

GUIDANCE FOR THE CONDUCT OF REMOTE COSTS HEARINGS

Preamble

1. Guidance has been issued by the Judiciary of England and Wales regarding the conduct of remote hearings. The parties are referred to the following:
 - a. Practice Direction 51Y – “Video or Audio Hearings During Coronavirus Pandemic”, in force 25 March 2020;
 - b. The Protocol regarding Remote Hearings, issued 26 March 2020 and updated 31 March 2020 - <https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil.GenerallyApplicableVersion.f-amend-26.03.20-1.pdf> (“The Protocol”). Parts of the Protocol are imported into this Guidance Note for ease of reference.
 - c. Practice Direction 51ZA – “Extension of Time Limits and Clarification of PD51Y”, in force 2 April 2020.
 - d. Civil Listing Priorities, issued 3 April 2020.
2. Parties are encouraged regularly to check for updates in relation to the aforementioned Practice Directions and Protocol, as well as to check the “HMCTS daily operational summary on courts and tribunals during the coronavirus (Covid-19) outbreak” - <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>.
3. Further guidance has been issued by the Lead Presiding and Designated Civil Judges of the Circuits. Parties are referred to the respective guidance.
4. **IMPORTANT: Where the contents of this guidance and an Order of the Court are in contradiction, the Order of the court must always be followed over the contents of this guidance.**
5. However:
 - a. it being recognised that there is no reference in the Civil Listing Priorities to the hearings listed below; and
 - b. it being considered possible to conduct those hearings remotely

it is thought appropriate to outline specific guidance for the conduct of remote costs hearings to deal with the particular challenges brought by those hearings in the Circuits. This document is to be read in conjunction with the aforementioned guidance.

Scope

6. This guidance is intended to address the remote conduct of the following costs hearings throughout the period of the Covid-19 pandemic: -
 - a. Detailed assessment hearings.
 - b. Oral review hearings of provisional assessments listed pursuant to a CPR 47.15(7) request.
 - c. Application hearings in which the court is invited to certify an amount payable from a child or protected party's damages pursuant to CPR 46.4(4).
7. This guidance is likely to apply only where all parties are legally represented.

Communication

8. Parties should communicate with the court by email.
9. All emails must contain the following information in the subject line: -
 - a. The claim number;
 - b. The claim name;
 - c. The time and date of the hearing.

Request Procedure

10. Where a hearing date has been requested (to include cases where a hearing date has been fixed, or was fixed and has been adjourned in light of the Covid-19 pandemic), the parties should as soon as practicable communicate with each other and seek to agree:
 - a. a mode of remote hearing including suggested platform;
 - b. the scope of the remote hearing;
11. Once a hearing date has been fixed, the parties should, not less than 20 business days prior to the date fixed for the hearing, or (if this is not possible due to the proximity of the hearing, as soon as practicable), communicate with the court with a request for approval of the mode, platform and, if applicable, scope of remote hearing.
12. Where it is proposed that the hearing is to address only preliminary issues, the parties must identify those preliminary issues by reference to the numbered points of dispute.
13. In the event that the parties fail to reach agreement as to the matters in paragraph 10 above (including if one or both of the parties would prefer to be listed for an hearing in person once the Covid-19 pandemic resolves), the parties will email the court as above with their reasons, upon which the court will issue directions which may include the vacation of the costs hearing or the requirement for the parties to attend a brief telephone directions hearing.

14. Available platforms for remote hearings include (non-exhaustively) Skype for Business/Microsoft Teams, CVP via Kinly Video Conferencing, BT MeetMe, and ordinary telephone call. It is likely that a video hearing via Skype for Business/Microsoft Teams will be preferred over any other platform. If the court does not agree with the parties' suggested platform, it will propose an alternative.

Consideration by the Court

15. Upon consideration of the parties' request, the court is likely to issue an order which will address preparation, filing and service of skeleton arguments (if ordered) and bundles.

16. Parties should consider court Orders carefully and, if they object to any part of the order, make an application to the court to vary the order. If both parties object to any part of the order they should file a consent order reflecting that agreement for the court to consider.

Bundles

Detailed assessment hearings

17. Not less than 3 business days before the detailed assessment hearing is to take place (or such other period as is specified in a court Order), the receiving party should electronically file: -

- a. An electronic copy of the bill in an editable format (for old-style paper bills, this should be in Microsoft Word (.doc or .docx); for e-Bills, this should be in Microsoft Excel (.xls or .xlsx);
- b. A composite Points of Dispute and Replies document as a single .pdf document;
- c. Their papers in support of the bill ("the eBundle");
- d. An electronic bundle of offers made to settle the detailed assessment proceedings ("the Offers Bundle");
- e. The advocates': -
 - i. Email addresses to which the invitation for the video hearing may be sent ;
 - ii. telephone numbers on which they confirm they can be reached by the court on the day of the hearing; and
 - iii. Stating in what capacity (e.g. counsel, solicitor, Cost Lawyer, party, etc.) they are attending.

18. The documents referred to above will be deemed filed when the receiving party emails to the court a link to an online data room containing those documents. The court will provide

the appropriate email address for that purpose. The advocates' details identified above should be included in the body of the email to the court.

