duty were being implemented in these difficult circumstances.

### Litigants

There was one litigant who identified as not having English as his first language and, while the court was aware of this, he reported that it had not been taken into consideration. It is unclear, however, if he had specifically requested the assistance of an interpreter. Nevertheless, he felt the absence of an interpreter had a negative impact on his case and he expressed his sense of being excluded from participating. Despite being in court he said he was '[v]ery bad representing myself [...] they don't listen' and noted that 'they should let you finish the sentence.' (P-LIP7)

It was not clear whether litigants, represented or not, know that reasonable adjustments can be requested.

### Practitioners

Only 19 practitioner respondents reported they had experience of litigants requiring reasonable adjustments (Table 14). Interpreters were the most common.

**Table 14: Practitioners: Reasonable Adjustments**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>Reasonable adjustments in order to participate (n=122)</b>							
Yes	4	5	2	3	2	3	19 (16%)
No	50	23	1	3	6	0	83 (68%)
I don't know	8	6	0	3	2	1	20 (16%)

One solicitor noted that obtaining confirmation of arrangements was not easy, which is unhelpful for litigants who require the assistance and for the interpreter to have prior contact with the litigant:

'We have a hearing next week in person and do not know how the interpreter will be able to assist if the Court does not allow the client and interpreter to sit beside each other.' (S36)

Other adjustments were separate waiting rooms and exits, facilities for people with disabilities, sign language interpreter and video links.

Reasonable adjustments were reported to have been made fully in only 11 of the 19 cases, partially in 6 cases and not at all in 2 cases. Both of these were reported by McKenzie Friends: one reported that physical appearance was required at court despite there being medical certificates – presumably to exempt the litigant from attending in person. We do not know why the requests for adjustments were not fulfilled in all cases.

Occasions have arisen where barristers have taken it upon themselves to facilitate vulnerable clients. As one barrister noted:

'I have real concerns about clients linking into such hearings and not having the support and assistance in person of their lawyers. When I had a remote Freeing case (the client did not wish to attend court due to his health conditions) I made arrangements for the client to link in from the same location as ourselves, so that we could be there for him, albeit in a socially distant manner.' (B34)

The vulnerability of some clients who had experienced domestic abuse led some practitioners to view remote hearings as beneficial in ensuring parties in high conflict situations or where there are allegations of domestic violence or harm do not have to be in close proximity.

## Issues with technology impacting on case management

Inevitably, the migration to online platforms for family proceedings is a huge undertaking and will throw up huge challenges. A modernisation strategy to bring proceedings online under normal circumstances would look very different and the demand-driven steps taken to manage the emergency situation represent a huge achievement. Any feedback on how users experienced the changes needs to be seen in this light. This section touches on the issues raised in the survey related to the technology and its impact on the flow of hearings.

### Confidence

The usability of the technology to attend remote hearings will have an impact on uptake, and this in turn depends partly on capacity and confidence with technology of the users. We asked respondents about their confidence to use the technology as a means of gauging whether some users might be excluded from legal proceedings due to the use of technology.

### Litigants

We asked the litigants how confident they felt using remote technology to access hearings with a average rating of 3.36. Overall, 61% of litigants felt confident or very confident to use technology to access remote or hybrid hearings and a third felt less confident. This was answered by more respondents than had actually attended a remote or hybrid hearing, suggesting a good level of technological competence to use the technology remote hearings entail (Table 15). It is unlikely that people who are not confident with online technology would complete an online questionnaire, so less confidence may be more prevalent. This would suggest that while the adoption and use of technology may be a positive development from COVID-19, there are potential issues relating to litigant confidence and experience in using legal technology and the option to avail of training or support to attend a remote hearing may be necessary.

**Table 15: Litigants: Confidence using technology**

Question	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Confidence using technology to access remote or hybrid hearings (n=61)</b>					
Average rating (scale 1- 5)**	3.34	3.55	3.38	3.22	3.36

\* 1=Not at all confident 5=Very confident

Only 16 litigants had attended a hearing by phone or video, with computer or laptop being the most frequently used device and then a mobile phone and two had used a tablet. Sightlink was the most common platform used, but other platforms used were Skype for Business, Zoom and Microsoft Teams.

### Practitioners

When asked the same question, 75% of practitioners reported feeling confident or very confident to use technology to access remote or hybrid hearings and only 7% felt less confident – lower ratings were given by five solicitors, a judge, a CCO, the legal executive and the Contact Centre (Table 16). Their overriding confidence possibly reflects the professional necessity to be confident with this new technology.

**Table 16: Practitioners: Confidence using technology**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>Confident using technology to access remote or hybrid hearings? (n=122)</b>							
Average rating (scale 1- 5)**	3.95	4.12	4	4.44	3.9	4.25	4.04

\* 1=Not at all confident 5=Very confident

The practitioners have attended many remote hearings with around 60% using more than one type of device: computers or laptops were the most frequently used, then mobile phones. All except two

practitioners (who did not know what platform was being used as they were in court) had experience of Sightlink. Other applications cited were Webex, Pexip, Skype for Business and Microsoft Teams.

### COVID Safety

The issue of safe working environments has been a critical focus in the need to strike a balance between enabling court business to continue while keeping everyone safe. Some practitioners noted that remote hearings were good for 'stopping the spread of the virus' (LE1) and for 'providing protection to legal representatives and their clients from the coronavirus' (S49).

However, not all practitioners felt safe as the consequence of moving lawyers and clients out of the court building meant that clients were attending their offices instead. This, as one barrister summed up, simply transferred the risk of catching COVID away from the court and the judge to the solicitor and staff in their office (B5).

### Time saved

Remote hearings meant there was no time spent travelling to or waiting around court. This was clearly appreciated by many practitioner respondents. The associated increase in work efficiency was pointed out as they were 'able to continue working in the office whilst waiting on cases to be dealt with' (S28). Other respondents similarly indicated that remote hearings meant their time was not wasted by waiting around.

### Timeslots

Related to time saved was the introduction of timeslots for hearings although, up to mid-November, timeslots were not provided in all family law cases. Five practitioners noted that they have been a welcome introduction and were 'generally adhered to' (S62). Similarly, one litigant appreciated that she was given a specific time to log in and reported that the video hearing worked well, reasoning that:

'I did not need to take a full day off work to attend. I had an exact time to be online and did not have to wait around all day.' (P29)

Taking time off work is an issue that we know can add to the burden of litigating, particularly for those who are self-representing who do not have a legal representative to attend court on their behalf.<sup>19</sup> Addressing this practicality could be a positive step forward in removing practical barriers for litigants as well as freeing up practitioner time.

Where timeslots were provided, however, they were not always run to time:

'When I first logged in solicitors & barristers from other cases were all logged in. I logged in at 10.30 as instructed however the judge did not appear until 11.10. My appeal was dealt with first as I am a litigant in person. The judge asked all others also logged in not related to my case to leave the video call.' (P-LIP3)

While the positive view of timeslots was not unanimous, twelve practitioners recommended timeslots as a means of improving remote hearings.

### Technical support

Being helped or supported to use new or unfamiliar technology may promote its acceptance and uptake. Support may also be a necessary requirement for those who are less confident of being able to navigate not just the legal system but the current online incarnation of this confusing system too.

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<sup>19</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland, barriers to legal participation*, Ulster University). Available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020]

### Litigants

Of the 16 litigants who had attended a remote hearing, nine had help to access the platform, either from their solicitor, the court, the CCO, a colleague or other friend. The technical support available during a remote hearing was perceived as variable by most litigants and a third were satisfied with it.

### Practitioners

Court staff were most frequently reported as controlling the technical aspects of the remote hearings by practitioners. Just over half of them reported a mixed experience with the technical support during hearings and over a third were satisfied with it and 9% were dissatisfied (Table 17). The reasons for the mixed experience are explained in the subsequent section on technical problems.

