



Video Hearings

As we all adjust to the many changes brought on by the COVID-19 pandemic and our government's response to it, this month's Spotlight article will feature video hearings.

Since the lockdown was announced on 23 March 2020 we have been informed that disputed claims, set aside hearings, insolvency hearings as well as possession hearings will all be adjourned depending on urgency. The fee for an application to adjourn has even been waived for those unable to attend if directly affected by coronavirus (see "[Applications to adjourn civil and family hearings because of coronavirus \(COVID-19\)](#)"). Many clients have been left in limbo as advice agencies and organisations are having to prioritise dealing with tens of thousands of employment and benefit related queries. However, civil justice must continue and cannot be suspended indefinitely.

[CPR 3.1\(2\)\(d\)](#) has allowed for a court to consider the option of a telephone hearing or 'any other method of direct oral communication' for some time, and criminal courts have been using video technology for many years now.

The intentions of HMCTS to put into use video technology in civil proceedings became evident on 02 March 2020 when [PD 51V](#) – The Video Hearings Pilot Scheme of the Civil Procedure Rules (CPR) came into effect and is due to run to 30 November 2020. Birmingham Family, Civil & Justice Centre and Manchester Civil Justice Centre were the chosen courts to trial video hearings and this was later limited to set aside applications only.

Then along came the COVID-19 pandemic and this resulted in the creation of the [Coronavirus Act 2020](#) (CA 2020) which came into effect on 25 March 2020 along with [PD 51Y](#) "Video or Audio Hearings During Coronavirus Pandemic" which allowed the court to use their discretion to allow a hearing in private away from the court building, i.e. the video (or telephone) hearing can take place at a location other than Birmingham Family, Civil & Justice Centre and Manchester Civil Justice Centre. However, PD51Y will only continue until the CA 2020 ceases to have effect.

How does the process start?

Where a client is involved in proceedings, they will be notified by post and/or email about any changes to those proceedings, and if a hearing is to be moved to a remote location, the case will be heard by telephone or most likely video. It is the court's duty to notify the client, not the claimant's, although the claimant may also inform the client once they have been notified also.

Over the counter applications have been suspended due to court building closures to the general public. For example, an N244 application should be made online or posted to the court of the original hearing. The fee can be paid by post, online or telephone. You will be able to contact your court by email or telephone – see [“Find the right court or tribunal”](#)

When a defence has been submitted to the court and the claimant does not agree, then depending on the complexity of the issue, it is the court who will decide how that case should proceed and if it should be conducted by video. Generally, where a claim has been defended both/all parties will be offered alternative dispute resolution (ADR) which is done by telephone – this process has not been affected.

Where a party does not agree to ADR, or if it's a set aside application, a client must have the equipment (camera, mic, computer) available to them. The court will provide the parties with instructions on attending/accessing the hearing be it a possession, insolvency or other type of hearing. Where a party does not agree to a video hearing they can make a submission to the court by email (copying in the other party) stating their reasons and an alternative proposal/suggestion. The court will then make a final decision.

The platform used mainly is Skype Business (for telephone hearings mainly BT MeetMe). The platform list is non-exhaustive and other platforms can be considered such as Zoom and Court Video Link (CVL). Ultimately, the court must be set up to have the facility for any other platform to be considered, as suits the parties accessing the hearing. Notification of the hearing will provide a link for all parties to access along with instructions. HMCTS have provided a guide on joining a hearing – see [here](#). Gov.uk have also made a guide available [here](#).

Can a client refuse to attend a video hearing in favour of attending in person?

Ultimately this would depend on their reasons. Where all parties agree that the hearing should not be held remotely, [guidance to District Judges](#) states such a reason is sufficient. Where the client does not have access to video technology, a telephone hearing will be offered. Where a client simply wants their 'day in court' a Judge is unlikely to agree. Other reasons not to have a remote hearing include where the client is a litigant in person and English is not their first language. [CPR 32.3](#) allows for evidence to be heard/submitted via video link. Where the evidence is complex and it would be impractical to deal with this remotely, the only alternative would be a hearing attended in person.

Prepare for the hearing

Preparation is essential; especially as the process is new to all users/attendees to the hearing. Submitting witness statements, evidence, documents – preparing your bundle must be done so as not to overwhelm the court/other party with minor details. Ensure arguments are brief, to the point and factual. References to legislation, CPR and case law must be clear and relevant. The Judiciary has issued guidance on PDF bundles [here](#). An electronic bundle for the case is stored on a secure document storage platform which the court notifies all parties of. You will upload your documents to make them available for the court and the other party. Timelines to do this within are directed by the court.

It has been advised that you should log in/attend the hearing about 15-20 mins before the start, and the clerk of the court will also be in attendance. This is to ensure all equipment works and you can be heard, and also that you can access the necessary documents. The Judge will attend on instruction from the clerk, usually after all parties have logged in and it has been confirmed all the equipment is working. The protocol for remote hearings can be found [here](#).

The Inns of Court College of Advocacy has produced a guide '[Principles for Remote Advocacy](#)' which is now available in the public domain.

This swift move in the use of remote hearings can become a great opportunity for more clients getting access to justice, and for advisers who have been unable to attend court hearings. Although PD 51Y will only continue until the CA 2020 ceases to have effect, it is expected the use of remote hearings will continue and expand. When the lockdown is eventually lifted and face-to-face advice can resume, advice agencies may be able to set up a room where advisers will be able to represent their clients without having to leave the building. This will save time and cost as well as ensure the client is not intimidated by a court building or court room.

Please see our May 2020 ebulletin's case summaries section for a round-up of remote hearings cases regarding the suitability of remote hearings across various subject areas of the law.