

COURT OF PROTECTION BAR ASSOCIATION

Guidance on Effective Remote Hearings

8 April 2020

Preparing for the hearing

- Issues
 - Should be clearly identified prior to the hearing, if necessary, by specific telephone and/or video liaison between the parties; you must ensure that any such hearing is accessible to and inclusive of any litigants in person.
 - To the extent they can be, compromises should be made on relatively peripheral issues so that the court's time can be focused on determination of the fundamental issues.
 - Agree an online suitable platform which all participants (including litigants in person) can access.
 - Consider and agree in advance how you will obtain instructions during the course of the hearing, e.g. text/WhatsApp/email/chat box within the online platform.
 - Agree a witness template (if there is to be oral evidence).
 - Try to agree with the other parties a protocol for using documents with a witness. In particular, whether they should work from their own printed/digital version of the bundle or have temporary access to an online bundle and/or whether they will be shown documents via the 'share screen facility' when absolutely necessary.
 - Out of hours hearings, including medical treatment: you must justify why the matter cannot wait until the morning.

- Bundles
 - Must contain only the documents necessary for the determination of the essential issues.
 - Must be paginated.
 - Should be chronological within tabs.
 - Try to de-duplicate the bundles further so that no page is repeated.
 - Consider how the bundle will be accessed by all the parties? How can users navigate around the bundle?
 - Consider how updates will be added to the bundle? How will they be circulated?
 - If it is one long PDF, can it be bookmarked?
 - Ideally the bundle should be a single PDF document with bookmarks corresponding to tabs in the index; OCR software should be used to render all documents in the bundle searchable.
 - If it is made up individual files, how are they named? Will that naming convention work for your skeleton or to refer the court to? Will it keep the documents in the same order for everyone?
 - Software used by solicitors to organise their electronic files internally might not name the documents in a useful way for a court bundle – documents might need to be renamed:
 - e.g. 1_Claim form; 2_Defence, etc. is much easier to say and navigate than [EE70451.0001]: 13_03_2019 Issued Claim Form in *Bloggs v Patten*.

- Skeletons
 - Should open with a short statement of what the issues are for determination, and stating the parties' respective positions on each issue (and reasons if they can be expressed briefly).
 - Will need to cross reference the bundle so the judge can get to the correct document/page.
- Authorities
 - How many are actually on point for the determination of the essential issues?
 - How are they going to get to the judge?
 - Assemble a separate, joint PDF authorities bundle with each case bookmarked.
 - Mark the relevant passages with either highlighting or a red line in the margin.

Shortly before the hearing

- How you will have pre-hearing discussions with your opponents? Will this be through a separate meeting earlier on in the day? Or will the parties join the meeting shortly before the Judge to allow for this to happen?
- Getting ready
 - Check who is dialling in and that you have the correct details.
 - Do you have your "at court" kit to hand (pen, paper, calculator if needed, procedural texts, phone on silent, computer notifications silenced).

At the hearing

- Advocacy
 - Focused and succinct advocacy is always desirable; at a remote hearing it is essential.
 - It is advisable to keep close to the essential issues, setting out a clear route as to how you propose the judge should deal with each issue, and then make succinct submissions on those points.
 - There will be less tolerance of over-running.
 - Succinctness is key.
 - It should be borne in mind throughout that whilst the hearing will be conducted, inevitably, against a backdrop which seems less formal, it remains, in every sense, a court hearing in which the core formalities remain. This includes dress – advocates should adhere to appropriate professional standards. This signals to the lay parties that their hearing is, in every way, as careful and as valid as a case heard in a conventional court setting.
 - Particular care must be taken to ensure that family members (and P, if giving evidence) are enabled to ensure that they can participate fully in all aspects of the hearing.
- Conducting the hearing
 - Treat the Judge as the "Chair of the electronic meeting": be patient, speak when invited and politely ask the Judge for permission to intervene and only do so if granted permission.
 - Always introduce yourself when you begin speaking, unless there are only two or three people on the call; don't assume the judge will recognise your voice.

- Do not record the call without the express permission of the judge; without permission this will be a contempt of court.
- Mute your microphone when not speaking to prevent feedback. Learn how to do this before the hearing.
- If telephone hearing: you cannot see if the judge is following your submissions - so will need to ask the judge as to whether they are ready for you to move onto your next point.