

ESSEX COURT CHAMBERS

BARRISTERS

Remote Hearings, Adjournments and the Challenges of COVID-19: Guidance, Authorities and Anecdotes

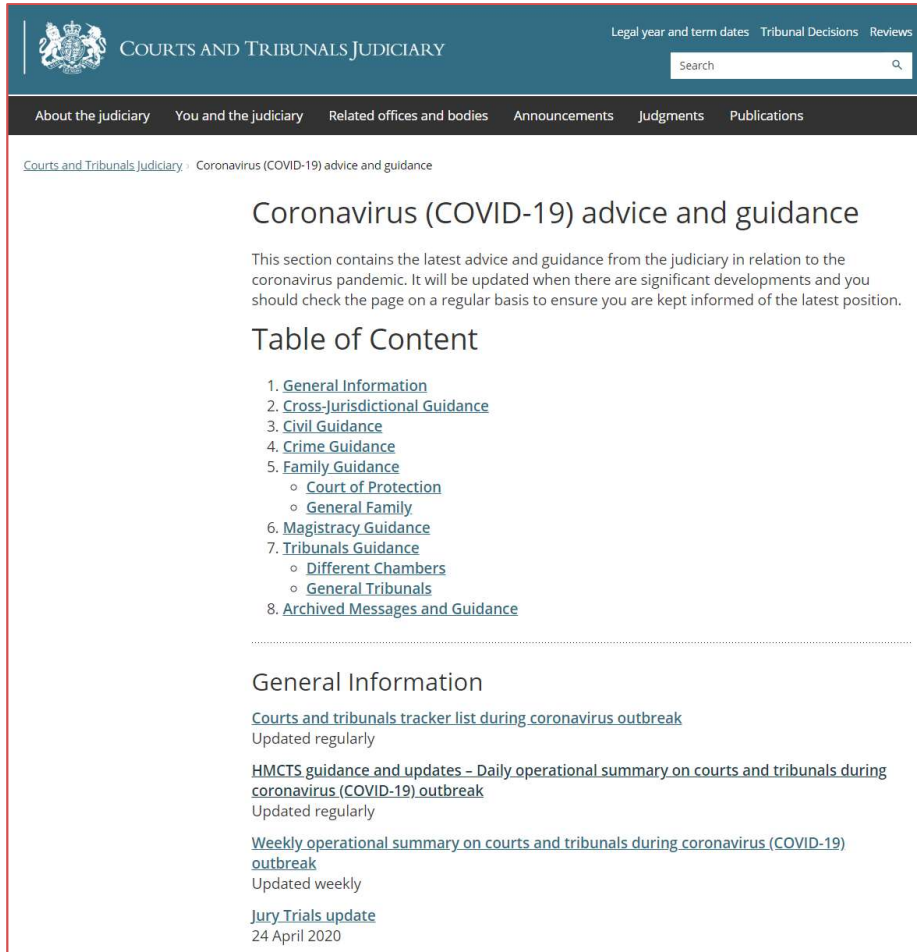
FRIDAY 1 MAY 2020 - 1300 HRS BST

JEREMY BRIER & WEI JIAN CHAN

-
- The official guidance
 - How it's working in practice
 - Remote hearings
 - Adjournments

