



TRIBUNALS
JUDICIARY

JUDGE ALISON MCKENNA
CHAMBER PRESIDENT'S OFFICE
GENERAL REGULATORY CHAMBER

Update on Ways of Working in GRC – June 2020

The GRC must, in view of the Covid 19 Pandemic and the pressure on HMCTS venues, make some alterations to the way it conducts its work.

I set out below some details about our new ways of working:

1. Hearings.

It is clear that HMCTS facilities for safe face to face oral hearings will be severely stretched for the foreseeable future.

Our expectation is that all GRC cases will be determined either on the papers without a hearing, or by a "remote" hearing (meaning by telephone or video).

This is our default position, in accordance with the [Senior President's Practice Direction of 19 March 2020](#).

In directing a remote hearing in any case, we will follow the approach of the High Court in Municipio de Mariana & Ors v BHP Group plc [2020] EWHC 928 (TCC) - in which HH Judge Eyre QC identified the relevant principles at [24] as follows:

i) Regard must be had to the importance of the continued administration of justice. Justice delayed is justice denied even when the delay results from a response to the currently prevailing circumstances.

ii) There is to be a recognition of the extent to which disputes can in fact be resolved fairly by way of remote hearings.

iii) The courts must be prepared to hold remote hearings in circumstances where such a move would have been inconceivable only a matter of weeks ago.

iv) There is to be rigorous examination of the possibility of a remote hearing and of the ways in which such a hearing could be achieved consistent with justice before the court should accept that a just determination cannot be achieved in such a hearing.

v) Inevitably the question of whether there can be a fair resolution is possible by way of a remote hearing will be case-specific. A multiplicity of factors will

come into play and the issue of whether and if so to what extent live evidence and cross-examination will be necessary is likely to be important in many cases. There will be cases where the court cannot be satisfied that a fair resolution can be achieved by way of a remote hearing.

www.bailii.org/ew/cases/EWHC/TCC/2020/928.html

2. Pre-Hearing Case Management

All parties will be asked to consider, if they have requested an oral hearing, whether they would now prefer it to be determined on the papers.

If a party requests a remote oral hearing, this will be convened using either the Cloud Video Platform (CVP), or BT Meet Me. Both of these formats are "hearings" within the definition of that term in the GRC Rules, so we do not need the parties' consent to convene a remote hearing, but we are of course willing to accommodate their preferences as between telephone or video.

You can find out more about [how to join telephone and video hearings](#) on the GOV.UK website.

There may be a good reason for a party asking the Tribunal to depart from its default position and convene a face to face hearing, for example where that party or a witness requires reasonable adjustments. In any case where a face to face hearing is requested, we will arrange a telephone case management hearing to discuss the reasons for the request.

A Judge or Registrar will apply the overriding objective of fairness and justice in considering how best to move forward, recognising that listing a face to face hearing is likely to result in a severe delay to that appeal being decided.

3. Considering All the Options

The options may not just be binary. For example, it may be possible to adopt a "hybrid" format, so that the person with particular needs can be in a face to face hearing room with a judge, but the representatives and other parties will join them by appearing on video screens.

It may also be possible to identify the parts of the hearing which could be completed on the papers (e.g. legal submissions) and the parts which must take place in the remote hearing (cross examination).

Lengthy remote hearings can be tiring, but they can be shortened by the parties agreeing in advance a list of facts which are in dispute and those which are agreed, and a list of the issues for determination by the Tribunal. We have invited Respondents to discuss these issues with the other parties.

4. Hearing Bundles.

We now expect all hearing bundles to be lodged with the GRC electronically. We have given the Respondents technical instructions for these.

We do not generally have the capacity to receive in and post out hard copy bundles, but if a party requires a hard copy of the hearing bundle as a reasonable adjustment, we will direct the Respondent to provide this.

Otherwise, all parties will work from an electronic bundle during the remote hearing.

5. Location of Face to Face Hearings

It is unlikely that we will be able to use the same range of hearing venues around the country that we have done in the past.

Any face to face GRC hearings will have to take place in new locations, in order to provide safe working arrangements for everyone.

This location may be further away from the Appellant's home than has hitherto been the case.

We will of course accommodate any reasonable adjustments in relation to the physical accessibility of the venue.

Judge Alison McKenna
Chamber President