

Making Remote Hearings Work

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A broad experience is building up among advocates with the use of remote hearings. Although many courts are still using telephone links (and for many litigants who do not have access to more sophisticated technology, this will remain the default medium) the use of video links is becoming more of a normal experience.

The Family Court has been amongst those at the front of developments here with a recognition by the judiciary that what has been termed a “smorgasbord” of platforms may be appropriate as many different organisations, entities and practitioners have invested in different systems. Nevertheless, there appears to be a concentration, by the Court at least, on Skype for Business (SfB) as this is the default system for the judicial DOM1 laptops and seems to be the lowest common denominator. While Zoom offers a number of advantages there is perceived (at least) to be a security issue and there is some suggestion that the MoJ will not indemnify a judge who uses it to set up a meeting or hearing if there is security breach. The DOM1 laptops are not easily (if at all) used with Zoom or MS Teams. However, if judges are invited into a platform other than SfB, this appears to work satisfactorily

Having recently had a very successful hearing by Skype for Business, and coming from a position where I am not at all confident in the use of the new technology, the following experience is offered in case it provides some useful tips. It is stressed that this is only personal experience and does not imply any technical expertise. It is more to do with practicalities. The case concerned financial remedies in the Family Court but the principles seem equally applicable elsewhere.

In this case the judge was in Wales and there were 9 participants, one in Poland and others scattered around the UK. The judge was on a DOM1 machine and unable to use MS Teams. We had tried the previous day to set up a MS Teams meeting but it seemed that the judicial firewall prevented us joining, although the judge had been able to send an invitation. In the event we all used Skype for Business and it worked well save for some difficulty initially connecting with one lay client which was sorted by the solicitors’ IT department working with her remotely. This experience suggests that it is an advantage to have a dedicated IT team among the support staff to assist with practicalities.

The solicitors had created an e-bundle sent to the court the previous week to which the other side tried to add things after the deadline, but they had to send their additional material separately. This did not seem to present a radical problem. However, to ensure everyone had access to several pages at once most participants were using more than one device.

The solicitors who created the e-bundle did not have Adobe Acrobat DC so the judge’s bundle was not searchable which meant he had to scroll through many pages. This was not helpful and caused delay during the hearing. However when I received my copy of the bundle I had then been able to apply OCR (Optical Character Recognition) and so my own bundle was fully searchable which was an immense help. It is certainly clearly the case that a searchable bundle, ideally with hyperlinks in the index, makes the process of navigating around several hundred pages much easier.

This was a hearing on submissions without oral evidence but, on the basis that everyone contributed at one point or another, I do not believe this would have been a problem (save perhaps for use of the bundle for which the witness might need help and a searchable bundle, and again, ideally, one with hyperlinks). We did not use the screen share facility simply because with several screens a reference to the (electronic) page numbers enabled one to move to the document swiftly while maintaining a view of the other parties on screen. My view is that the efficiency of bundle use is key to the success of these hearings and their preparation should be a priority.

Being on Skype with the Court setting up the hearing, sending out the invitation and bringing everyone in, meant that the recording was dealt with by the Court which was a help and one less thing to worry about. If the lead solicitor sets up the hearing and invites the judge in (which is one way in which alternative platforms can be used) the obligation for recording lies on the lead solicitor who then has to ensure the recording is GDPR compliant and that the recording is lodged forthwith with the Court.

Absolutely essential were the trial runs. First we had secured the permission of the Court to conduct the hearing remotely. Agreed directions were made the previous week. We then had a trial remote session within the legal team which took over half an hour to connect but provided an invaluable opportunity to iron out glitches. The solicitors had a separate trial run with the client. We lawyers had a trial run with the judge the day before the hearing. This was also vital.

During the hearing individual members of the legal team communicated by WhatsApp. We had a separate WhatsApp group for the client and solicitors so the advocate was not distracted with too much comment.

The judge gave breaks at various points for the taking of instructions. This was helpful. It is however essential to ensure all participants are muted and cameras off during these breaks.

While our understanding was that the link was turned off over the lunch adjournment, it was very easily and quickly set up again with the same URL.