SITUATION UPDATE: SOURCES OF INFORMATION

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The screenshot shows the homepage of the Courts and Tribunals Judiciary website. The header includes the Royal Coat of Arms, the text 'COURTS AND TRIBUNALS JUDICIARY', and links for 'Legal year and term dates', 'Tribunal Decisions', and 'Reviews'. A search bar is also present. The main navigation bar lists 'About the judiciary', 'You and the judiciary', 'Related offices and bodies', 'Announcements', 'Judgments', and 'Publications'. The breadcrumb trail reads 'Courts and Tribunals Judiciary > Coronavirus (COVID-19) advice and guidance'. The main heading is 'Coronavirus (COVID-19) advice and guidance', followed by a paragraph stating that the section contains the latest advice and guidance from the judiciary in relation to the coronavirus pandemic. Below this is a 'Table of Content' with eight numbered items: 1. General Information, 2. Cross-Jurisdictional Guidance, 3. Civil Guidance, 4. Crime Guidance, 5. Family Guidance (with sub-items: Court of Protection, General Family), 6. Magistracy Guidance, 7. Tribunals Guidance (with sub-items: Different Chambers, General Tribunals), and 8. Archived Messages and Guidance. A horizontal line separates the table of contents from the 'General Information' section. This section includes three links: 'Courts and tribunals tracker list during coronavirus outbreak' (Updated regularly), 'HMCTS guidance and updates – Daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak' (Updated regularly), and 'Weekly operational summary on courts and tribunals during coronavirus (COVID-19) outbreak' (Updated weekly). At the bottom, there is a link for 'Jury Trials update' dated 24 April 2020.

- Updates can be found on the Courts and Tribunals Judiciary website
- <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>

SITUATION UPDATE: OVERVIEW OF KEY GUIDANCE

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- Coronavirus (COVID-19): Message from the Lord Chief Justice to judges in the Civil and Family Courts dated 19 March 2020
 - Review of court arrangements due to COVID-19, message from the Lord Chief Justice dated 23 March 2020
 - Guidance: Changes to court and tribunal hearings during the coronavirus outbreak dated 2 April 2020 updated 22 April 2020
 - Message for Circuit and District Judges sitting in Civil and Family from the Lord Chief Justice, Master of the Rolls and President of the Family Division dated 9 April 2020
 - Guidance: HMCTS telephone and video hearings during coronavirus outbreak dated 18 April 2020 updated 22 April 2020
 - Guidance: Courts and Tribunals tracker list during coronavirus outbreak (on Open, Staffed, Suspended Courts)
 - Guidance: HMCTS daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak
 - High Court Business Contingency Plan for maintaining Urgent Court Hearings dated 26 March 2020
 - Civil Court Listing Priorities (applicable to County Court matters)

SITUATION UPDATE: KEY GUIDANCE

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The use of technology will be embraced for all types of hearings.

- ***“The rules in both the civil and family courts are flexible enough to enable telephone and video hearings of almost everything. Any legal impediments will be dealt with.”***
- ***“The default position now in all jurisdictions must be that hearings should be conducted with one, more than one or all participants attending remotely. [...] Final hearings and hearings with contested evidence very shortly will inevitably be conducted using technology.”***

(Message from the Lord Chief Justice to judges in the Civil and Family Courts dated 19 March 2020)

SITUATION UPDATE: KEY GUIDANCE

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Hearings requiring physical presence only to be conducted in very limited circumstances – consistent with “default position”

- *“Guidance has already been given about the use of remote hearings. Hearings requiring the physical presence of parties and their representatives and others should only take place **if a remote hearing is not possible and if suitable arrangements can be made to ensure safety.**”*

(Review of court arrangements due to COVID-19, message from the Lord Chief Justice dated 23 March 2020)

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Importance of ensuring fair hearings:

- *“The overarching criterion is that whatever mechanism is used to conduct a hearing must be in the interests of justice, that issue being assessed by reference to the unusual circumstances that prevail and the unhappy alternative if a hearing is adjourned. Every hearing we conduct in whatever form must provide a fair hearing.”*

(Message for Circuit and District Judges sitting in Civil and Family
from the Lord Chief Justice, Master of the Rolls and President of the Family Division dated 9 April 2020)

- Must be fair to **all** users – witnesses, public (media), counsel and solicitor teams?

