

SENDIST – Practical guidance on video hearings in the SENDIST

This guidance covers, first, tips for witnesses and second, tips for representatives

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Top ten tips for witnesses in remote hearings

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The First Tier Tribunal's (Health, Education and Social Care Chamber) ("SENDIST's") response to the coronavirus crisis was not, as in some jurisdictions, to cancel all hearings. Instead, it has transferred them to remote hearings taking place by telephone or video call. From the recent SENDIST user group meeting it seems that remote hearings may be here to stay as a particularly positive collateral impact is that no hearings have been adjourned. SENDIST is therefore seeking feedback with a view to maintaining remote hearings after the pandemic is resolved. The change in forum will have an impact on those appearing as witnesses before SENDIST.

Having had the privilege of acting as counsel in the first entirely remote hearing operated by SENDIST, and having been involved in more thereafter, I thought I would outline my top tips for witnesses to prepare for and participate in remote hearings. My colleague, Alice de Coverley, provides tips for representatives below.

1. If you were a witness at an attended hearing you would generally meet with the person acting as a representative an hour prior to the hearing. This is a vital opportunity for you to ask all those last minute queries. Do not be afraid of asking for a pre hearing conference when appearing in a remote hearing. All professional representatives will have facilities to facilitate a remote conference in advance of the hearing.

2. Plan in advance of the hearing to make sure that you have a copy of the hearing bundle available to you, for instance, if you are a teacher and have left your bundle at school, get an e-copy sent to you.
3. Background noise is more likely when you are appearing as a witness at home, be it from children, animals or significant others. Learn to use the mute function on your device and then use it when you are not speaking during the hearing.
4. On a similar note, make sure you give everyone in your household the heads up that you are acting as a witness to minimise interruptions.
5. Often you will want to pass messages to the representative during an attended hearing. Speak with the representative in advance of the hearing to find out what remote version of the 'post it note' is being used. An email chain works well, as do instant messaging services.
6. Make sure that you speak clearly and slowly.
7. The Judge in your hearing will provide you with a telephone number in case your internet goes down. Make sure you write it down.
8. If using a laptop plug it into your router with an Ethernet cable. If not possible, participate from somewhere in your property with as strong a wireless signal as possible. If you are a professional witness who appears regularly, consider purchasing a signal booster.
9. The fluidity of evidence may change. Whereas often there is no real formality to proceedings at attended hearings, for ease and convenience, the Judge will be less likely to allow witnesses to give evidence ad hoc and will give them designated periods. Make sure that you have some capacity to take notes so that if there is something that you want to respond to you can make a note of it.
10. Judges understand that being a witness may be a significant burden at the present time (particularly if you are a medical professional or teacher). If needed, don't be afraid of asking to be excused from the hearing when you are not required. The Judge will likely be amenable to giving you a time to return to give evidence.

Everyone giving evidence in any setting is going to be nervous. In part this comes from fear of the unknown and, in part, it comes from knowing you are going to have to perform public speaking – apparently the UK’s number one fear. Hopefully the tips above will help alleviate some of this stress by allowing you to plan as much as possible for giving evidence.

If you would like any more hints or tips do not hesitate to get in touch - matthew.wyard@3pb.co.uk

Six tips for representatives

By [Alice de Coverley](#), 3PB Barristers

The first video hearing I had under the new Coronavirus regime was a disability discrimination claim on behalf of a school before the First-tier Tribunal, which was conducted entirely by video. This was a case involving several heads of claim concerning a child with complex special educational needs. Despite some interruptions by various pets and loud neighbours, the hearing went smoothly. The Judge was also keen to collect participants’ views on how the video system went.

Since then, I have had further video hearings and would recommend the following:

1. Invest in decent PDF-management software

Now that electronic bundles are becoming the norm, it is worth getting used to and investing in good PDF management software. I have been entirely paperless for Tribunal hearings for almost a year, using Nitro Pro¹. Other software that colleagues use and recommend include: Foxit Phantom PDF (also good for Macs), PDF Expert, PDF Element, PDF Architect and PDF Adobe.

Nitro Pro allows me to merge PDFs and other file types into a single, searchable PDF document that’s simple to share and view. I can also add, delete, extract, rotate, and re-order pages of my bundle, annotate the pages, and turn any scans into searchable, size-optimised PDFs.

2. Set up a “counsel’s corridor”.

In a recent hearing, I spoke with opposing counsel at 8am, my clients at 9am and started in court (after a few technical hitches) just after 10am. I would recommend

¹ <https://www.gonitro.com/>

obtaining the contact details of the representative on the other side in advance and arranging a time to speak, if appropriate, which it usually is.

