



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