SITUATION UPDATE: KEY GUIDANCE

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The general approach to remote hearings

- *“If all parties oppose a remotely conducted final hearing, this is a very powerful factor in not proceeding with a remote hearing; if parties agree, or appear to agree, to a remotely conducted final hearing, this should not necessarily be treated as the ‘green light’ to conduct a hearing in this way;*
- *Where the final hearing is conducted on the basis of submissions only and no evidence, it could be conducted remotely;*
- *Video/Skype hearings are likely to be more effective than telephone. Unless the case is an emergency, court staff should set up the remote hearing.*
- *Parties should be told in plain terms at the start of the hearing that it is a court hearing and they must behave accordingly.”*

(Message for Circuit and District Judges sitting in Civil and Family
from the Lord Chief Justice, Master of the Rolls and President of the Family Division dated 9 April 2020)

SITUATION UPDATE: KEY GUIDANCE

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For civil cases in particular

- *“Listing remains a matter for the judge. He or she should not feel under any pressure to list a certain number of remote hearings every day. Video hearings have proved more tiring than ordinary hearings, so lists of about half their usual length may well be appropriate.*
- *The best guide to what should be dealt with over the coming weeks is set out in the Civil Listing Priorities, although of course there will always be some cases outside those categories which are urgent and will need to be heard as a matter of urgency.*
- *Particularly careful consideration will need to be given to any remote hearings involving litigants in person, or parties (or witnesses) for whom English is not their first language.”*

(Message for Circuit and District Judges sitting in Civil and Family
from the Lord Chief Justice, Master of the Rolls and President of the Family Division dated 9 April 2020)

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Judges are human too

- *“It is important that the listing of cases, which is a matter for judges, takes account of the reality that long hours in front of a screen or on the phone concentrating hard are more tiring than sitting in a court room with all the participants present.”*

(Message for Circuit and District Judges sitting in Civil and Family
from the Lord Chief Justice, Master of the Rolls and President of the Family Division dated 9 April 2020)

SITUATION UPDATE: KEY GUIDANCE

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The screenshot shows the GOV.UK website with a search bar and navigation links. The main heading is 'Coronavirus (COVID-19): what you need to do'. Below this, the page is titled 'Guidance: HMCTS telephone and video hearings during coronavirus outbreak'. It includes a sub-heading 'Legal information about how HMCTS will use telephone and video technology during the coronavirus (COVID-19) outbreak.' and a 'Contents' list. A 'Related content' section lists several links. A footer note states: 'If you've been asked to join a hearing by telephone or video during the coronavirus outbreak, check this guide on how to join your hearing'.

GOV.UK

Search

Departments Worldwide How government works Get involved
Consultations Statistics News and communications

Coronavirus (COVID-19): what you need to do

Home > Crime, justice and law

Guidance English | Cymraeg

HMCTS telephone and video hearings during coronavirus outbreak

Legal information about how HMCTS will use telephone and video technology during the coronavirus (COVID-19) outbreak.

Published 18 March 2020
Last updated 22 April 2020 — [see all updates](#)
From: [HM Courts & Tribunals Service](#)

Contents

- The decision to use telephone and video hearings
- Using existing technology and making new technology available
- The rules on using video and audio technology in courts
- New legislation
- Open justice
- Publication of courts and tribunals lists
- Media access to proceedings
- Court and tribunal users
- Guide to joining an audio or video hearing
- Oaths and affirmations
- Communication between legal professionals and clients
- Prison to court video links and new video conferencing centres
- Authentication
- Video remand hearings (VRH)

Related content

- [HMCTS daily operational summary on courts and tribunals during coronavirus \(COVID-19\) outbreak](#)
- [Courts and tribunals tracker list during coronavirus outbreak](#)
- [How to join telephone and video hearings during coronavirus \(COVID-19\) outbreaks](#)
- [Changes to court and tribunal hearings during the coronavirus outbreak](#)
- [HMCTS priorities during coronavirus outbreak](#)

If you've been asked to join a hearing by telephone or video during the coronavirus outbreak, [check this guide on how to join your hearing](#)

- HMCTS has provided guidance on how will

it will use telephone and video technology

- https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak?utm_medium=email&utm_source=

SITUATION UPDATE: KEY GUIDANCE

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Which Courts are open?

- **Open courts** – these buildings are open to the public for essential face-to-face hearings
- **Staffed courts** – staff and judges will work from these buildings, but they will not be open to the public
- **Suspended courts** – these courts will be temporarily closed.