One issue was that there was a suspicion that one lay party had someone else in the room. He denied it and there was no way of telling. Plainly this is difficult to police. Perhaps a party can be asked to scan the room with his camera to show it is empty. The judge gave a clear warning at the outset that no-one must record the meeting and set out the ground rules. Again this is important.

The judge informed us that he had had several trials with oral evidence on SfB and his experience was that it worked well. On the basis of this experience I would agree, but there are some practical considerations to bear in mind to ensure the experience works as well as possible.

In summary:

- It is essential to secure directions from the Court and ensure the ground rules are in place
- It is essential to have a trial run with the Court 24 hours before the hearing to ensure things will go smoothly on the day
- Having IT support available is helpful
- Having the Court arrange the hearing and co-ordinating the joining of the participants makes the process comparatively painless and more convenient
- A carefully and fully prepared e-Bundle is a *sine qua non*. This needs to be electronically paginated, fully searchable with OCR, and comprehensive. It is helpful if last minute

documents are not added, (although the pdf editing software should make it tolerably easy to add documents, once the bundle has been lodged this becomes much more difficult. A new bundle may need to be lodged which may be inconvenient if the judge has already bookmarked the original bundle).

- It is very helpful to have at least two or three screens, one for the video image, one for the e-bundle and one for additional documents. You may benefit from having a further device available for other lines of communication and/or note taking
- A line of communication through emails and/or WhatsApp is very useful for the communication of instructions and virtual “gown-tugging”
- Be aware of the background. Remove inappropriate pictures or objects from the line of sight. The experience circulated in social media of some lay persons involved in hearings has been instructive. They are not comforted by images of conspicuous wealth and privilege in the background of some participants. A neutral background is ideal. Some platforms allow for the blurring of the background (not very efficiently in the writer’s opinion) and some allow for a virtual background (although whether waves crashing onto a coral beach with palm trees swaying over an azure sea is appropriate is doubtful – chose your virtual background with care!)
- Maintain all the formality and decorum of a normal court hearing
- Ensure all the parties, including especially the lay parties, are fully aware of the rules about ensuring others are not present, that no-one may record the proceedings etc.

However, overall, the system appears to work well, provided appropriate and timely preparation is undertaken.

Below is some guidance circulated by the FLBA for the use of Skype for Business for Court Hearings.

Skype for Business for Court Hearings

It appears that Skype for Business (SFB) is going to be the means that court hearings are conducted for the foreseeable future.

You can join an SFB meeting without downloading any new software and you don’t need an Office 365 subscription to use it. There is a web based version which you can access through any browser. There is also a free meeting app which you can download.

To arrange a SFB meeting you must have an Office 365 subscription. This can potentially cause a problem if you are acting for the applicant as it would normally fall to you to arrange it. In such circumstances it would be sensible to see if one of the other parties could arrange the meeting. If that isn’t possible then you could ask the court to arrange the meeting as they have the facilities. If they refuse, then you may have to seek out an alternative method of meeting.

Download Skype for Business App

To download the app you have to have an Office 365 account but you don’t need an account to join a Skype meeting, you can do this through a web app. This may be useful if you are struggling with the app or are using multiple devices to work remotely.

If you have an Office 365 account use this link to download the app
<https://products.office.com/en-gb/skype-for-business/download-app>

Download Instructions will guide you through setup

<https://support.office.com/en-us/article/video-download-and-install-skype-for-business-9162ae37-12f9-4971-bbbe-2e4a05590f36>

Sign in to the App

Sign in and out instructions

<https://support.office.com/en-us/article/video-sign-in-and-out-of-skype-for-business-8abed4b3-ac48-493e-9d76-0e10140e9451>

However, experience has demonstrated that it is not necessary to limit the platform to SfB.

All the barristers at St John's Chambers can accommodate remote hearings on whatever platform the Court designates (Zoom, Skype for Business etc) and can arrange hearings or meetings on a variety of platforms (eg MS Teams, Zoom, SfB etc) if required.

If the court requires a hearing to be conducted on Skype for Business it is better that the court arranges it and as indicated above, this carries the advantage that the court can control the recording.

If a meeting or hearing needs to be arranged it is recommended that the issue is discussed with the relevant barrister who can advise on the most appropriate way forward

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