

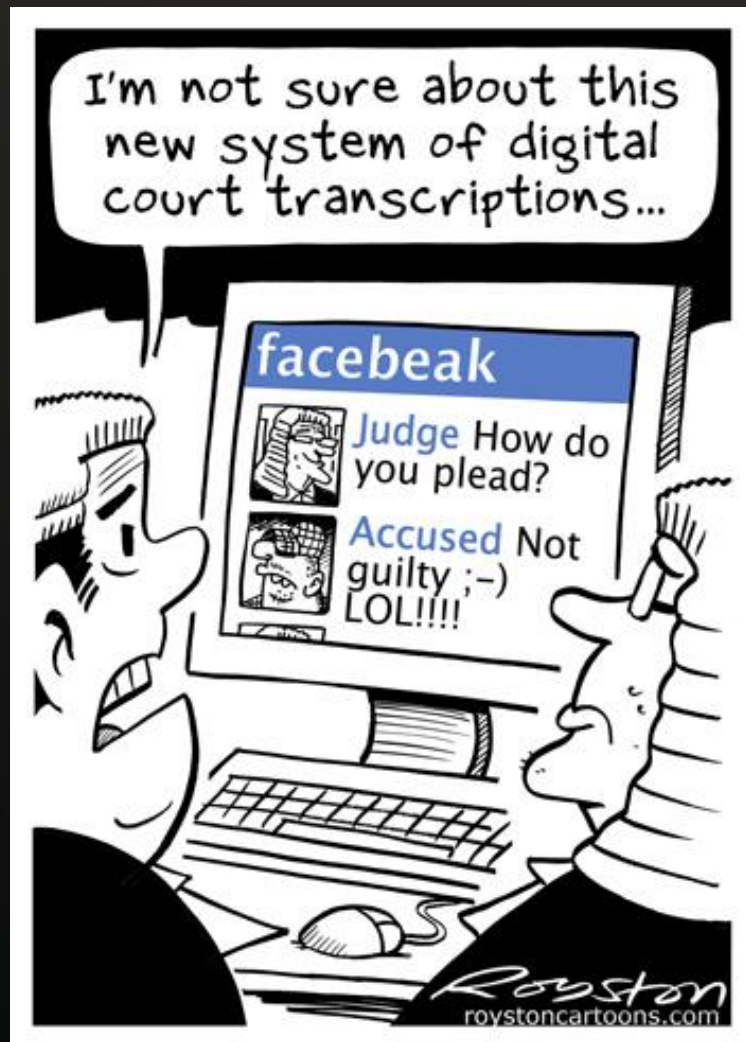
Covid-19 and Remote Hearings: The New 'Normal'

Kriti Upadhyay, James Bentley and Sophie Walmsley

Agenda

- 1. Update**
- 2. The Tools**
- 3. Electronic Bundles**
- 4. Case Management**
- 5. The Virtual Hearing**
- 6. Q&A**





Update: Courts

How are the courts coping?

- HMCTS daily guidance: <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>
 - Many courts suspended or remote hearings only
- Updated guidance on remote hearings: <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>
 - https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-26_03_20-1.pdf
- New Practice Directions:
 - Remote hearings: <https://www.judiciary.uk/wp-content/uploads/2020/03/CPR-116th-PD-Update-video-or-audio-hearings-for-coronavirus-period.pdf>
 - extending time limits
- BUT: technology issues, inconsistent application

Particular concerns for PI/clin neg cases

- Delays for clients
- CFAs! – Cost recovery implications

PIBA:

*“What can we do? All that we can do to enable trials and other hearings to go ahead. **Spend time and effort mastering our telephone and video-hearing skills.** Come up with practical solutions which will allow hearings to proceed. **Be proactive:** identify in advance those cases which could be dealt with remotely, whether by telephone or video, and co-operate with our opponents to make the hearing work.”*

Is your hearing remote-ready?

