

Time for your close-up: A first High Court video hearing in the age of Covid-19

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The frantic last-minute shoehorning of files, books and robes into the ‘trundler’ suitcase, to be lugged on trains and tubes. Arriving at the Rolls Building, RCJ or somewhere further flung with 20 minutes to spare, then being subjected to an uncompromising full body frisk at security. On with the unwashed wig and un-ironed gown, then find your team of solicitors and clients by knocking on the closed doors of successive windowless rooms. Just time to exchange a cagey, handshake free (even in pre-Covid times, at least if s/he was old school) greeting with your ‘oppo’, before being summoned into the arena. Spilling water on your papers in the first 5 minutes.

I could go on. On the list of a thousand and one things we will miss during the pandemic, how high or low do these things rank for members of the Bar?

“Disembodied” hearings are, in theory, not a new thing. There was an expectation of a significant increase in telephone hearings when the CPR came in, and urgent injunctions had always been available, at least in theory, from a judge in pyjamas over the weekend. Courts have, however, tended to fall back on the phone just for case management, largely non-contentious or just plain dull hearings, and even then mostly when they were located far from the parties or their representatives (good afternoon Penzance!). Most of us acquired habits for conducting such hearings. Home or in Chambers? If the latter, at your own desk or in a special conference room to lend a sense of occasion? And most importantly of all, what would you wear? One former colleague always donned his three piece suit even for agreed directions hearings. Another, now a QC, wore bright pink beach shorts in the summer.

Yet telephone hearings, at least when they did not descend into shouting matches, usefully served their relatively limited purposes. And no-one could see you. The advent of Covid-19 has abruptly changed this, amongst many other things. The swiftly issued Protocol Regarding Remote Hearings followed by CPR Practice Direction 51Y, and the full closure of over half the Court estate, now including the Court of Appeal and Supreme Court, ensure that video conference hearings will be the norm until further notice.

So what would it be like when, in the very first week of “lockdown”, I faced my first such substantive day long High Court appeal hearing?

A welcome casualty of the contagion was the usual armful of broken lever arch files. One of the most significant effects of the current crisis may be a massive final nudge towards paperless hearings. If you have found yourself resisting progress in this regard, insisting that you ‘have to see it on the page’ for it to be real, you may have to adapt quickly, and stop cursing when “papers” are sent to you as 20 email attachments. Efficient bespoke directions in this case, in accordance with paragraph 24 of the new Protocol, required swift electronic lodging of each bundle and authorities tab as a numbered PDF direct to the judge’s clerk, which the judge confessed he found more efficient than the official CE file system.

As to the particular platform to be used, paragraph 16 of the Protocol currently leaves this open. There is scope for divergence and a little confusion. The Court order in this case prescribed Skype for Business, yet by the time the link was sent through, it was Microsoft Teams, so even an idiot (me) could click on that and join.

With no associate to bark out “Court rise!”, the hearing effectively began when the judge emerged in a slightly gloomy video feed from his home study 200 miles away. He and the three counsel in the case remained the only visible parties throughout, although ten others, including lay clients, joined and looked on silently.

After that, sequential legal submissions followed in a fairly familiar manner. Counsel were suited, and seated, throughout. References to electronic documents and authorities took no longer than they would at a physical hearing. Individual video and audio feeds occasionally went a little bit ‘jerky’ and broken, but only a few words or submissions had to be repeated. No-one talked over anyone else.

My first impressions were that we could all learn from the major YouTubers in our presentation. Get the lighting and angles right. A plain blank wall is the best background. No-one wants to see a silhouette, or your nostrils. Keep any physical papers you have out of shot, and well away from the microphone. Keep your head up, and look at your camera rather than yourself.

There was strangeness in not having a post-hearing discussion at Court with solicitors and

clients, although that could easily have been done by separate telephone conference if there was anything much to talk about beyond “how do you think it went?” (judgment was reserved). On the plus side, it was very nice to pop downstairs at half time for lunch in my kitchen.

In the months ahead, we will all get used to variants of the above. There will inevitably be glitches along the way, and a deal of initial muddling through with a combination of high and low tech solutions. In this case, the judge’s concern that the full video and audio recording of the hearing on Teams might generate a file too massive for easy sharing seems to have been well founded. The copy sent to me afterwards generated a “Video could not be found” message. But luckily, the Appellant’s solicitor in East Anglia had an analogue dictaphone pressed against his screen throughout as a backup.

So welcome to the brave new world. See you in court. Or in your study bedroom...

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