



Virtual Court Hearings: Practical tips, tricks and takeaways for lawyers everywhere

This document provides practical tips, tricks and takeaways for Virtual Court Hearings. From running the hearing, to handling witnesses and what to do if you're the advocate. It includes useful guidance on making the technology work, considerations for your bundles and documents, and communicating with your client and lawyers.

Making the technology work

- Choose tech which you have access to in advance so you can work out how to operate it. There are many platforms (Microsoft Teams, Skype for Business, Zoom, GoToMeeting, Google Hangouts, WebEx, etc.). Each works slightly differently. Different courts are defaulting to different systems (e.g. England: Skype for Business, Singapore and Texas: Zoom).
- Look out for lawyers seeking to take responsibility for setting up and run the hearing software: why are they doing this? Will your set-up be compatible? How will your client feel about it? Can you object and should you do so to ensure a level playing field?



The legislature is sending a very clear message that it expects the courts to continue to function so far as they are able to do safely by means of the increased use of technology to facilitate remote trials.

MR JOHN KIMBELL QC, DEPUTY HIGH COURT JUDGE IN ONE BLACKFRIARS LTD (1/4/20)

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- Take the initiative: you can suggest alternative systems – as long as you can make them work. Have regard to any published guidance on remote hearings. Most jurisdictions are now publishing this, for example: The US Court of Appeals for the Federal Circuit issued an advisory that it would hold all oral arguments telephonically during the court's May 2020 session. United States District Court for the Eastern District of New York has issued a number of administrative orders regarding the administration of justice - one such Order encourages judges to conduct proceedings by telephone or video conferencing where practicable.
- Test your set up prior to the Hearing by holding conferences and preparatory meetings using the same software that will be used during the Hearing.
- Skype for Business will generally be used for the hearing in the UK. It works well in our experience. But the Courts are working on adopting an adapted version of Microsoft Teams. And are also developing a Cloud Video Platform ("CVP") which is being rolled out.
- Use the same software for the preparatory meetings and conferences, as you will in the hearing, as it familiarises both the legal team and the client with its use and gives some invaluable "dry-run" experience.
- For multi-day Hearings, make sure you are early to the call each and every day, both in the morning and after the breaks. Do not become complacent about technology. Occasionally, a reset will be required in order to reconnect you, so give yourself extra time for this.



Murphy's law has never been more evident than when trying to organise a virtual hearing

DUNCAN BAGSHAW, HOWARD KENNEDY LLP

Bundles and documents

- E-bundles need to be agreed and checked, and then checked again; to ensure that everyone is looking at the same thing. Simple things like late additions and clerical errors can become magnified as problems in the hearings if not eliminated in advance. It's surprising how difficult it is to understand what has gone wrong when you are not in the same room as the judge.
- Try to set up bundles so that there are as many ways to navigate as possible: Tabs as bookmarks down the left hand side (always visible); a hyperlinked index at the start; bundle pages which match the pages of the pdf document itself to the judge can go directly to the bundle page by typing it into the page number, etc.
- Consider using a provider of shared electronic bundle management (e.g. Opus 2, Consilio) – this can have advantages in being able to arrange for each participant to have a shared screen showing the same thing at all times, controlled by the advocate.
- Open your e-Bundles before the video call starts. Consider downloading them to a local drive rather than viewing on a server – less will go wrong.
- Download what you need in advance. The video call will use your Wi-Fi bandwidth so you do not want to download heavy files from your Wi-Fi network after the Hearing starts. Close Outlook and anything you do not need access to.
- If using multiple PDFs, organise them in an obvious way, such as in a chronological sequence.
- If you will be using hardcopy Bundles, organise them before the Hearing and know where each Bundle is so that you can readily access the documents. There will invariably be late documents and law reports even if you are using an e-Bundle.



The courts exist to resolve disputes and, as I noted this morning, the guidance given by the Lord Chief Justice is very clear. The default position now, in all jurisdictions, must be that hearings should be conducted with one, more than one, or all participants attending remotely.

