

Remote Hearings: Business as Usual?

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Agenda

- 1. Case Management**
- 2. The Tools**
- 3. Electronic Bundles**
- 4. Remote Hearings**
- 5. Practical Realities**



Judicial Approach

National Bank of Kazakhstan and Others v Bank of New York Mellon and Others (Teare J, unreported):

"The courts exist to resolve disputes and, as I noted this morning, the guidance given by the Lord Chief Justice is very clear. The default position now in all jurisdictions must be that a hearing should be conducted with one, more than one, or all participants attending remotely. I accept that for various reasons, in particular the geographical location of the expert witnesses, this exercise will have particular challenges. But it seems to me that having regard to the need to keep the service of public resolution of disputes going, it is incumbent on the parties to seek to arrange a remote hearing if at all possible." (emphasis added)

See also: *In the matter of One Blackfriars Limited* [2020] EWHC 845 Ch (John Kimbell QC)

Case Management



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Case Management

- CPR 3.1(2)(d): “hold a hearing and receive evidence by telephone or by using any other method of direct oral communication”
- Practice Direction 32, Annex 3: guidance for conduct of hearings by video conference
- Section 55 and Schedule 5 of the Coronavirus Act 2020, Practice Direction 51Y

Court Protocols

Business and Property Courts Protocol:

“The current pandemic necessitates the use of remote hearings wherever possible. This Protocol applies to hearings of all kinds, including those in which there are litigants in person, and those made in the applications court.

...

It will normally be possible for all short, interlocutory, or non-witness, applications to be heard remotely. Some witness cases will also be suitable for remote hearings.” (Emphasis added)

https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1-1.pdf

The Process

- Court will propose a solution; parties can disagree
- CMCs for directions
- Parties to attend first, joined by judge
- Focus on electronic bundles:

“Electronic bundles should contain only documents and authorities that are essential to the remote hearing. Large electronic files can be slow to transmit and unwieldy to use.”

Directions

See Birmingham Business & Property Courts Standard Directions:

- Platform for hearing (i.e. Skype/Zoom etc)
- Advanced provision of attendance forms with participants & contact email address
- Form & content of bundle of documents & authorities
- How additional documents are to be provided

Also consider:

- Dress code
- Administration of oaths
- Connecting witnesses

Bristol Civil Justice Centre

IT IS ORDERED:

1. The hearing set for **will not take place as an attended hearing** i.e. with the parties attending at court.
2. The parties are to liaise as a matter of urgency and seek to agree ;
 - a) If the hearing is urgent
 - b) If the hearing could take place by telephone and/or “skype for business” (both of which the Court can set up) and if so the preferred method, or such other medium/method as the parties agree is practicable and can facilitate
 - c) If the answer to (b) is that the hearing could proceed remotely, whether the parties can agree the contents of, and lodge with the court (and provide for any witness), a suitable e bundle for the hearing and the Claimant should inform the court within seven days of the receipt of this order if agreement has been reached on the issues set out above
3. If the parties cannot liaise upon and agree the issues set out above each party is to send to the court and the other party within ten days of the receipt of this order ;
 - (i) Answers to the issues set out at 2(a)-(c) above
And to the Court alone ;
 - (ii) An up to date telephone number and, if possible, an e-mail address
4. Because this order has been made without a hearing any party may apply pursuant to CPR Part 3.3(5) to have this order set aside, varied or stayed. A party wishing to make an application must send the application to the court (together with any appropriate fee) to arrive within seven days of service of this Order.

HMCTS Guidance

See: <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#joining-an-audio-or-video-hearing>

Whether to have a remote hearing is a decision for the judge.

Guidance on how to join a remote hearing:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876566/Guide_on_joining_court_hearings_by_video_call_or_phone_27_March_2020.pdf

The County Court



HM Courts & Tribunals Service

CORONAVIRUS update

Civil court listing priorities: 3 April 2020

Priority 1 – work that must be done

- Committals
- Freezing Orders
- Injunctions (and return days for ex parte injunctions).
- The emphasis must be on those with a real time element (such as post-termination employment restrictions), noise or interference with property.
- Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
- Applications to stay enforcement of existing possession orders
- Production of persons in custody following Power of Arrest detentions
- Applications to displace under s 29 of MHA
- Homelessness Applications
- Enforcement work that does not involve bailiffs, such as third-party debt orders (particularly hardship payments).
- Any applications in cases listed for trial in the next three months
- Any applications where there is a substantial hearing listed in the next month.
- All Multi Track hearings where parties agree that it is urgent (subject to triage).
- Appeals in all these cases

Priority 2 – work that could be done

- Infant and Protected Party approvals (children could attend by Skype)
- CPR 21 approvals
- Applications for interim payments in MT/PI/Clin Neg
- Stage 3 assessment of damages
- Enforcement of trading contracts
- Applications or hearings pursuant to the Insolvency Act 1986 which concern the survival of a business or the solvency of a business or an individual
- Applications for summary judgement for a specified sum
- Applications to set aside judgement in default
- Applications for security for costs
- All small claim/fast track trials where parties agree it is urgent (subject to triage)
- Preliminary assessment of costs
- Appeals in all these cases

Civil work in the Court of Appeal is subject to separate guidance and civil work carried out within the Queen's Bench Division and Business & Property Courts of England and Wales is covered by the High Court Contingency Plan. The work of the Business and Property Courts outside of London (District Registries) is being dealt with on a case-by-case basis and is also excluded from these lists.

