

COURT OF JUDICATURE OF NORTHERN IRELAND

INTERIM PRACTICE DIRECTION 01/2020 [REV 1]

REMOTE HEARINGS

Preface

This is the first revision of Practice Direction 01/2020, which came into operation on 29 May 2020. This revised version is effective from 29 January, 2021. The changes are found at:

- Paragraph 4.11
- Paragraph 4.14
- Paragraph 4.15
- Appendix 3

SIGNED: 

SIR DECLAN MORGAN

LORD CHIEF JUSTICE OF NORTHERN IRELAND

DATED: 22 JANUARY 2021

1. Definition and Scope

- 1.1 A remote hearing is one in which judges, parties, legal representatives and/or witnesses ("*participants*") do not gather physically at the same location and normally involves some species of video link facility or telephonic mechanism. This is not intended to be an exhaustive definition and the term "remote hearing" will be construed and applied liberally, flexibly and responsively.

2. Overarching Principles

- 2.1 Every remote hearing will be planned and conducted in a manner designed to secure every party's right to a fair hearing.
- 2.2 The planning and conduct of every remote hearing will replicate, insofar as possible and with all modifications deemed appropriate by the court, the conventional form of hearing in the court or court division in question.

- 2.3 The duties owed to the court by every party, legal representative and other participants will apply fully in the planning and conduct of every remote hearing.
- 2.4 Every remote location attended by the participants in a remote hearing forms part and is an extension of the court. All participants must conduct themselves accordingly.
- 2.5 Scrupulous compliance with all regulatory and procedural requirements, all provisions of this Protocol, all pre-hearing orders and directions and all directions of the presiding judge is essential.
- 2.6 The overriding objective in Order 1, Rule 1A of the Rules of the Court of Judicature applies to the planning and conduct of every remote hearing. Thus the court's duty to deal with every case justly will include, so far as practicable:
- (a) Ensuring that the parties are on an equal footing;
 - (b) Saving expense;
 - (c) Dealing with the case in ways which are proportionate to –
 - (i) The amount of money involved;
 - (ii) The importance of the case;
 - (iii) The complexity of the issues; and
 - (iv) The financial position of each party.
 - (d) Ensuring that it is dealt with expeditiously and fairly; and
 - (e) Allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
- 2.7 The ability of the court to give full effect to the overriding objective may sometimes be somewhat impaired having regard to *inter alia* limited human, logistical and technological support and facilities. This does not detract from Overarching Principle 2.1 above.
- 2.8 The Rules of the Court of Judicature apply fully to every remote hearing.

3. Procedures

- 3.1 Any relevant Practice Direction ("PD") applies fully to every remote hearing, subject to such modifications as may be specified in this Protocol or in any order or direction of the court whether upon the application of any party or upon the court's own motion.
- 3.2 Thus PD6/2011 (as amended) applies fully to every remote hearing in the Court of Appeal (Civil and Criminal Divisions), Chancery Division, Queen's Bench Division and Family Division other than cases which are managed in the Commercial Hub in accordance with PD 1/2019 (as amended), subject to any modification specified herein or in any order or direction of the court.
- 3.3 The court does not have the capacity or resources to make printed versions of any document sent electronically and no such document shall be printed for the judge/s or for any other purpose, with the exception of any document specifically authorised by this Protocol or by order or direction of the court to be provided electronically.
- 3.4 Hearing bundles and authorities bundles must, therefore, continue to be delivered physically to the court, in appropriate numbers, in the usual way.
- 3.5 Every skeleton argument, in a form compliant with paragraphs 8 and 9 of PD6/2011 (as amended), to include the requisite schedules, will be sent electronically to the court.
- 3.6 Parties and legal representatives are reminded that, in accordance with PD6/2011 (as amended):
 - (a) The skeleton argument of the plaintiff/applicant/appellant must be provided at least 13 working days before the hearing date.
 - (b) The replying skeleton argument of other parties must be provided at least 8 working days before the said date.
 - (c) Hearing bundles and authorities bundles must be provided, in appropriate numbers, *i.e.* 4 in Court of Appeal and Divisional Court cases, at least 7 working days before the said date.
 - (d) The provision of any additional skeleton argument or bundle requires the prior leave of the court.

- (e) The proposition of law which every party seeks to draw from a core authority will be clearly stated in the skeleton argument.
 - (f) The relevant passages in every authority shall be clearly highlighted, normally with yellow highlighting.
- 3.7 **Criminal cases.** The provisions of PD6/2011 (as amended) relating specifically to criminal appeals apply fully.
- 3.8 **Extradition appeals.** The provisions of PD6/2011 (as amended) relating specifically to extradition appeals apply fully.

4. Technical and Other Matters

- 4.1 The court will provide parties and legal representatives with the necessary technical information and details relating to a forthcoming remote hearing in advance.
- 4.2 Every proposed remote hearing participant (using the technology for the first time) will preferably test the relevant technical mechanism where feasible in advance of the scheduled remote hearing date and will advise the court of any technical or kindred problems by email or telephone forthwith.
- 4.3 The location for the conduct of every remote hearing will be selected with a view to ensuring the recognition and promotion of the integrity of the court, the formality and solemnity of court proceedings and the administration of justice generally. For legal representatives suitable locations would include a solicitor's office, a private study or a private room in The Bar Library.
- 4.4 The judge/s and counsel will be robed appropriately in all Court of Appeal (Criminal) cases and bail matters unless the exigencies of the situation render this not feasible, in which case business attire shall apply.
- 4.5 Subject to paragraph 4.4, business attire is required of all legal practitioners.
- 4.6 For all other participants, either business attire or other attire suitable for court proceedings is required.
- 4.7 The names and contact particulars of every proposed participant will be provided (a) in every completed Business Continuity Form ("BCF") and (b) at the conclusion of each party's skeleton argument. This may be

amended in advance of the remote hearing with the leave of the court and on notice to every other party.