**Table 17: Practitioners: Technical problems and support for litigants**

Questions	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>Satisfied with technical support (n=111)</b>							
Satisfied	16	13	2	7	2	1	41 (37%)
Dissatisfied	3	2	0	0	3	2	10 (9%)
Mixed experience	36	17	1	2	4	0	60 (54%)
<b>Support been provided by the NICTS for represented litigants (n=122)</b>							
Yes	14	9	2	7	2	1	35 (27%)
No	15	1	0	0	1	1	18 (15%)
I don't know	33	24	1	2	7	2	69 (57%)
<b>Has support been provided by the NICTS for unrepresented litigants (n=122)</b>							
Yes	4	6	3	8	1	1	23 (19%)
No	3	0	0	0	2	1	6 (5%)
I don't know	55	28	0	1	7	2	93 (76%)

We asked the practitioners whether they were aware of any support provided to litigants – represented or unrepresented – to access remote hearings. Their negative responses, 71% and 81% respectively, indicate a patchy awareness of the support provided by NICTS. This was even amongst court administrators and McKenzie Friends who would have been at the forefront of such provision. While it is not necessarily everyone's role to know what support NICTS provides, and perhaps it is less important when fewer litigants attend hearings remotely than they did in person, nonetheless the ability of client-facing practitioners to point to sources of support or information is weakened by this lack of awareness.

### Technical problems

It needs to be acknowledged that the NICTS and the judiciary have performed a herculean feat of making remote hearings happen. They started from a low or even non-existent base, not having had the comparable investment in modernisation that the Ministry of Justice has provided in Britain, and have put in place resources to enable remote hearings. Inevitably, however, there are problems, and it is within the context of the emerging digital landscape that the implications for access to justice and fairness need to be fully considered. We do not see it as incompatible to value the hard work and commitment of NICTS staff and the judiciary in moving legal systems online while recognising that the operational task is not the test that needs to be met: the issue of concern set out from the start by the Lord Chief Justice is that hearings are fair and provide access to justice. Our survey identifies the immediate impact of the changes put in place arising from technical problems that should provide impetus for further reform.

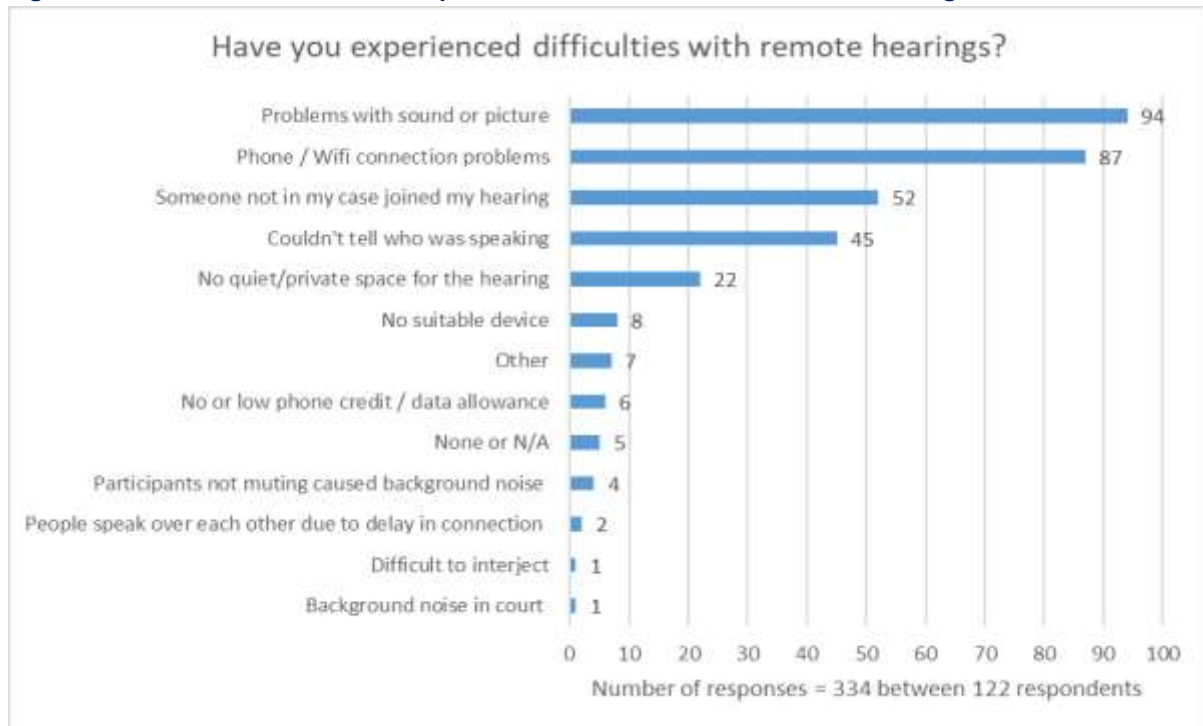
When asked whether they had experienced any difficulties with remote hearings only three of the litigants said they had not. Anyone who has used web-based video calls will be familiar with the potential technical problems that can arise. Litigants reported problems with sound or vision and connection

problems. More salient to the gravity of occasion are the problems with not being able to tell who is speaking, and having someone not relevant to the case join the call.

‘It was hard to follow what was being said. In particular the Judge as they kept moving away from the microphone and it was difficult to hear at times’ (P-LIP3)

Only five practitioners said they had not experienced any technical problems (Figure 5). Again, sound or vision issues and connection problems were common; 45 practitioners affirmed not being able to tell who is speaking; 52 affirmed having someone not relevant to the case join the call; and 22 affirmed not being able to find a suitably quiet or private place for the call.

**Figure 5: Practitioners: Number of responses about difficulties with remote hearings**



It is clear is that technology in hearings is experiencing major teething problems, put simply by one solicitor:

‘Technology is letting the court down.’(S21)

Practitioners and litigants pointed to specific problems in the following areas.

#### Locked out of Sightlink

Some legal representatives became locked out of a Sightlink slot and had difficulty alerting the court clerk to re/admit them. Sometimes the court clerk did not see their messages during the hearing, so they sent a text to another participant to alert them that they had been locked out, supporting one practitioner’s view that a ‘network of contacts’ is required to enter or re-enter a hearing. This suggests an additional role for the court clerk to be alert to who is in the hearing and should be; and to ensure participants are present, can see and hear others and can likewise be seen and heard by others.

‘I have been locked out of my review hearings on a daily basis because the links are locked by the clerks to preserve confidentiality. It is usually resolved with an email to the clerk or a text to other counsel on the link.’ (B26)

‘If you are given a certain time to link into Sightlink and another case is running over and you are locked out of the room, the Court staff rarely email you to tell you when to link into your case and you can miss your review.’ (S24)



'There is no effective communication from the court. You could be listed at 11.30 but cannot get on the link and have no idea when you might get on and no one to engage with to find out when you might be heard.' (B28)

### Sound and vision issues

Poor connectivity and audio and visual capacity meant that the courtroom, where participants can generally see and hear each other, was not replicated virtually through a video or hybrid hearing. Practitioners reported not being able to see or hear the proceedings:

'Can't see court / panel members; Don't know who is present in court.' (S9)

'Not always knowing who is speaking.' (GAL3)

'Judge finding it v difficult to hear participants.' (B3)

'As someone who is hearing impaired the sound quality is horrendous in the larger court and I have struggled at times to hear what is being said.' (S21)

Interference in the audio was created when participants did not mute their microphones and allowed background noise to interfere with the proceedings.

'People not muting mics interfering with sound.' (S26)

### Privacy and confidentiality issues

Beyond technical issues hindering proceedings, security of the Sightlink system was of concern to a number of respondents. It is not clear if this is a result of technology alone or a combination of technology and human error.

'Families and self-litigant parents [are] present online before the list starts and can hear discussions.' (CCO1)

'I have had self-litigants from other cases appear online for divorces and I am concerned as to the safety of Sightlink. No information was provided as to cyber-security in relation to same and I am worried as to the GDPR ramifications, i.e. if information is leaked who exactly is responsible?' (S21)

Both practitioners and litigants reported accessing the timeslot of another hearing:

'On one occasion I was given a Sightlink, when attending it was the wrong case. I believe this adds an element of concern around confidentiality.' (P-LIP10)

### No appropriate space

The capacity of the judge to clear the courtroom to only allow participants in the case to see and listen to the hearing was not always replicated in the virtual sphere. A few respondents raised this concern not because strangers were sitting in a hearing inappropriately but because some participants did not have a private space or the capacity to prevent others from walking in accidentally. This was the case for some litigants too where children were present:

'For any hearing where clients are to give evidence from home it is not appropriate for children to be in the vicinity but due to restrictions this cannot be avoided.' (S16)

'It's impossible to do hearings with children in the house.' (B29)

'During the period when children were not at school many clients could not effectively consult due to their children being present.' (B21)

### Connection issues

Several participants reported that they lost connection and were not updated on issues when the connection was resumed, thus having no opportunity to address what had been said:

'If the link breaks down, the review proceeds anyway so there have been a few occasions when I have been effectively cut out of the review ... [P]arties not being able to fully participate; not being able to make proper representations and decisions being made without full and proper consideration being given.' (B29)

If a legal representative left a live hearing, the proceedings would halt unless it was clear or decided they could proceed without him/her. Protocols for remote hearings do not yet mimic those for live hearings.

