



**Administrative Law Bar Association**

**Guidance to Advocates on Remote Hearings - May 2020**

**A. Introduction**

1. The conduct of hearings by video-link or telephone (“remote hearings”) can pose particular challenges for advocates. The purpose of this guidance is to set out recommendations from ALBA to assist advocates properly to prepare for, and effectively participate in, such hearings in public law cases which do not involve oral evidence.

**B. Preparation: focusing on the issues**

2. Anecdotal evidence suggests that remote hearings tend to last longer, and can be more tiring, than hearings in person, and greater logistical difficulties are likely to arise if hearings overrun. Accordingly, advocates should take appropriate steps to ensure that the time available for the hearing is used efficiently and effectively. This may include:
  - (1) ensuring that the skeleton argument properly reflects the oral submissions that the advocate intends to make at the hearing;
  - (2) liaising with opposing advocates to ensure that all parties are clear as to which issues are, and are not, in dispute, so that oral submissions may be appropriately focused;
  - (3) liaising with opposing advocates to agree a timetable for submissions; and
  - (4) liaising with opposing advocates to agree the bundles for use at the hearing (see paragraphs 3-7 below).

**C. Preparation: documents**

3. Properly considered and prepared hearing bundles (both documents and authorities) will be key to enabling an effective hearing to take place. Advocates should ensure, or ask their instructing solicitors to ensure, that all parties and the court are provided with identical electronic bundles, paginated consecutively from the beginning to the end. Each document or authority should be bookmarked, and there should be a usable (and preferably hyperlinked) index at the beginning.
4. Careful thought needs to be given to the contents of the documents and authorities bundles for the hearing. The larger the bundle, the more difficult it will be to navigate, and the more likely it is that there will be difficulties in sending or receiving it electronically. Advocates should try to take an active role in agreeing the contents of bundles, and if possible should liaise with opposing advocates directly in this respect. If at all possible, advocates should avoid submitting further documents or authorities, once bundles have been sent.

5. Include only the documents or authorities to which the court will be asked to refer. Where reference is likely to be made to only a page or a few pages of a document, include only those pages, and such other pages are necessary to indicate the nature of the document and the context of the relevant pages. This applies as much to authorities as to documents.
6. If possible, include side-lining of any particularly relevant passages in documents or authorities, in order to assist the court in its pre-reading.
7. If the documents bundle or the bundle of authorities is necessarily voluminous, consider the preparation of a short and easily-navigable core bundle including only key documents or key legislation and authorities, as the case may be. In some cases, it might be possible to have a core bundle which includes both key documents and key legislation and authorities. For example, a core bundle of documents might include:
  - (1) the grounds of claim/appeal,
  - (2) the grounds of defence/response,
  - (3) any decision/document that is being challenged, and
  - (4) the parties' skeleton arguments.

#### **D. Preparation: technology**

8. This is potentially critical, and technological preparation will render the experience less stressful. If it does not work it may mean that your hearing needs to be adjourned, or goes part heard, which is unlikely to be in the interests of your client.
9. Test your audio and video (as appropriate) in advance of the hearing using the same software as will be used for the hearing, and ensure that any portable devices are sufficiently charged or are plugged into a power source. Wired internet is more reliable than wireless internet. If you have wired internet connected to a particular device you should turn wifi off on that device. Close all non-essential apps/windows running on the device in order to free up bandwidth.
10. In the case of video-hearings, ideally, have at least two screens available: one for the conduct of the hearing itself and one for the electronic bundle(s).
11. In the case of video hearings, ensure that your camera is appropriately located. In particular, try to ensure that:
  - (1) the background is professional and is not likely to be distracting (it is usually best if the background is neutral, e.g. closed curtains);
  - (2) you will be sufficiently well-lit during the hearing (avoid bright sources of lighting behind the advocate); and
  - (3) the camera is located in such a way that enables you to refer to documents or notes whilst still maintaining eye-contact with the court.
12. Agree a protocol with your instructing solicitor and your opponents as to what will happen if you are inadvertently disconnected from the hearing. It may assist to obtain the contact details of court staff or judges' clerks in advance of the hearing so that there is an avenue for communication if the connection is lost.

13. Establish a mechanism for communicating with your instructing solicitor and/or client and/or leader during the hearing in order to take instructions (e.g. a text group via mobile or email, having first sought permission from the judge to keep mobile phones turned on), and agree a protocol for using that mechanism to ensure that it is used appropriately and that it does not become an unnecessary distraction.
14. Where possible, join the hearing in sufficient time before it starts to allow for any connection difficulties to be resolved.

#### **E. The hearing: presentation and formalities**

15. Check at the outset that the court and other participants are able to hear and/or see you clearly.
16. Treat the hearing as if it were a hearing in court. Wear appropriate professional dress, remain present throughout the hearing, act appropriately at all times, and do not eat or drink (other than drinking water from a clear glass, as would be the case in court). Insofar as possible, make sure that you are not disturbed and that you do not disturb the court or other parties. In particular, switch off or mute any telephones or other devices that might ring or otherwise make a sound.
17. Mute your microphone unless you are speaking. This will prevent background noise and feedback from affecting the hearing.
18. If the hearing is by telephone, identify yourself each time before you speak; the court and the other parties might not be able to identify you from your voice alone.

#### **F. The hearing: advocacy**

19. The normal rules for effective advocacy apply with even greater force to remote hearings, particularly as there is likely to be less room for flexibility in relation to timing. In particular:
  - (1) advocacy should be clear, structured, focused and succinct;
  - (2) advocates should speak at a slightly slower pace than usual and should be aware that there is likely to be a delay in transmission, leading to a risk of appearing to talk over others;
  - (3) advocates should use their skeleton arguments as the basis for their submissions;
  - (4) advocates should clearly signpost to the court where they are in the structure of their submissions and when they move from one point to another;
  - (5) anecdotal evidence suggests that there can be a tendency for the courts to be less interventionist during remote hearings due to the nature of the technology, so advocates should afford the court an opportunity to ask questions before moving from one point to the next;
  - (6) it may be useful to ask the judge for some time after your opposing counsel has finished speaking in order to seek instructions on specific points;
  - (7) it may also be useful before finishing to check whether there are any electronic comments which your client, solicitor and/or junior have made; and
  - (8) only take the court to essential documents and authorities.

20. During adjournments it may be a good idea to leave the relevant software running with the connection open but ensure that your microphone is muted, the sound output is turned off on your device (in case others are speaking without realising that they are not muted), and if possible it may be best to relocate to another room before speaking with your solicitor and/or lay clients.
21. Ensure that any necessary administrative matters (for example, which party has responsibility for drafting an order) are dealt with before the hearing concludes.