19. The electronic copy of the bill should not include any supporting documentation (such as disbursement vouchers).
20. The eBundle should comprise a single .pdf file which includes an index. If paginated, page numbers must match the 'electronic' page number of the .pdf file.
21. The use of hyperlinks and/or bookmarks where possible is encouraged to allow for easy navigation around the bundle. The receiving party is also encouraged to make the eBundle "readable" such that key word searches can be performed (where possible).
22. The eBundle should be organised as follows: -
 - a. Any skeleton arguments;
 - b. Extracts of any authorities upon which either party wishes to rely;
 - c. A core case documents to include: -
 - i. Pre-action letter of claim and letter of response;
 - ii. Statements of case (to include schedules and counter schedules of loss);
 - iii. Court Orders;
 - iv. Key disclosure;
 - v. Witness statements (relevant to the main action, and not witness statements in support of any interlocutory applications); and
 - vi. All disclosed experts' reports (to include experts' joint statements) arranged in chronological order.
 - d. Precedent Q (if the case was subject to a Costs Management Order);
 - e. The receiving party's last approved Costs Budget;
 - f. All other documents in support of the bill identified in CPR 47PD13.12. Wherever possible, documents should be prepared in the order in which those documents will likely be considered by the court, on the assumption that the points of dispute will be taken in turn.
23. The identity of the documents referred to at paragraph 22(a)-(e) inclusive should be agreed between the parties. At the same time as filing the eBundle at court, the receiving party must serve by email upon the paying party, or otherwise make available to the paying party at an online data room, a copy of the eBundle, save that the documents referred to at paragraph 22(f) above may be excluded. For the avoidance of doubt, pagination of the served eBundle should match the court's eBundle for ease of reference during the hearing.

24. It is a matter for the receiving party which documents they choose to include in respect of the direction at paragraph 22(f) above. It should be borne in mind that the Judge will not have access to any documents not included within the eBundle and so it must be complete. This does not alter the documents which must be provided in accordance with CPR 47PD 13.12. As such, the court should be in a position to consider any document it would have wished to consider at a hearing attended in person.
25. At the detailed assessment hearing, the receiving party's advocate should be prepared to direct the Judge to the relevant page numbers of documents in the eBundle when dealing with each point of dispute.
26. The Offers bundle should comprise a single .pdf file. If paginated, page numbers must match the 'electronic' page number of the .pdf file. The file should require a password to open. The password should not be communicated to the court until such time as the assessment has concluded and the court is entitled to see the offers. The receiving party's advocate must be in a position to provide the password to the court at the conclusion of the hearing.

Oral reviews of provisional assessment listed pursuant to a CPR 47.15(7) request

27. Paragraphs 10-26 above apply to oral reviews of provisional assessments listed pursuant to a CPR 47.15(7) request save that the documents referred to at paragraph 22(f) should be limited to documents in respect of those points of dispute which are under review.

Applications for the court to certify an amount payable from a child or protected party's damages pursuant to CPR 46.4(4)

28. In respect of applications to certify an amount payable from a child or protected party's damages pursuant to CPR r.46.4(4), paragraphs 17(a), (c) and (e), 18, 20, 21 above shall apply, modified as set out below.
29. Reference to the "receiving party" should be taken as a reference to the applicant.
30. In such applications, the eBundle should comprise the documents required by CPR 21PD11, plus any other supporting documents upon which the applicant relies. The court may direct specific documents should be included.
31. In addition, the eBundle should include a copy of the Certificate of Suitability of a Litigation Friend, or any Order appointing a deputy.

Conduct of the Remote Hearing

32. If the remote hearing is to be conducted on a video platform, careful thought needs to be given to a number of matters. The parties are referred to <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>.

33. The court will likely make arrangements for the hearing by way of email invitation to a video meeting to the email addresses provided for the advocates in accordance with paragraph 17(e) above.
34. All participants must ensure, in advance, that that they have installed and/or tested their ability to participate in the hearing.
35. If any party has not received the invitation by 12 noon on the preceding day, they should contact the relevant court office urgently citing the case name and date of hearing.
36. If there is an unavoidable change in the representative it is for that party to make arrangements for any alteration in the invitation email in good time for any hearing. The parties are reminded that administrative support in the courts is greatly reduced now in this time of national crisis and late amendments will not always be able to be accommodated in time and may result in a hearing occurring in the absence of a party or being adjourned with potential cost consequences.
37. In all remote hearing cases the parties must recognise that the hearings may not commence at the appointed time and/or conclude in the time estimate and must make themselves available well beyond the time allotted to allow for such contingencies which may include technical difficulties or cases running over. Legal representatives are reminded that it will not be appropriate for them to expect to be able to conduct multiple hearings in proximity of time as a consequence of these matters and costs orders may be made against them if they are unable to attend as required.
38. The court will retain responsibility for recording the hearing in accordance with The Protocol.
39. The court will mark or amend the copy of the bill with which it has been provided during the course of the detailed assessment to reflect the decisions made.
40. If the paying party successfully invokes the Pamplin procedure codified in 47PD 13.13, and if the receiving party elects to disclose the document, the court will “share” that document with the parties on the screen. Where that process is inadequate or inconvenient, the Judge will direct how the document(s) shall be disclosed.
41. If, for any reason, a short adjournment is granted (e.g. to take instructions or undertake calculations etc.), then the Judge will leave the hearing. **NB: If the hearing is being recorded via Skype/Teams, the hearing will continue to be recorded unless the Judge stops recording, irrespective of whether the Judge remains in the hearing or temporarily leaves the hearing. If the parties do not wish the recording to continue, they should ask the Judge to stop the recording.** The Judge will direct how and when the hearing will be reconvened.
42. Parties are encouraged to mute their microphones when not speaking to prevent distracting background noise.