Northern Circuit Guidance to Civil Practitioners practising in the Manchester Civil Justice Centre during the Covid-19 Pandemic

1. This guidance has been prepared by the Northern Circuit and the Manchester Law Society. It is aimed at providing definitive guidance for solicitors and barristers undertaking civil work in the Manchester Civil Justice Centre.

2. This document has been approved by the Designated Civil Judge and the Manchester Circuit and District Judiciary. All practitioners are expected to have read it and to comply with it wherever possible.

Orders

3. It is important that orders issued by the Court are read with care. Aside from the usual need to comply with court orders, there are 3 important reasons for this:

   (a) First, all orders set out in clear terms what the court expects of the parties. This covers early co-operation about how a remote hearing might take place to details of how bundles should be made available to the Judge who will hear the matter. These requirements have been put in place specifically for the difficulties we find ourselves in. They are designed to facilitate a fair hearing.

   (b) Secondly, the orders change over time and are reactive. The court has been issuing orders to cover periods 3 to 4 weeks ahead. This means that when circumstances change (as they have recently changed) the court can react to the change. For example, orders issued in respect of multi-track trials which are yet to be listed encourage parties to let the court know if the hearing is suitable for a "part remote" hearing, with the judge and legal representatives (for example) in court, and others joining remotely. New fast track orders for cases listed after 1 June 2020 are likely to offer the same option (with the option of a face-to-face hearing as well)

   (c) The orders contain some useful explanations of (for example) when a hearing might be suitable for a remote hearing and when it might not. These are set out in the "reasons" at the end of fast track orders. They also remind parties of the very important point that the final decision about how a trial proceeds (in other words if the trial can proceed remotely in a fair way) is one for the Judge.

Official Protocols and Guidance from the Manchester Courts

4. The Designated Civil Judge has issued protocols and guidance as follows. The 31 March Note is expressly subject to orders made by the Court. The orders always trump Guidance:

- Note on Covid-19 Orders, Temporary Procedures and Listing Priorities for the Manchester Courts, 31st March 2020
- Manchester CJC – Clinical Negligence and Serious Personal Injury Protocol – Covid 19 – Urgent Matters

National Rules, Protocols and Guidance

5. Practitioners should also be familiar with the following:

- The Inns Of Court College Of Advocacy principles for remote hearings
- The Northern Circuit "Dos and Don'ts" for the Civil Trial by Video
- CPR Practice Directions 51Y: Video or Audio Hearings in Civil Proceedings during the Coronavirus Pandemic
- Master of the Rolls' Protocol Regarding Remote Hearings, 26 March 2020

Remote Hearings

Hearings other than Trials

6. The DCJ's guidance of the 31st March 2020 states that all interim applications, costs and case management conferences and pre-trial reviews shall be conducted by telephone, Skype, BTMeetMe or some other mutually convenient method.

7. The guidance requires the parties to send to the court a bundle in accordance with the requirements set out below. More detail on what the court expects bundles to contain and who they are to be put together and sent to the Court are set out in the orders issued by the Court.

Trials

8. The court requires the parties to use their best endeavours to agree a mechanism to allow trial listed to proceed by video hearing or telephone hearing during the period in which the restrictions are in force. As restrictions ease, the range of options open to the parties will widen. As set out above, parties will be encouraged to consider if their trial could take place on a partly remote basis, or even in open court.

9. *Whether the Case is Suitable for remote or partly remote determination*
The parties are encouraged to agree how a trial should proceed. The parties are likely to have the best handle on whether a trial can be heard remotely, partly by remote means or in open court. The view of the parties is an important factor for the Court. But, it is not determinative.

10. To assist practitioners, the following additional guidance is given as to when a trial might be heard on a fully remote basis:

1. Decisions as to (i) which cases can proceed by way of a fully remote hearing, and (ii) how a remote hearing should proceed are always a matter for the trial judge. Those decisions will take into account all of the circumstances, including:

1.1. The views of the parties

1.2. The urgency of the remedy sought
If the remedy sought is urgent, such as an injunction or an interim payment, the case is more likely to be heard remotely.

1.3. Litigants in person
Generally cases involving litigants in person will not be suitable for remote hearing, although the views of any litigant in person will always be considered.

1.4. Interpreter or intermediary
If one or more witness requires the assistance of an interpreter or intermediary, the hearing is unlikely to be able to proceed remotely.

1.5. The number of witnesses

The larger the number of witnesses the less likely a remote hearing is to take place.

1.6. Nature of the allegations

Cases in which there is an allegation of fundamental dishonesty, fraud or similar are unlikely to be suitable for a remote hearing.

1.7. Real evidence

It is unlikely that it would be fair to proceed in a case which calls for the examination of real evidence by the court.

1.8. Complexity

The more straightforward the issues in dispute are, the more likely that it is that a fair remote trial will be possible.

1.9. Technological competence and access to appropriate devices

If a party or a witness does not have access to an appropriate device which would enable them to participate effectively then the hearing is unlikely to go ahead.

11. The above guide will influence decisions about the part remote hearing of a trial, whether it can be heard in open court or whether it should be adjourned. A trial involving legal complexity or the need to examine real evidence or a trial which involves more than a handful of witnesses might not be suitable for a remote hearing, but eminently suited a partly remote hearing. Most cases will be suitable for open court hearings with no remote element, these might be reserved for trials involving litigants in person, or longer trials where there is a degree of urgency. The parties should be pro-active, communicate with each other and inform the court by complying with the appropriate order.

The Platform for the Hearing

11. If the hearing is to proceed by telephone, it will take place by BTMeetMe (which generally requires the court to connect the parties into the call). We understand that BT Legal Connect is no longer taking on work. If the parties agree on other conference call providers they can invite the court (by complying with the orders issued on each case) to agree to that as an appropriate platform. .

12. Practitioners should be patient during this period, while an increased number of hearings are being dealt with by telephone, many starting at the same time.

13. If the hearing is to proceed by video, it is likely to take place by Skype for Business (to which all judges have access), but may proceed by another video platform (including Microsoft Teams) if the judge is willing to accommodate this. If the parties agree on an appropriate platform which is not Skype for Business they should invite the court (by complying with the orders issued on each case) to agree to that as an appropriate platform

Preparing for the Hearing – Bundles

14. The viability of remote hearings requires the use of a properly prepared bundle of documents. It is essential that the parties comply with the court's directions in this regard. Failure to do so may well result in the court refusing to hear the case in a remote hearing.

15. The court's directions are aimed not at making life difficult for practitioners, but to ensure that, so far as possible, hearings run smoothly and that everyone who is taking part feels that they have had a fair chance to put their case. Please read the orders.

16. The standard order demands that the bundle complies with the following requirements:

    1. No more than 7 and no fewer than 3 days before the hearing is to take place the claimant/appellant shall send an email to the court at manchestercivil@justice.gov.uk copied to the other party and (if provided) to the Judge's email address:
        1.1. Containing in the subject line the name of the case and the date and time of the hearing and the words "HEARING BUNDLE AND READING LIST"
        1.2. Setting out in its body (not as an attachment) a succinct reading list of documents for the Judge who will conduct the hearing together with an agreed estimate of the time it will take the Judge to read the documents. The parties should endeavour to agree the list and the list should be specific and if necessary refer to specific sections of a document, with page references to the electronic bundle.
        1.3. Containing a link to the electronic hearing bundle if required to an electronic authorities bundle at an online data room. If access to the bundles is password protected, it is the responsibility of the party filing them to ensure that the

judge hearing the matter has been provided with the password and has access to the bundles.

1.4. The electronic hearing bundle:

1.4.1. Should be agreed

1.4.2. Must only contain the documents referred to in the reading list, which should only be those documents which are necessary and will be referred to at the hearing

1.4.3. Should include skeleton arguments if ordered or appropriate

1.4.4. Wherever appropriate, should contain extracts of documents rather than the entirety of documents

1.4.5. Should be prepared in a single pdf format

1.4.6. Must be indexed and paginated in ascending order, to include index pages and necessary authorities

1.4.7. Must always have a default display view for all pages of 100%

1.4.8. Must allow text on all pages to be selectable and to facilitate electronic annotation

1.4.9. Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another

1.4.10. Shall not exceed 200 pages.

1.5. The electronic authorities bundle (if any):

1.5.1. Should be agreed

1.5.2. Should be prepared in a single pdf format

1.5.3. Must be tabbed so that each authority or extract is easily located

1.5.4. Must be indexed and paginated in ascending order, to include index pages

1.5.5. Must always have a default display view for all pages of 100%

1.5.6. Must allow text on all pages to be selectable and to facilitate electronic annotation

1.5.7. Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another

1.6. The parties should prepare the focussed reading list and electronic bundle on the basis that the Judge dealing with the matter may have no previous knowledge of the case and may not have access to the court file.

1.7. For the avoidance of doubt, this paragraph and the provision of an electronic bundle must be complied with even if the parties have already filed a paper bundle.

17. If you feel your bundle cannot sensibly be accommodated within the page limits set out in the bundle it is sensible to provide a longer bundle and to ask the court to vary the order to allow the longer bundle. If the bundle is prepared with care, it is highly unlikely in most cases that the page limit will be exceeded. Practitioners are encouraged to read the judgment of HHJ Hodge QC in *Re TPS Investments (UK) Ltd.* [2020] EWHC 1135 (Ch), and especially paragraphs 3-5, in which guidance is given for the preparation of electronic bundles for remote hearings, and in particular in respect of excluding irrelevant documents.

18. By way of examples of what can be excluded from an electronic bundle for such a hearing:

- the court has experience of a credit hire case in which numerous pages of screenshots from websites were included in the context of a dispute over basic hire rates. These documents were never likely to be referred to in the hearing and should not have been included;
- backsheets can be excluded and there should be no blank pages;
- only relevant court orders need to be included.

19. It is recognised that judgement calls will sometimes have to be made as to what to include. Practitioners should be reassured that they are unlikely to be criticised for excluding a particular document if there was a reasonable basis for doing so. If it turns out that a document *is* required, it can be circulated or shared on screen.

Preparing for the Hearing – Familiarity with the Technology

20. Hearings conducted by video, and especially trials, will not work without those participating in it having a good familiarity with the technology. All practitioners should familiarise themselves with the way in which Skype works (and Teams if relevant). If clients and witnesses are to give evidence, a dry run should take place before the hearing.

21. Practitioners should read the Northern Circuit's "Civil Trial by Video: Do's and Don'ts".

The Hearing

22. Again, the hearing will only proceed successfully if all participants adhere to the guidance given in the Northern Circuit's "Civil Trial by Video" document.

23. In particular:

- treat the hearing as any other court hearing: dress and act with appropriate formality.
- put your mobile phone on silent.
- unless addressing the Judge, or otherwise requested to do so, all other participants to the call should have their microphones muted at all times.
- when a witness is giving evidence that witness must keep their camera and microphone on at all times.
- make sure your submissions, questions and involvement are focussed and relevant.
- remote hearings are more tiring than face-to-face hearings. Do not waste time or test patience.
- your appearance on screen should be as if you were attending Court. For those hearings which would have been robed, it is not necessary to robe for remote hearings.
- you should ensure that your background visible on screen is appropriate and appropriately lit to allow your face to be seen.
- you should not move away from the screen without permission of the Judge during the course of a remote hearing.
- the judiciary and other advocates should be addressed as if you were in a physical courtroom.