Connection problems were also noted to impede the hearings or make them protracted:

'There can be a delay with sound – someone else might have already started talking and there is a delay then and overlaps in conversation or loss of sound.' (S5)

### Viewing documents

One area of concern was not being able to see the papers that were discussed in the hearing with eight of the 16 litigants who attended hearings remotely remarking on it. Many practitioners have been able to see the papers using digital means, such as a computer, tablet and/or phone, and sometimes paper versions. One practitioner reported that consulting on the documents was difficult during hybrid hearings:

'With hybrid hearings it is even more difficult for all counsel conducting the case to communicate particularly if documents to be read/exchanged as some are in Court and some on the video link therefore phone-calls, Zoom/Teams calls and emails are utilised.' (B26)

Many practitioners did not use digital means to view documents, with 33 out of 122 viewing documents in hardcopy. Having sight of documents is essential in many hearing, and the survey indicates varying access to documents with some respondents viewing hard copies, others viewing them online and some not being able to see them at all.

### De-humanising the process

The full participation of people in the hearing was by and large believed to be stilted in remote and hybrid hearings. While being locked out of a hearing literally interrupted the flow of a hearing, remote hearings took on the another meaning of remote in that there was little connection with or relationship to the actors in the hearing. This loss of rapport and difficulty to engage emotionally when participants were not physically together was acknowledged by one judge:

'It is harder to establish a rapport with the parties where I am trying to get them to come up with resolutions ... perhaps people feel more distant and disconnected from what is going on and sometimes find it easier to put up poor excuses ... When they are present in court I find it easier to get immediate answers and to come up with plans to try to solve problems and get cases moving on. It is undoubtedly better to be able to bring parties into the court and speak to them directly.' (J1)

This disconnect between the participants in a remote hearing was echoed by a social worker:

'The humanity has been lost in some proceedings, some judges are good at speaking directly to parents when making decisions and this isn't possible remotely.' (SW3)

In the case of hybrid hearings, dehumanisation was caused by the absence of people in the courtroom or poor camera angles to view attendees:

'Sometimes in some courts the only view we have is of an empty courtroom. Very hard to make submissions when speaking to an empty room and no body language feedback or even view of the Judge.' (B25)

'My view of the Court does not always enable me to see my witness and or the Judge which makes it difficult to know when someone has stopped speaking.' (S29)

'You don't have a view of the person addressing the court, just the Judge.' (B34)

The issue of empathy was seen as particularly relevant to family proceedings which were highly emotive and which could result in life-changing outcomes for litigants and their children. The human element of justice dissipated in remote hearings, as one practitioner noted:

'Remote hearings ... may feel somewhat impersonal for clients when decisions are being made that affect their lives and children.' (S1)

The impersonal remoteness of a hearing that was not face-to-face led a number of practitioners to state that they should not be used for many family law hearings:

'Not appropriate to have difficult emotive cases dealt with on a video link.' (S47)

The practical setbacks arising from technical matters were believed to be taking a toll on litigants in family hearings and many respondents asserted that due to the significance of issues in dispute, fact-finding or final hearings in family law cases were not appropriate to be held remotely or in a hybrid fashion:

'Everything other than agreed directions hearing and non-controversial reviews [that] are well managed is not suitable for remote [or] hybrid hearings.' (S57)

'Final hearings in family cases require the ability to test evidence, this is only effectively achieved through physical hearings.' (S7)

While the emotive nature of hearings required not just empathy but gravitas, there was further concern that the transactional nature of remote hearings was also adding an element of disrespect:

'Attending a settlement meeting in the Court buildings requires all parties to be prepared and to recognise the gravity of what they are dealing with. Consultations are arranged with clients remotely. However some clients are not taking time off work to attend these meetings, conducting them in private spaces in work or in their cars.' (B21)

Lawyers are perhaps more attentive to the different level of gravitas than the litigants, for whom more prosaic concerns have been evident, including the ability to save time in attending hearings and the acknowledgment that at least cases could still progress without the need to attend court for a day. We see no evidence that would allow for an adverse inference about the litigant to be drawn from the fact that they are attending remote hearings from their cars, particularly where we know that litigants can struggle to find private hearing spaces in their work or at home.

### Stilted flow of the hearing

The capacity to mute participants' microphones was welcomed by some as a means of cutting off unasked for submissions:

'If someone is going off-piste and refuses to stop talking, unlike in a court room, their mic can be muted and thus means that the Judge has more control of the irrelevant information sometimes brought into cases.' (CA4)

However, some participants expressed a sense of abruptness in the hearings and not being given time to talk:

'I have experienced being cut off in submissions which is difficult to persevere with the point on a link with a time delay, link being frozen and Judge dealing with the case anyway, admonished for talking over the Judge when there is an obvious time delay.' (B26)

'Judge didn't give time to talk.' (P26)

'In a court room appearance, I believe I would be given the opportunity to speak more. I feel it is easier to move people along via remote hearings, especially a personal litigant.' (P-LIP12)

Some judges appear to be not allowing legal representatives to make full submissions, due to complexity and time pressure:

'Judges don't allow complex submissions (as they can't).' (B9)

'Judges have refused to allow oral submissions from legal reps and ask for "headlines only."' (S11)

Several litigants who had attended a remote hearing reported that despite their presence they were not allowed to make their submissions before the judge and it was difficult to get the judge's attention to say something. Their elaboration was focused not just on the practical matters but on their sense of exclusion:

'I found it really difficult. I couldn't follow it and didn't really get to speak about the stuff the other side were saying.' (P-LIP11)

'In a court room appearance, I believe I would be given the opportunity to speak more. I feel it is easier to move people along via remote hearings, especially a personal litigant.' (P-LIP12)

Being cut off mid-flow by the judge happens in live proceedings and is not peculiar to remote formats, so these comments should be taken in the context of needing to deal with cases efficiently while ensuring all the relevant facts are aired. However, participants should not be left with a sense that their case is prejudiced due to being cut off.

### Body language and assessing evidence

More subtly, communication via body language was lost in remote hearings. Judges found it difficult to read the body language of the litigant and of witnesses. Lawyers reported struggling to make submissions to the judge and to cross-examine witnesses. Even though, as one solicitor pointed out, experts out of the jurisdiction can join remote hearings, most practitioners were not content with the practice of assessing evidence remotely. Connection issues and the limitations of a computer screen were to blame:

'No depth. [Two] dimensional so difficult to fully assess the evidence/speaker.' (S25)

'Both the court and the lawyers have lost the opportunity to properly observe the witness – their nonverbal cues when giving evidence is lost in a remote hearing and such cues can be very informative for the bench and the lawyers in a hearing.' (B36)

This difficulty in reading body language and determining credibility was noted by one judge, whose response was to have face to face hearings in these instances.

'I am using Sightlink hearings where there are no real credibility issues. If there are issues re. credibility I am listing for in-person hearings.' (J1)

Making submissions to court in a remote hearing has been difficult for some litigants and practitioners.

'I had evidence to hand in, but the judge didn't even let me have a voice in court to put forward my concerns.' (P-LIP2)

'Not being able to put case across effectively. Points lost in transmission and not sure of judiciary can understand full effect of issues being mentioned.' (CCO2).

### Communication between litigants and their legal representative

The change in the dynamic between solicitors and their clients and other solicitors caused by COVID-19 is far-reaching. Some solicitors were on furlough and could not progress their cases; others took on the workload of furloughed colleagues, increasing their workload to unmanageable levels. There were

fewer face to face meetings in offices in the early days and the halt to the discussions in the court building prior to a hearing took away opportunities for taking instruction and advising on developments in a case.

### *Litigants*

Litigants reported a wide variety of means of communicating with their legal representative, with phone and email being the most commonly used means. This is likely to be similar to how they were in touch prior to the pandemic. We had hoped to find out about their communication directly before and after or during a remote hearing, but as only eight represented respondents had attended a hearing and the difficulty in ascertaining whether they were specific to COVID-19 measures in their responses, we cannot draw any conclusions.

