

Virtual reality

I'm here live... I'm not a cat

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If you haven't yet seen the "viral" video of an American Attorney appearing before a Judge having accidentally enabled a cat filter whilst on Zoom, I would encourage you to look it up. If nothing else, it will give you a reason to smile! But videos like this can also serve as a useful warning to practitioners as we continue to work more remotely than we ever have done before: always check your settings before you log on!

At the time of writing this article, we approach the one-year anniversary of the SEND Tribunal moving to remote hearings. The official commencement of remote hearings in the SEND Tribunal was 23 March 2020, however Matthew Wyard of 3PB Barristers became one of the very first participants in a virtual disability discrimination claim in the SEND Tribunal on 19 March 2020. Who knew he was such a trend-setter?

The one-year anniversary of "going digital" provides an opportunity to reflect on the last 12 months. What have we learned? What has worked well? And what could we improve?

From my perspective, I have largely embraced remote working in the SEND Tribunal. No commuting on busy trains, no concerns about arriving late if you miss a connection or you encounter traffic, no soggy sandwiches from a service station and no one batting an eyelid if you turn up to court in your slippers.

Remote hearings also appear to be preferred by the majority of clients. For many witnesses, appearing in Tribunal is a stressful occasion. Being able to participate in a hearing within the comfort of one's own home does seem to make participants a little less anxious in my experience. That is, of course, until a child/ partner/ cat/dog/other interrupts! But even then, the Tribunal is very accommodating of such interruptions. It can, after all, happen to the best of us. Our Head of Group, Charlotte Hadfield, was recently interrupted during closing submissions by her daughter banging on the office door and loudly asserting "little pig, little

pig, let me come in Mummy Pig!”. Needless to say Charlotte did not let her daughter in. So she huffed and she puffed and.... Well, you know the rest.

Returning to the merits of virtual hearings, it’s not just the convenience factor that has made them so popular. The availability of Judges and panel members has also increased, meaning that in the last 12 months, very few (if any) cases have been stood down due to a lack of judicial availability. This is incredibly impressive given that the picture in other Courts and Tribunals is quite the reverse. It is also an encouraging sign given that pre-March 2020, the SEND Tribunal were vacating approximately 80% of cases due to a lack of judicial availability. Remote hearings do largely appear to have improved access to justice and they have enabled the SEND Tribunal to successfully clear a significant backlog of cases.

I have also been incredibly impressed at the Tribunal’s ability to meet the needs of some of the most vulnerable parents and young people in society. In a recent hearing I was involved in, there were not only 3 witnesses on each side before a panel of 3 but also two BSL interpreters translating the proceedings on screen. It felt like things had really come a long way since this time last year when so many parties on screen would have felt like an impossibility.

But like so many things, the system is not perfect. For those parents who have limited means, a laptop computer with reliable internet connection may be something that they simply do not have and cannot reasonably access. Parents with extremely vulnerable children may also be concerned about those children interrupting proceedings (despite the Tribunal’s very understanding approach). Equally, in cases involving children with complex SEMH needs, parents may have significant reservations in talking openly about their child’s difficulties in circumstances where they could be overheard.

As a practitioner, I have also found that virtual hearings can be incredibly draining. Regular breaks are usually provided by the Tribunal (and rightly so) but this has the adverse effect of lengthening the day and more often than not, Judges will invite the parties to file written submissions some time after the hearing. This can be helpful in that it avoids an advocate having to rush through their submissions and parties are given a fair opportunity to put forward their case but the obvious disadvantage of this is that it may drive up costs for those involved.

In my view, given that virtual SEND hearings have generally been met with praise from all of those involved, I anticipate that they will continue for quite some time, even when the world

returns to some semblance of “normal”. Will virtual hearings become the “new normal”? I think it’s too soon to say but it would not surprise me.

So what will I take from the last 12 months of virtual hearings, aside from ensuring that the “cat filter” is always switched off?

1. Always ensure that your client has a way of getting in contact with you throughout the day. WhatsApp works well for this but so too does a simple email thread. It’s always worth reminding your client though that they should not reach out to you whilst giving evidence: it is imperative that the evidence a witness gives is their own.
2. If the Judge hasn’t called for a break in over an hour and a half, ask for one. It’s really important to keep focussed in these hearings and too much screen time does not help.
3. If you require time to discuss a working document with the other side, consider setting up a separate zoom meeting that can act as your “room” to negotiate in. Sharing your screen in this environment can also really help when you are negotiating specific wording.
4. Keep an eye on the participant list during the hearing. If a witness or panel member drops out inform the Judge at once so that the participant can re-join immediately without missing any evidence.
5. At some point, someone will be interrupted. Know that it’s ok and we’re all human!

For now, I shall continue to enjoy attending Court in my slippers.

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