15th May 2020
Northern Circuit Coronavirus Task Force
Manchester Law Society

Note on Covid-19 Orders, Temporary Procedures and Listing Priorities

Orders

1. I have directed that orders be issued on cases and applications in civil work (excluding BPC) listed in Manchester after 31 March 2020 in accordance with drafts attached to this note. In due course these orders are likely to cover cases listed in both Stockport and Wigan.

2. The orders made in individual cases (which will be sent out by the Court in the usual way) may vary slightly, but the substance of those orders is likely to match the attached drafts. Orders will change as time goes on and as we gain experience of how they work in practice.

3. The parties should consider the orders carefully and, if they object to any part of the order (for example because they want the matter to be adjourned), make an application to the court to vary the order. Each order sets out how that must be done. If both parties object to any part of the order they should file a consent order reflecting that agreement for the court to consider.

4. The orders make broadly standard provision for the arrangements to be made for setting up a video hearing (see the FT and MT order at para.3) and preparing an electronic bundle (see the same order at paragraph 7). I would encourage parties to consider these drafts as a starting point for any consent orders which concern electronic bundles or video hearings.

5. The orders mandate the production of electronic bundles. This will greatly enhance the court's ability to deal with matters efficiently. As the orders make clear, the aim is to ensure that a judge can determine the matter without having the court file or a paper bundle transported to her/him from the court or by the parties.

6. If electronic bundles have not been prepared the judge may decide to adjourn the hearing and costs consequences may follow.

Communication with the Court

7. Telephone lines will still be open for you to speak to court staff. The lines will be busy and, by reason of reducing numbers, staff will be under greater pressure than usual. It is likely to be far more effective to communicate by email.

8. The main email address for all civil matters will remain manchestercivil@justice.gov.uk

9. I have directed within the orders that emails contain certain information in the subject line. The provision of the right information will help HMCTS staff and judges to deal with emails efficiently. HMCTS staff are very likely to deal with compliant emails first. Please bear that in mind and ensure that your emails are succinct.

Listing Priorities

10. From now, work will be dealt with following the priorities set out in the attached document (see annex.1). We will keep the priorities under review.

11. It is important to note that the priorities do not apply to general QB matters.

County court

12. A protocol to help the court prioritise county court work (claims and applications) has been prepared for the CJC (annex.2). A Greater Manchester Courts version is in the course of preparation. It covers all existing work and work issued after 29 March 2020. A listing questionnaire designed to help the court carry out the triage process is part of the protocol.

13. The Protocol should be followed.

Queen's Bench

14. Queen's Bench work outside the TCC and the Circuit Commercial Court will be dealt with on a case-by-case basis.

Mode of Hearing

15. If a matter remains in the list and involves live evidence all efforts will be made to arrange a remote hearing. It is likely that a video hearing will be preferred over a telephone hearing. If no live evidence is involved it is likely that telephone hearings will be the best way forward. However, there will be (at the moment and in most cases) no fixed rules as to when a telephone hearing or a video hearing should be used. I encourage all parties to agree the way forward; agreement will limit the time the court spends considering the matter and will ensure that the parties can work with the arrangements made both practically and from an IT point of view.

16. The main platforms for a telephone hearing are the usual court HMCTS approved legal conference providers and BTMeetMe. Generally, where a legal representative sets up a call one of the approved providers should be used. This will mean that BTMeetMe hearings (which do not require any pre-booking and so are easier to use) will be generally available for litigants in person.

17. If the hearing is by telephone, each participant (other than the Judge) should introduce herself/himself by name each time she or he speaks.

Video

18. If video hearings are to be arranged, careful thought needs to be given to a number of matters. Some are set out in the MR's Protocol (at https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf)

which should be read with care.

19. It will be sensible to ensure all attendees are gathered on the video call and for the judge then to be the last introduced participant and to ensure that the court has contact details for all participants.

Witnesses

20. Arrangements will need to be made for witnesses to have access to the bundle.

21. It will be important that witnesses understand, before they give evidence, the need to be in an appropriate place which is quiet and free of distraction. Arrangements to swear the witness in or for the witness to affirm should also be made. The responsibility to arrange or point out these matters will rest with representatives.

Bundles

22. It will also be important to give careful thought to bundles (for all hearings). The old practice of including everything in the bundle will need to change. Bundles should be prepared so that they are concise and manageable. I would encourage the parties to include only extracts of documents if only extracts are needed. You should remember that the judge may not have the court file and may be working away from the court building.

23. Where possible if the bundle is to be emailed, it should not be made available in a piecemeal fashion, it should be sent via one email. As far as possible attached documents should not be password protected and the provision of documents after the bundle has been finalised should be kept to a minimum.

24. Where possible, online (or virtual) data rooms should be used for bundles, particularly large bundles for use at trial. The court is unlikely to be able to accept emails which are in total larger than 10 MB (see PD5B and general email guidance at https://www.justice.gov.uk/courts/email-guidance#canfile) and so using an online vault will ensure that the court has easy access to the relevant papers. Arrangements to access the online vault should be communicated in good time before the hearing.

Platform

25. It will be important to agree an appropriate platform for the hearing. Most judges will have access to Skype for Business, but the Protocol makes clear that other platforms might be used. It will be important to make sure that the judge dealing with a matter is content to use the suggested platform.

26. Participants should be aware that the email address used to sign in to Skype may be visible to all other participants.

Moving matters to a paper determination

27. If the trial is a small claims trial it may be sensible to consider inviting the court to deal with the matter on paper in accordance with CPR 27.10. The judge will have the final decision as to whether the case can be dealt with in that way.

28. When dealing with applications, thought should be given to the use of CPR 23.8(b). I would encourage parties to consider if the application can be dealt with on paper. If the parties agree it can they should comply with CPE PD 23A para.11.1. Again, the judge will have the final decision as to whether the application can be dealt with in that way. The court might consider using its powers under CPR 23.8(c) to make orders on paper where it does not consider a hearing is necessary.

Litigants in Person

29. Litigants in Person will also be affected by these temporary arrangements and should actively consider what remote hearings would best suit them. Parties will no doubt bear in mind CPR 1.3 which sets out the duty of all parties (and by extension their representatives) to help the court to further the overriding objective and ensure that all cases are dealt with justly.

Other Orders

30. When allocating a county court claim to track, the Judge will bear the listing priorities in mind. High Court Multi Track cases are likely to be listed to a CCMC to be heard by telephone.

31. Further orders have been issued on block listed matters, Small Claim trials, appeals, applications for permission to appeal and possession matters. Those orders are not attached. Many matters have been moved to be heard by way of telephone conference or video with the co-operation of the parties.

32. I would urge all parties to co-operate to find means by which matters can be heard remotely. Such agreements are very likely to be approved by the Court. If consent orders can be lodged on any matter I would again encourage that to be done.

33. The Manchester CJC will remain open.

34. Matters heard remotely may be relayed through an open court room. Hearings will be shown on the daily cause list. If the hearing is relayed into a court room, it will be recorded by the court's recording system.

35. If any matter is heard in private and there is no court based recording facility a legal representative may be invited by the judge to arrange for recording and required to hold the recording on strict undertakings. Representatives must remind parties that is a contempt of court to record (or transmit) proceedings in any way unless the Judge gives permission.

36. In considering if it is necessary to hold a hearing in private the Judge will have regard to CPR 39.2 and 39.9 (in its updated version as appears at

https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part39) section 85A of the Courts Act 2003 and CPR PD51Y.

HHJ Nigel Bird

DCJ Greater Manchester

31 March 2020

ANNEX.1

CURRENT LISTING PRIORITIES IN CIVIL – COVID-19

FOR COURTS IN GREATER MANCHESTER[1]

Issued: 27.03.20

Priority 1: Work Which Must Be Done

1. Committals
2. Freezing Orders
3. Injunctions (and return days for ex parte injunctions).
4. The emphasis must be on those with a real time element (such as post-termination employment restrictions), noise or interference with property.
5. Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
6. Applications to stay enforcement of existing possession orders
7. Production of persons in custody following Power of Arrest detentions
8. Applications to displace under s 29 of MHA
9. Homelessness Applications
10. Enforcement work that does not involve bailiffs, such as third-party debt orders (particularly hardship payments).
11. Any applications in cases listed for trial in the next three months
12. Any applications where there is a substantial hearing listed in the next month.

12a. any application suitable for paper determination

13. All Multi Track hearings where parties agree that it is urgent (subject to triage).

[1] Additional items for GM are shown underlined

14. Appeals in all these cases

Priority 2: Work Which Could Be Done

1. Infant and Protected Party approvals (children could attend by Skype)
2. CPR 21 approvals
3. Applications for interim payments in MT/PI/Clin Neg
4. Stage 3 assessment of damages
5. Trials involving the survival of a business or the solvency of an individual
6. Enforcement of trading contracts
7. Applications for summary judgement for a specified sum
8. Applications to set aside judgement in default
9. Applications for security for costs
10. All small claim/fast track trials where parties agree it is urgent (subject to triage)

10a. Any small claim suitable for determination on paper

11. Preliminary assessment of costs
12. Appeals in all these cases

Caveat

The work in the Court of Appeal and the QBD (and District Registries) are excluded from these lists, for obvious reasons.

B&PC work is also excluded from these lists. Thus far, it has not proved possible to deal with this work on anything other than a case-by-case basis. The triage system is working well. Accordingly, these lists relate only to County Court work.

Annex.2

Protocol for the prioritisation of civil work

In the present emergency, the court's resources must be concentrated on the most urgent cases. The Deputy Head of Civil Justice has identified the priorities for the County Court. The Designated Civil Judge, HHJ Bird, has modified the priorities slightly, as appears in the accompanying direction. The following protocol is intended to assist in identifying those cases which require prioritising.

1. For all existing claims and applications, the listing officer will in the first instance make an assessment of whether the case falls within category 1 or category 2 or otherwise and will list accordingly. In cases of doubt the matter will be referred to a judge.

2. For all applications or claims issued after 29th March 2020 the party issuing the application or claim will be required to a) complete the attached listing questionnaire; and b) file a copy of the completed request with the court within 7 days of the issue of the application and c) serve it on the respondent / defendant. The questionnaire is intended to be sent out and returned electronically but can be printed if necessary.

3. The parties' responses will be considered by a member of the listing office. In a clear case the hearing will be prioritised as suggested by the parties without referral to a judge. In a case of any doubt or disagreement between the parties the matter should be referred to a judge for prioritisation.

4. In any case which has not been prioritised that comes before a judge, the judge shall assign a priority.

5. In any such case as referred to in paragraph 4 above the judge shall at the same time, and if not already determined, give an indication of the preferred method of hearing – whether in court or remotely and if remotely the preferred method of conducting the hearing (telephone or video and the arrangements for such if not already made).

6. The listing office will have the power to remove cases from the list that either a) do not have priority or b) cannot be accommodated because of the amount of other prioritised work.