Insight into the two-metre distance requirement at a hybrid hearing was reported by one litigant who wished to communicate with counsel during the hearing and was impeded from doing so:

'I don't see any reason why courts are making me and my ex-partner sit in designated chairs, without being able to talk to or communicate with our barristers.' (P9)

### *Practitioners*

Taking instruction was raised as a specific difficulty by legal representatives, as even if they were in the same room as their clients, a two-metre distance does not allow them to take whispered instructions:

'It is difficult to communicate with either your client/Barrister/witness when an issue arises during a hearing as you cannot turn round and speak to them directly as we are not in the courtroom. This means you have to have another means of communicating ... while you are linked into the court. N.B. Not all clients have the electronic devices to do this.' (S24)

'It's difficult to take client's instructions in comparison to in-person hearings. For example, the client will attend at solicitor's office for the hearing, however Counsel will be linking in from home. So you have to consult before, during a break, and after the hearing via phone or video, as opposed to be able to take instructions then and there at court.' (B6)

One respondent believed impeding communication had a tangible impact on the overall outcome of a case, which was inappropriate given the nature of family cases:

'Family cases are of paramount importance to those families involved in them and even review hearings are dynamic and require immediate responses which cannot be prepared for in advance. The ability to consult and communicate mid hearing is vital to effective representation and an overall fair outcome.' (B21)

Practitioners also noted occasions where they were unable to consult with other professionals in the remote hearing:

'Unable to consult with interpreter.' (S9)

'Can be difficult to speak to other professionals, GAL, social worker and court children's officer in private.' (S9)

'You can't talk to your senior, solicitor, client.' (B9)

However, there were exceptions to the general discontent of practitioners who found communication with their clients and other professionals difficult. One Guardian ad litem noted the 'use of a WhatsApp group for the GAL, Solicitor and Barrister only, for private conversation.' (GAL3)

### Impact on out-of-court discussions

Negotiations in the waiting rooms or corridors are standard practice for legal representatives for reaching settlements. The remote medium does not facilitate these encounters naturally and so we wanted to understand the impact of this.

### Litigants

New applications and submissions to court were common among the litigants, but 71% said there had been no attempt to settle their case out of court (Table 18). We do not have anything to compare this with to see whether COVID-19 is hindering or promoting efforts to settle out of court and it should be noted that this is a complex issue. Our research has found that LIPs are not aware that pre-hearing negotiations are common or how they can be conducted, so where there are fewer opportunities to enable settlements this could have a particular impact on LIPs.<sup>20</sup> Nonetheless, our data highlight that reluctance to settle out of court is problematic even where, as in family proceedings, settlement is encouraged.

**Table 18: Litigants: Proportion who attempted to settle**

Question	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Attempts to settle case (n=62)</b>					
Yes	10	1	11	2	13 (21%)
No	29	9	38	6	44 (71%)
I don't know	3	2	5	0	5 (8%)

When considered by representation status, we found that in 10 of the 42 represented parents' cases (24%) settlement had been attempted but in only one of the 12 unrepresented parents' cases (8%). This echoes our previous research which found that litigants without representation were not generally aware how to mediate or settle their case out of court.<sup>21</sup>

### Practitioners

Likewise, the majority of practitioners (81%) thought social distancing measures had impacted on out of court negotiations (Table 19).

**Table 19: Practitioners: Impact COVID-19 on negotiation and settlements**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>Has COVID-19 had an impact on negotiation and settlement (n=125)</b>							
Yes	54	33	3	1	7	3	101(81%)
No	7	1	0	1	1	0	10 (8%)
I don't know	2	2	0	7	2	1	14 (11%)

Negotiations now require time for email correspondence prior to the hearing so that instead of pre-hearing face-to-face discussions, there was now:

'Lengthy time on email chains attempting to agree positions and FCI1 forms.' (B19)<sup>22</sup>

<sup>20</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland: barriers to legal participation*, Ulster University, available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 16 December 2020]

<sup>21</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland: barriers to legal participation*, Ulster University). Available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020]

<sup>22</sup> Previous version of Family Business continuity forms, known as FCI1, developed since end of March 2020.

Scheduling a meeting between the relevant professionals prior to the hearing added another layer of delay – the different professionals involved in the cases have to find a time to meet in their busy schedules, which effectively pushes back the completion of the ‘COVID forms’ and case outcomes.

‘More difficult to engage in negotiations as matters develop on the day. Group discussions between representatives and social worker, court children’s officers etc. which would have occurred on the day now need structured before or after which can also cause further delay.’ (B25)

‘We can’t meet to negotiate. Zoom consultations with many counsel don’t work ... We need to be in the bar library and the courts to get work done. Cases aren’t settling as we don’t have the time to sit down and thrash it out.’ (B9)

‘Often cases have to be adjourned to allow for further discussions or negotiations which would often have occurred in court.’ (S15)

## Litigants in person

In our previous research on LIPs in Northern Ireland, the main finding was that LIPs have trouble fitting into a system not designed with them in mind.<sup>23</sup> We wanted to throw light on whether the measures taken for COVID-19 were designed with LIPs in mind, and with 12 LIPs in the sample of litigants, we can draw out valid individual experiences. In addition to their perspective covered in previous sections, this section reviews issues specific to LIPs: the introduction of forms specifically for LIPs, access to information about the changes due to COVID-19 and about their proceedings, submitting documents, attending hearings alone and McKenzie Friends.

Only eight LIPs had attended a remote hearing, and none of them thought the changes in hearing format were working well: six said they were not working well and two were not sure.

The reasons for the negative reaction to the online measures overlapped with those raised by represented litigants and practitioners: not finding the format conducive to engagement with the proceedings; the hearing being hampered by technology problems; and wishing the timeslots were more timely.

Additional issues did arise, however, including the view that remote hearings could be intrusive and intimidating where LIPs were taking part in video-enabled hearings at home:

‘I felt as if they were all in my living room.’ (P-LIP9)

While being in the court building can be intimidating, it can also offer neutrality.

## Communications and guidance

Among the LIPs were eight men and two women; ten in private cases, one in a public cases and one in both. Ten of them are in proceedings that started before the end of March 2020, suggesting they may have experience of the family justice system already and are in a position to compare the service pre- and post-COVID-19 measures coming into play.

Ten of them were contacted directly by the court or the other party about on-going actions in their cases, while two were not. Being contacted directly is a necessity for LIPs who do not have legal representation to manage their cases and this seemed to be working reasonably well. Three of the nine court

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<sup>23</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland: barriers to legal participation*, Ulster University). Available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020]

administrators who completed the questionnaire and were aware of special arrangements put in place for LIPs referred to personal contact with LIPs with times and instructions on how to join a remote hearing via Sightlink. This adaptation to meet the specific situation of LIPs who cannot rely on information and support from a legal representative indicate LIPs have been taken into consideration in COVID-19 measures.

As we might expect with different courts managing different challenges and most LIPs not being familiar with the procedural requirements of family litigation, there was variable experience of communications with the court, ranging from excellent to frustrating. Nine LIPs had submitted documents requested by the court, with half of them reporting a difficulty with the process, such as this LIP:

'I have put my application for court by email as stated to do so by guidelines; the court accepted it then because I couldn't get through to their phone lines for 5 days straight, they emailed me back 8 days later to tell me it had to be done by post instead.' (P-LIP10)

Inconsistent guidance may be negotiated more easily by legal representatives who have networks of contacts, but will be baffling and defeating to LIPs without such support mechanisms. There was a specific tab on the COVID-19 section of the website for the Office of the Lord Chief Justice for LIPs. This contained the LIP forms and the guidance on how to complete them but the fact that LIPs still struggled with understanding how to complete the process of application suggests the materials themselves were insufficiently clear. This is supported by the LIPs' slightly lower rating of how useful the information was compared to the represented litigants': average rating of 2.46 and 2.71 respectively on a rating scale of 1 to 5 where 1 is Not at all useful and 5 is Very useful.