HMCTS Guidance:

“The decision as to how a hearing is conducted is a matter for the judge... who will determine how best to uphold the interests of justice. In considering the suitability of video/audio, judges will consider issues such as the nature of the matters at stake during the hearing; any issues the use of video/audio technology may present for participants in the hearing, having regard to individuals’ needs; and any issues around public access to or participation in the hearing.”

Civil Listing Priorities

Full list can be downloaded from here:

<https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>

Must list ('Priority 1'):

- applications in cases listed for trial in the next three months or
- Applications in cases 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

Civil Listing Priorities

Could list ('Priority 2'):

- 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
- 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

Message for Judges sitting in Civil Courts from Lord Chief Justice 9.4.20

Concerns noted from remote hearings run:

- Judges facing abuse from witnesses/parties – instances of shouting
- Problems with the availability of papers
- Remote hearings unusually tiring.
- *“From next week the **bespoke HMCTS video hearing facility** will have a greatly increased capacity; this system is expected to offer better quality all round than Skype and so should enhance yet further our ability to conduct remote hearings.”*
- Short script to be read by judges at the start of hearing
- Muting facility for those ‘misbehaving’
- *“The present restrictions mean that it is likely that case management hearings, or hearings that can be conducted by submissions only can probably be undertaken remotely. The focus of concern is upon hearings which involve the hearing of oral evidence.”*

Is your hearing remote-ready?

- Before you try to make a remote hearing work: Can you NEGOTIATE? – No time like the present for ADR!
- Can all parties, including all witnesses where required, make the technology work? – Dry runs
- **Bundles**

The Tools

What will you need?

- PDF editing: eg Adobe Acrobat Pro, PDF Professional
- Large file sharing
- Video conferencing
- Internet stability
- Ideally, a PC/laptop/tablet, not a phone



Some Options



mimecast[®]

zoom



Demo!