7. Any case that has to be removed from a list will be referred to a judge for directions as to relisting.

CovidNote313201727

Greater Manchester County Courts

Listing priority questionnaire

In the present emergency, the court's resources must be concentrated on the most urgent cases. The Deputy Head of Civil Justice, Coulson LJ, has identified the priorities for the County Court. The Designated Civil Judge, HHJ Bird, has modified the priorities slightly, as appears in the accompanying direction. You should complete this form to enable the court to list your case.

You should identify any matters in support of your application in the "Comments" section, for example, why you say that a multi track case should be treated as urgent. This form should be submitted by email to manchestercivil@justice.gov.uk. The email must include in the subject line of the email the claim number, the names of the parties and the words "Listing priority."

You should return this form as soon as possible and in any event within 7 days.

Case number	Click or tap here to enter text.
Name of parties	Click or tap here to enter text.
Your name	Click or tap here to enter text.
Which party are you (or whom do you represent)?	Click or tap here to enter text.
What kind of case is this? (You should refer to HHJ Bird's direction)	Choose an item.
Will the case be heard	☐ In court Cases will be heard in open court only in exceptional cases. State in the "Comments" section below why this case must be heard in court ☐ By video link State in the "Comments" section below what arrangements have been/will be made to ensure that the judge, the parties and the witnesses will be connected ☐ By telephone ☐Decision only on papers
Have you prepared an electronic bundle in accordance with HHJ Bird's direction?	Choose an item.
Do all parties agree the contents of this form?	Choose an item.

Comments	Click or tap here to enter text.
Judge’s comments	Click or tap here to enter text.

Annex.3

Orders to be issued where a FT or MT is listed – subject to any decision on priority

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Before His Honour Judge Bird the Designated Civil Judge for Greater Manchester

UPON the court taking notice of the COVID 19 (Coronavirus) pandemic and the measures being taken in response and the Protocol regarding remote hearings issued on 20 March 2020 ("the Protocol") a copy of which can be found at https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf

AND UPON the Court having considered matters on the papers

AND UPON it being recorded that the court expects the parties to do their utmost to co-operate with each other in all things and lodge consent orders wherever possible

AND UPON the parties being reminded of the HMCTS Email Guidance referred to in CPR PD 5B which provides that the total size of an email, including attachments, must not exceed 10 megabytes

AND WITHOUT A HEARING AND ON THE COURT'S OWN INITIATIVE

IT IS ORDERED THAT:

1. The parties shall use their best endeavours to agree a mechanism to allow the trial of this action presently listed to commence on [ ] 2020 to proceed on that date by way of video hearing or telephone hearing, having regard to the matters set out in this Order and in the Protocol (insofar as they do not clash with the terms of this order).

2. Within 7 days of service of this order upon the parties,

a) In the event that the parties reach agreement, the Claimant (or the first named represented party in the event that the Claimant is unrepresented) shall send an email to the court at manchestercivil@justice.gov.uk which confirms that terms have been agreed and sets out such terms as an attachment to the email;

b) in the event that terms are not agreed, the parties shall send an email to the court at manchestercivil@justice.gov.uk attaching each party's draft directions, containing brief reasons for each side's proposal for the disposal of this claim.

3. In the event that the agreed arrangement is for a video hearing, the terms shall include the following detail:

a) The chosen video platform (bearing in mind that all judges have access to Skype for Business but that not all judges will have access to other video platforms)

b) Arrangements that will be made to join the judge and all persons into the video conference and how witnesses will be dealt with

c) The identity and a contact telephone number and email address for all persons who will join the conference

d) Provision for all parties to sign in to the conference at least half an hour before the hearing is due to begin, to address any issues with the connection

e) Such other matters as are necessary for the hearing to take place including the matters listed at paragraphs 20 to 23 of the Protocol

4. The subject line of the email must include the claim number and the date of the trial and include the words "agreed remote directions".

5. In the event that the parties reach agreement and comply with paragraphs 2, 3 and 4 of this order the court the directions set out at paragraphs 7 and 8 of this order shall apply. If the parties seek alternative directions in relation to the bundle they must set out within the email the directions they seek and the reasons why the provisions set out in paragraph 7 are not appropriate in their case. The court will consider the agreement, and any request to vary paragraph 7, and give such further directions as are required which may include attendance at a brief telephone directions hearing.

6. In the event that the parties fail to reach agreement the court will give directions in any event which may include the vacation of the trial or the requirement for the parties to attend a brief telephone directions hearing.

7. Any directions already given as to the filing of a trial bundle or skeleton argument are varied as follows. No less than 3 days before the hearing is to take place the Claimant (or if unrepresented, the first named represented party) shall send an email to the court at manchestercivil@justice.gov.uk , copied to the other party and (if provided) to the Judge's email address:

a) Containing in the subject line the name of the case and the date and time of the hearing

b) Setting out in its body (not as an attachment) a succinct reading list of documents for the Judge who will conduct the hearing together with an agreed estimate of the time it will take the Judge to read the documents. The parties should endeavour to agree the list and the list should be specific and if necessary refer to specific sections of a document, with page references to the electronic bundle.

c) Containing a link to the electronic bundle at an online data room (where possible). If it is not possible the electronic bundle must be attached to the email, in which case the size of the email including attachments may not exceed 10 megabytes. The electronic bundle:

(i) Should be agreed

(ii) Must only contain the documents referred to in the reading list, which should only be those documents which are necessary and will be referred to at trial

(iii) Should include skeleton arguments if ordered or appropriate

(iv) Wherever appropriate, should contain extracts of documents rather than the entirety of documents

(v) be prepared in a single pdf format

(vi) Must be indexed and paginated in ascending order, to include index pages and necessary authorities

(vii) Must always have a default display view for all pages of 100%

(viii) Must allow text on all pages to be selectable and to facilitate electronic annotation

(ix) Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another

(x) Shall not exceed 250 pages in a claim allocated to the fast track, or 750 pages in a claim allocated to the multi track.

d) The parties should prepare the focussed reading list and electronic bundle on the basis that the Judge dealing with the matter may have no previous knowledge of the case and may not have access to the court file.

e) For the avoidance of doubt, this paragraph and the provision of an electronic bundle must be complied with even if the parties have already filed a paper bundle.

8. Save insofar as they are varied or superseded by this order, directions already given in respect of the preparation for trial shall continue to apply.

9. The parties must ensure that all witnesses have a copy of the bundle in a format that they are able to use whilst giving evidence.

10. At an appropriate stage, the Court will consider whether the hearing should take place in public or private having regard to CPR 39.2 and the Protocol.

11. Because this order has been made without a hearing a party may apply to set it aside or to vary its terms. Such an application:

a) may be made by email to manchestercivil@justice.gov.uk

b) must be made within 7 days of service of this order and be copied to all parties

c) must include in the subject line of the email the claim number and the date of the adjourned hearing

d) must attach a draft of the order the court is invited to make and

e) must set out in the body of the email on what grounds the proposed order is sought and, if it is proposed that a hearing in a Court room is to take place, the measures required to ensure that this can be done safely, lawfully and in accordance with Government, Public Health England, and other appropriate guidelines

f) will be dealt with on paper without a hearing.

CovidNote313201727

Annex.4

Order to be issued in all listed applications – subject to any decision on priority

……

Before His Honour Judge Bird the Designated Civil Judge for Greater Manchester

UPON the court taking notice of the COVID 19 (Coronavirus) pandemic and the measures being taken in response and the Protocol regarding remote hearings issued on 20 March 2020 ("the Protocol") a copy of which can be found at https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf

AND UPON the Court having considered matters on the papers

AND UPON it being recorded that the court expects the parties to do their utmost to co-operate with each other in all things and lodge consent orders wherever possible

AND UPON the parties being invited wherever possible to consider the use of CPR 28.8(b), as set out in paragraphs 7 to 9 of this order, bearing in mind that such a determination will be final pursuant to CPR PD 23A para 11.1

AND UPON the parties being reminded of the HMCTS Email Guidance referred to in CPR PD 5B which provides that the total size of an email, including attachments, must not exceed 10 megabytes

AND UPON it being recorded that in the event that any party fails to comply with any provision of this order the matter may be adjourned

AND WITHOUT A HEARING AND ON THE COURT'S OWN INITIATIVE

IT IS ORDERED THAT:

1. The hearing of this application listed to take place on [ ] 2020 shall (subject to the remaining terms of this order) proceed by way of a telephone conference.

2. At an appropriate stage, the Court will consider whether the hearing should take place in public or private having regard to CPR 39.2 and the Protocol.

Arrangements to be made for the hearing if at least one party is represented

3. If at least one party is represented then the hearing shall be organised through an approved legal conference provider, with the Claimant (or if the Applicant is unrepresented, the first named represented party) to make the arrangements for the telephone conference.

Arrangements to be made for the hearing if both parties are unrepresented

4. If no party is represented then each party should separately

(a) notify the court as soon as possible (and in any event by 4pm 3 days before the hearing) that they are unrepresented;

(b) provide a telephone number on which they confirm that they can be reached by the court for a telephone hearing conducted using BTMeetMe (or such other telephone hearing method as may be utilised by the court in future).

5. The court will, after receiving the telephone numbers referred to in paragraph 3(b) above, make the necessary arrangements for the telephone hearing. If the court cannot facilitate a BTMeetMe hearing (or other telephone hearing method utilised by the court) on the time and date of the hearing, the hearing will be adjourned to a date when the court can facilitate the telephone hearing.

Arrangements for preparation of electronic bundle for remote hearings where one or both parties is represented

6. No less than 3 days before the hearing is to take place the Applicant (or if the Applicant is unrepresented the first named represented party) shall send an email to the court at manchestercivil@justice.gov.uk copied to the other party and (if provided) to the Judge's email address:

a) Containing in the subject line the name of the case and the date and time of the hearing

b) Setting out in its body (not as an attachment) a succinct reading list of documents for the Judge who will conduct the hearing together with an agreed estimate of the time it will take the Judge to read the documents. The parties should endeavour to agree the list and the list should be specific and if necessary refer to specific sections of a document, with page references to the electronic bundle.

c) Containing a link to the electronic bundle at an online data room (where possible). If it is not possible the electronic bundle must be attached to the email, in which case the size of the email including attachments may not exceed 10 megabytes. The electronic bundle:

(i) Should be agreed

(ii) Must only contain the documents referred to in the reading list, which should only be those documents which are necessary and will be referred to at the hearing

(iii) Should include skeleton arguments if ordered or appropriate

(iv) Wherever appropriate, should contain extracts of documents rather than the entirety of documents

(v) be prepared in a single pdf format

(vi) Must be indexed and paginated in ascending order, to include index pages and necessary authorities

(vii) Must always have a default display view for all pages of 100%

(viii) Must allow text on all pages to be selectable and to facilitate electronic annotation

(ix) Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another

(x) Shall not exceed 100 pages.

d) The parties should prepare the focussed reading list and electronic bundle on the basis that the Judge dealing with the matter may have no previous knowledge of the case and may not have access to the court file.

e) For the avoidance of doubt, this paragraph and the provision of an electronic bundle must be complied with even if the parties have already filed a paper bundle.