### Practitioners

Over a third of practitioners (36%) said they had been in proceedings with parties who were self-representing. When asked whether any special arrangements had been put in place for LIPs due to COVID-19, two barristers, three court staff and the three judges were aware of special arrangements made for LIPs which include: separate forms for LIPs, arrangements for submitting documents and being contacted directly by court staff, in particular with information about joining a hearing and the choice of hybrid or video format. Practice with LIPs is reported by one judge to be bedding down:

'From March to June very little was being progressed. From June for a couple of months I was directing on the cases from home by email to the clerks as Sightlink had not been set up. This included, in any case where a party was unrepresented, getting the clerk to send directions out to them also, asking them to confirm their attitude to the case and also asking them to fill in the unrepresented litigants form. Once Sightlink was available I have been in court every sitting day dealing with the list on Sightlink. Anyone now who is unrepresented is being asked to join by Sightlink and I have recently been indicating that the timeslot for unrepresented persons is to be 11:30am.' (J1)

In contrast to these practitioners who were aware of special arrangements for LIPs, the others were unaware of any, including the two McKenzie Friends. Awareness of the special arrangements for LIPs has clearly not filtered through to even those who support LIPs, or to practitioners who support represented litigants. It is quite an indictment of the level of awareness or concern of 57% of practitioners not to be aware of support being provided to represented litigants and 76% of them not to know if support had been provided to unrepresented litigants.

### McKenzie friends

Given the particular communication needs between in-court supporters such as McKenzie Friends and litigants, we asked the survey respondents about their experience of them in remote hearings.

Five of the litigants – two represented and three LIPs – said they had been helped by a McKenzie Friend. Three of them were positive about the support, with one saying:



'The McKenzie friend shared more info on the process than any legal rep has ever done.' (P5)

Only one LIP reported difficulties with his McKenzie Friend being permitted to his hearing, but this meant the LIP did not have support present during his hearing:

'I found it really difficult to follow it all. My McKenzie Friend wasn't allowed as it's not recognised here and he wasn't allowed to help me.' (P-LIP11)

Our previous research on LIPs found that admittance of McKenzie Friends to hearings was not dealt with consistently by judges, and this appears still to be the case. The dimension of not being aware of or able to control for when a McKenzie Friend accompanies a LIP in a remote hearing is an additional complication of remote hearings that needs further thought.

In a similar vein to lawyers not being able to communicate with their clients, one McKenzie Friend noted that even when they had been present to support the LIP they were not permitted to communicate with each other and consequently:

'The litigant found it difficult to follow the fast paced online hearing and wanted to speak to McKenzie friend. No opportunity to do so was allowed and he was unhappy with the court's directions and the court did not ask him for his views.' (MF1)

Only two practitioners had experience of McKenzie Friends. They believed the McKenzie Friends communicated with the LIP during or immediately before or after the hearing either by text or directly, yet none of the three McKenzie friends said they could communicate at all with the LIP during the hearings.

In-court and more general support provided by McKenzie Friends for LIPs was found to be greatly valued by LIPs in our previous research. Being prevented from providing that support denies sources of reassurance and support for LIPs.

## Delay and adjournments

The delays in getting hearings have been considerable with 63% of our litigant respondents stating that their case hearing was adjourned for more than three months:

'... the standstill a lot of cases were met with in March [2020]. A lot didn't happen in cases from March to August, which obviously would have had a very detrimental effect to parties private and family lives.' (B6)

'Delayed twice. The second time I had to attend the court house to be told my hearing wouldn't happen tomorrow. I got a notification the following week by post that confirmed that.' (P-LIP13)

'Delays in making progress with assessments because of lack of hearings and court availability.' (P25)

Social workers not being able to enter other people's homes, contact centres being closed, staff shielding and working from home and delays in the work of other public bodies have added further layers of delay to the progression of family cases.

We asked the litigants about the impact of COVID-19 on contact with their children and delay in their cases. We saw earlier that 40% of the litigant respondents were contacted about delaying their case, so it is within reason that nearly two-thirds of the sample reported that their cases had been adjourned for over three months. Of these litigants, 18 additionally reported that they had not been able to see their children because of adjournments in their cases. Even though the survey highlights a small number of litigants in this situation, it indicates a worrying impact of COVID-19 on maintaining contact with children. We cannot determine in these data whether the reasons for the adjournments are directly

attributable to backlogs and changes in court practice or COVID-19 being used as an excuse to hamper contact with the other parent or both. However, these reasons were raised by litigants and legal representatives.

Backlogs in court practice was seen as one source of delay, including court requests for CCO reports:

'Social worker review required but there is a huge backlog, will be 12 weeks before a report is ready.' (R3)

'It has been a most upsetting and frustrating time. The delay was due to waiting list for Court Children's officer, made even longer by COVID.' (P3)

The proposition that COVID response measures were being used to delay or prevent contact was highlighted by several respondents:

'People abuse the fact that courts not likely to hear disputes any time soon.' (S42)

'COVID was used quite simply as a weapon to stop me seeing my son. Whilst it was clear that separated parents were still permitted to have contact with children this message was not / did not seem to be enforced by the courts.' (P-LIP1)

Many parents emphasised that contact with children had been stopped due to court closures which meant there was no mechanism with which to enforce a contact order which was flouted by the other parent.

'Wife cancelled contact for last 10 months despite court order. No mechanism to bring her in front of a judge. Eventually got a date for contempt of court and review date, then sets hearing date which involves more delays.' (P21)

'The impact upon my child was significant. My ex did not abide by the court order and it took too long to return to court to have the order amended.' (P29)

Litigants' sense of frustration at the delays was taking its toll on their well-being:

'I am very concerned with the longer terms effects this is having on my children's well-being and my own health.' (P37)

The ineffectiveness of the court system or even complicity in not preventing these tragic contact cases was summed up by one solicitor:

'Clients' perception is that nothing is happening to resolve their case and where one party wishes to delay or frustrate contact, the current system enables this.' (S29)

A consequence of delay was the reduction in the power of an imminent hearing as an incentive to move a case along as delays in fixing hearing dates reduced the impact of this negotiating strategy:

'It has caused massive delay, usually you can lever an intransigent opposition with threat of hearing but delay means that has less impact now.' (S6)

'Think people are more likely to settle the case when they know they have to appear at a court hearing or they are actually at court physically. Cases are being adjourned indefinitely. No sense of urgency and no pressure to settle.' (B33)

The response to this delay was, for some, to open up the courts.

'I don't understand how we can wear masks and socially distance in shops but we can't be in a court room.' (P2)

'Open the courts, why can you go on an airplane but not go to court? Matrimonial cases need to get on, children order cases need to get on. People will die while still married and this will impact their successors. Vulnerable people need their cases heard in person.' (B9)

Not all of the respondents with cases adjourned for over three months have been prevented from maintaining contact, as 13 reported they had been able to see their children despite the adjournment. Similarly, there is a mixed picture of whether litigants with an existing order have been able to follow it, with half reporting positively and half negatively.

## Fairness and justice

The issue of fairness was not defined in our questionnaires and will undoubtedly mean different things to different people. What we wanted to know, however, was not how fairness was defined by respondents – accepting that multiple interpretations can all be valid – but how it was perceived.

### Litigants

We asked the litigants whether they considered their case was being dealt with fairly (Table 20). The mean rating was 1.9 suggesting a low rating in terms of fairness.

**Table 20: Litigants: Fairness**

Question	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep	No legal rep	All		
<b>Felt your case had been dealt with fairly? (n=61)</b>					
Average rating (scale 1- 5)*	1.77	2.36	1.85	2.22	1.9

\*1=Not at all fair and 5=Fair

Over two-thirds of the litigant respondents (69%), including six LIPs, said it was not fair at all or not fair. Of these 33 respondents, 25 of them additionally said their case had been adjourned for over three months, which may account for their attitude. Only six opted for a positive response. We do not have a baseline to determine what views would have applied pre-COVID-19 and so attributing this reaction to COVID-19 is not possible, but the results still raise a concern over how some litigants currently view the fairness of the family justice system.

As noted earlier, litigants were particularly concerned about being excluded from the substantive discussions: they reported feeling rushed, with judges moving the discussions on quickly, leaving litigants feeling they were not getting a chance to speak or to be heard:

'I had evidence to hand in, but the judge didn't even let me have a voice in court to put forward my concerns.' (P-LIP2)

'I didn't think it was fair. the judge didn't listen to me.' (P-LIP11)

'Not able to get points across or be listened to.' (P26)

The unfairness was therefore seen by litigants as an issue of both procedural and substantive justice.