(Guidance: Changes to court and tribunal hearings during the coronavirus outbreak
dated 2 April 2020 updated 22 April 2020)

- Guidance on “*Courts and tribunals tracker list during coronavirus outbreak*”
can be found at: <https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>

SITUATION UPDATE: KEY GUIDANCE

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The screenshot shows the GOV.UK website interface. At the top is the GOV.UK logo and a search bar. Below the logo are links for Departments, Worldwide, How government works, Get involved, Consultations, Statistics, and News and communications. A yellow banner with a right arrow icon contains the text 'Coronavirus (COVID-19): what you need to do'. Below this is a breadcrumb trail: Home > Crime, justice and law. The main heading is 'Guidance' with a language selector for English and Cymraeg. The title of the page is 'HMCTS daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak'. A paragraph states: 'This page provides a daily summary of the HM Courts and Tribunals Service operational position during the coronavirus pandemic. We will aim to update this page by 9am daily.' Below this is the publication information: 'Published 25 March 2020', 'Last updated 24 April 2020 — see all updates', and 'From: HM Courts & Tribunals Service'. On the left is a 'Contents' list with links to daily operational summaries from 1 April 2020 to 24 April 2020. On the right is a 'Related content' section with links to 'Courts and tribunals tracker list during coronavirus outbreak', 'Coronavirus (COVID-19): courts and tribunals planning and preparation', 'HMCTS telephone and video hearings during coronavirus outbreak', 'Changes to court and tribunal hearings during the coronavirus outbreak', and 'Keeping court and tribunal buildings safe, secure and clean'.

GOV.UK

Search

Departments Worldwide How government works Get involved
Consultations Statistics News and communications

Coronavirus (COVID-19): what you need to do

Home > Crime, justice and law

Guidance English Cymraeg

HMCTS daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak

This page provides a daily summary of the HM Courts and Tribunals Service operational position during the coronavirus pandemic. We will aim to update this page by 9am daily.

Published 25 March 2020
Last updated 24 April 2020 — [see all updates](#)
From: [HM Courts & Tribunals Service](#)

Contents

- [HMCTS operational summary: 24 April 2020](#)
- [HMCTS operational summary: 23 April 2020](#)
- [HMCTS operational summary: 22 April 2020](#)
- [HMCTS operational summary: 21 April 2020](#)
- [HMCTS operational summary: 20 April 2020](#)
- [HMCTS operational summary: 17 April 2020](#)
- [HMCTS operational summary: 16 April 2020](#)
- [HMCTS operational summary: 15 April 2020](#)
- [HMCTS operational summary: 14 April 2020](#)
- [HMCTS operational summary: 9 April 2020](#)
- [HMCTS operational summary: 8 April 2020](#)
- [HMCTS operational summary: 7 April 2020](#)
- [HMCTS operational summary: 6 April 2020](#)
- [HMCTS operational summary: 3 April 2020](#)
- [HMCTS operational summary: 2 April 2020](#)
- [HMCTS operational summary: 1 April 2020](#)