Arrangements for preparation of electronic bundle for remote hearings where no party is represented

7. In the event that no party is represented the Applicant shall comply with the requirements of paragraph 6

Arrangements to be made if the parties wish the application to be dealt with on paper

8. The parties should consider inviting the court to deal with the application on paper in accordance with CPR 23.8(b) instead of at a telephone hearing.

9. If the parties are agreed, they should invite the court to deal with the matter in that manner by sending an email to manchestercivil@justice.gov.uk

a) the subject line of the email must include the claim number and the date of the hearing and include the words “paper determination” and

b) the email shall comply with paragraphs 6 (b) to (e) of this order

10. On receipt, the listed hearing will be vacated and the court will determine the application on paper or give further directions.

Right to apply to vary this order

11. Because this order has been made without a hearing a party may apply to set it aside or to vary its terms. Such an application:

a. must be made by email to manchestercivil@justice.gov.uk

b. must be made within 7 days of service of this order and be copied to all parties

c. must include in the subject line of the email the claim number and the date of the adjourned hearing and the words “Application to vary order”

d. must attach a draft of the order the court is invited to make and

e. set out in the body of the email on what grounds the proposed order is sought and, if it is proposed that a hearing in a Court room is to take place, the measures required to ensure that this can be done safely and lawfully and in accordance with Government, Public Health England and other appropriate guidelines.

f. will be dealt with on paper without a hearing.

MANCHESTER CJC - CLINICAL NEGLIGENCE AND SERIOUS PERSONAL INJURY PROTOCOL - COVID 19 - URGENT MATTERS

The following arrangements will be effective from Monday 4 May 2020, to assist the efficient running of matters being dealt with under the Clinical Negligence and Serious Personal Injury ("CNSPI") Protocol whilst the restrictions imposed by the Government arising out of the Covid 19 Pandemic are in force.

On each working day, one of our CNSPI District Judges will be available to deal with urgent matters by email and to consider listing urgent matters remotely.

Without being prescriptive concerning the types of matters which might be referred to the CNSPI District Judges under this arrangement, it is envisaged that they may include: -

- Consent Orders bringing claims to a conclusion where a hearing has been listed;
- Consent Orders extending Court timetables or the time for compliance with directions where a hearing has been listed;
- Consent Orders inviting the Court to vacate hearings and, in particular, CCMCs;
- Ex parte applications where the Order sought is urgent;
- Requests for short, urgent applications to be listed as a matter of urgency.

This arrangement is being introduced with a view to avoiding unnecessary delays in urgent matters and optimising the Court's listing capacity.

In particular, a considerable amount of Court hearing time in CNSPI matters is devoted to CCMCs. It may be that parties are aware well before the hearing that a CCMC will not be effective or that (in light of agreements reached on directions and costs) the matter could properly be dealt with on paper by the judge or, alternatively, would only require a very short hearing. In those circumstances, parties' representatives are encouraged to use this arrangement.

All applications/ requests / Consent Orders should be marked "URGENT – CNSPI" and sent to CNSPIMcr@ejudiciary.net and should be accompanied by any required permission for the Court staff to take the applicable Court fee, along with all information and evidence which the judge will require to deal with the matter.

The Inns of Court College of Advocacy

Principles for Remote Advocacy

Introduction

The COVID-19 epidemic has forced courts and advocates to adapt at pace. Fortunately, we already have some experience to draw on. In civil and criminal courts, "paperless" working has already been taking place, so that advocates have begun to learn some of its challenges. In other areas such as arbitration and international litigation, there is already experience of remote hearings and cross-examination of distant witnesses by video. Courts and advocates have been building on these experiences, and rapidly gaining experience of the skills required to deal effectively with remote hearings.

This guide does NOT offer advice on the choice or use of different IT programs. In many cases the choice will have been imposed upon the advocate. The principal systems currently in use are Zoom and Skype for Business. Information on these programs is abundantly available.

This guide concentrates on the way in which advocates can most efficiently deploy their professional skills in communication and persuasion in the new working environment. It aims to distil existing experience into a set of principles that we hope will enable everyone to approach a remote hearing with confidence and do their job effectively.

Judges and advocates who already have experience with this practice consistently remark that effective remote advocacy depends not on new skills. It rewards the bedrock skills; a clearly articulated and logical case, supported by selective use of authority and documents, and focussed examination of witnesses. With careful preparation and attention to those core skills, it is possible to make remote hearings, in appropriate cases, highly effective. We hope these principles will help you do that.

The ICCA gratefully acknowledges the helpful commentary and guidance it has received, in preparing this document, from Rt. Hon. Lord Justice Bean, His Honour Judge Mark Brown, Rt. Hon. Sir Stanley Burnton, Professor the Hon. Clyde Croft AO SC, Neil Kaplan CBE QC, and individual members of the Bar of England and Wales.

The 8 Principles

1. Liaise in advance

- Confirm with the court or tribunal which software is to be used. Confirm the scheduling, special arrangements and hearing protocols.
- It is essential to agree a bundle in advance and check it in advance with all parties.
- Familiarise yourself with pre-hearing rules and guidance relevant to the jurisdiction.
- Ensure that the tribunal has your up-to-date contact address and number. Please check practice directions on this point.
- Go to the latest advice and guidance from the judiciary across all jurisdictions in relation to the Coronavirus (COVID-19) pandemic.
- For a list of other useful links to UK court protocols and updates, see Appendix 1

2. Understand the technology

- Test the technology prior to the hearing, including the camera, microphone and sound settings. Know how to turn the camera on and off, how to mute the microphone and to adjust the volume.
- Be aware that sometimes the camera/video will be turned off and the sound muted by default when you join a hearing electronically.
- Decide how many screens you intend to use during the hearing. The minimum is two. Some advocates use three: one for video, one for notes/LiveNote and one for electronic documents.
- Join the hearing in good time before it is due to start to resolve any technological issues.
- In the event of a breakdown in communication, a protocol should be in place for anyone affected, including witnesses and third parties, to contact the court or tribunal by additional means to alert them to the problem, e.g. telephone, text, email.
- If something does go wrong (a critical participant drops offline, for instance, or some connection fails) pause until it is sorted out. There are some distractions, like people joining and leaving calls, that you may have to ignore. But you should not be afraid, if that happens, to go back and repeat a point or a question.

- Should the technological problem concern the internet or Wi-Fi connection, it is helpful to have an alternative method of communication which is not reliant on either.
- If there is a technical failure that cannot be fixed, then the hearing may have to be adjourned. The hearing must be a fair hearing satisfying Article 6 of the ECHR.

3. Make sure all parties can be seen and heard

- As far as possible the online hearing should emulate a traditional hearing. This advice applies to advocates and witnesses alike.
- Establish a speaking protocol at the outset. This may involve participants, when introduced, acknowledging the introduction by raising their hand rather than speaking. This is preferable to a brief nod which may be imperceptible on small thumbnail videos.
- You must not record a court hearing but be prepared to remind the judge to record the hearing.
- When not speaking, press mute. All participants should do this when not speaking.
- When it is your turn to speak, remember to unmute your microphone. Speak directly into the microphone.
- Where multiple devices are in use, all should be muted and only one unmuted when required.
- Advocates should avoid using headsets in online hearings, unless required and the court or tribunal authorises you to do so.
- Avoid setting your device to the highest volume, since this is likely to cause feedback when you are speaking.
- Encourage participants to raise their hand when wishing to interrupt a speaker, or otherwise use a facility to do this on the software provided.
- Prepare witnesses for the taking of the oath or affirmation. Email the form of words to witnesses in advance of the hearing and make sure they have any book they require to take an oath.
- Third parties, such as interpreters, or intermediaries may be required to assist witnesses. During the Coronavirus (COVID-19) pandemic, third parties are likely to be remote from those they are assisting. Issues regarding discreet and separate channels of communication between them will need to be resolved by the court or tribunal in advance of the hearing.

- When third parties are used to assist witnesses, this adds to the risk of participants speaking over one another. Third parties should be reminded of speaking protocols where necessary.
- Defendants in the Crown Court attending online in custody often have difficulty hearing the proceedings. It is imperative that all participants have good audio and visual contact.
- Maintain eye contact with the camera. This will ensure you appear to be looking at your audience. The thumbnail image of the person you are speaking to may be at the bottom of the screen, when the camera on your device is above the screen. If so, this will give the appearance that you are looking down or away from your audience.
- Ensure that you are clearly visible by maintaining a reasonable distance from the camera, to show your head and upper body. Too close and your image may blur and fill the screen, too far and you will appear distant and detached from the hearing. Some cameras zoom in and out depending on the movement of the subject. This should be avoided.
- Advise everyone to be mindful, if using Skype for Business, that the camera records a wider area than one sees on one's own screen.
- If you are using the camera on your laptop, typing when you are visible is liable to cause the camera (and your image) to shake. Try to use a separate keyboard or a separate camera mounted away from the laptop.
- Remember that others are watching even if you cannot see them. In cases involving multiple participants, thumbnail video images may appear on screen, but these thumbnails often move off screen to allow participants to see the face of the person talking, or the document being shared. Observers may also be present. As such, often there are people present at the hearing who are not visible.
- Ensure that you are well lit by natural or artificial light. Avoid sitting with your back to a window or other light source. This can result in only your silhouette appearing on screen.
- Ensure that your background is appropriate for a hearing. A neutral background is best. Avoid revealing personal or distracting items, such as photographs, ornaments and paintings. The camera may show more of the room than you expect.
- Close the door to the room in which you are appearing. This will prevent unwanted visitors, sights and sounds from interfering with the hearing. This and the use of the mute button will suppress the noise of coughs, sneezes, doorbells, coffee machines, dishwashers, dogs barking, typing, rustling of papers etc.

- Dress professionally, but not in robes unless specifically asked to do so and appear as if attending the court or tribunal in person.
- Most hearings take place with parties seated. If in doubt, check with the court. If you prefer to stand, adjust your camera accordingly.
- Limit yourself to a glass of water as you would when appearing in an actual court.

4. Know how to handle the documents

- Download an app to enable you to mark up the bundles such as Acrobat DC or PDF Expert.
- Save and keep all your work (including prep and bundles) in a GDPR-compliant cloud NOT on your device. Whichever cloud you use, it is important to store documents systematically so you can find them easily.
- Keep a clean duplicate of your bundle, so that you have one clean bundle and one that is marked up. This way, if the judge asks for a document to be handed up, you have a clean copy.
- The numbers on the pagination can be quite small. Before a hearing, it helps to expand them (and change them to a bright colour) so that you can see them more clearly and move around the bundle more quickly.
- Use an agreed indexed electronic bundle of documents which can be referred to between relevant parties by section, page and paragraph number without the need to share the document on the screen or to hold up physical documents.
- Minimize the size of the hearing bundle. It is tempting, since the bundle is electronic, to include anything at all that might conceivably be relevant. Resist that temptation. Big files are harder to handle and cause all sorts of other problems (e.g. rejection by email filters). That goes for authorities, too, of course.
- Make sure you can find documents you need at speed. Advocates are advised to have a list of key documents, or a hyperlinked index. Bookmark critical documents. Make sure all references in your notes are absolutely accurate and precise and that references in the skeleton argument are to the pages in the electronic bundle, not some historic paper version.
- You must be able to provide, without delay, the reference to the documents to which you want to refer. Always give the reference, not just the description, and give people time to find the document.
- Make sure you can access two documents simultaneously (e.g. on different devices or windows). You will often need both to follow a document that someone else is referring to and find another document for your own purposes.