### Practitioners

We asked a slightly different question of practitioners because we wanted to know whether they were satisfied that remote or hybrid hearings were not an impediment to fairness (Table 21). In general, they rated fairness in the remote means quite positively, with an average rating of 2.84 which is above a mid-rating of 2.5 in a rating scale of 1 to 4. Nonetheless, five respondents, including a judge, gave a very unsatisfied rating.

**Table 21: Practitioners: Fairness**

Question	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>Satisfied case(s) dealt with fairly by remote or hybrid hearings (n=122)</b>							
Average rating (scale 1-4)*	2.82	2.76	2.67	3.33	3.1	2	2.84

\*1 = Very unsatisfied and 4=Very satisfied

This seemingly positive overall satisfaction rate appeared to be acknowledging that the best was being done under the circumstances:

'Remote or hybrid hearings are not ideal, but necessary in the current climate.' (B6)

'At least it allows progression of some sort.' (S58)

'It's a poor substitute for a live hearing, However, there is no alternative.' (J3)

There was a belief that judges were doing their utmost to ensure that cases were dealt with fairly. As one social worker noted this effort was being made but may not always be perceived this way:

'Judges and court staff have been thorough in ensuring that all representatives are given proper access to sharing their view as per usual procedure. Outcomes have been fair but maybe managed more bluntly than usual.' (SW3)

Where remote hearings were seen as unfair and inferior to face-to-face hearings, however, respondents were highly critical:

'Technology is no substitute for in person hearing.' (S5)

'Client getting a "cheap version" of court.' (S31)

For fairness to be achieved, therefore, some reported that adjournment until the hearing could be held face-to-face was the only solution, with all parties participating in court:

'I only list cases for remote hearing where I am satisfied that they can be dealt with appropriately. These are cases where statements/ position papers have been filed and the issues are clear.' (J1)

'Judicial approach is very thorough and there appears to be a willingness to make decisions where absolutely necessary but equally to defer where it is not absolutely essential and status quo can be maintained.' (S25)

What this means, however, is that delay is likely to continue for contentious – including final – hearings, as respondent practitioners have noted the reluctance or refusal of judges to list these case for hearing. While we did not ask how far the litigants' cases had progressed, there only being two litigants in the sample who had had a final hearing (and attended remotely) suggests final hearings are not happening frequently. We have set out that two-thirds of our litigant respondents had their hearings adjourned for more than three months. These delays are being exacerbated by the corresponding backlog of work for CCOs and public bodies. We know that this is also having an impact on contact arrangements, including through upholding the 'status quo' of interim orders which may well fall into the category of deferment on the basis of being 'not absolutely essential' for hearing. This situation frames how litigants perceive the fairness of how they have been treated by the court system:

'Massive delays. My next court date was April 15<sup>th</sup> [2020], that got delayed and then delayed again. My court date is 12/11/2020. 7 months waiting. Disgraceful.' (P-LIP13)

'Still not dealt with, hearing now 13th December [2020] ongoing from January [2020]. Contact stopped most of year ... no one to adjudicate the matter. Life has been controlled for the last year in many different forms due to lack of court proceedings. Contact stopped and started. No consequences for the other party.' (P11)

The frustration felt by parents where delay has meant a lack of contact with their children is evident, with many also expressing their hurt at what they perceived as the justice system not taking their situation seriously, a concern echoed by practitioners:

'I was told my case could only be heard if there was an emergency.' (P14)

'The clients do not feel their case has been treated seriously.' (S5)

The fairness of remote hearings is therefore not simply a case of the technical limitations that they present in themselves, but the consequential impact of this in having to wait for face-to-face hearings to be available so that family law problems can be determined.

On a final aspect of fairness and justice, we asked the respondents whether the new hearing formats were working – see Tables 22 and 23 – because positive perceptions of hearings are understood to be closely related to trust and confidence in the justice system.<sup>24</sup>

Only six (10%) litigants gave a positive reply and said they were working and 40% said they were not working. The majority were not sure. This lack of certainty reflects the small amount of experience of remote format hearings within the sample.

'I haven't had the experience to be able to answer whether or not the process is working well. Looks good on paper though, as does most things.' (P33)

'I will know better after first hearing due to be held via video link. While I think family cases are too important and should not be delayed thus video has to be an option.' (P21)

Of the 16 who had attended remotely, only two said the formats were working, eight said they were not and six were unsure. It is only a limited view from the litigants' side but nonetheless it does not instil much faith that the changes are working for them.

**Table 22: Litigants: Are the changes to hearing formats working?**

Question	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep n=51	No legal rep n=12	All		
<b>Are changes to hearing formats working (n=63)</b>					
Yes	4	0	4	2	6 (10%)
No	16	5	23	2	25 (40%)
Not sure	22	7	27	5	32 (51%)

Similarly, we asked the practitioners whether phone or video format were effective in allowing both parties to participate in their proceedings – Table 23. Practitioners rated video more effective than the phone with an average of 2.8, above a mid-rating in a scale of 1 to 4 where 1 is Not at all effective and 4 is Very effective. Phone hearings were rated at an average of 1.7, below a mid-point, suggesting a lower opinion of the effectiveness of phone hearings.

**Table 23: Practitioners: Ratings for effectiveness of phone and video formats**

Questions	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicitor	Barrister	Judge				
<b>Are phone hearings effective in allowing both parties to participate (n=109)</b>							
Average rating (Scale 1-4)*	1.78	1.58	1.5	2.25	1.6	1.5	1.72
<b>Are video hearings effective in allowing both parties to participate (n=108)</b>							
Average rating (Scale 1-4)*	2.83	2.77	3	3.25	2.8	2	2.81

\*1 = Not at all effective and 4 = Very effective

Judges and court staff rated video hearings more highly than other practitioners. While this reflects their point of view of how well the proceedings are managed under the new regime, it is only part of the picture. Court staff were more favourable towards phone hearings than other practitioner groupings.

<sup>24</sup> See for example, EA Lind and TR Tyler (1988) *The Social Psychology of Procedural Justice*. Springer, New York; TR Tyler (2000) 'Social Justice: Outcome and Procedure,' *International Journal of Psychology*, 35(2), pp117-125

Again, as a barometer of the appropriateness of the hearing formats, these views suggest further refinement and development of the technology and platforms is needed to be seen to be offering a fair hearing from all perspectives.

## **Conclusion**

The survey findings reveal difficulties for everyone involved in family proceedings cases since March 2020, from those administering the changes to the system to those working within it to those dependent on it for determining critical issues relating to contact with children. The choices for access to justice should not be between the 'standstill' referred to by one of our practitioner respondents and the temporary remote measures to inch forward on cases; the impetus instead should be on how to ensure legal participation that enables access to justice in the circumstances we are now in.

## Chapter 4: Conclusions

Our intention for this survey was to establish if the Northern Ireland court system was dealing with or managing similar problems to those that have emerged in England and Wales as a consequence of the changes to court procedures to reduce the public health risk of COVID-19. We wanted, in particular, to understand if the changes impacted differently for litigants in person than might be the case for represented litigants.

While we have collected sufficient survey data to examine our research objectives, the caveat of our research should continue to be applied: that this was not a representative survey of the practitioner or litigant population (nor was it intended to be) and so the results are neither representative nor generalisable. What we gathered was a snapshot of some of the views, over a short time period, that highlight some of the issues of concern as well as identifying some of the practices that are working well. The research should be read in this light as providing a starting point for further understanding of how the COVID-19 adaptations to court proceedings are affecting access to justice.

Our research has helped identify what has worked well and what remains problematic. This chapter highlights briefly how the findings fit with what our existing research tells us about effective participation in court hearings, particularly for litigants in person.

### Learning lessons

The key finding of this research is: remote hearings are making the best of a bad situation but are not perceived as delivering effective access to justice. This finding mirrors findings in other surveys. There are significant concerns around the fairness of remote hearings and the difficulty in ensuring the participation of all parties. The relative difficulty in responding to, misinterpreting or missing visual cues in remote hearings may be an increased risk to effective participation. The survey shows that the flow of remote or hybrid hearings has become stilted, potentially impacting on the fairness of the outcome. This may further complicate pre-existing problems of access to advice and support services, and respondents identified difficulties in accessing legal advice since the pandemic. The mental health toll of remote justice beyond the court building also needs to be monitored. Respondents to our survey noted the absence of humanising processes that interaction with court staff and practitioners can create, as well the potentially intrusive nature of having proceedings take place at home. The limitations flow also from the lack of modernisation and investment in technology – a major issue that precedes and is now exacerbated by the pandemic. It is particularly noteworthy that courts in Northern Ireland have been able to respond as well as they have given the absence of any notable investment in digital justice pre-pandemic, in comparison with the considerable and controversial digital reform programme that was already being implemented by the Ministry of Justice.<sup>25</sup> While further investment is needed, it is also the case digital hearings may not be economically rational in all jurisdictions, where additional time costs for practitioners in particular exist. These costs should be considered alongside the access to justice costs of LIPs not being able to overcome digital barriers.

