

Virtual Hearings

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In 2020 the spread of Covid-19 and the resulting lockdown in the UK greatly increased the use of virtual court, committee and Tribunal hearings.

Many in-person hearings have been replaced by virtual hearings, conducted via telephone or video conferencing. This is therefore a useful guide on Virtual Hearings and with tips on good practice and what to avoid.

The Platforms

Most virtual hearings currently taking place occur over the same online platforms and/or applications, whether in court in front of a Judge, or in a regulatory or disciplinary Tribunal. These are: Zoom, Skype for Business, Cloud Video Platform (“CVP”), Microsoft Teams, HMCTS Video Hearings Service and, via the telephone, using BTMeetMe.

In some cases, the parties and their witnesses will attend remotely, with the Judge and clerk physically present in the courtroom or Tribunal room; while, in others, a Judge will be present in the courtroom, with some parties in attendance and other parties and/or witnesses participating remotely.

The Tribunal should make clear which platform is being used and, where applicable, participants should download any applications needed well before the date of the hearing. CVP is an exception to this as it can be accessed online, however users will need to have Google Chrome downloaded.

Before the Hearing

In the lead up to a virtual hearing, it is especially useful for legal representatives, advocates and, where possible, witnesses, to conduct tests of the setup and connection of the platform to be used, in advance of the substantive hearing. This allows everyone joining to be reassured as to internet connection and speed, as well as system functionality and their own audio-visual capability.

It is also very important that bundles are prepared which all participants are able to make use of, with clear document labelling, numbering and pagination. This should be agreed and provided to the court or Tribunal well ahead of the hearing.

For those organising virtual hearings, an additional part of preparation involves ensuring there is a backup system available for use in case of insurmountable problems with their first-choice platform.

Similarly, where one or more parties are going to be physically in attendance, the configuration of the courtroom/hearing room is important and should be considered and tested, so that all parties can see and hear one another, as well as anyone giving evidence or participating remotely.

In either case, those participating remotely should be sent a link by the court or Tribunal in advance of the hearing. For some this is on the morning of the hearing, whereas, many regulatory Tribunals for example, will send the link out a few days before and will also arrange for testing of connections and AV equipment.

Pre-Hearing Solicitor/Counsel and Client Conferences

One issue posed by Skype, CVP and telephone hearings, is that there is often very little to no opportunity for legal representatives and counsel to conference with clients or opposing counsel on the day, prior to the hearing. It is useful in such circumstances to set up a call beforehand via instructing solicitors. Some have found the use of WhatsApp groups useful in this regard as it allows both group video calls, as well as easy and instant messaging.

Unlike some video conferencing platforms, Zoom however gives its users the option of breakout rooms, which function like virtual conference rooms to which access is limited by the administrator. Parties can be pulled in and out of the main conference/hearing into their respective breakout rooms, where they can discuss matters privately with their barrister and other parties.

For those platforms without virtual breakout rooms, a workable alternative is the setting up of other individualised links for parties to access when not in the main virtual hearing room.

Advocates should feel confident in asking the Judge or Tribunal for a short break to take instructions or confer with legal representatives as required during the proceedings, given that the opportunity to do this in person will not be available.

Hearings

Scheduling

Proceedings are likely to take longer than usual due to time lost in connecting (or re-establishing connection) with participants in the hearing. Practically speaking, time is also likely to be lost having to describe documents or their location within the court bundle, which may have previously been done more easily in person.

While these issues are by themselves unlikely to cause significant delays to the proceedings, when they accumulate over a number of hours or days, hearings can potentially take considerably longer than they otherwise would.

These delays could be accounted for when scheduling proceedings and any competing diary appointments that might conflict if a virtual hearing exceeds its allotted time.

Bundles/Papers

As above, bundles should be prepared, agreed and sent well in advance of the hearing. However, some video conferencing platforms have a “share document” or “present screen” function, which allows for parties/witnesses to be taken to specific documents, statements and exhibits as required. This can often be useful for cross examining experts and witnesses, as they can be taken directly to a document without having to scroll around.

If this is not available, it is useful to know ahead of time that everyone involved has what they need to proceed and the relevant pages can be digitally earmarked.

It is also worthwhile practising using the “share” function so as to ensure you are sharing a specific tab or page only. It is also safer, prior to the hearing, to have open only those documents to which you might refer. This will avoid unwittingly sharing any irrelevant or confidential documents.

Witness Preparation

As people have been largely working from home since March 2020, most lay witnesses are naturally likely to feel more relaxed giving their evidence in this environment. It is therefore important to remind witnesses that the hearing is no less serious due to its being conducted virtually, albeit from the comfort of their own home.

As with other parties, witnesses should be afforded the opportunity to test their connection ahead of time where possible. They should be encouraged to use a laptop or tablet for ease of going through documents (as opposed to using their mobile phone).