Accordingly these lists relate only to County Court work.

The Tools

How do you put it together?



- PDF editing
- Large file sharing
- Video conferencing
- Internet stability

Some Options



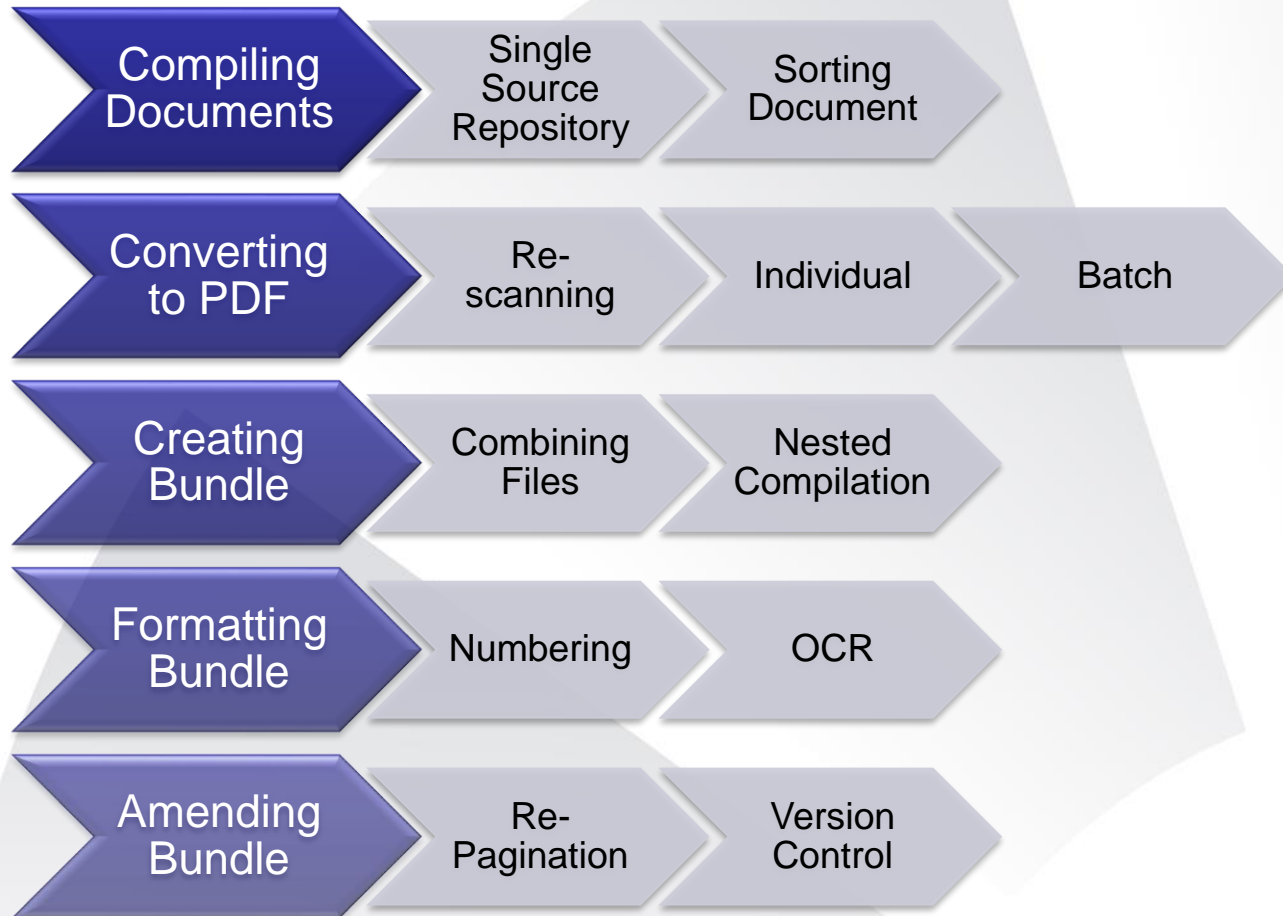
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zoom



Electronic Bundles

Bundle Stages



Remote Hearing



**Drafting a
Protocol**



**Running
the Hearing**

The Protocol

Aims

- Pre-empt hiccups
- Minimise distractions
- Smooth hearing

Content

- Arranging the hearing
- Steps before the hearing
- Conduct of the hearing

Practical Realities



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