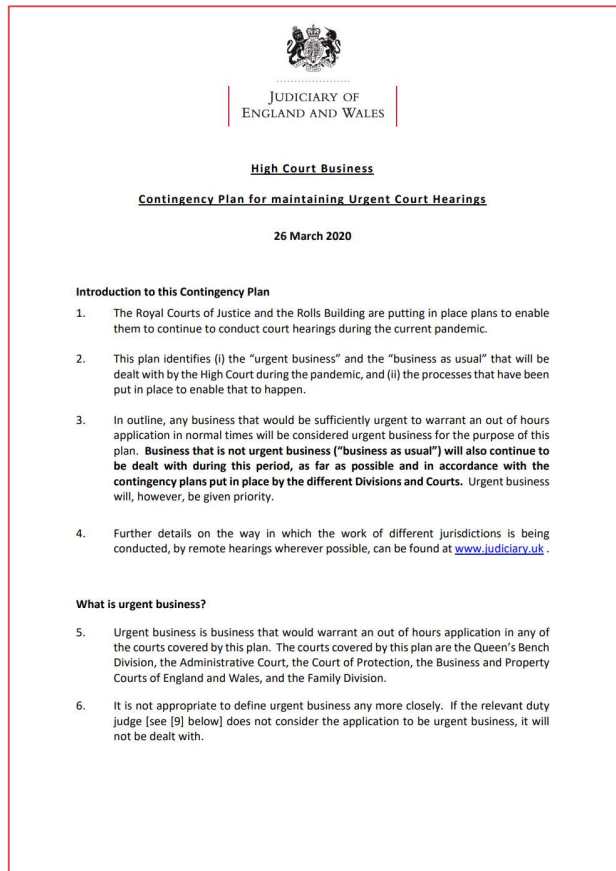
Related content

- [Courts and tribunals tracker list during coronavirus outbreak](#)
- [Coronavirus \(COVID-19\): courts and tribunals planning and preparation](#)
- [HMCTS telephone and video hearings during coronavirus outbreak](#)
- [Changes to court and tribunal hearings during the coronavirus outbreak](#)
- [Keeping court and tribunal buildings safe, secure and clean](#)

- HMCTS provides an operational summary on courts and tribunals
- Summary is now provided weekly
- <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>

SITUATION UPDATE: KEY GUIDANCE

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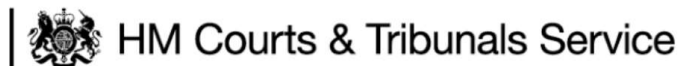


High Court Business Contingency Plan for maintaining Urgent Court Hearings dated 26 March 2020

- Identifies "***urgent business***" that High Court will deal with (i.e. "***any business that would be sufficiently urgent to warrant an out of hours application in normal times***")
- Sets out the processes that have been put in place to enable this

SITUATION UPDATE: KEY GUIDANCE

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CORONAVIRUS update

Civil court listing priorities: 24 April 2020

Priority 1 – work that must be done

- Committals
- Freezing Orders
- Injunctions (and return days for ex parte injunctions).
- The emphasis must be on those with a real time element (such as post-termination employment restrictions), noise or interference with property.
- Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
- Applications to stay enforcement of existing possession orders
- Production of persons in custody following Power of Arrest detentions
- Applications to displace under s 29 of MHA
- Homelessness Applications
- Enforcement work that does not involve bailiffs, such as third-party debt orders (particularly hardship payments).
- Any applications in cases listed for trial in the next three months
- Any applications where there is a substantial hearing listed in the next month.
- All Multi Track hearings where parties agree that it is urgent (subject to triage).
- Appeals in all these cases

Priority 2 – work that could be done

- Infant and Protected Party approvals (children could attend by Skype)
- CPR 21 approvals
- Applications for interim payments in MT/PI/Clin Neg
- Stage 3 assessment of damages
- Enforcement of trading contracts
- Applications or hearings pursuant to the Insolvency Act 1986 which concern the survival of a business or the solvency of a business or an individual
- Applications for summary judgment for a specified sum
- Applications to set aside judgment in default
- Applications for security for costs
- All small claim/fast track trials where parties agree it is urgent (subject to triage)
- Preliminary assessment of costs
- Appeals in all these cases

Civil work in the Court of Appeal is subject to separate guidance and civil work carried out within the Queen's Bench Division and Business & Property Courts of England and Wales is covered by the High Court Contingency Plan. The work of the Business and Property Courts outside of London (District Registries) is being dealt with on a case-by-case basis and is also excluded from these lists.

Accordingly these lists relate only to County Court work.