You can then speak again during breaks, if needed. This also applies to litigants in person, who advocates normally introduce themselves to before the hearing.

3. Set up a communication channel for your clients

As Matthew indicates above, in court normally, clients will often want to pass messages to their representative during the hearing. I have used an email system where the client or clients are on the same email chain. I have also arranged to call clients by conference call during breaks.

You will need to be careful, however, about your ethical duties and warn clients against 'passing notes' whilst giving evidence.

4. Separate, multiple screens

A dual monitor set up can be very helpful for video hearings. You can set up the hearing itself on a separate computer monitor, and have the hearing bundle on a separate computer, alongside any typed notes. Using one of your monitors in vertical orientation can make a big difference for scrolling long documents.

Any modern desktop or laptop PC has the graphics capability to run dual displays. All that's required is a second monitor. If you don't have a separate computer, but you do have a spare HDMI cable, you can use your television as an extra monitor. On how to set this all up, see this PC World blog: <https://www.pcworld.com/article/2057936/how-to-set-up-two-monitors.html>

If you want to add three or more monitors, because you are extravagant like that, check to see whether your computer is physically capable of handling all that graphics prowess. First, look at the back of your PC: how many graphics ports (DVI, HDMI, DisplayPort, and VGA) do you see? If no more than two, you may need to check whether your graphics card actually supports and has enough ports for the number of monitors you want to set up. For further information, see: <https://www.pcworld.com/article/2923941/how-to-create-an-insane-multiple-monitor-setup-with-three-four-or-more-displays.html>

5. Make your clients aware that they can decline to give evidence remotely and have a paper hearing or adjourn instead

At the moment, Notice of Hearings from the Tribunal are being sent out which allow for hearings to take place either remotely or on paper. No option exists right now, for obvious reasons, for a hearing to take place, as normal, in a courtroom. This means that clients have three options – proceed with the video hearing, opt for a paper-based hearing or request an adjournment using the Request for Change (SEND 7) form.

Given that the Tribunal is galloping through hearings at the moment, they may be less reluctant to adjourn hearings which parties feel are inappropriate to take place via video. I have many clients who would be uncomfortable with giving evidence via video, whether because of technical barriers, or because of their own disability or because the child they are speaking about lives with them and may overhear them and be upset by what they hear. Sometimes the balance may fall in favour of an adjournment or a paper hearing. As representatives, we need to be alert to where this may be appropriate.

It is imperative that those responsible for designing and implementing any system of justice-via-video understand that in doing so, *'[s]peed and efficiency do not trump justice and fairness. Justice and fairness are paramount.'* (R (Detention Action) v First-tier Tribunal (Immigration and Asylum Chamber) & Others [2015] EWCA Civ 840, para 22, per Lord Dyson MR).

Indeed, as Sedley LJ observed in R (Refugee Legal Centre) v SSHD [2004] EWCA Civ 1481, para 8: *'The choice of an acceptable system is in the first instance a matter for the executive... But it is not entitled to sacrifice fairness on the altar of speed and convenience, much less of expediency...'*²

² See also how the Public Law Project has rightly been pressing that the Ministry of Justice commission independent research on video hearings and video links with a primary focus on justice outcomes, which should be completed before HMCTS makes more widespread use of video technology in courts and tribunals.

6. Finally, keep an eye on (the swathes of) new guidance

HMCTS have (as at 8.4.20):

- Published guidance on telephone and video hearings:
<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>
- Published Guidance from the Chamber President and Deputy Chamber President of HESC regarding the Special Educational Needs and Disability, Care Standards and Primary Health Lists jurisdictions: launch of the first paperless, digital tribunal jurisdictions: https://www.judiciary.uk/wp-content/uploads/2020/03/2020_03_19_Guidance-from-the-Chamber-President-and-Deputy-Chamber-President-of-HESC-regarding-the-SEND_CS-and.pdf
- Published guidance for Upper Tribunal appeals: <https://www.judiciary.uk/wp-content/uploads/2020/03/UTAAC-General-extension-stay-and-directions-25-March-2020.pdf> and <https://www.judiciary.uk/wp-content/uploads/2020/03/STATEMENT-FROM-THE-PRESIDENT-OF-THE-UPPER-TRIBUNAL-ADMINISTRATIVE-APPEALS-CHAMBER.pdf>
- Established a set of priorities to ensure that ‘access to justice can be maintained’
<https://www.gov.uk/guidance/hmcts-priorities-during-coronavirus-outbreak>
- Maintained a daily update on operational guidance across different jurisdictions
<https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>
- Published a tracker of open, staffed and suspended courts
<https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>

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