

# Remote hearings

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**20 May 2020**

BBC  
NEWS



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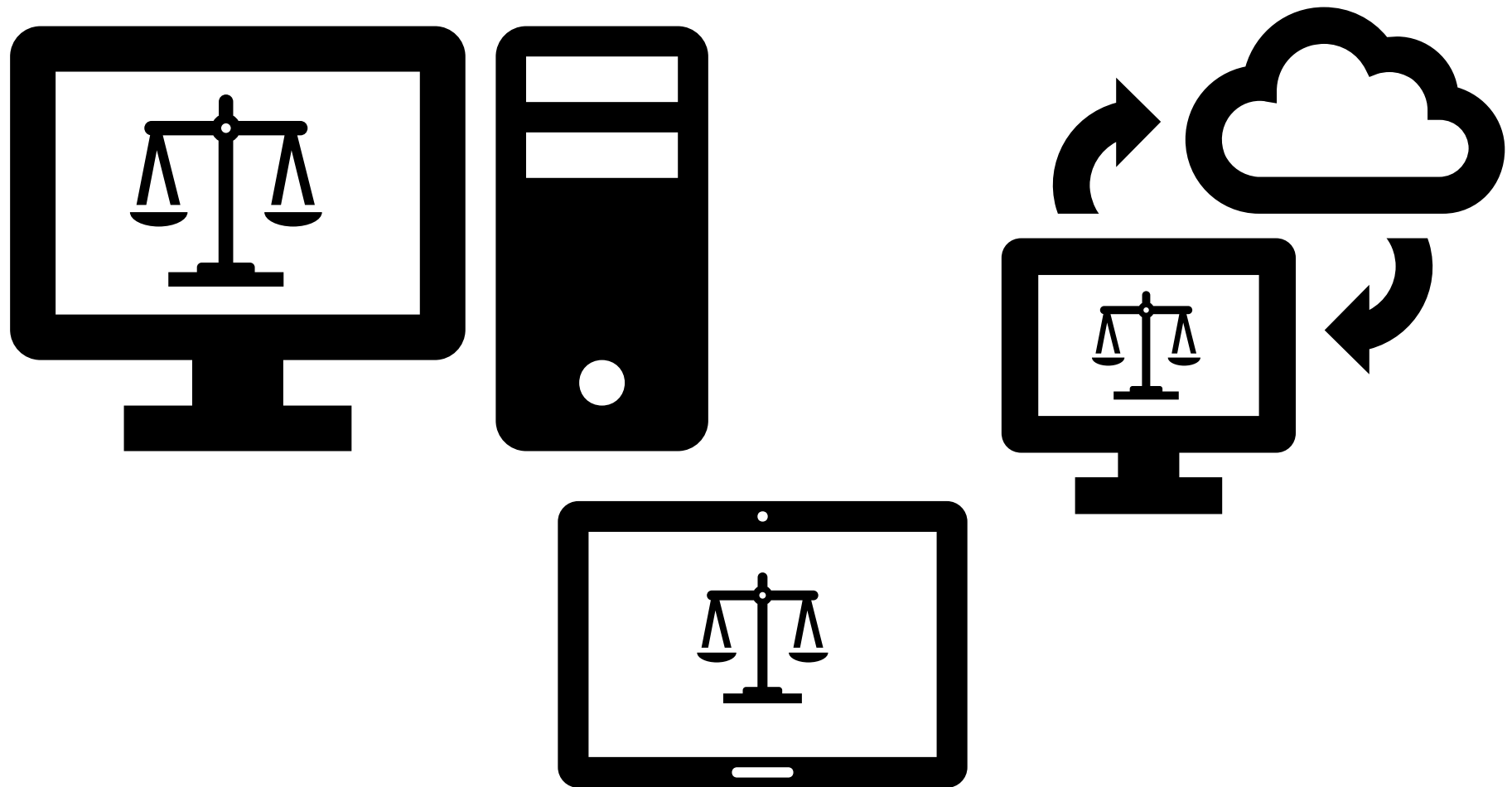


# Outline



- (1) Law and procedure.
- (2) Practicalities.
- (3) Discussion.