Visit gov.uk/hmcts for court and tribunal related **coronavirus updates**

REMOTE HEARINGS

REMOTE HEARINGS: PROTOCOL REGARDING REMOTE HEARINGS

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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

Initial guidance from LCJ

- What should happen when a hearing is fixed?
- Procedures for remote hearings
- Preparations for remote hearings

(Civil Justice in England and Wales: Protocol Regarding
Remote Hearings dated 26 March 2020)

REMOTE HEARINGS: PRACTICE DIRECTION 51Y

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The screenshot shows the UK Ministry of Justice website. The header includes the Royal Coat of Arms and the word 'Justice'. Below the header is a navigation bar with links for 'Courts', 'Procedure rules', and 'Offenders'. The main content area is titled 'PRACTICE DIRECTION 51Y – VIDEO OR AUDIO HEARINGS DURING CORONAVIRUS PANDEMIC'. It includes a breadcrumb trail: 'Home » Courts » Procedure rules » Civil » Rules & Practice Directions » PART 51 - TRANSITIONAL ARRANGEMENTS AND PILOT SCHEMES » PRACTICE DIRECTION 51Y – VIDEO OR AUDIO HEARINGS DURING CORONAVIRUS PANDEMIC'. The text states that this Practice Direction supplements Part 51 and provides four numbered points regarding remote hearings, public access, and recording requirements. It is dated 'Updated: Wednesday, 25 March 2020'.

- **Proceedings may take place in private in the event that it is not practicable to broadcast the hearing**
- Where a media representative is able to access proceedings remotely, they will be public proceedings – access link for media given on the Daily Cause List
- Hearings must be recorded where practicable
 - Amendment under PD51ZA: any person seeking permission to listen to or view a recording of a hearing is not required to make a formal application under CPR Part 23

REMOTE HEARINGS:

PROTOCOL REGARDING REMOTE HEARINGS

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Procedure remains a matter for the Judge

- *“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.”*

(Civil Justice in England and Wales: Protocol Regarding Remote Hearings dated 26 March 2020, para 3)

- But the parties will typically make proposals, cooperate between them and seek to agree a structure. More on that later.

REMOTE HEARINGS: PROTOCOL REGARDING REMOTE HEARINGS

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Principle of open justice should be respected

- *“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.*
- *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.”*

(Civil Justice in England and Wales: Protocol Regarding Remote Hearings dated 26 March 2020, paras 8-9)

REMOTE HEARINGS: RECORDING HEARINGS

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Parties and their representatives **may not** record remote hearings

- It is an offence to make or attempt to make an “*unauthorised recording*” or “*unauthorised transmission*” of a broadcast or live link of a remote hearing:
Coronavirus Act 2020, Section 55; Schedule 25 (amending the Courts Act 2003)
- Court clerks may record proceedings
- Transcripts can be produced in the usual way
- It may also be an offence to have a parallel video meeting. Parties should seek a court order permitting this meeting if they wish to do so.

REMOTE HEARINGS: ADVOCACY TIPS

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- Central screen for video and microphone
 - Suits, neutral background
 - Side screens for bundles and docs
 - Important to keep an eye on the Judge rather than other participants
 - Slower and clearer than usual
 - Fine to take breaks to “check in” with team on What’s App group?

REMOTE HEARINGS: E-BUNDLING

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The official guidance

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

(Civil Justice in England and Wales: Protocol Regarding Remote Hearings dated 26 March 2020, paras 24-26)

REMOTE HEARINGS: E-BUNDLING

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Supreme Court guidance (which we have seen transposed to a High Court CMC Order)

- *“The document **must** be a **single PDF**.*
- *The document **must** be numbered in ascending order regardless of whether multiple documents have been combined together (in future the original page numbers of the document will be ignored and just the bundle page number will be referred to).*
- *Index pages and authorities **must** be numbered as part of the single PDF document (they are not to be skipped; they are part of the single PDF and must be numbered).*
- *The default display view size of all pages **must always be 100%**.*
- *Texts on all pages **must be selectable** to facilitate comments and highlights to be imposed on the texts.*
- ***The bookmarks must be labelled** indicating what document they are referring to (**best to have the same name or title as the actual document**) and also display the relevant page numbers.*
- *The resolution on the electronic bundle **must** be reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another (**it is advisable to print off the hard copy before reducing the resolution or creating the hyperlinks as stated below**)*
- ***The index page must be hyperlinked** to the pages or documents they refer to.*
- ***Supplementary documents or bundles** filed during or close to the start of the hearing must be created as a **separate single PDF** numbered in ascending order starting from 1 and filed on new memory stick.”*

