



THE FACULTY OFFICE

Remote Hearings Proposal Briefing Paper

Introduction

In response to the Covid-19 pandemic the UK Government imposed a series of restrictions designed to prevent further spread of the disease. These included but were not limited to:

- Prohibition on non-essential use of public transport
- Social distancing requirements
- Shielding advice and requirements etc.

These restrictions have impacted the ability of the Court of Faculties to hold disciplinary hearings in person, although no hearings in fact have been due to take place during the period.

It is important that the Court of Faculties continues to be able to hold disciplinary hearings in a way that is compliant with all relevant law on health and safety and government guidance. It is because of the need to allow disciplinary hearings to be conducted when movement and meetings are restricted which has prompted the Faculty Office to consider the proposed amendments discussed in this paper.

What other tribunals have done¹

Both criminal and civil courts have been able to conduct hearings or parts of hearings remotely using the powers given to them through statute and practice directions.

The Coronavirus Act 2020 further extended the use of video and audio technology in criminal trials [see ss.53-57]. Whilst it does not extend to allowing a defendant to give evidence remotely, the courts have used their inherent jurisdiction to allow a defendant to do so.

The Court of Appeal holds most appeal hearings with defendants linked by video from the prison in which they are serving their sentence. Although they have had the power to do so since 2007, by an amendment to s.31A(2) of the Criminal Appeal Act 1968, it has only made any substantial use of its power to do so over the last five years.

Since the Coronavirus Act 2020 came into force, one of the crucial requirements for criminal trials is that all those participating in the hearing can see each other. Zoom technology is one of the platforms capable of providing that facility. Any anxiety about the security of this technology has been shown to be illusory. Public access to criminal proceedings has to be maintained.

¹ Source: correspondence with HHJ Anthony Leonard 13.06.2020

Civil trials can be conducted remotely and can be held in private where it is not possible to provide access to the public, so long as it the proceedings are recorded.

Advice from HHJ Anthony Leonard QC

Upon reviewing the Notaries (Conduct & Discipline) Rules 2015 (as amended) ("the Rules") His Honour Judge Anthony Leonard, the Commissary of the Court of Faculties, advised that the present Rules did not provide for hearings to be held remotely except through the inherent powers of the Commissary. Exercise of those powers to hold a remote hearing would be extremely unlikely without the consent of all parties and provision for the hearing to be made public.

Proposal

The Faculty Office considers that a reliance on the inherent powers of the Commissary to be a temporary fix. Instead the Faculty Office proposes to make amendments to the Rules enabling the Court of Faculties to hold remote hearings both now, during the current pandemic, and into the future to cater for other occasions where physical attendance cannot be obtained. It is the intention of the Faculty Office that physical hearings are better, but if they cannot take place for whatever reason, or if one or more parties are precluded from being present, then participation by remote means should be facilitated.

The proposed amendment to the Rules is annexed.

Annex

Rule 18A

1. Anyone who is required or entitled to be present at a hearing of a complaint or application under Rule 18.9 at a venue the Commissary may direct shall be deemed to be present at the hearing if he is connected by live video link provided that he has applied for permission to do so not less than 21 days before the hearing and the Commissary has granted him permission to do so before the hearing commences.
2. Those required or entitled to be present includes, but is not restricted to the Respondent, the Nominated Notary, any party representing or assisting the Respondent or Nominated Notary, and any witness either party calls to give evidence. Any costs incurred by the Registrar in establishing the live video link shall be paid by the party who has been granted permission to be present and are not otherwise recoverable.
3. The Registrar and their assistants, and any member of the Court may also apply to the Commissary to be present by live video link.
4. A live video link may be used to receive the evidence of any witness as if the witness was present at the venue and that witness shall be subject to the Court's jurisdiction as if they were present.
5. The platform for the live video link will be that specified by the Registrar and must allow the party on the link to see and be seen and to hear clearly and be clearly heard by every member of the Court and any other party to the proceedings.
6. When the Registrar gives public notice of proceedings that are to be public but where physical attendance is not to be allowed, the Registrar shall give information on how any member of the public can view the proceedings. Any member of the public must be informed that during the proceedings they must:
 - a. Mute their microphone and prevent their picture being seen by the court;
 - b. Cannot take part in the proceedings but only observe; and
 - c. Must not record the proceedings; to do so would amount to a contempt of Court.
7. The Commissary may grant an application to attend by video link made less than 21 days before the hearing if the applicant can satisfy the Commissary that there are good and substantial grounds for the failure to make the application within the specified time.
8. The Commissary may also acting upon the Court's own initiative determine that proceedings will take place by video link if there is some serious need and issue directions accordingly.