- Do not let the difficulty in handling documents deflect you from using documents effectively. In civil cases, documents are often very important. If you have a point to make about a document you nearly always need to make sure that you, the witness, and the judge all have that document in front of them. Summaries are never as effective.
- If you unexpectedly need to share a document with the court or tribunal which is not in the electronic bundle, but which cannot be made visible to all observers by sharing on screen, agreement must be reached as to the appropriate channel of communication to be used, e.g. sending the document to the court or tribunal by email.

5. Make the best use of written argument

- Be aware that it is likely that rather more weight will fall on the written argument than it does in typical hearings.
- Use the written argument to provide a clear road-map of the key issues and how you expect to approach them.
- Use the written argument to provide a way of finding any key document, especially if you are dealing with a complex body of evidence. Recognise that it is harder to follow a remote presentation, and that the judge may well need an aide memoire that can be consulted before and after the hearing.
- Do not, however, be tempted to shoehorn a mass of material of secondary importance into the written argument. If anything, this is even worse when the oral hearing is compressed, because it is likely to leave your written argument disconnected from your oral presentation.
- Give careful thought to which parts of the argument will require oral presentation or expansion, and how you are going to do that.
- Mark documents in arguments for ease by agreeing a key with the other side e.g. [1/1/1] = bundle 1, tab 1, page 1.

6. Be prepared, then be brief and to the point

- Your preparation needs to be more meticulous than it would be for a normal hearing. In a remote hearing, time is at a premium. Remote communication has less impact and less subtlety than face-to-face communication. Much of what follows is general good advice for advocacy, but the requirement is heightened for remote hearings.

- Write a more detailed script for submissions and cross-examination questions than you usually would.
- Anticipate questions that the judge is likely to raise, or points that your opponent may develop orally, and discuss them with your team in advance.
- For witness handling, make sure that your cross-examination is highly focussed on the main issues. Have clear objectives, and plan to achieve just those objectives. Expect the pace to be slower than you are used to. Do not rely on any cross-examination technique that depends on high pace or pressure.
- When questioning a witness, keep questions short, make sure each is a single question, and use clear questioning cues to show when a question is finished. Avoid multiple questions. Avoid questions which are simply statements and depend on inflection.
- Vulnerable witnesses do not achieve the same level of conviction on-line as they do, say, live behind a screen when the jury can see them. Please be reminded of the 20 Principles of Questioning vulnerable witnesses, available on the Inns of Court College of Advocacy website.
- Advocates must ensure that all witnesses are as comfortable as possible when giving evidence.
- Simplify your arguments as much as you possibly can, remembering that if you "lose the judge" you are less likely to notice that you have done so than you are in court.
- A lot of non-verbal communication (and aspects of "style") are lost when working remotely. Concentrate on the substance.
- Brevity and precision are key. In the event that either sound or video quality is interrupted during a question or submission, repetition may be required, a process far easier to complete with succinct questions or submissions.
- Aim to present your case in a low-key courteous and measured way. Be careful not to have too much mental overload during a hearing.
- Be prepared for the fact that remotely-conducted hearings are more taxing than a conventional hearing. Do not be shy of asking for breaks.

7. Avoid overspeaking

- In a remote hearing, a brief delay typically occurs between the video image of the person speaking and their voice being heard by the court/tribunal and witness. This connection delay may lead participants to believe a person has finished speaking before they have, in fact, done so and is liable to result in participants inadvertently speaking over one another.

- Do not interrupt. Let a speaker finish before speaking. Be especially careful not to interrupt a witness's answer or a judge's question.
- When you are speaking, allow pauses for judicial questions. You may even want to invite them.
- If you are speaking and become aware that someone else is trying to speak, pause to allow them to do so.
- Do not fill pauses. Gaps between speakers (e.g. while waiting for a witness to answer) are more common with remote communication than when you are together in court.
- If you feel compelled to interrupt and 'get to your feet', you may want to raise your hand to the tribunal as an indication of wanting to do so.

8. Maintain confidentiality

- Organise your workspace carefully in advance. Clear it of anything that is not related to the hearing.
- As far as you can, turn off or close any communications channels that are not related to the hearing you are conducting (email, SMS, WhatsApp etc).
- If you share your screen, be careful. When you share your screen, everything is visible online, including pop-up notifications, screensaver photographs etc. For safety's sake, ensure your screen is clear and that notifications are disabled. Documents can be shared without sharing your screen or (best) referred to in an agreed bundle.
- You will probably want to communicate with your own team but consider how this is best done. Receiving a steady stream of emails and WhatsApp messages from many different people is not helpful. Agree how your team will communicate but ask for communication to be limited to what is really necessary and consider channelling all communications through a single team member who can act as a filter.
- Taking instructions during an on-line hearing can create a serious technical problem. In the Crown Court, where resources are limited, taking instructions from a client in custody at any stage is a serious problem. There are communication and confidentiality issues which have not yet been satisfactorily resolved. Even when the client is not in custody the handling of taking instructions is messy. It may be that some link external to the on-line contact – perhaps by (secure) telephone or e-mail – needs to be considered.

- Be careful about private meetings. Some software allows the user to leave the main hearing and enter a separate virtual meeting 'room' to have a conference with, for example, a professional or lay client. You will have to be especially confident in using the software to exploit such breakout facilities securely.
- You may prefer, with the agreement of the court or tribunal, to conduct a separate private meeting by temporarily leaving the hearing and physically moving to another room to conduct a private conversation.
- When leaving a hearing, even if going to another room, ensure that the microphone is muted, and the video is disabled until you return. Alternatively, you should sign out of the meeting and sign in again upon returning.
- If you are calling a witness, make sure that someone has checked in advance that the witness knows how to operate the software, and to find documents.
- But remember that witnesses must not be communicating with third parties while they are giving evidence and must not be consulting documents other than the agreed bundle without the Court's knowledge and permission. It is common to ask a witness to identify anyone who is in the room with them and to show a "wide shot" of the room at the beginning of their evidence to verify that.

Appendix 1

UK Court and Tribunal protocols and updates

- HMCTS Guidance on Virtual Courts - Telephone and video hearings
- HMCTS Guidance on remote access - Guide on Joining Court Hearings by Video Call or Phone
- Mr Justice MacDonald - Guidance on Remote Access Family Court- Remote Access Family Court (23 March 2020)
- Administrative Court - Covid 19 related arrangements - Administrative Court Office Notices (March 2020)
- FLBA user guides for video platforms - FLBA Video Conferencing/Remote Hearings (30 March 2020)
- HMCTS - List of list open, staffed and suspended courts - Courts and Tribunals Tracker List
- HMCTS - Guidance on changes to court and tribunal hearings - Changes to Court and Tribunal Hearings
- HMCTS Daily Operational updates (You can sign up for all updates)
- Main HMCTS Guidance - Courts and Tribunals Planning and Preparation
- HMCTS list of Priority Courts

NORTHERN CIRCUIT

Civil Trial by Video:

Do's and Don'ts

Do's

At all times

1. **Ensure that everybody understands that a video hearing is still a Court hearing. It is important that there is a proper formality to the proceedings. It is equally important that litigants understand that the court process is not less serious or binding because it is conducted remotely. The Judge will still expect all participants to behave appropriately at all times.**

Before the hearing

2. Practise your own skills using and managing the video-conferencing software that you will be using at the hearing.
3. Check what equipment your client/witnesses are able to use to participate in a video hearing. They must have a desktop/laptop, tablet or smartphone which has a working screen, camera and microphone.
4. Try and avoid clients/witnesses using a smartphone for the hearing. Small screens, small on screen buttons and limited functions will put them at a disadvantage. A client/witness holding a smartphone at arm's length will be off-putting and a smartphone will be difficult to "*prop up*" on a table or desk.
5. Conduct a video "*dry run*" with your client and your witnesses:
    - 5.1. Make sure that they are using the equipment they will be using on the day of the hearing and they are in the location they will be at on the day of the hearing.
    - 5.2. Are they able to join the video hearing efficiently and successfully? Explain that on the day of the hearing they may be waiting "*on hold*" until the Judge has joined.
    - 5.3. Do they need to download an App or software in order to join?
    - 5.4. If they need to join via a web browser, does their browser allow them to join?
    - 5.5. Is their wi-fi signal strength strong enough? Can they be in the same room as the router to optimise signal strength?

5.6. Are their cameras and microphones enabled so that they can be seen and heard? If not, talk them through how to do that if necessary.

5.7. Orientate them to them as to what to press and what not to press. They need to know where the mute button is (i) to mute themselves when not giving evidence, and (ii) to avoid pressing the mute button when they are giving evidence/are required to speak!!!

5.8. Show them how to "*pin*" somebody so that person is permanently on screen. This may be useful so that they can pin the Judge and the advocate asking questions during the hearing.

5.9. Get them to undertake this exercise in the room they will be using on the day of the hearing. Are they planning on sitting in front of a window with blinding sunlight shining through or in front of some inappropriate poster/artwork?

5.10. Consider asking them to "*blur*" the background, if necessary, which is an option on some video platforms.

5.11. Attempt the dry run with more than two people on the call, ideally you, your solicitor or somebody from your solicitor's office, and your client/witness. This gives somebody who has not used video conferencing before an introduction to how the screen will look on the day.

5.12. Reassure your clients that they do not have to lean forwards with their nose to the camera in order to be seen and heard. Get them to sit at a comfortable distance from the device so that they can be seen and heard and they can also see and hear others when others are speaking.

5.13. Ask them to placing the laptop computer, tablet or phone on a pile of books or similar to give a good "*face on*" perspective and avoids the camera looking up their nostrils.

5.14. Consider encouraging use of headphones, which may it makes it easier to hear and gives privacy.

5.15. Trial screen sharing so that they can get used to seeing a document on their screen which you are controlling. Demonstrate the transition with

a document appearing on their screen, moving through that document and then switching back to seeing the speaker on screen.

5.16. Ask what they are going to wear for the hearing. A remote video hearing is still a Court hearing. Sitting on the sofa in pyjamas might be how they spend much of their time during "*lockdown*" but it probably isn't the best look for a hearing. The same applies to you!!!!

5.17. Warn them against excessive or unnecessary movement. Walking up or downstairs with the camera running is best avoided.

6. Check what the client's/witness's domestic arrangements are going to be on the day of the hearing:

6.1. Does a family member work from home? Can he/she work in a different room? Will he/she be using the wi-fi for video calls/streaming? Can he/she rearrange any video calls to free up the wi-fi for the day/for the period that the witness is giving evidence?

6.2. Will there be children at the location? If young children, will there be somebody there to look after them? If older children, can they be persuaded not to spend the day using the wi-fi and streaming *YouTube* clips or *Netflix* shows? Children interrupting a hearing could be very off-putting and could undermine the proper formality of the proceedings.