(<https://www.supremecourt.uk/procedures/electronic-bundle-guidelines.html>)

REMOTE HEARINGS: E-BUNDLING

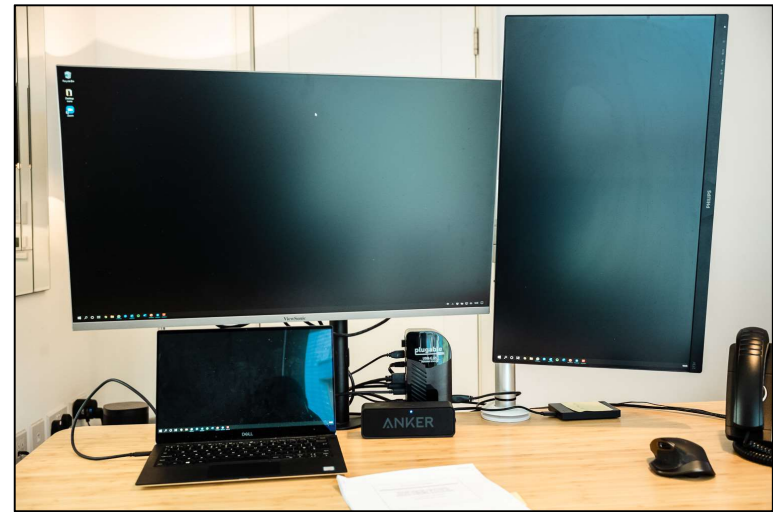
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To summarise the best practice:

- E-bundles should be a Single PDF
- Use PDF page numbers for references
- Use PDF Bookmarks (and adopt suitable labels)
- Hyperlink the index page to the pages or documents referred to
- Ensure that text is selectable (use optical character recognition if necessary)
- Optimise the document for fast viewing (reduce resolution to 200-300 dpi)

REMOTE HEARINGS: WORKSTATION SETUP

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- **Centre: microphone and video**
- Screen 2 / 3: Bundles and central document display (Magnum Opus, RingCentral). (ipad for documents?)
- Screen 3: Transcripts?
- Screen 4 or laptop: Your notes
- Screen 5 (phone?): Team “chat”

REMOTE HEARINGS: WHAT PLATFORM?

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Skype for Business appears to be the platform adopted by HMCTS

- *“For videoconferencing we have started using Skype for Business on HMCTS and judicial systems. Participants in a hearing do not need Skype for Business to join these videoconferences, however they will need the free Skype meetings app. [...] We have increased capacity, undertaken testing, and are now introducing our ‘cloud video platform’ (CVP) for hearings. [...] Please note, HMCTS does not currently support the use of other video conferencing applications and therefore Skype and CVP should be used.”*

(Guidance: HMCTS telephone and video hearings during
coronavirus outbreak dated 18 April 2020 updated 22 April 2020)

ADJOURNMENTS

ADJOURNMENTS: KEY POINTS

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- COVID-19 does not give parties *carte blanche* to obtain adjournments of hearings
 - Considerations relating to health, care obligations, and technological infrastructure apply and the CC will take these seriously – but “concrete evidence” a good idea
 - Adjustments that do not affect hearing dates may be more easily obtained
 - Parties will be expected to cooperate to make it work

ADJOURNMENTS: THE STARTING POINT

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Practice Direction 51ZA, paragraph 4

- *“In so far as compatible with the proper administration of justice, the court will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions, the adjournment of hearings, and applications for relief from sanctions.”*

(Cited in *Municipio de Mariana v BHP Group plc* [2020] EWHC 928 (TCC) [17] (HHJ Eyre QC))

Hyde and Murphy v Nygate and Rayment
[2020] EWHC 845 (Ch)