# (1) Law and procedure



# (1) Law and procedure



## ➤ CPR Part 39

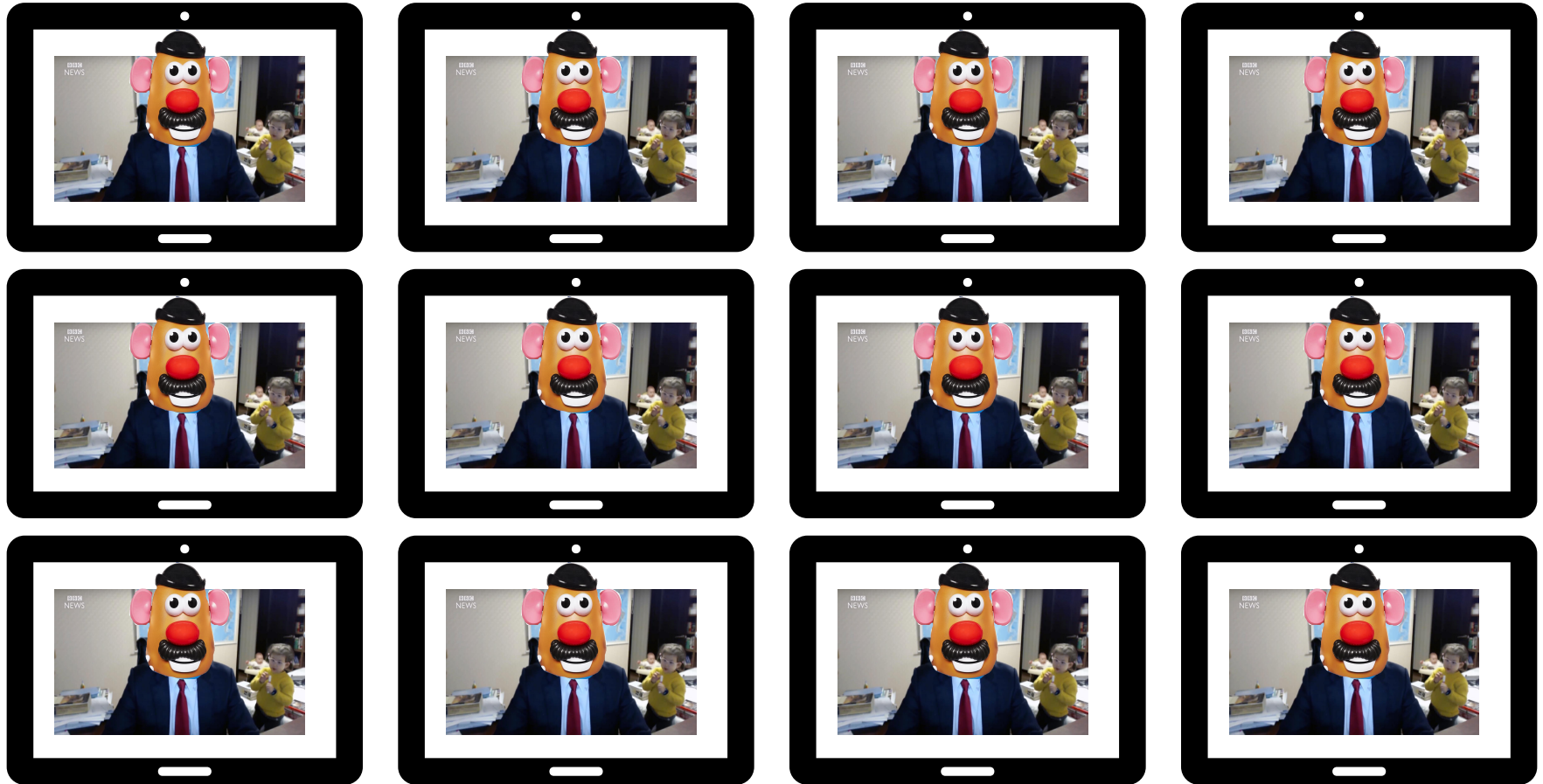
- r.39.2(1): general rule – hearing in public.
- r.39.2(2A): the court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.

# (1) Law and procedure



- **Coronavirus Act 2020.**
  - Section 55: public participation.
  
- **Courts Act 2003.**
  - Section 85A: enabling the public to see and hear proceedings.
  - Sections 85B and 85C: offences.

# (1) Law and procedure





# (1) Law and procedure



## ➤ CPR Practice Direction 51Y

- Audio and video hearings.
- Where a media representative is able to access proceedings remotely while they are taking place: public proceedings.
- In private hearings.

# (1) Law and procedure



## ➤ Example listing:

In the High Court of Justice - Business and Property Courts of  
England and Wales

### Technology and Construction Court (QBD)

Remote Hearing via Skype for Business

Before **[Judge's name]**

Wednesday 20 May 2020

At 10:30 AM

**[type of hearing, e.g. trial / application / adjudication enforcement]**

HT-**[claim number and parties]**

The hearing will be available to representatives of the media, on their request, and therefore will be a hearing conducted in public in accordance with CPR PD51Y. It will be organised and conducted using Skype for Business. Any media representative (or any other member of the public) wishing to witness the hearing will need to do so over the internet and provide an email address at which to be sent an appropriate link for access. Please contact [tcc.listing@justice.gov.uk](mailto:tcc.listing@justice.gov.uk)

# (1) Law and procedure



- CPR Practice Direction 51ZA.
  - Extensions of time.
  - CPR r.3.8: 28 days to 56 days.
  - Court take into account the impact of the Covid-19 pandemic.