They should therefore be told to approach virtual hearings with the same seriousness and gravitas of an in-person hearing, ensuring that they are in a private space for the duration of their evidence, with mobile phones and televisions turned off.

Witnesses should also be told that things they would not ordinarily do in court should not be done whilst giving their evidence at home. This includes eating, drinking (other than water) and smoking, which are not appropriate, in the same way they would be inappropriate in a live court hearing.

Legal representatives may wish to give some practical guidance on things such as appropriate dress and how to address the Judge or Chair of the Tribunal.

Witnesses should be asked whether they wish to swear on a holy book or affirm. If the former, they should be advised to have their respective holy book to hand for the start of their evidence. It may be, due to the difficulties involved, that the Judge or Tribunal will direct that witnesses should affirm. They should therefore be warned as to this possibility.

It is also important that witnesses know to address the Judge or Tribunal with eye-contact so far as is possible. Witnesses should be directed to look into the camera, and not at the screen or to the side, when answering questions.

If the case involved multiple witnesses who have been warned for different times, legal representatives should liaise with counsel for those witnesses to be ready to join the link provided shortly before they are due to give their evidence. This can be by way of a phone call or email to warn a witness that they are next up.

Most Judges/Tribunals are aware of the tiring nature of staring at a computer screen for long periods of time and will therefore usually offer breaks every hour or so. Witnesses should be made aware that they should request a short break if they become uncomfortable and need to step away from the screen for a short while. Whilst this will not always be possible, depending on the nature and stage of the hearing, witnesses should be made aware that they can ask nonetheless.

If there is a break during a witness' evidence, they will likely be put into a room on their own (where virtual breakout rooms are available). If this is not possible, they will likely be asked to mute their microphone and turn off their camera for the duration of the break. They should be

made aware that, they remain under oath and should not speak about their evidence to anyone until they have been discharged.

Some “Do’s” and “Don’ts”

Everyone will have heard the cautionary tales (and possibly seen footage on the news/social media) of children, pets and family members making surprise appearances in virtual meetings, and stories of people being caught out wearing business attire from the waist up, and anything from pyjamas and slippers, to underwear only from the waist down!

Here are a few tips on what to do and what is best to avoid (this is not an exhaustive list but a good starting point):

- Check your internet connection ahead of time.
- Make sure your computer has adequate battery or is plugged into the mains so you are not at risk of running out.
- Make sure there is a means by which you can communicate with other parties, legal representatives and advocates in your case ahead of time.
- Ensure there is a means by which you can communicate/take instructions during the hearing.
- Dress appropriately. If you cannot bring yourself to wear a full suit, ensure your trousers are dark and match your suit in case you have to stand unexpectedly, or the camera being used for the hearing falls. Business attire is best however. Witnesses should wear appropriate clothing, as they would if attending a live hearing.
- Ensure you have a private space (as far as is feasible) in which to participate in the hearing and that you will not be interrupted by earnest toddlers or family members.
- Remember that the hearing is no-less formal than if it was taking place in court and therefore the appropriate etiquette should be maintained. As with your witnesses, avoid eating/drinking/smoking as you would in court.
- Be transparent with the Judge or Tribunal if any problems arise during the hearing. Everyone is new to this to a large extent and they will more than likely be understanding if problems arise.

- If your connection drops and you are disconnected during the proceedings, try reconnecting with the same link.
- Most video conferencing applications come with virtual backgrounds that can be employed. If you choose to use a virtual background, make sure it is neutral and avoid sunny beaches and the backdrop of deep space. It is also useful to test out a background you intend to use ahead of time to make sure that it works.
- If you are not using a virtual background, aim for a neutral backdrop for your hearing. It is worth testing this out using your laptop, tablet or mobile phone camera in advance of the hearing. Avoid having the TV or anything likely to draw the eye away in the background.
- Look into the camera when addressing the Judge or Tribunal.
- When you are not talking, it is best practice and safest to put yourself on mute. It is far better to go through the tedium of un-muting yourself each time you need to speak, than to have the entire courtroom or Tribunal overhear something muttered under the breath or spoken to or by someone out of view of the camera. Many video conferencing applications switch the main screen automatically to whoever is speaking, so failing to mute your microphone can result in your face being inadvertently brought centre screen!
- Proceedings are recorded and so be mindful of what is said even in social conversation between advocates/parties in the main hearing room before the hearing starts. Similarly, in any off-screen conversations, if your microphone is not muted, be mindful that whatever you say is likely not only to be overheard by all participants, but also to be picked up and recorded.
- Be mindful of the fact that there is nowhere to hide in virtual hearings, especially when you are the one speaking. You cannot avoid being front and centre on the camera and everything you say and do very much on display, including facial expressions and reactions.

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