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- Claim brought by the joint liquidators of One Blackfriars Limited against former administrators. Trial due to take place over five weeks in June 2020.
 - Application to adjourn the trial on the basis that this was a necessary response to the “*lockdown*”. Submissions included:
 - To proceed with a trial exposed participants and other court workers to unacceptable risks
 - Technological challenge posed for such a trial was too great
 - There was a real risk of unfairness
 - The judge (John Kimbell QC) rejected the application: [58]
 - **See Jeremy Brier, “*Applications to adjourn on account of COVID-19*” (13 April 2020) at <https://files.essexcourt.com/wp-content/uploads/2020/04/14113842/Applications-to-adjourn-on-account-of-COVID-19.pdf>**

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- Current conditions “*fall very far short of justifying a wholesale adjournment*”: [39]
 - Remote hearings are consistent with government guidance: “*far from being inconsistent with Government guidance in response to the pandemic, the use of video technology and electronic document handling software is precisely what both the Coronavirus Regulations themselves and the guidance issued by the Lord Chief Justice had in mind*”: [35]

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- A remote trial must not endanger the health of any participants or, indeed, anyone else involved in the trial behind the scenes; account must also be taken of care needs: [38]
 - Technological challenges are an “*an absolutely essential enquiry*”, and arrangements should be made to deal with them: [51]
 - Unfairness is relevant, but unlikely to arise in “*litigation between well-resourced sophisticated parties*”: [53]

Municipio de Mariana v BHP Group plc
[2020] EWHC 928 (TCC)

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- 7-day application to stay proceedings on jurisdictional grounds due to be heard starting from 8 June 2020
 - Underlying claim related to the collapse of the Fundão Dam in Brazil on 5 November 2015
 - Defendants applied for extension of time to serve evidence in reply to 19 June 2020 (and therefore hearing in July 2020 or Michelmas term 2020). Submissions included:
 - Difficulties in obtaining evidence due to “*lockdown*” in Brazil and restriction on entry for non-Brazilians
 - Delays caused by difficulties in remote working
 - **HHJ Eyre QC vacated hearing and re-listed hearing on 20 July 2020: [48]**

HHJ Eyre QC summarised the principles relating to adjournments at [32]. By way of summary:

- ***“The objective if it is achievable must be to keep to existing deadlines and where that is not realistically possible to permit the minimum extension of time which is realistically practicable.”***
- Parties and representatives are expected to rise to the challenge of remote working and put up with inconveniences
- However, the court should be willing to accept less polished evidence and other materials than usual, and should take account of realities when requiring lawyers and other professionals to press forward with deadlines
- *“[T]he court must be conscious that it is likely to take longer and require more work to achieve a particular result”*
- *“[A]n extension of time which requires the loss of a trial date has much more significance and will be granted much less readily than an extension of time which does not have that effect.”*

ADJOURNMENTS: NON-HEARING DEADLINES

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Practice Direction 51ZA, paragraphs 2-3

- *“During the period in which this Direction is in force CPR rule.3.8 has effect as if in substitution for the reference to 28 days there was a reference to 56 days.*
- *Any extension of time, whether agreed by the parties or on application by a party, beyond 56 days requires the permission of the court. An application for such permission will be considered by the court on the papers. Any order made on the papers must, on application, be reconsidered at a hearing.”*

ADJOURNMENTS: APPROACH

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- Anecdotal evidence is that “wellbeing” issues are being taken seriously – prep time, childcare, space in home
 - Technological issues are usually solvable – e.g. dongles, broadcast from office – BUT what if the witness is in a remote location?
 - Key tip: approach court *after* the parties have discussed finding a way forwards
 - Anecdotal evidence from the Bar Council that some cases are being adjourned with no clear reason provided.

REMOTE HEARINGS, ADJOURNMENTS
AND THE CHALLENGES OF COVID-19:
GUIDANCE, AUTHORITIES AND ANECDOTES

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We are open for business!

JEREMY BRIER & WEI JIAN CHAN

T: +44 (0) 20 7813 8000

E: clerksroom@essexcourt.com

This slideshow will be available on the Essex Court Chambers COVID-19 Legal Issues page at:

<https://essexcourt.com/covid-19-legal-issues/>

This briefing does not constitute legal advice.

You are advised to seek specific advice in the context of any disputes.