6.3. Do they have pets, in particular dog(s)? It is important that they and others are not distracted by the appearance or sound of pets during the hearing.

6.4. Are they expecting a visit or delivery which will require their attention? Can that be re-arranged?

6.5. Explain that it is preferable[1] for witnesses to be in a room on their own when they give evidence to avoid distractions and interruptions.

6.6. Explain that the witnesses must not be prompted by anyone when giving their evidence.

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[1] If the hearing is in private then it may not be permissible to have somebody else in the room. If a witness says that he/she needs somebody present for moral support or to assist with the technology then consider whether the case should proceed by way of video hearing at all.

7. Does the client/witness want to affirm or swear on a holy book? If the latter, do they have the holy book they require and do you have the words of the oath? If the affirmation, do you have the words of the affirmation? Send the words of the oath/affirmation to them so that they have them for the day of the hearing.

8. Once you have completed your "*dry runs*", ask yourself, "*Is each individual capable of participating in the hearing and giving their best evidence? Are they able to cope with the demands of a video hearing [technology, unusual circumstances etc] sufficiently so that they are not disadvantaged in giving their evidence?*" If the answer to those questions is "*No*", can that be addressed by a further dry run, some practice [not rehearsal] or other appropriate adjustment? If not, you must consider whether it is appropriate for the trial to go ahead by way of video hearing, even if you have to apply to adjourn. Discuss the options with your client.

9. Ensure that your client/witness has a copy of the e-bundle that is going to be used. At the hearing it is anticipated that all documents they have to comment upon will be placed on screen by "*screen sharing*". However, they may well need to use the e-bundle if there is a problem with "*screen sharing*" or if they want to identify documents themselves when giving evidence, e.g. in cross-examination or if they have to compare different pages in the bundle. Do they have a second device which they can use to look at the e-bundle? Encourage them to familiarise themselves with the bundle.

10. Ensure that you have contact telephone numbers for your clients/witnesses which they will have access to on the day of the hearing in case you need to contact them.

11. Agree how you are going to privately communicate with your solicitor, client and/or witnesses on the day of the hearing. You may need to take instructions. Would a *WhatsApp* group chat with your solicitor and client work? Are you happy for your client to have your mobile phone number? How is a witness to contact you/your solicitor if the hearing is taking longer than expected or they have an unexpected emergency? Set up those lines of communication.

12. Contact your opponent to discuss arrangements for the hearing:

12.1. Housekeeping – check bundles and documentation.

12.2. Are there any applications to deal with first?

12.3. Order of witnesses: try and agree an agenda/running order for the hearing.

12.4. Try and narrow the issues [bearing in mind in particular the "*overriding objective*"]

12.5. Agree how you are going to be able to contact each other during the hearing if there is something one of you needs to raise privately with the other.

13. Check that any CCTV or other video footage can be played on your computer and seen via screen sharing if necessary. If not, is there a link to that footage so that the Court and the witnesses can access it to watch it at the hearing if required. The Judge may not have the court file. If there is a CD containing the footage it is unlikely that the Judge will be able to play it.

14. Consider "*hot-tubbing*" for any expert evidence.

Bundles

15. Make sure that you have a well organised e-bundle which complies with the directions issued by the Court. In particular, make sure:

15.1. It has a clear index.

15.2. All pages are paginated sequentially and page numbers are clearly visible.

15.3. The documents are "*bookmarked*".

15.4. It only contains relevant documents which are likely to be referred to. If only 2 pages of an 80 page instruction manual are relevant, why do you need to include the other 78?

15.5. If the bundle is password protected, ensure that everybody who will/might have to access it has the password.

15.6. Everybody has the same version.

16. Consider separate bundles as you would for a traditional trial bundle. Would it be sensible to have the medical records in a separate bundle so that they can

be on screen at the same time as a medical report is on screen? It might make it easier for the Judge/witnesses to have separate e-bundles.

17. Make sure that the Judge and others can easily access the e-bundle. If at all possible you must use an online data store and issue a link to the Judge and all other participants so that they can access and download he e-bundle.

18. Remember that there is a data-limit of 10MB on the size of attachments that the Courts can receive by email. You should only use email attachments for the bundle if it is not possible to use an online data vault.[2]

Skeleton Arguments, Agendas and Reading Lists

19. Provide the Judge with a Skeleton Argument or at least an Agenda for the hearing. Anything that can assist the Judge with an introduction to the case, with an explanation as to how you propose to manage the hearing and instructions as to where to find key documents will be of enormous help. Skeleton Arguments will probably be longer than would be expected ordinarily.

20. Provide the Judge with a focussed suggested reading list and an estimate of likely reading time. Try and agree the suggested reading list with your opponent.

The day of the hearing

21. Have a quick dry run before the hearing. Clients/witnesses will probably be nervous about the hearing and/or using the technology. They may have forgotten precisely what to do, what to press and what not to press. There might be a technical hitch that needs to be resolved. You can also have one last check of their location, wi-fi strength and outfit. If you were conducting a trial at Court you would arrange to meet your team in advance of the hearing and would not introduce yourself at 10:28 for a 10:30 start. Find the time to do the same for a video hearing.

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[2] For Greater Manchester cases see the MT/FT order and the applications order each of which require that the court be provided with a link to an online data room (where possible) and an e-bundle by way of attachment if it is not possible to use an online data room

22. Check that your client is still happy to proceed with a video-hearing and that the case is still suitable for remote determination. If there is a possibility for example of raising fundamental dishonesty you should tell the Judge allegations of dishonesty may be best dealt with at a face-to-face hearing.
23. Make sure everybody's device is fully charged and, ideally, plugged in.
24. Check that they have the holy book they require if they are to swear an oath.
25. Check that they have the words of the affirmation/oath.
26. Ask them to put a "***DO NOT DISTURB!!!***" sign on the door to their room. Ask them to explain to others in the house that they are involved in a Court hearing today and they must not be disturbed except for emergencies. Ask them to explain to any children that not being able to find the TV remote control does not qualify as an emergency!!!!
27. Check they have easy access to the e-bundle in case it is required.
28. If the client/witness is using a paper bundle then make sure they have it to hand <u>in paginated order</u> and that it is exactly the same as the e-bundle the Judge and others have.
29. Ask them to eliminate as many distractions as possible: <u>mobile phone on silent</u>; landline unplugged [if possible]; dogs/pets in another room; children entertained/supervised; etc.
30. Warn your client that they can be seen at all times. Facial expressions can be seen and "*off camera*" conversations can be heard.
31. Remind everybody that the hearing will be recorded.
32. Remind everybody to keep their camera and microphone on <u>when giving evidence or speaking to the Judge</u>.
33. Remind everybody to mute their microphones when not giving evidence/not required to speak.
34. Tell everybody that there will probably be a lunchtime break. They should not eat during the hearing. However, check if clients or witnesses have a medical condition such that they may need to eat during the hearing, for example somebody with diabetes. If that *might* be necessary, ask for their permission to explain that to the Judge at the hearing.

35. Reassure everybody that they can drink water during the hearing. Mugs of tea/coffee are probably best avoided; alcoholic drinks are certainly to be avoided.
36. Explain that they do not have to stand when the Judge joins the hearing or when addressing the Judge.
37. Have a short video-conference with your client. That is precisely what you would do if you were at Court. There is no reason not do it before a video hearing. It also presents the perfect opportunity to settle them into using the video facility and get used to having a conversation with somebody on the screen, which is what giving evidence is.
38. Ensure you have easy access to any and all documents you might need to screen share or refer to during the hearing.
39. Clear your computer desktop of any and all irrelevant/unnecessary documents.
40. Plan the order in which you are going to go through the documents. Check if there are any documents that your clients/witnesses consider are important and they want to refer to.
41. Give yourself a clear uncluttered space to work in. You would not cover the desk in Court with empty coffee cups, half eaten sandwiches, other sets of papers or the like. Don't do it for a remote hearing; a cluttered workspace could be an unwelcome distraction or create other difficulties.
42. If you want to refer to authorities ensure that the Judge and all parties have copies in advance. An agreed bundle of marked up authorities [indexed and bookmarked] is to be encouraged.

The hearing

43. Put your mobile phone on silent.
44. All participants to the video hearing should join the hearing shortly before the listed start time and before the Judge.
45. Unless addressing the Judge, or otherwise requested to do so, all other participants to the call should have their microphones muted at all times.

46. You should ensure that all participants are warned that there must be no recording or broadcasting of the proceedings save to the extent that the court has permitted it. The Judge may remind all participants of this. The lay parties should be asked to turn on their microphones and cameras whilst any warnings are given, and may be invited to confirm their understanding of the warnings

47. Check with the Judge whether participants should have their cameras switched off when not addressing the judge/giving evidence.

48. Check that the Judge has the e-bundle and any other documentation he/she requires: skeleton argument authorities; applications etc.

49. Check that the video software settings allow the Judge and the advocates to "*screen share*" so that they can place a document on screen so that the witness and others can see that document. This is particularly important in Skype For Business where the organiser of the hearing is the default only presenter. The organiser of the hearing has to give the advocates presenter status[3].

50. When a witness is giving evidence that witness must keep their camera and microphone on at all times.

51. Consider suggesting that the "*chat panel*" facility is used. This is an easy way of passing on information privately to an individual or publicly to everyone, for example that it is difficult to see or hear them, or that they have turned their microphone off and how to turn it back on, or the location of a document they are struggling to locate. It is probably best to avoid using this facility for confidential messages.

52. It is easy for parties to feel left out of a hearing when the video screens show only those who are speaking. The Judge will be aware of this. You should also be aware of it. Take care with any in-court humour. In a remote video setting humour (however mild and however well you know the Judge) does not work and can serve to alienate the parties. The parties remain the most important participants.

[3] The organiser expands the list of participants and then right clicks [Ctrl and click on Mac computers] on the name of the advocate and then selects "*Make presenter*".

53. Make sure your submissions, questions and involvement are focussed and relevant. Remote hearings are more tiring than face-to-face hearings. Do not waste time or test patience.

54. Be aware that participants cannot hear their own "*audio*" feed. For example, they will not hear or appreciate that the microphone might be picking up their heavy breathing if they are too close to the microphone. Don't be afraid to ask them to move back from the microphone or to switch their microphone off when not speaking.

Your responsibilities

55. Your appearance on screen should be as if you were attending Court. For those hearings which would have been robed, it is not necessary to robe for remote hearings.

56. You should ensure that your background visible on screen is appropriate and appropriately lit to allow your face to be seen.

57. You must ensure that you will not be interrupted or distracted during the course of the hearing.

58. You should not move away from the screen without permission of the Judge during the course of a remote hearing.

59. The judiciary and other advocates should be addressed as if you were in a physical courtroom.

60. Ensure your clients and your witnesses understand how the hearing is to proceed. It is important that there is a proper formality to the proceedings. It is equally important that litigants understand that the court process is not less serious or binding because it is conducted remotely. The judge will still expect all participants to behave appropriately.

