

Remote hearings in the English courts – Learning points and pitfalls to avoid

02 April 2020

We have recently successfully represented a client at a 3-day remote hearing relating to an application for specific disclosure. In line with the recent guidance from the Commercial Court, the hearing was conducted via Skype for Business with each party (and also the Judge) dialling in to the hearing from their home. On the back of this experience, we are sharing our top tips and learning points:

1. Think ahead

For many of those involved (including counsel), this will be the first time grappling with the new technology, so the first step is to make sure you and your counsel team have the necessary equipment. For example, we found that using a headset and speaking into the microphone significantly increased the sound quality and speaking clarity of our counsel team.

2. Test, and then test again

You should ensure you conduct a test (at least within your team) by setting up your own "mock" Skype hearing so that any technical issues can be identified and addressed well ahead. As we discovered, these can range from issues connecting from a MacBook computer, to child restrictions preventing access to Skype, to poor broadband speed impacting on the sound and video quality. After you receive the "official" link from the Court to the Skype hearing room, it is a good idea to test that too.

3. Communicating during the hearing (the end of Post-It notes?)

Post-It notes were replaced by the use of an online platform for group chats, which enabled us to communicate with each other and (separately) with counsel during the hearing. This was an efficient way for counsel to get instructions from the team, and for us to discuss and then pass on any additional comments, both as our counsel was making submissions and during the other side's submissions. The feedback from counsel was that this worked even better than the old tried-and-tested Post-It notes.

4. Communicating pre- and post-hearing and during breaks

We dealt with this by having a separate conference line that we kept open from the morning to the end of the Court day. The line was muted whilst the hearing was ongoing, but it enabled us to talk to each other (and counsel) before the hearing, during breaks (including the 5-minute ones), and for the usual end-of-day debrief. We used a web-based conferencing service for this, but a traditional telephone dial-in would also work, provided it will stay "open" all day and can be quickly muted as needed.

5. Communicating with the Court

We liaised with the Judge's clerk, mostly via email, in relation to the logistics for the hearing and to provide additional documents to the Judge during the course of the hearing. We had a great experience and the clerk was very responsive.

6. Transcribers

Arranging for a third-party provider to record and transcribe the hearing is likely to be a "must-do" for most remote hearings, as the Court is unlikely to be able to put in place the facilities to have the hearing recorded remotely.

7. E-Bundles

Assuming the Judge will have directed that electronic bundles should be produced, it is worthwhile thinking about a solution that will allow the Judge to flick between documents quickly. In our case, the other side arranged for the e-bundle to be hosted on an online platform; this worked ok, but the downside was that the documents sometimes took a while to load.

8. Skype hearing etiquette

Everyone apart from the counsel speaking (and the Judge) was on mute during the hearing. Only the parties' respective senior counsels and the Judge had their video on. An advantage of having the remote video over the traditional Court setting is that we were able to follow very closely the reactions not only of the Judge but also the other side's counsel.

If you would like to find out more about our experience with remote hearings, please get in touch with one of the contacts below.

Contacts



Elaine Penrose
Partner, London
T +44 20 7296 2713
elaine.penrose@hoganlovells.com



David Burgess
Associate, London
T +44 20 7296 5755
david.burgess@hoganlovells.com



Alex Riposi
Associate, London
T +44 20 7296 5682
alex.riposi@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com. Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.
© Hogan Lovells 2020. All rights reserved.