

INFORMATION SHEET

# Synopsis: The Future of Remote Hearings

Roundtable Discussion, 13th May 2022

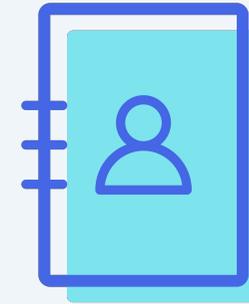
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## Introduction

Following the Covid-19 crisis, the way in which legal and regulatory proceedings were conducted had to be adapted to comply with the Government guidance on isolation rules in England and Wales. With those rules no longer in force, a collection of in-house lawyers and compliance professionals from regulatory bodies came together for a roundtable to discuss the opportunities, challenges, insights and recommendations which emerged from conducting remote hearings throughout this period. This paper serves to summarise this discussion and provide some insights for future directions.



### Key Points:

- Overall, there was a strong consensus that any decision to run a hearing remotely should be done so on a case-by-case basis.
- A plethora of contextual factors, including accessibility, cost, access to justice, witness vulnerability (and a related desire for anonymity), played into this decision.
- However, there was a sense of ambivalence upon considering whether remote hearings would find some permanence within the fabric of the regulatory landscape.



## Core discussion points

### 1. Access to Justice

One of the core issues for discussion was access to justice and how remote hearings can aid this. Remote hearings can make legal representation easier and more cost effective for registrants as legal representatives would not have to travel and therefore incur costs and expenses for that travel time.



### 2. The Role of Technology

A key component within the debate over remote hearings continues to be the role of technology; in a remote hearing, parties are able to access documentation electronically, obviating the need for travel or the obvious printing costs. Cost savings and efficiencies were cited as the main motivators for seeking to continue with remote or hybrid hearings. However, negative points to consider are that not all registrants or witnesses have access to the requisite technological means.



## Core discussion points

### 3. Witness Veracity/Unconscious Bias

Witness veracity remains a concern in a remote setting. The loss of social data (body language, demeanour, and live reactions from a witness - save for specific technology which is designed to focus on one participant at a time in the hearing) raises questions of inequity and is inexorably linked to the access to justice point; however, some found that remote hearings led to better, fairer decisions by removing unconscious bias.

### 4. Vulnerable Participants

Some participants felt that in-person hearings, in many scenarios, benefit some more vulnerable participants, whose preference would be in-person. Conversely, certain complainants (for example, in sexual misconduct cases) with a natural desire for anonymity, could potentially benefit from hybrid or remote hearings. The capacity to run a hearing without a complainant on screen could be facilitated by tech in a way that would be much more of a challenge in person.

The need for special measures for vulnerable witnesses was another key consideration when making the decision on the format of the hearing. This led to the conclusion that context and the specific factors of each hearing needs to be part of the decision making process when deciding format.



## Core discussion points

### 5. Documentation

It was generally agreed that the pandemic served as a catalyst for using electronic bundling solutions or “softcopy”, with many seeking bundling solutions to align with remote ways of working. Overall, managing and preparing documents electronically (for both remote and in person hearings) was deemed to be positive and much less of a challenge than was initially anticipated.

However, some participants struggled with the technical aspects, which could simply be seen as a transitional phase as we migrate to fully digital ways of working.



### 6. Talent Strategy and Remote Hearings

Talent strategy provoked some interesting discussion. Everyone agreed that hybrid and/or remote working was a positive shift, and flexibility was now part of employers’ strategies going forward. Hybrid practices are favoured, with employees tending to come together in person for strategy and policy meetings, but otherwise, working very effectively from home.

Participants mentioned a positive impact overall, crediting this to greater mobility and work/life balance. Furthermore, travelling to take a witness statement has become a “thing of the past”, with technology facilitating video conferencing from any location. Substantial cost savings have been reported on an anecdotal level; however, it was felt that data on time efficiency would be needed to inform future strategy.



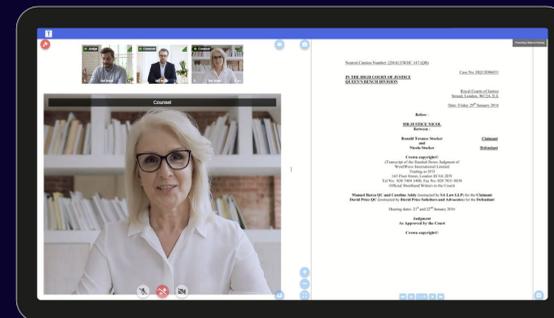
## Core discussion points

### 7. Cybersecurity

Cybersecurity remains a prominent concern for regulators, which inadvertently impacts on decision making around chosen technology. Conversely, regulators also recognise that maintaining hard copy documents - combined with increased home working - brings its own set of security and data protection concerns, with employees printing off sensitive and confidential documents from home. Most participants were actively monitoring the security situation and looked forward to more bespoke solutions starting to become available.

### 8. Sustainability

Sustainability has become less of a buzzword and very much a driving force within all regulatory bodies, with a universal push towards greener ways of working, running in symbiosis with the momentum behind remote working, remote hearings, and electronic management of documentation.



## Conclusion

- There was a clear focus on the need for regulators' autonomy when deciding on how a hearing is conducted. There was consensus that this decision should be led by the participants wishes, and specific consideration should be given to the contextual factors which may inform why a remote, hybrid or in-person hearing is necessary or preferred on a case-by-case basis.
  - It was noted that, for particularly vulnerable participants, the option to conduct an in-person hearing may be in the best interest of the parties.
- Overall, the group were convinced that by offering remote and/or hybrid hearings this improved access to justice issues for parties to the proceedings, and this also caters particularly well to matters with anonymity concerns.
  - Conversely, it was raised that there are some limitations of conducting remote hearings where witness testimony and credibility are concerned, specifically surrounding the inability to effectively analyse body language, demeanour and live reactions of witnesses, although there were arguments to the opposite effect stating that this in fact mitigates against the risk of unconscious bias.

## Conclusion

- Additionally, the shift towards digital documentation benefits all hearings, regardless of whether they are in-person or fully remote, and is something which, despite a small level of resistance, should be pursued and encouraged to evolve towards full digitality.
  - Talent strategy was a strong motivator in favouring remote and hybrid working practices. The group was in agreement that flexibility and autonomy were beneficial to all parties with regards to work/life balance, cost and efficiency. That said, more data regarding efficiency is needed to better inform working arrangement strategy.
- The issue of climate change invoked strong support for remote hearings, citing international travel and printing as key pollutants of in-person hearings.
  - Finally, cybersecurity remains a prominent issue, and applies whether the hearing is to be conducted remotely or in-person. Therefore, there are many benefits to providing the option for parties to choose how their hearings are to be conducted, and specific contextual factors should be considered to inform why the parties may opt for a remote, hybrid or in-person hearing.