Our previous research showed that, pre-pandemic, LIPs were seen as an aberration within the court system and the lack of 'fit' with the norm of represented litigants, or any attempt to make accommodation for them, created difficulties for the system and those using it. The test for how effectively a new system of remote justice works for LIPs therefore starts with how well LIP needs were being taken into consideration as the system was reoriented towards remote hearings. To the credit of the Northern

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<sup>25</sup> Although notably this investment by MOJ is partly in response to the substantial cuts to the legal aid budget that have not been applied in Northern Ireland, including removing private family proceedings from the scope of legal aid.

Ireland Courts and Tribunals Service (NICTS) and the Office of the Lord Chief Justice of Northern Ireland (OLCJ), LIPs were part of the considerations at the outset of pandemic planning. The creation of the LIPCI1 form enabled LIPs to request an urgent hearing. Alongside this, the OLCJ's website provided LIP-specific guidance. The delivery of this support was problematic, however, where the inconsistencies between court offices, broken links and email addresses, and the difficulty in accommodating alternative online arrangements for fee payments, shows there is still some way to go in making such support effective.

The replacement of the LIPCI1 form – and the equivalent form (FCI1) for represented parties – by a single form (HR1) also enables the identification of LIPs as parties to the case, in advance of the hearing, as it asks whether any of the parties are self-representing. Our previous research pointed clearly to the need to gather data on how the justice system is working, and our original recommendation was that the NICTS work towards identifying LIPs within the system in real time, rather than at the point of case disposal, itself a data point only on the NICTS internal management information system.<sup>26</sup> The court system has traditionally been poor at identifying, in advance of hearings, whether litigants will be self-representing and for that reason it can be difficult for court services to direct support to LIPs that would assist their preparation for and participation in their hearings. Both the LIPCI1 and the HR1 forms capture this data. With the LIPs now identified, support could be targeted more effectively towards LIPs: making the necessary arrangements for remote hearings helps provides a mechanism for the court service to identify LIPs in time to direct them towards relevant resources, whether internal to the court system, or to external support services, either through advice agencies where there is capacity and expertise, or online services that might exist.

The NICTS and OLCJ have provided public information and guidance on the changes to court processes as a result of the COVID-19 public health measures, including on how remote or hybrid hearings would run for those who had hearings scheduled. We know from our previous research that the lack of information on court processes can be a barrier to legal participation. One of our original recommendations was for NICTS to develop the information provided to the public about what they could expect at a court hearing.<sup>27</sup> Our survey revealed mixed views on the effectiveness of the information provided by NICTS and OLCJ, although respondents were more positive about the information relating to how their own hearings would be run. For LIPs, special arrangements put in place whereby court staff would contact the LIPs with times and instructions on how to join a remote hearing clearly address the gap that LIPs often fall into where they are not receiving information from a legal representative. Where this worked, it was regarded as helpful, but where it failed LIPs would miss the notification of their hearing. As our previous research demonstrated, there is a need for consistent and reliable methods for contacting LIPs about their hearings. Despite this specific information and accommodation for hearing arrangements, however, most practitioners who responded to our survey were not aware of the special arrangements that had been made for LIPs, or, for that matter, for represented litigants. This included the two McKenzie Friends whose primary role is to support LIPs and the two-thirds of practitioners who reported having experience of remote or hybrid hearings

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<sup>26</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland: barriers to legal participation*, Ulster University). Available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020]. See Recommendation 7: 'Identify LIPs within the court system at successive stages of their court proceedings, to provide an accurate data count of the number of LIPs in the court system at any one point and to facilitate direct contact with them.'

<sup>27</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland: barriers to legal participation*, Ulster University). Available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020]. See Recommendations 14-20. Our current research is looking at how this information gap might be filled through a human-centred design process: *Understanding and Supporting Legal Participation for Litigants in Person*: <https://www.nuffieldfoundation.org/project/understanding-and-supporting-legal-participation-for-litigants-in-person> [accessed 15 December 2020].



involving LIPs. While NICTS has been attentive to some of the issues facing LIPs – and in relation to accessible information on court changes more generally – they appear to have been less successful in generating awareness of the support available, including for those at the forefront of supporting or dealing with LIPs.

In identifying what worked well, there was consistency between parents and practitioners in seeing the advantage of timeslots for individual hearings, including for LIPs. Timeslots would mean not having to take days off work or manage caring responsibilities and ‘hang around’ court buildings waiting for their case to be called. Our previous research recommended piloting the scheduling of court hearings as individual appointment times and a regular timeslot for LIP hearings has now been developed by one of the judges who responded to our survey, as the practice of remote hearings has bedded down.<sup>28</sup> As has proved the case in so many other arenas, COVID-19 has made possible that which was otherwise believed to be impossible, or at least too difficult a system-change to make. What now seems possible is a more structured evaluation of how this time-slot approach works, taking account not just the efficiency of court time and preferences of participants but the ability to orient court services to better meet the needs of users. Likewise, our research recommended making provision for the online submission of some court documents, a practice which has still not reached consistency but is at least developing. The opportunity has now been created to measure the impact of change here and the capacity issues that need to be addressed. Problems around connectivity, digital skills and having the space at home to focus on the hearing need to be considered, along with broader concerns over the additional needs of those with protected characteristics, the contraction of public space and the impact on open justice. Our previous research evidenced the hard work done outside of court to settle and agree issues, but how there was a need for expectations concerning these out of court actions to be realistic. Our survey shows that remote justice creates difficulties in accommodating these more informal discussions and the need for more effective solutions to facilitate expectations and agreement beyond court hearings.

## Conclusion

The move to remote justice was a necessity rather than a choice. The current deficiencies are a product of having to make urgent changes rather than planning for how new technologies can enhance legal participation and uphold fundamental legal principles of fairness, impartiality and access to justice.<sup>29</sup> Nevertheless, the central recommendation from our previous research was that that future guidance and judicial directions would take into consideration what would happen when one or more of the parties was a LIP. The responses by the OLCJ and the NICTS in implementing new arrangements have demonstrated clearly that this has been done. This is to be commended and could considerably advance the need to ensure effective participation for LIPs. Further work is required, however, to match operational delivery with policy intent and to address the particular difficulties faced by LIPs in remote hearings, as well as the difficulties faced by represented litigants, solicitors, barristers, judges, CCOs, social workers and McKenzie Friends. This will be part of a bigger piece of work that the NICTS will need to do to learn the lessons of how digital justice can enhance rather than stymie access to justice. The clear message emerging from this and related survey work show the challenges of enabling participation in remote hearings, particularly for contested and emotive issues. The challenge of technology is an immediate one: the administration of justice is currently being let down by the

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<sup>28</sup> Gráinne McKeever, Lucy Royal-Dawson, Eleanor Kirk and John McCord (2018) *Litigants in person in Northern Ireland: barriers to legal participation*, Ulster University). Available at: [https://www.ulster.ac.uk/\\_data/assets/pdf\\_file/0003/309891/179367\\_NIHRC-Litigants-in-Person\\_BOOK\\_5\\_LOW.pdf](https://www.ulster.ac.uk/_data/assets/pdf_file/0003/309891/179367_NIHRC-Litigants-in-Person_BOOK_5_LOW.pdf) [accessed 15 December 2020]. See Recommendation 8.

<sup>29</sup> Gráinne McKeever, “Remote Justice? Litigants in Person and Participation in Court Processes during Covid-19” (2020) [2020] *Modern Law Review Forum* 005, available at: <https://www.modernlawreview.co.uk/mckeever-remote-justice/> [accessed 15 December 2020]

technology in the court system. Ten months into the COVID-19 pandemic, we should be past the watershed point of unreliable technology. Priority must be given to how digital justice can be used to overcome the limitations that the court system faces, future-proofing access to justice through a focus on accessibility, inclusion and participation.