# (2)Practicalities



# (2)Practicalities



- Order.
- Bundles, skeleton arguments and authorities.
- Software/vehicle for the hearing.
- Equipment and set up.
- Attendance sheets.
- Test hearing.
- Final hearing.
- Technical hitches.
- Judgment.

# (2)Practicalities



➤ Order.



# (2)Practicalities



- Order.
  - Recitals: “*taking notice of...*”
  - Remote hearing: public; if not then private: CPR r.39.2(3)(g).
  - Notification of attendance.
  - Provision of documents for the hearing.
  - The hearing:
    - Vehicle.
    - Invitations.
    - 30 minutes before.
    - Recording.
  - Reasons.

# (2)Practicalities



IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
TECHNOLOGY AND CONSTRUCTION COURT (QBD)

CLAIM NO: HT-[claim no]

BETWEEN

**[CLAIMANT]** Claimant  
and  
**[DEFENDANT]** Defendant

ORDER

BEFORE the Honourable [Judge's name] sitting at the Rolls Building, London,

UPON READING [application notice, correspondence – identify]

AND UPON the Judge taking notice of the COVID 19 (Coronavirus) pandemic and the measures being taken in response

AND UPON the Court having considered matters on the papers

AND OF THE COURT'S OWN MOTION  
IT IS ORDERED THAT:

**Remote hearing**

1. There shall be a remote hearing of [the trial/hearing/application – identify] on [date] 2020 at [time] with a time estimate of [hours] for the hearing (this time may be varied at short notice to accommodate the listing requirements of the court).

**THIS HEARING SHALL TAKE PLACE BY REMOTE HEARING.**

2. If and to the extent that such hearing cannot take place in public, then the hearing is to take place in private pursuant to CPR 39.2(3)(g).

**Notification of attendance**

3. By no later than 10:00am on [at least 1 clear day before hearing] 2020, each party must file by email to the Judge's clerk the identity of each person attending the hearing, the capacity in which they will attend, their email and telephone contact details.

**Provision of documents for the hearing**

4. The parties shall co-operate in ensuring that all documents necessary for the Court to determine the application or trial are made available in electronic form in good time before the hearing.

5. The Claimant shall serve and file an indexed and paginated electronic bundle comprising all relevant documents, including pleadings, statements, reports and other material by 4.30pm on [at least 3 clear days before hearing] 2020.

6. Electronic bundles should contain only documents that are essential to the remote hearing. Please note that large electronic files can be slow to transmit and unwieldy to use.

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7. Electronic bundles can be prepared in .pdf or another format and should facilitate electronic annotation. Where possible, the electronic bundles should be sent to the court by link to an online data room or delivered to the court on a USB stick. If that is not possible, they must be filed through CE-file or sent by email to the Judge's clerk.
8. Any skeleton arguments should be prepared and sent to the Judge's clerk by email by 4.30pm on [3 clear days before the hearing] 2020.
9. Any authorities relied upon (an agreed bundle if possible) should be provided by electronic bundle to the judge's clerk and to all other representatives and parties by 4.30pm on 28 April 2020.
- The hearing**
10. The vehicle for the remote hearing shall be Microsoft Teams (formerly known as Skype for Business).
11. Invitations to join the meeting will be sent by email to all persons who have notified the Court as attending the remote hearing. Any person who has so notified the Court but not received an invitation to the hearing by 2.00pm on [the last business day before the hearing] May 2020 should contact the Judge's clerk or listings.
12. Thirty (30) minutes before the hearing, the Claimant's legal representative will sign in and all attendees are obliged to attempt to sign in shortly thereafter, so that any issues with the connection can be addressed before the hearing is due to begin. Issues should be raised with the Judge's clerk.
13. The hearing will be recorded by the Judge's clerk. Although the hearing is being conducted remotely, the hearing remains a court hearing. The usual rules and formalities continue to apply. In particular, it is not permitted for any other party to record these proceedings, and breach of this rule amounts to a contempt of court.

## Liberty to apply

14. The parties have permission to apply to set aside or vary these directions on two (2) working days' written notice to the other.

## REASONS

- (1) I have considered the papers in this matter and can see no reason why the application cannot fairly be disposed of by way of a remote hearing.
- (2) A remote hearing is, in this case, necessary for a hearing to take place at all; and it is in the interests of justice that the matter be disposed of on the date listed, rather than be adjourned.
- (3) However, remote hearings bring with them added complexity, in terms of:
- (i) Ensuring the presence of all relevant parties; and
- (ii) Ensuring that all material documents are before the Court in a manner that all parties can easily identify and reference.

The order seeks to anticipate and deal with these issues.



# (2)Practicalities



- Bundles, skeletons, authorities.