61. You should confirm with the Judge that the hearing will be in public (which is likely to mean that is broadcast through an open court). If not then thought needs to be given to whether the hearing should proceed in private or be adjourned. Ensure that you are familiar with the updated version of CPR 39 and with CPR PD 51Y.

Don'ts

Before the hearing

62. Don't leave it to your solicitor to make all of the arrangements. You will be the one using the video software at the hearing and communicating with the Judge, client and witnesses on screen. You need to be able to use the technology with them. They need to be comfortable using the technology with you. Very often, particularly in Fast Track cases, your solicitor will not attend the trial and will therefore not be in a position to help with the technology.
63. Don't leave it to the night before the hearing to have a look at what is involved and to consider what arrangements have been made for the video hearing.
64. Don't assume that everything is going to be "*plain sailing*". Try and identify potential challenges or difficulties that might arise in your case and try to pre-empt.

At the hearing

65. Don't sit in front of a sunlit window so that you are no more than a dark silhouette and those watching are blinded by the light.
66. Don't wander off!!! You must be visible at all times unless the Judge gives you permission to excuse yourself from the screen.
67. Don't interrupt or talk over your opponent or anybody else. You wouldn't do that in Court and so there is no reason to do it on video. Be aware that there may be a short lag in the relay. You must take account of that whenever you are speaking (and when you are listening)
68. Don't be afraid to ask for a break. If you were physically in Court and your client or witness needed a break for an appropriate reason, ask for a break. However, as when in Court, this is to be used sparingly.
69. Don't be afraid to ask for a break – even if only a very short one – if you need to take instructions. That is precisely what you would have to do at Court. Judges understand when you need to take instructions. They should

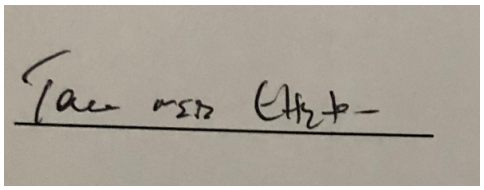
understand if that takes a little longer if it by WhatsApp or even an off camera phone call with your video hearing microphone muted.

70. Don't forget you are on camera at all times. Pantomime expressions of disbelief are visible to all and will be recorded.

116th UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Direction 51Y supplementing the Civil Procedure Rules 1998 is made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Lord Chancellor.

The new Practice Direction comes into force on the day after the day on which it is approved.



The Right Honourable Sir Terence Etherton
Master of the Rolls and Head of Civil Justice
Date:

The Right Honourable Robert Buckland QC MP
Lord Chancellor:
Date: 24th March 2020

PRACTICE DIRECTION 51Y – VIDEO OR AUDIO HEARINGS DURING CORONAVIRUS PANDEMIC

1) After Practice Direction 51X insert Practice Direction 51Y as set out in the Schedule to this Update.

SCHEDULE

PRACTICE DIRECTION 51Y – VIDEO OR AUDIO HEARINGS DURING CORONAVIRUS PANDEMIC

This Practice Direction supplements Part 51

1. This practice direction, made under rule 51.2 of the Civil Procedure Rules ("CPR"), makes provision in relation to audio or video hearings. It ceases to have effect on the date on which the Coronavirus Act 2020 ceases to have effect in accordance with section 75 of that Act.

2. During the period in which this Direction is in force, where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice.

3. Where a media representative is able to access proceedings remotely while they are taking place, they will be public proceedings. In such circumstances it will not be necessary to make an order under paragraph 2 and such an order may not be made.

4. Any hearing held in private under paragraph 2 must be recorded, where that is practicable, in a manner directed by the court. Where authorised under s.32 of the Crime and Courts Act 2013 or s.85A of the Courts Act 2003 (as inserted by the Coronavirus Act 2020), the court may direct the hearing to be video recorded, otherwise the hearing must be audio recorded. On the application of any person, any recording so made is to be accessed in a court building, with the consent of the court.

JUDICIARY OF
ENGLAND AND WALES

CIVIL JUSTICE IN ENGLAND and WALES

PROTOCOL REGARDING REMOTE HEARINGS

26 March 2020

Introduction to this Protocol

1. The current pandemic necessitates the use of remote hearings wherever possible. This Protocol applies to hearings of all kinds, including trials, applications and those in which litigants in person are involved in the County Court, High Court and Court of Appeal (Civil Division), including the Business and Property Courts. It should be applied flexibly.

2. This Protocol seeks to provide basic guidance as to the conduct of remote hearings. Whilst most court buildings 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(s), 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. Hearings conducted in accordance with this Protocol should, however, be treated for all other purposes as a hearing in accordance with the CPR.

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. CPR Part 39.9 provides that "[a]t any hearing, whether in the High Court or the County Court, the proceedings will be tape recorded or digitally recorded unless the judge directs otherwise" and that "[n]o party or member of the public may use unofficial recording equipment in any court or judge's room without the permission of the court".

6. CPR Part 39.2(3)(g) provides that hearings can (actually must) be held in private if the court is satisfied that it is, for any reason, "necessary, to secure the proper administration of justice". In such a case, however, a copy of the court's order to that effect must, under CPR Part 39.2(5), be published on www.judiciary.uk, "[u]nless and to the extent that the court otherwise directs", and non-parties may apply to attend the hearing and make submissions, or apply to set aside or vary the order.

6A. A new Practice Direction 51Y entitled "Video or Audio Hearings During Coronavirus Pandemic" came into force on 25 March 2020. It provides that: "where the court directs

that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice". Remote hearings accessed by a media representative are public proceedings. But if an order is made under PD51Y, there is no requirement for the order to be published as under CPR Part 39.2(5).

7. There are, therefore, the following legal issues to be addressed before any remote hearing can begin: (i) whether the hearing is to be in public or in private; if in private, on what grounds, and (ii) how is the hearing to be recorded, or can an order properly be made to dispense with recording?

8. As to the first, remote hearings should, so far as possible, still be public hearings. This can be achieved in a number of ways: (a) one person (whether judge, clerk or official) relaying the audio and (if available) video of the hearing to an open court room; (b) allowing a media representative to log in to the remote hearing; and/or (c) live streaming of the hearing over the internet, where broadcasting hearings is authorised in legislation (such as the new s85A recently inserted into the Courts Act 2003). The principles of open justice remain paramount.

9. As to the second, the recording of hearings and compliance with CPR Part 32.9 can also be achieved in a number of ways: (a) recording the audio relayed in an open court room by the use of the court's normal recording system, (b) recording the hearing on the remote communication programme being used (e.g. BT MeetMe, Skype for Business, or Zoom), or (c) by the court using a mobile telephone to record the hearing. It is not, however, permitted for the parties to record the hearing without the judge's permission.

What should happen when a hearing is fixed?

10. In the present circumstances, the court and the parties and their representatives will need to be more proactive in relation to all forthcoming hearings.

11. It is good practice for the listing office, judges, clerks and court officials to consider as far ahead as possible how future hearings should best be undertaken.

12. 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.

13. Available methods for remote hearings include (non-exhaustively) BT conference call, Skype for Business, court video link, BT MeetMe, Zoom and ordinary telephone call. But any communication method available to the participants can be considered if appropriate.

14. Before ordering a hearing by court video link, the judge must check with the listing office that suitable facilities are available.

15. The listing office will seek to ensure that the judge(s) and the parties are informed, as long in advance as possible, of the identity of the judge(s) hearing the case.

16. Judges, clerks, and/or officials will, in each case, wherever 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, BT MeetMe, Zoom, ordinary telephone call or another method) for the hearing;

(ii) that the case will proceed in court with appropriate precautions to prevent the transmission of Covid-19; 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.

17. If the parties disagree with the court's proposal, they may make submissions in writing by email or CE-file (if available), copied to the other parties, as to what other proposal would be more appropriate. On receipt of submissions from all parties, the judge(s) will make a binding determination as to the way in which the hearing will take place, and give all other necessary directions.

18. It will also be open to the court to fix a short remote case management conference 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, and/or any other relevant matters.

19. 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

20. 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, Zoom or BT call, the judge(s) will then be invited in by the clerk or court official.

21. The hearing will be recorded by the judge's clerk, a court official or by the judge, if technically possible, unless a recording has been dispensed with under CPR Part 39.9(1). 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.

22. The hearing can be made open to the public, if technically possible, either by the judge(s) 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 (see [8] above). But in the exceptional circumstances presented by the current pandemic, the impossibility of public access should not normally prevent a remote hearing taking place (see [6]-[7] above). 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.

23. The clerk, court official or the judge(s) must complete the order that is made at the end of the remote hearing. The wording of the order should be discussed and agreed with the parties.

Preparations for the remote hearing

24. 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, court official or to the judge (if no official is available), and to all other representatives and parties well in advance of the hearing.

25. 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.

26. Electronic bundles can be prepared in .pdf or another format. They must be filed on CE-file (if available) or sent to the court by link to an online data room (preferred) or email.

The Master of the Rolls
The President of the Queen's Bench Division
The Chancellor of the High Court
The Senior Presiding Judge
The Deputy Head of Civil Justice

Neutral Citation Number: [2020] EWHC 1135 (Ch)

Insolvency – Administration – Extension of administrator's term of office

Coronavirus Pandemic – Guidance on preparation for remote hearings

Case No: 3007 of 2016

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)

Manchester Civil Justice Centre,
1 Bridge Street West,
Manchester M60 9DJ

Date: Monday 11 May 2020

Before :

HIS HONOUR JUDGE HODGE QC
Sitting as a Judge of the High Court

- -

IN THE MATTER OF TPS INVESTMENTS (UK) LIMITED (In Administration)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

MARK GRAHAME TAILBY

Applicant

- -
- -

MR IAN TUCKER (instructed by **Howes Percival**, Leicester) for the **Applicant**
There was no respondent to the application

Hearing date: Thursday 7 May 2020

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HIS HONOUR JUDGE HODGE QC

- Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:30am on Monday 11 May 2020.

His Honour Judge Hodge QC:

1. This is my judgment on an application (pursuant to paragraph 76(2) of Schedule B1 to the Insolvency Act 1986 (as amended)) made by the sole administrator of TPS Investments (UK) Limited for a nine months' extension to his term of office (to 10 February 2020). It is supported by the 8th witness statement of the administrator, Mr Mark Graham Tailby, dated 8 April 2020, together with Exhibit MGT 8, and a short witness statement from Mr Hope Wilson, a trainee solicitor, dated 23 April 2020 evidencing, and exhibiting (as Exhibit HW1), emails from the legal representatives of the company's secured creditor, and also the entities asserting a prior interest in the company's assets, indicating their consent to the proposed extension and confirmation of their non-attendance at the hearing. Beyond the fact that this is the fifth application to the court for such an extension, there is nothing unusual about the present application, which is not opposed. Mr Ian Tucker (of counsel) appeared for the applicant. The application was listed for 30 minutes in the Applications List in Manchester at 10.30 am on Thursday 7 May 2020. In the usual course (prior to the extended hearing times required for remote hearings due to the Coronavirus pandemic), it would have been listed for about half that time; and I would have proceeded immediately to deliver a short, extemporary judgment setting out my reasons for acceding to the application. But there is nothing usual about the present times. At the conclusion of the hearing, I announced that I would grant the application but that I would reserve my judgment, to be handed down remotely at 10.30 am on the next court sitting day, Monday 11 May, because I wanted to incorporate some general guidance on preparation for the remote hearings of short applications. I emphasise that nothing in this judgment is intended to be in any way critical of the legal representatives in this, or in any other, case. Rather, it is intended to be of assistance to the legal profession generally in the difficult circumstances in which this court appreciates, and acknowledges, that they are currently operating, in many cases at home and away from their offices and chambers, and without their usual support staff and machinery.