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(19/3/20)

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Communicating with your client and lawyers

- Schedule and diarise team/client conferences that will happen before, during and after the Hearing ahead of time. Agree on who will be responsible for setting up the calls, on what platform and during which times.
- Set up a messaging group such as WhatsApp, or a suitable message platform approved by your firm, for communicating with your client and the rest of the members of the team
- We found that a separate WhatsApp group for just the lawyers to communicate in was invaluable.
- Think carefully about who should be in any WhatsApp group. As an example, we had junior barrister in both WhatsApp groups for use during hearing, and we had a third separate WhatsApp group that QC (the lead counsel) were in, which would be used at agreed times during the hearing so as to avoid unnecessary distractions for the lead lawyer.
- Name the WhatsApp groups in an obvious way and take care to check which group you are in before replying or messaging!

Running the hearing

- Plan what will happen if you 'lose' your advocate. When your advocate has lost his or her internet connection, someone needs to alert the advocate and Judge about this immediately. Have a plan in place to tackle this in case it does happen.
- The Judge may not realise that your lead lawyer has lost his or her connection before you notice, so it is important that discussions are held about this issue prior to the start of the Hearing and a protocol agreed.
- Remind the advocate to pause and take instructions before ending any submissions, before ending the hearing, and at the outset before launching into submissions. This is obviously more difficult than in a hearing room and the advocate will need to ask for a moment to do it (see tips on communication amongst the team to make it easier).
- The importance of multiple screens: Relying entirely on e-Bundles requires the use of more than one screen. It is essential that you have two screens, or preferably three screens to navigate, throughout the Hearing.
- These screens can be your laptop, desktop or even tablet screens. One screen can be dedicated solely to viewing the remote Hearing and seeing the advocates, witnesses and Judge(s) whilst they speak. The second/third screen can be for navigating the e-Bundles and note-taking (or – you could – resort to, good old-fashioned, notebooks!) If you have two/three screens, you can dedicate one screen solely to viewing the remote hearing and the speakers, whilst the other screen can be used to navigate the bundle and note-taking.
- 'Pin' the relevant people once the call is set up so you can see those you want to see, regardless of whether they are speaking or not. On Skype for Business, you can pin up to 5 people.
- Pinning people needs setting up each day. So spend a couple of minutes to put people into the same order each day to help with your familiarity.
- Mute your microphone at all times when you are not speaking.
- If your microphone needs to be on, be conscious of any background noises that may be distracting to others. One barrister had to confess to a Judge that the background noise interrupting his submissions was his flock of geese!
- If background noises may be an issue, wear headphones with a microphone to reduce them.
- Ensure your mobile phone is on silent, particularly if your microphone will be turned on. The aim is to avoid any background noises and distractions. When your WhatsApp messages come in – or indeed e-mails - you want to avoid the constant "arrival-ping-notification."
- Turn off your video. This will not only free bandwidth, but also ensure you are not acting as a visual distraction.
- If your video is on, remember that everyone is watching you all of the time, whether you are speaking or not. They will be reading your reactions just as we all do in court.
- You can fuel yourself during the remote Hearing. Have drinks and snacks available as required.
- In the UK, the mid-morning and afternoon breaks are only 5 minutes long so do not plan anything significant for those breaks.
- We found fresh air in the lunch break to be very reviving. A virtual Hearing can be strangely tiring!