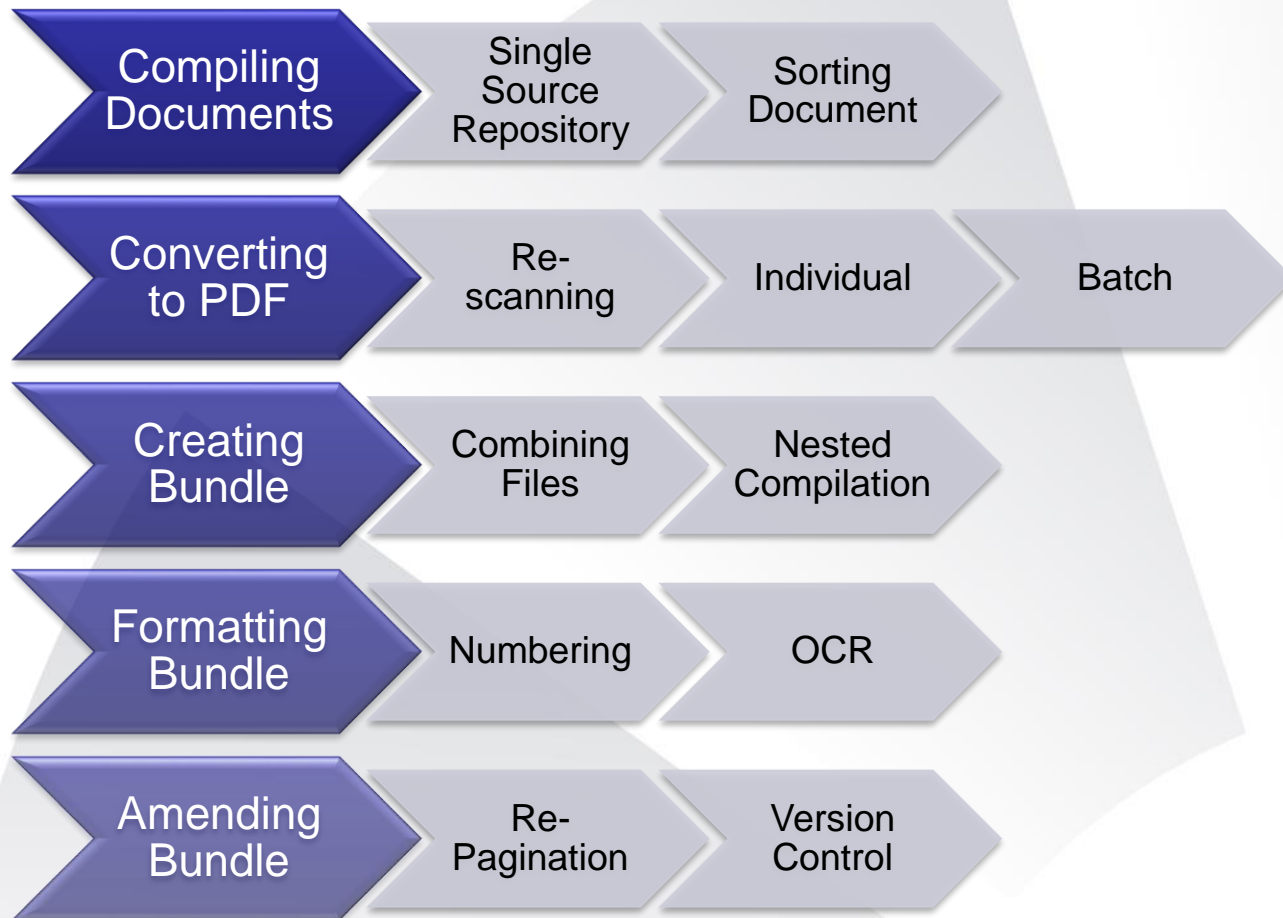
The screenshot displays a Zoom meeting in progress. The main window shows a screen share of Adobe Acrobat Reader DC. The application window title is "Bundle (1).pdf (SEC...)" and it is running on "Adobe Acrobat Reader DC". The toolbar includes icons for Home, Tools, and a search bar with the text "Search for or type a command". The main content area shows a satellite map of a residential area with various buildings and streets. A video toolbar is overlaid on the bottom of the screen share, showing a timer at 07:57, a microphone icon, a screen share icon, a "Request control" button, and a red end call button. The bottom of the Zoom window shows a gallery of five participants: Anna Williams, Oliver Mitchell, Sophie Walmsley, Govinder Chabbay, and another participant whose name is partially obscured. The Zoom name "Chabbay" is visible on the left side of the screen share area.



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Electronic bundles

Bundle Stages



Electronic bundles: the key points

- Dynamic page numbers
- Tab and index properly
- Is it searchable? Does it need to be?
- Is it editable by others?
- How large is it?
- Be selective! Do you really need 200 pages of correspondence in there? Or all 2000 pages of medical records? Extracts more appropriate!

Demo!



Case Management



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How to reach the sunlit uplands...

What do we have in our case management 'locker'

- Overriding Objective and onus on parties to cooperate
- Covid-19 Practice Direction and protocols
- Ability to make an application at any time
- Locally cascaded information
- Eg local courts: Guidance from DCJs.

What does being proactive look like?

- Making applications to transfer the hearing to a remote video hearing.
- Identifying suitable Preliminary Issues for determination (e.g. points of law, pleading points).
- Liaise with the other side to find common ground.
- Mediation?

Avoiding unnecessary housekeeping

- Agreed (detailed) List of Issues
- Agreed Facts / Facts in dispute
- Agreed Chronology
- Agreed case law
- Flag issues in good time
- Skeleton arguments in advance

Party & Witness participation

- How will the hearing be conducted- telephone / video?
- Do the parties / witnesses have the wherewithal to participate?
- What steps can be taken to assist those who do not?
- Does any party / witness require reasonable adjustments?
- Expert evidence.
- Administration of oaths and avoidance of coaching.

Other considerations

- Ensuring, as far as is possible, a public hearing
- Use of Written Representations
- Oral Submissions & Written Submissions
- The backchannelling between participants
- Judicial Mediation

The Virtual 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



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Thank you



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