## Appendix 1

### At a Glance summary tables of the questions and results

By way of providing a snapshot of the responses to the two questionnaires, Appendix 1 provides At-a-Glance summary tables showing how many litigants and practitioners, broken down by their roles, answered those questions which can be easily tabulated.

#### Litigants

Table 1 presents an at-a-glance summary of survey questions to give a sense of the overall data. The sample is sub-divided between litigants with legal representation and those without to highlight some differences between them.

**Table 1: Litigants: Summary table of litigants' responses to questions**

Questions	Parent / legal guardian			Other Relative/ Other	All
	Legal Rep n=51	No legal rep n=12	All		
<b>Contacted about case (n=62)</b>					
Yes	37	10	47	6	53 (86%)
No	5	2	7	2	9 (14%)
<b>Have made new applications (n=62)</b>					
Yes	23	8	31	3	34 (55%)
No	19	4	23	5	28 (45%)
<b>Required to submit documents (n=61)</b>					
Yes	26	9	35	6	41 (67%)
No	16	3	19	1	20 (23%)
<b>Attempts to settle case (n=62)</b>					
Yes	10	1	11	2	13 (21%)
No	29	9	38	6	44 (71%)
I don't know	3	2	5	0	5 (8%)
<b>Have you spoken to Judge directly (n=63)</b>					
Yes	0	0	0	0	0 (0%)
No	42	12	54	9	63 (100%)
<b>Notified of hearing (n=62)</b>					
Yes	28	7	35	4	39 (63%)
No	13	5	18	5	23 (37%)
<b>Offered a choice about the format of hearing (n=39)</b>					
Yes	3	3	6	0	6 (15%)
No	23	4	27	3	30 (77%)
Not sure	2	0	2	1	3 (8%)
<b>How good has communication with the court been (n=39)</b>					
Average rating (scale 1 – 5)*	2.39	2.43	2.32	3.00	2.39
<b>Did you look for information about attending a hearing (n=61)</b>					
Yes	23	7	30	6	36 (59%)
No	18	4	22	3	25 (41%)
<b>How useful was the information (n=36)</b>					
Average rating (scale 1 – 5)*	2.71	2.46	2.67	2.46	2.67
<b>Did you have hearings in your case (n=62)</b>					
Yes	22	9	31	4	35 (56%)
No	19	3	22	5	27 (44%)
<b>Have you attended any hearings (n=35)</b>					
Yes	7	9	16	2	18 (51%)
No	15	0	15	2	17 (49%)
<b>Confidence using technology to access remote or hybrid hearings (n=61)</b>					
Average rating (scale 1- 5)**	3.34	3.55	3.38	3.22	3.36
<b>Are changes to hearing formats working (n=63)</b>					
Yes	4	0	4	2	6 (10%)
No	16	5	23	2	25 (40%)
Not sure	22	7	27	5	32 (51%)

<b>Had participated in a remote or hybrid hearing (n=63)</b>					
Yes	5	6	11	2	13 (21%)
No	37	6	43	7	50 (79%)
<b>Felt your case had been dealt with fairly? (n=61)</b>					
Average rating (scale 1-5)***	1.77	2.36	1.85	2.22	1.9
<b>Case insights†</b>					
% not seen children due to adjournments	47%	55%	48%	60%	50%
% not been possible follow existing order	33%	100%	48%	67%	50%
% able to maintain contact with children	46%	50%	46%	20%	44%
% case has been adjourned >3 months	65%	25%	59%	100%	64%

†Each % stated is calculated against the sum within the category who selected whether it applied.

\*1 = Very poor and 5 = Excellent

\*\*1 =Not at all confident and 5 = Very confident

\*\*\*1 = Not at all fair and 5 = Very fair

### Practitioners

Table 2 presents the number of responses for some questions from practitioners with the sample sub-divided according professional role.

**Table 2: Practitioners: Summary table of practitioners’ responses to questions**

Questions	Qualified Legal Professionals			Court Staff	Child profs	Others	All
	Solicit or	Barrister	Judge				
<b>How useful was NICTS information (n=121)</b>							
Average rating (scale 1 – 5)*	3.57	3.65	4.5	3.63	2.9	3.75	3.56
<b>How much notice of hearing given (n=113)</b>							
Average notice given (3=1 Month, 4=1 Week)	3.48	3.58	4	4.17	3	3.75	3.52
<b>How good was communication with Courts (n=117)</b>							
% satisfactory, good or very good	62%	80%	100%	-	70%	75%	72%
<b>How often were type hearing requests granted (n=91)</b>							
% who said requests mostly granted	48%	86%	-	-	33%	-	59%
<b>Were reasons given for not granting requests (n=63)</b>							
Yes	33%	40%	-	-	33%	-	40%
No	66%	60%	-	-	67%	-	60%
<b>Characteristics of Remote Hearings* (n=122)</b>							
% said 'none' to hearings by telephone only	89%	74%	100%	89%	90%	75%	84%
% said 'all' hearings by video only	39%	29%	33%	22%	20%	25%	33%
% said 'none' to hearings by both phone and video	58%	53%	67%	67%	60%	50%	58%
% said 'none' to hearings by hybrid only	39%	15%	0%	33%	40%	50%	31%
% said 'none' to physical hearings at court	65%	56%	0%	56%	90%	100%	63%
<b>Proportion of hearing type which was mainly by remote video</b>							
% case management/review (n=114)	93%	88%	100%	86%	75%	100%	90%
% Remote hearing (n=120)	90%	85%	67%	89%	70%	100%	87%
% Fact-finding hearings (n=53)	59%	31%	0%	63%	0%	10%	49%
% Final Hearings (n=109)	55%	44%	33%	44%	67%	100%	53%
<b>Reasonable adjustments in order to participate (n=122)</b>							
Yes	4	5	2	3	2	3	19 (16%)
No	50	23	1	3	6	0	83 (68%)
I don't know	8	6	0	3	2	1	20 (16%)
<b>Were all parties legally represented in hearings (n=122)</b>							
Yes	46	25	0	1	5	1	78 (64%)
No	16	9	3	8	5	3	44 (36%)
<b>McKenzie Friend, an Intermediary or an interpreter present (n=122)</b>							
Yes	5	4	2	2	2	2	17 (14%)

The impact of COVID-19 on Family Courts in Northern Ireland (December 2020)

No	28	57	1	6	8	2	102 (84%)
I don't know	1	1	0	1	0	0	3 (2%)
<b>Confident use technology to access remote or hybrid hearings? (n=122)</b>							
Average rating (scale 1- 5)**	3.95	4.12	4	4.44	3.9	4.25	4.04
<b>Satisfied with technical support (n=111)</b>							
Satisfied	16	13	2	7	2	1	41 (37%)
Dissatisfied	3	2	0	0	3	2	10 (9%)
Mixed experience	36	17	1	2	4	0	60 (54%)
<b>Support been provided by the NICTS for represented litigants (n=122)</b>							
Yes	14	9	2	7	2	1	35 (27%)
No	15	1	0	0	1	1	18 (15%)
I don't know	33	24	1	2	7	2	69 (57%)
<b>Has support been provided by the NICTS for unrepresented litigants (n=122)</b>							
Yes	4	6	3	8	1	1	23 (19%)
No	3	0	0	0	2	1	6 (5%)
I don't know	55	28	0	1	7	2	93 (76%)
<b>Are phone hearings effective in allowing both parties to participate (n=109)</b>							
Average rating (Scale 1-4)***	1.78	1.58	1.5	2.25	1.6	1.5	1.72
<b>Are video hearings effective in allowing both parties to participate (n=108)</b>							
Average rating (Scale 1-4)***	2.83	2.77	3	3.25	2.8	2	2.81
<b>Satisfied case(s) dealt with fairly by remote or hybrid hearings (n=122)</b>							
Average rating (scale 1-4)****	2.82	2.76	2.67	3.33	3.1	2	2.84
<b>Has COVID-19 had an impact on negotiation and settlement (n=125)</b>							
Yes	54	33	3	1	7	3	101(81%)
No	7	1	0	1	1	0	10 (8%)
I don't know	2	2	0	7	2	1	14 (11%)

\*1 = Not useful at all and 5 = Very useful

\*\*1 = Not at all confident and 5 = Very confident

\*\*\*1 = Not at all effective and 4 = Very effective

\*\*\*\* 1 = Very unsatisfied and 4=Very satisfied