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If you are the advocate

- Remember that your written advocacy is perhaps even more important when the hearing is reduced to a videoconference.
- Try to put the camera level with your forehead, so that you are neither looking up nor down – neither is flattering. The inside of your nostrils are not very persuasive.
- Displays of décolletage may be best avoided if you want the judge to focus on your argument.
- Are you in silhouette? If you have more light behind than in front, you will be. Advocates should by now have invested in a computer-mounted light for hearings. It does not make you a prima donna!
- Remember your background and think about what others will see behind you and who might walk into camera shot. Books are fine but which books? What will your literature collection say about you? You don't want a background that is more interesting than listening to you.
- Consider where your camera is placed and which screen your e-Bundles are on. When making submissions or asking questions, you will want to be looking at the Judge to understand their body language and reactions, and not to have to look away completely even when looking at another screen.
- We counsel against a virtual background (definitely nothing quirky) or blurred background. You have enough to worry about with the technology without adding that. It has glitches.
- Be wary of your body language! Eye rolls, head shakes and similar body language are always seen by the Judge no matter who is speaking – and the close-up camera makes it much more obvious.
- Deliver submissions slowly and with frequent cross-reference to documents so that the Judge can see what you are talking about. It is harder to judge how it is coming across if you are speaking unsupported by a document.
- Remember to turn off your video and mute your microphone during breaks and before dialling into a conference call with your client and legal team.
- If you are dialled in to a video hearing, dress for court. Even those who do not expect to speak might need to come on screen in an emergency. Dare you risk dressing for court from the waist up only?...

Handling witnesses

- In England, Judges are likely to order trials to go ahead even if it means disputed oral evidence being given by video conference. Other jurisdictions may take a more traditional view.
- Make sure your witnesses are comfortable with the technology. They will not get much sympathy for struggling due to inability to navigate the bundle or to deliver their oral testimony clearly. Have a practice session with the witness (content dependent on your jurisdiction's rules on witness preparation).
- You need to consider what measures to have in place to preserve the integrity of the witness's evidence. This could include: instructing an independent person to be in the room with them while they give evidence; having two cameras to record the witness from another angle to see any improper behaviour; having the witness give evidence in a neutral location with access only to an arranged computer which contains only the hearing bundles.
- This will depend upon the nature of the issues and who the witness is. If the witness is accused of dishonesty then such measures should reflect that.
- Make sure that witnesses who will testify on oath have the necessary words of the oath, any sacred text to use, and that a relevant person to administer the oath is present (if that is a requirement in your jurisdiction).
- Cross examination is likely to take longer than usual. Maybe don't leave your best point until last in this environment; you might end up making it against the tribunal's impatience, so it gets lost.
- When cross-examining, plan your questions so that the answers are very closed – this is standard stuff anyway but here, you can't use body language, or non-verbal communication so easily to get the witness under control. So you may need to be prepared to get the point over in fewer questions.

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Want to know more?

As the world is experiencing some major changes to how we do business, radical changes are happening in the court room. Using a range of video conferencing platforms, Courts are holding numerous "virtual" hearings. Partners Mark Stephens, CBE and Duncan Bagshaw, have planned and managed some of the first fully virtual hearings. Please get in touch if we can help.



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Mark Stephens specialises in international, appellate and complex litigation. He has undertaken some of the highest profile cases in the UK and abroad. Mark is a solicitor with expertise in constitutional, human rights, IP, media and regulatory work, defamation, privacy, media, art and cultural property, data protection and freedom of information, trusts litigation, intellectual property and international arbitration disputes.

Mark has created a niche in international comparative media law and regulation. He acts in judicial reviews, Privy Council cases- Ultimate Appeal Court for parts of the Commonwealth, as well as, regulatory cases and inquiries. Mark practices before every level of court in England and Wales and also abroad before international tribunals and courts. He is also a Privy Council agent regularly working with a range of overseas lawyers. Mark is a qualified mediator. He can also assist clients in jurisdictions outside of the UK and has been retained by a number of governments to advise and to represent their interests.

Duncan Bagshaw is a barrister and specialises in international arbitration and litigation. He has acted in arbitration hearings around the world, including London, Paris, Vienna, Dubai, Singapore, and Mauritius. Duncan principally advises on cases involving the energy, natural resources, construction and development, and hotels and leisure sectors. Duncan has a special interest in Africa and cases involving African parties and projects. Duncan now manages complex arbitrations and litigations, in some of which he acts as advocate.

He recently appeared in the famous case of Halliburton v Chubb, in the UK Supreme Court. Duncan has undertaken several court hearings by videolink since the restrictions were imposed (as advocate and as solicitor), and a mediation.



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