



JUDICIARY OF
ENGLAND AND WALES

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROTOCOL REGARDING REMOTE HEARINGS

Purpose of this Protocol

1. The current pandemic necessitates the use of remote hearings wherever possible. This Protocol applies to hearings of all kinds, including those in which there are litigants in person, and those made in the applications court.
2. This Protocol seeks to provide basic guidance as to the conduct of remote hearings. Whilst court buildings, including the Rolls Building, currently remain open, the objective is to undertake as many hearings as possible remotely so as to minimise the risk of transmission of Covid-19.
3. The method by which all hearings, including remote hearings, are conducted is always a matter for the judge, operating in accordance with applicable law, Rules and Practice Directions. Nothing in this Protocol derogates from the judge's duty to determine all issues that arise in the case judicially and in accordance with normal principles.
4. It is inevitable that undertaking numerous hearings remotely will cause teething troubles. All parties are urged to be sympathetic to the technological and other difficulties experienced by others.
5. Remote hearings can and will be recorded by the court (normally by the participating judge's clerk or court official, or by the judges themselves).
6. Remote hearings will, so far as possible, still be public hearings, but CPR Part 39.2(3)(g) provides that hearings must be held in private if the court is satisfied that it is, for any reason, "necessary, to secure the proper administration of justice".

What should happen when a hearing is fixed?

7. In the present circumstances, the court and the parties and their representatives will need to be more proactive in relation to all forthcoming hearings.
8. It is good practice for all judges and their clerks to consider as far ahead as possible how future hearings should best be undertaken.
9. It will normally be possible for all short, interlocutory, or non-witness, applications to be heard remotely. Some witness cases will also be suitable for remote hearings.

10. Available methods for remote hearings include (non-exhaustively) BT conference call, Skype for business, court video link, and ordinary telephone call. But any communication method available to the participants can be considered if appropriate.
11. Before ordering a hearing by court video link, the judge must check with the listing office that suitable facilities are available.
12. The judges and their clerks will, in each case, where possible, propose to the parties one of three solutions:-
 - (i) a stated appropriate remote communication method (BT conference call, Skype for business, court video link, ordinary telephone call, or another method) for the hearing;
 - (ii) that the case will proceed in court; or
 - (iii) That the case will need to be adjourned, because a remote hearing is not possible **and** the length of the hearing combined with the number of parties or overseas parties, representatives and/or witnesses make it undesirable to go ahead with a hearing in court at the current time.
13. If the parties disagree with the court's proposal, they may make submissions by email or CE-file, copied to the other parties, as to what other proposal would be more appropriate. On receipt of submissions from all parties, the judge will make a binding determination as to the way in which the hearing will take place, and give all other necessary directions.
14. It will also be open to the court to fix a short remote CMC in advance of the fixed hearing to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, or any other relevant matters.
15. The fact that a hearing is to be a remote hearing and, where possible, the technological method to be employed, will normally be shown in the cause list.

The remote hearing itself

16. The clerk or court official, and the parties, will all need to log in or call in to the dedicated facility in good time for the stated start time of the remote hearing. In a Skype call, the judge will then be invited in by the clerk or court official.
17. The hearing will be recorded by the judge's clerk, a court official or by the judge, if technically possible. The parties and their legal representatives are **not** permitted to record the hearing. With the court's permission, arrangements can be made with privately paid for transcribers.
18. The hearing can be made open to the public if technically possible, either by the judge or the clerk logging in to the hearing in a public court room and making the hearing audible in that court room, or by other methods. But in the exceptional circumstances presented by the current pandemic, the impossibility of public access should not normally prevent a remote hearing taking place. If any party submits that it should do so in the circumstances of the specific case, they should make submissions to that effect to the judge.

Preparations for the remote hearing

19. The parties should, if necessary, prepare an electronic bundle of documents and an electronic bundle of authorities for each remote hearing. Each electronic bundle should be indexed and paginated and should be provided to the judge's clerk or to the judge (if no clerk is available), and to all other representatives and parties well in advance of the hearing.
20. Electronic bundles should contain only documents and authorities that are essential to the remote hearing. Large electronic files can be slow to transmit and unwieldy to use.
21. Electronic bundles can be prepared in .pdf or another format. They must be filed on CE-file or sent to the court by link to an online data room (preferred), email or delivered to the court on a USB stick.

CHC 19 March 2020