

Suggested Guidance for the conduct of a remote hearing as arbitrator or PFDR judge¹

General

1. In the case of an arbitration hearing, the parties are in most circumstances (subject to Art. 1.4 of the relevant Rules)² free (pursuant to Art 9.1) to agree matters of procedure, including the form of any hearing. If they do not so agree, the question whether the hearing should proceed via videoconferencing will be a case management decision for the arbitrator as it would be for a judge in court proceedings.³
2. In the case of a PFDR which it is intended should proceed via videoconferencing, the parties should be asked to confirm in writing or through their solicitors that videoconferencing (i) constitutes an acceptable means of communication; and (ii) will be used as the means for conducting the hearing.

Pre-hearing preparation

3. The applicant's solicitors (or the respondent's solicitors if the applicant is not represented) ("the lead party") should be responsible for (i) the preparation of the electronic bundle of relevant documents, ordinarily in compliance with PD27A; and (ii) any electronic bundle of authorities.
4. The lead party should prepare the electronic bundle(s), usually in the following format:
 - a. PDF format is to be used;
 - b. all documents are to be contained, if possible, within one single PDF file;
 - c. the PDF file must be searchable;
 - d. pagination must be computer generated within the PDF and not hand-written:
 - i. original pagination should be by section and page number i.e. A1, A2, A3.... B1, B2, B3 etc;
 - ii. insertions should adopt 'legal' numbering (e.g. B13.1, B13.2, B13.3 to be inserted between B13 and B14); and
 - e. each section of the bundle, and each individual document referenced in the index, should be separately bookmarked.
5. Unless the arbitrator/judge is to be responsible for setting up the remote hearing, the lead party should be responsible for doing so. In either case, the person so responsible should provide to all of the other parties the details required to attend the remote hearing as soon as they are available. In practice the arrangements are likely to be made by the arbitrator's/judge's/lead party's counsel's clerk.
6. Anybody attending the remote hearing should ensure that they have a good connection/signal to avoid a breakdown in connection.
7. The minimum recommended bandwidth for a successful remote video hearing is 1.5 Mbps in both directions, but ideally it should be at least 5 Mbps.

¹ This document includes material drawn from (i) the Civil Justice in England and Wales Protocol Regarding Remote Hearings (20th March 2020); (ii) the Protocol For Remote Hearings in the Family Court and Family Division of the High Court (23rd March 2020); (iii) the Remote Access Family Court v4 (16th April 2020); and (iv) Byron James (via Twitter).

² Financial Scheme Rules (6th Edition, effective 1st January 2018) and Children Scheme Rules (4th Edition, effective 6 April 2020).

³ See now *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] EWCA Civ 583.

Conduct of the hearing

8. The parties should log/call into the remote platform c. 5 minutes before the hearing is due to begin.
9. Each participant's computer/tablet/phone should be set so as to identify who they are. If possible, all parties should use a computer or tablet rather than a phone.
10. Each participant should shut down all background browsers and applications on the device used for the virtual hearing (including disabling "pop up" notifications), and turn off all other devices which might either:
 - a. appropriate necessary bandwidth from the device to be used to access the virtual hearing;
or
 - b. produce audible notifications during the hearing.
11. The arbitrator/judge should log/call into the platform at the time the hearing is due to begin.
12. Every remote hearing that is being conducted in private should start with all parties confirming that:
 - a. they can see and hear everyone;
 - b. they are in a private space (and, so far as is possible, that they are alone and cannot be overheard);
 - c. everyone accessing the hearing is authorised to be there;
 - d. they are not relaying the hearing to any third parties;
 - e. subject to 15 and 16 below in the case of an arbitration hearing, they are not making any recording of the hearing; and
 - f. if there are any changes to the above they shall say so as soon as possible.
13. In the event that the video-conferencing fails for one of all of the participants:
 - a. the tribunal/parties should seek to re-establish that connection; and
 - b. if that is unsuccessful, the tribunal should convene a telephone hearing to determine the appropriate next steps depending on how far the hearing has progressed.
14. The following etiquette is recommended for the conduct of the hearing:
 - a. "*note taking*" participants (e.g. pupils or solicitors' assistants/paralegals) should mute their feed for the entire hearing;
 - b. everyone should mute their microphone when not speaking, save
 - c. when evidence is being given, when the microphones of the witness, question-asker and tribunal should be on;
 - d. no-one should speak when someone else is speaking;
 - e. a person should only ask to speak when invited by the tribunal; and
 - f. if something urgent arises and a participant wishes to speak, he/she should visually indicate to the tribunal before doing so.

Arbitration Hearings

15. The person responsible for setting up the remote hearing should:
 - a. ensure that appropriate arrangements have been made for recording (if the hearing is going to be recorded) via Lifesize, Zoom, or Microsoft Teams; and

- b. ensure that the parties know if the hearing is being recorded by the relevant platform.
16. The parties should be asked to confirm that they agree and accept that:
- a. unless expressly agreed (in advance with all parties and the arbitrator) they must not record the hearing themselves; and
 - b. any recording of the hearing in accordance with 15 above or with express agreement under 16.a above is not used for any purpose other than:
 - i. the obtaining of legal advice;
 - ii. court proceedings arising out of the arbitration; and/or
 - iii. in accordance with the express written agreement of the arbitrator and other party to the arbitration.
17. Unless otherwise agreed, any hearing listed for a day should 'sit' from 10 am to 1 pm (with a break at a convenient moment between 11 am and 12 pm) and from 2 pm to 4.30 pm (with a break at a convenient moment between 3 pm and 3.30 pm).
18. Only documents that have been included in the bundle lodged for the hearing may be "shared" on screen without prior approval of the tribunal.
19. If oral evidence is being given the tribunal should guide witnesses in the oath or affirmation. The Mostyn J short form - *"do you swear or affirm to tell the truth, the whole truth and nothing but the truth?"* should be acceptable. There should be no expectation to hold a Holy Book.
20. Witnesses should be in a secure room, alone, with the doors closed and with measures taken to prevent interruptions and disruptions.
21. If it is not possible for witnesses to have access to a full electronic bundle consideration will need be given in advance to the documents to which the witness is likely to be referred. The parties should endeavour to agree the list of such documents (if at all possible). An electronic bundle of these copy documents should then be prepared in advance which the lead party should send to the witness.

Authored by:

Nicholas Allen QC
Janet Bazley QC
Andrzej Bojarski
Nigel Dyer QC
Marina Faggionato
Charles Hale QC
Suzanne Kingston
Christopher Pocock QC