# (2)Practicalities

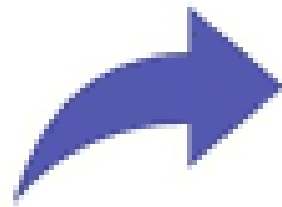


- Bundles, skeletons, authorities.
  - Bundles:
    - Electronic. Hard copies also?
    - PDF: bundle size, volumes, index, pagination, bookmarks, software.
    - Document transfers – to the parties and the Court.
  - Skeletons:
    - May be more detailed than an in-person hearing.
  - Authorities.
    - Agreed/joint authorities' bundle.

# (2)Practicalities



- Software/vehicle for the hearing.



# (2)Practicalities



- Software/vehicle for the hearing.
  - Skype for business.
    - Notwithstanding that MS Teams may be cited in the Order.
    - Skype account not required to attend the hearing.
    - Video and audio settings: prior to the hearing.
    - Microphone and video: during the hearing.
  - Zoom:
    - Occasionally used.

# (2) Practicalities



## ➤ Equipment and set-up.



# (2)Practicalities



- Equipment and set-up.
  - Essentials:
    - Bandwidth.
    - Webcam (if the advocate).
    - Microphone.
    - As quiet a location as possible.
    - Phone.
  - Preferable:
    - Two (or more) screens.
    - Laptop/tablet.

# (2)Practicalities



- Attendance sheets.



# (2)Practicalities



## ➤ Attendance sheets.

Remote Hearing Attendance Form				
Case No				
Case Name				
Claimant				
Defendant				
Hearing date and time				
Party filing this document				
<b>ALL PERSONS ATTENDING ON BEHALF OF THIS PARTY</b>				
Name	Email	Direct phone	Capacity attending	Speaking (Y/N)



# (2)Practicalities



- Test hearing.



# (2)Practicalities



- Test hearing.
  - Organised by the Judge's Clerk.
  - No Judge in attendance.
  - Logistical: checking the advocates can be seen and heard.
  - Explanation of the Court's preferences.
    - Advocates: microphones off when not speaking; video on.
    - Solicitors and client: microphones and video off.
  - Explanation of the process of the remote hearing.
  - Arrive early.
  - Notification of expected additional attendees (reporters).

# (2)Practicalities



- Final hearing.



# (2)Practicalities



## ➤ Final hearing.

- Arrive early. Dress appropriately.
- Judge's Clerk:
  - Checks advocates can be seen and heard.
  - Checks the participants can see and hear the Clerk and advocates.
  - Checks all other participants muted and no video.
  - Invites the Judge into the hearing.
  - Calls on the case.
  - States: recorded by the Court Clerk; no other recording.

# (2)Practicalities



## ➤ Final hearing.

- Judge:
  - Explains the process of remote hearing.
  - If connection slow: may ask to turn off video.
  - If connection drops: re-join by video, failing which by telephone.
  - If not looking at the camera, still listening to the submissions.
  - Preferences: e.g. muting of microphones when not speaking.
  - Asks each person attending on behalf of a party to identify.
  - States what e-bundles open and what the Court has read.
  - States the order in which submissions will be received.
  - States that Counsel may remain seated.
  - Invites Counsel to give submissions.

# (2)Practicalities



- Final hearing.
  - ‘Handing up’ documents.
  - Witnesses.
  - Stenographers and e-bundle operators.
  - Taking instructions:
    - Needs thought in advance.
    - Instant message group.

# (2)Practicalities



- Final hearing.
  - Be self-aware: you may be on full screen...



# (2)Practicalities



## ➤ Technical hitches.





# (2)Practicalities



## ➤ Technical hitches.

- If connection slow: ask to turn off video.
- If dropped from the hearing: attempt to re-join by video, failing which by telephone.
- Don't just talk more loudly, hoping it's fine...

# (2)Practicalities



## ➤ Judgment.

- Ex tempore.
  - Either immediately or after a short adjournment.
- Reserved.
  - Hand down under the COVID-19 protocol.
  - I.e. handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII.

# (3) Discussion



# (3) Discussion



# (3) Discussion



- Tremendous proactivity, industry and achievement of HMCTS, TCC and Court staff.
- Many positives.
- Limitations?
- Live evidence?
- What next?

# (3) Next steps/discussion

## ➤ Further reading:

- BPC remote hearings protocol: Revised 20 March 2020.
  - <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>
- ICCA principles for remote advocacy; and Appendix 1.
  - <https://www.icca.ac.uk/wp-content/uploads/2020/04/Principles-for-Remote-Advocacy-1.pdf>
- COMBAR guide: 12 May 2020
  - <https://www.combar.com/wp-content/uploads/2020/05/Combar-Guidance-Note-on-Remote-Hearings-12-May-2020.pdf>
- The Lord Chief: 13 May 2020.