2. On 19 March 2020 the Lord Chief Justice delivered a message (Civil & Family Courts – Covid-19) in which he said that:

> "We have an obligation to continue with the work of the courts as a vital public service, just as others in the public sector and in the private sector are doing. But as I have said before, it will not be business as usual … The rules in both the civil and family courts are flexible enough to enable telephone and video hearings of almost everything … The default position now in all jurisdictions must be that hearings should be conducted with one, more than one or all participants attending remotely …"

Since then, all those who contribute to the administration of justice - the legal professions (barristers, solicitors, legal executives, para-legals and support staff), the court staff and the judges - have been working immensely hard, and with great initiative and creativity, to ensure that, even if it is not "business as usual", the Business and Property Courts nevertheless remain able to continue to transact the business of dispensing justice. To that end, the Business and Property Court Judges in Manchester have issued guidance on hearings before the s.9 Specialist Circuit Judges and District Judges during the Covid-19 Pandemic. At paragraph 7 it is clearly stated that;

> "Unless otherwise proposed or directed, electronic bundles should contain only the documents which are **essential** for the hearing …" [Emphasis supplied]

The word "essential" was chosen advisedly, in preference to alternative formulations, such as "that which is reasonably required", which appears, for example, in CPR 35.1 (the duty to restrict expert evidence). One (accurate) dictionary definition of "essential" is "indispensable or important in the highest degree"; and that is the notion which the guidance was, and is, seeking to convey. The intention underlying the use of the word "essential", and the rationale for the restriction, was to relieve the burden cast, not only upon the judges of assimilating material in often user-unfriendly electronic bundles, but also upon the legal professionals, and any support staff, responsible for compiling the electronic bundles, by reducing the volume and scope of the documentation to be included within them.

3. How is the instruction to restrict the electronic bundle to "only the documents which are essential for the hearing" to be followed? It seems to me that this is probably best achieved by engaging the advocate who will present the application in court at an early stage of the process of preparing for the hearing. Only they can know how they will wish to present the application to the judge, and what material will be required to this end. When I first started in practice at the Chancery litigation Bar in 1980, it was still (just about) common practice for trial counsel to be instructed to prepare an Advice on Evidence before the preparations for trial had begun. Under the current practice, trial counsel are frequently involved in advising on witness statements for trial. In the relatively new world (for some) of electronic bundles and remote hearings, if counsel is to be briefed to present the application, then they should be retained in sufficient time to enable them to advise as to the contents of the electronic bundle. Under the current guidance (now helpfully set out in the Covid-19 Notice at the top of the revised standard-form Manchester Chancery email acknowledgment):

> " …
>
> 2. **Electronic bundles** should be emailed to the designated email address for hearings given by the Judge no later than 3 business days before the hearing.
>
> 3. **Skeleton Arguments** and copies of authorities should be emailed to the designated email address no later than 2 business days before the hearing.
>
> … "

The reason for these time limits is that the skeleton argument will need to refer to the relevant pages of the electronic bundle; but that should not dictate the time at which the advocate is first retained for the hearing, or prevent him from having any input into the contents of the electronic bundle. Paragraph 3 of the Manchester Judges' guidance already strongly encourages the parties

> "… to discuss and agree the best means for holding a remote hearing (including the provision of electronic bundles, skeletons and authorities and for recording the hearing) and, so far as possible, to do so before any application or request for a hearing and well in advance of any scheduled hearing."

This is all part of the parties' duty (under CPR 1.3) to "help the court to further the overriding objective".

4. In the instant case, for an unopposed hearing listed for thirty minutes, all that it was essential for the court to receive were the application notice itself, the administrator's supporting witness statement (with its exhibit) and the short witness statement of the trainee solicitor, exhibiting emails from the legal representatives of the company's secured creditor, and the entities asserting a prior interest in the company's assets, indicating their consent to the proposed extension and confirmation of their non-attendance at the hearing. Instead, the court received a "Core" bundle (in PDF format) of some 105 pages, which included no less than four previous witness statements from the administrator (his 3rd, 5th, 6th and 7th), made in support of the four previous applications for extensions of his term of office. The respective exhibits to the various statements were apparently contained in a shared file, and the court also received (by separate email) an invitation to access the shared file (although the access key was only supplied by a further email sent a day or so later and, when the court tried to use it, the court was unable to access the shared file). None of this might have mattered had the "Core" Bundle been readily accessible, but it was not. There was no searchable contents tab. There was no sequential page numbering throughout the bundle. Rather, each of the documents – the application notice, the two alternative draft orders, the six witness statements, and the 52 pages of copy correspondence - were each separately paginated, making it impossible for the court to scroll down and identify any particular document by the page number within the PDF file. It was only with the assistance of the page numbering contained within Mr Tucker's helpful written skeleton argument that the court was able to identify individual relevant documents within the "Core" Bundle.

5. In summary, therefore, there are two relevant lessons to be learned from the present case. First, engage the advocate who will be conducting the actual hearing at an early stage to advise as to what documents are "essential" so that they can be included, and all other documents excluded, from the hearing bundle. Secondly, provide a searchable index to the bundle if this is possible; but, if it is not, ensure that all the pages of the bundle (including any index and divider pages) are individually, and sequentially, paginated so that it can be readily searchable by scrolling down the file. Any reader not involved in this particular case can stop here.

6. The company was placed into administration by an order of this court, made on the application of its sole director, on 11 November 2016. Originally there were two administrators but Mr Tailby's joint administrator, Mr Courtman, resigned on 25 October 2018 leaving Mr Tailby as the sole administrator. By then, the term of the administration had already been extended by twelve months with the consent of the company's creditors. There have been no less than four previous court extensions of the administrator's term of office, for two successive periods of three months each, and then for two successive periods of six months each. The current extension expires on 10 May 2020. Although the present extension application was only issued on 14 April 2020, and thus within the one month period prescribed by paragraph 8.3 of the Insolvency Practice Direction, it had been sent to the court office on 8 April 2020 and therefore nothing turns on the fact that it was strictly issued less than one month before the current expiry of the administrator's term of office. It is the fifth

application to the court for an extension and, if granted (as I am satisfied that it should) it will take the currency of the administration to 4 ¼ years.

7. So far as relevant to the present application, the company had two properties, both of which were subject to charges in favour of Hutchinson Telecom FZCO ("Hutchinson"), which (acting through its appointed receivers) has sold one of them and is in the process of selling the other. Three related entities ("the Alpha Companies"), now themselves in administration, assert a trust interest over these assets with priority to Hutchinson's charge and also to the proceeds of insurance claims in relation to one of the properties presently held by the administrator. There are pending applications, issued by the administrator, acting in his capacity as the liquidator of two associated companies, seeking directions as to the application of various realisations in which the essential issue will be as to the validity of the Alpha Companies' trust claims. Both Hutchinson and the Alpha Companies have been served with, and consent to, the present application, although a minor issue arises in relation to Hutchinson as to the appropriate form of the recitals to the extension order.

8. As Mr Tucker points out in his helpful skeleton argument, on applications of the present kind, four questions tend to arise:

   (1) Why has the administration not yet been completed?

   (2) Is any other alternative insolvency regime more suitable?

   (3) Is the extension sought likely to achieve the purpose of administration?

   (4) If an extension is appropriate, for how long should it be granted?

9. The administration of the company has not yet been completed for two reasons. First, because it retains the title to an extremely valuable, but complex, development opportunity. Conduct of the sale has been given to the fixed charge-holder since February 2018 and it is not clear when the sale will complete, nor whether there will be any, and if so what, surplus. Secondly, the issue of the Alpha Companies' trust claims has yet to be resolved. This will impact on the application of the proceeds of the insurance claim and the proceeds of sale of the property, as well as impacting on whether there is any surplus.

10. No other alternative insolvency regime is more suitable: a move to creditors' voluntary liquidation under paragraph 83 of Schedule B1 is not possible as it is not yet known whether there will be any assets to make a distribution to unsecured creditors. The cost of compulsory liquidation is prohibitive, involving as it does administrative expenses, statutory payments and charges, the calling of creditors' meetings, the conduct of investigations, and regulatory and reporting obligations. The most proportionate and cost effective way for the company to remain "alive" is for it to remain in administration. The administrator is therefore faced with the choice of whether to dissolve the Company, on the basis of bare assertions previously made by Hutchinson to the effect that the equity in the remaining property will be swallowed by its charge, or to continue in administration. Any receipt from the sale of the remaining property would assist in achieving the second, or at least the third, in the statutory hierarchy of the purposes of administration.

11. Mr Tucker acknowledges that the statutory regime contemplates the conclusion of administrations within 12 months of the administrator's appointment, and that an 18 months extension has now been obtained, unusually over four applications. The administrator is not content, based on the evidence that he has seen, that there is no prospect of any surplus; it may well be a breach of duty to dissolve the company based on Hutchinson's assertions alone. Given the minimal costs that will be incurred in waiting for the sale of the remaining property, the court accepts that it is appropriate that an extension should be granted, and that the extension of nine months that is sought is long enough to allow a sale to progress. Hutchinson has previously confirmed that they are in the course of a formal marketing campaign in relation to the remaining property and that they have received a number of expressions of interest. The pandemic means that no realistic time-frame can now be put forward, and any attempt to do so would be entirely speculative. The court has a discretion as to whether to grant an extension and, if it chooses to do so, as to its duration. In the circumstances, the court accepts that a nine months' extension is appropriate. The court notes that the only parties with any actual, or contingent, interest in this administration all concur in that course.

12. The only remaining issue relates to the recitals to the order and whether to record the Alpha Companies' consent to the application. Hutchinson opposes the inclusion of this recital, and asks for their correspondence, and proposed draft order, to be drawn to the court's attention (as Mr Tucker has done). Hutchinson contends that the Alpha Companies have not filed any proof of debt in the administration and so they have no standing. In fact, the Alpha Companies contend that they have a proprietary interest in various assets, with the result that they do not fall within the administration. It would be inconsistent with this position to then file any proof of debt in their capacity as an unsecured creditor. Mr Tucker also suggests that Hutchinson's opposition may be to prevent any point being taken in due course that it has tacitly agreed that the Alpha Companies have any interest in the company's administration as a result of their trust claim. He points out that on any view the Alpha Companies have a contingent interest. The administrator considers it appropriate to record their consent, and he does not consider that, on any sensible consideration, the proposed wording prejudices Hutchinson.

13. The court agrees. The order proposed by the administrator merely records the fact of the Alpha Companies' consent to this order, without any acknowledgment of their status, which remains a matter for future determination in the pending litigation. That consent is a matter of fact, and the Order should reflect it.