



Hearings in the time of C-19

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The UK was put into lockdown on 23 March 2020.

The immediate reaction of Her Majesty's Courts and Tribunals Service (HMCTS) was to announce that physical hearings would be avoided wherever possible. Remote hearings have quickly become the 'new normal'.

The situation has been fast moving. HMCTS and the judiciary have issued guidance and implemented rule changes. Much of the guidance published since the entry into lockdown has been updated several times or replaced, and it continues to be. So, now more than ever, we litigators need to do our best to keep up to date.

What guidance do I need to be aware of?

Litigators (and litigants) should be aware of the following:

1. Civil Justice Protocol [regarding remote hearings](#) of 26 March 2020;
2. High Court [contingency plan for maintaining urgent court hearings](#) of 26 March 2020;
3. HMCTS [guidance on courts and tribunal planning and preparation](#); and
4. HMCTS [daily operational summary](#). The summary includes a civil section which contains links to information about listing priorities ([an example](#)).

The HMCTS guidance is updated on a regular basis, although note that as of 24 April the 'daily' operational summary will be a 'weekly' operational summary.

In addition, for property litigators:

1. First-tier Tribunal (Property Chamber): [Guidance during Covid-19 pandemic](#)
2. First-tier Tribunal (Property Chamber): [Practice Direction for lodging applications and documents](#)
3. Upper Tribunal (Lands Chamber): [Presidential guidance during Covid-19 pandemic](#)

There have also been changes to the rules. Property litigators need to be aware of three new Practice Directions:

1. [PD51Y](#) deals with public access to court hearings.
2. [PD51ZA](#) increases the length of an extension of time parties can agree without seeking the court's permission from 28 days to 56 days, so long as that does not put a hearing date at risk.



3. PD51Z (as amended) ([here](#)) which stays possession actions, save for those falling with the exceptions at para 2A, for 90 days. Note that the practice direction imposes a stay; it does not preclude claims being issued. Litigants should also recall that they are to sign a statement of truth when a claim is issued so, if there are no persons on the land who are 'unknown', then it is not appropriate to include them as a party.

There is also a temporary insolvency practice direction ([here](#)) which deals with, inter alia, the electronic filing of notices and the use of remote hearings.

What software is the court using?

The HMCTS guidance ([here](#)) indicates that telephone hearings will be run using BTMeetMe, and video hearings on Skype for Business.

That is consistent with my experience in both Central London County Court and the Rolls Building, although some judges are using Microsoft Teams and will soon use Video Cloud Platform (VCP).

Further information is given in the guidance about access to those systems, and the fact that no Skype for Business account is required.

How are remote hearings working in practice?

Experiences will no doubt differ from court to court and, possibly, from judge to judge. And most of us are sensible enough to recognise that not all hearings will be suitable for dealing with remotely.

However, having done remote hearings since lockdown, there is no need to shy away.

Not everything will run perfectly, but if they are prepared properly, there is little reason why we cannot carry on with business as usual in the 'new normal'.

Here is the big point and one which the courts have been reminding us of at any given opportunity:

CPR 1.3 requires parties to help the court to further the overriding objective.

It's important to take that duty seriously right now. The court needs us to put away our swords insofar as the logistics of hearings are concerned. We all need to work with our opponents to ensure the smooth running of matters, so far as we can.

THE QUALITY OF THE WRITTEN ADVOCACY IS GOING TO BE MORE IMPORTANT, AND THE ORAL PRESENTATION NEEDS TO BE MUCH SIMPLER AND DELIVERED MORE SLOWLY

Managing remote hearings: some tips on logistics

1. **Plan and prepare:** There are two aspects to this:
 - a. Do not leave preparation until the last minute; and
 - b. Take the initiative.



Solicitors should be note that it's important to agree and compile the bundle early. If you are in the business and property courts, you will probably be directed to lodge it at least two clear days before the hearing (yes, even for applications or CCMCs). Check whether counsel wants a hard copy – most will for good, practical reasons – and get it to them in good time because their skeleton argument might well need to be lodged earlier than normal too.

Whichever side you are acting for, think ahead. The courts are carrying out a triage of their lists, as required under the Protocol for remote hearings, but some courts will do it quite late in the day. Consider contacting the court to let them know whether the hearing is effective and about any preferences for the format of the hearing, rather than waiting for the court to contact the parties.

It is for claiming parties to take the lead on bundle preparation, unless directed otherwise.

If you are acting for the defendant / respondent, don't wait for the claimant to contact you about the bundle. Discharging your duty under CPR 1.3 might require you to take the initiative and contact them, especially if you are dealing with a litigant in person or a less able (or disorganised) representative.

2. **Dry run before hearing:** It may seem obvious, but do check the video conferencing software works on your computer / device. For iMac users, you will probably find your microphone does not work on Skype for Business, even when your microphone is set up correctly. This is a known issue relating to privacy settings which for some can only be fixed through Terminal (I'm not that brave). It is best to have a back-up device for this reason (see below).

3. **Back up device:** Someone in your hearing is likely to have issues with technology. It might be you, especially if you are using an iMac. If you are counsel, a back-up device on which you have already installed the relevant software is advised. I tend to have two devices to hand – my computer and an iPad – and have had to log out of one and onto the other.

4. **Be prompt, not tardy:** log in and get onto your call *before* the judge. Might seem obvious, but not all representatives have thought of it, which can prove to be embarrassing.

5. **Timing:** Everything is going to take much longer. Your judge will take longer to find a page, and the oral advocacy will need to be slower. If you are setting time estimates now, allow for extra time. For some hearings, you might need almost double the time estimate. If you set your estimate before lockdown, consider whether you need to ask the court to lengthen it.

6. **Advocacy (written and oral):** You need to adapt the way you convey your message. Face-to-face communication is said to operate very differently, with body language accounting for 55% of the message. The quality of the written advocacy is going to be more important, and the oral presentation needs to be much simpler and delivered more slowly.

7. **Communications between counsel and instructing solicitor (and lay client):** You will need a back channel. HMCTS says their platforms allow private messages (they often do) but it is all too easy to mistakenly send the message 'to everyone' rather than just your client. A WhatsApp group for counsel, solicitors and lay client is not a good idea for two reasons: (i) it would require counsel to have their phone to hand, as well as the other devices they may be using; and (ii) the flow of messages may become distracting. Emails (assuming there is lag) or iMessages work well, as they



can be used on the representatives' computers / devices, and the instructing solicitor can ensure only those messages which need to get through are referred to counsel (as in open court).