- 4.8 Where practicable, at the beginning of every remote hearing legal representatives announcing their appearance will also provide particulars of every other person attending at the remote location.
- 4.9 Where practicable, the relevant legal representative, or party, will also inform the court of (a) the arrival of any person not present at the beginning of the remote hearing and (b) the proposed departure of any participant from the remote hearing prior to its conclusion.
- 4.10 The “presence” of every participant in a remote hearing entails physical attendance at the relevant distant location/s and visible participation from beginning to end unless otherwise authorised by the presiding judge.
- 4.11 Earphones or headphones with a microphone may be worn by participants and must be worn by every person addressing the court directly in order to enhance the quality of communication.
- 4.12 Microphones must be muted when another person is speaking.
- 4.13 At the outset of every remote hearing the presiding judge will normally summarise orally the basic protocol to be observed.
- 4.14 Bearing in mind the Overarching Principles (above), **in all appeals to the Court of Appeal** and in any other case where directed by the court, the conventional sequence of oral presentations to the court shall, unless otherwise directed in advance or by the presiding judge, be modified to operate in tandem with the statement of issues and each party’s core propositions and speaking note (see **Appendix 3**), as follows:
 - i. Each party shall provide a speaking note, as per Appendix 3. The plaintiff’s/appellant’s representative will address the court first, with minimal judicial intervention.
 - ii. The court may then retire.
 - iii. Judicial questions will then be addressed.
 - iv. The same sequence will be replicated regarding the defendant’s/respondent’s representative.
 - v. The court will consider whether to permit a brief reply on behalf of the plaintiff/appellant
- 4.15 Where a party or legal representative has a compelling reason to make an intervention, permission should be sought by raising one’s hand or

other discreet mechanism, to include technical mechanisms such as "Reactions" or "Chat".

- 4.16 Each participant is at liberty to use the mechanisms of "gallery view" and "speaker view" or comparable mechanisms.
- 4.17 All participants will address the court seated, unless otherwise directed by the court.
- 4.18 Where the court considers it appropriate to do so, the affirmation/oath will be administered from the remote court location.
- 4.19 As in the context of conventional hearings, permission to confer privately may be requested of the presiding judge by a participant at any stage. In such event the presiding judge will make appropriate directions to ensure the privacy of such communications.
- 4.20 In courts of record the only permanent recording of the proceedings will be that made by the court. Thus no-one is permitted to make any video or audio or other recording or image whatsoever of any part of the proceedings. This absolute prohibition includes a 'screenshot' or 'screengrab' and all like or related mechanisms.
- 4.21 Any violation of the foregoing absolute prohibition is likely to be considered a contempt of the court in question with possible resulting imprisonment or other penalty and/or a criminal offence under The Coronavirus Act 2020.
- 4.22 The court audio recording of remote hearings can be bespoke, procured and utilised in accordance with existing arrangements.
- 4.23 The court will take reasonable steps to ensure that the hearing is of an open and public character, including by seeking to give notice to the media and providing the option of personal or remote attendance.
- 4.24 The customary arrangements and requirements relating to the confidentiality of family and children's cases shall apply unless otherwise directed.
- 4.25 Further details of the protocol which will normally apply are contained in Appendix 1 hereto and the standard Notice of Hearing at Appendix 2.

5. Commencement and Review

- 5.1 Certain elements of this Interim Practice Direction have already been in practical operation in some cases recently.
- 5.2 The formal commencement date of this Practice Direction is 29th May 2020. It shall apply to every remote hearing thereafter. [AND SEE PREFACE ABOVE]
- 5.3 The content and operation of this Interim Practice Direction shall be reviewed from time to time taking into account *inter alia* any comments and suggestions by parties, legal representatives, professional bodies and others.

Sir Declan Morgan
Lord Chief Justice of Northern Ireland

Dated this 29 day of May 2020

APPENDIX 1

[1] It must be remembered that even when business is conducted remotely by telephone or live video link it is still a court hearing and the usual rules about rights of audience continue to apply.

- i. Thus if counsel appears with an instructing solicitor it is important that the usual proprieties are observed and that the court is ordinarily only addressed by counsel unless otherwise invited by the judge.
- ii. As regards court attire and formalities the judges and legal representatives should dress in accordance with the directions set out in paragraphs 4.4, 4.5 & 4.6 of PD 01/2020 unless the court directs otherwise in which case the direction should be notified to the participants well in advance of the hearing.
- iii. The language and forms of address used should continue to be that of the court – including the manner of addressing the bench and referring to the other party's representatives, as should any remarks or asides. It may occasionally be appropriate to remind participants of this.
- iv. The oath/affirmation should be administered remotely in the hearing of all participants by the clerk who will have received instructions on how that should be done.
- v. The court should be afforded the courtesy of being informed what method is being used to obtain instructions from the client during the course of the remote hearing – WhatsApp closed groups or Facebook Messenger are among the means which can be employed for these purposes. These should be disclosed at the outset.
- vi. While it will be important to carry out the business in the hearing efficiently and in a reasonable timeframe it should also be borne in mind – particularly in hearings of longer duration – that it may be appropriate to build in regular breaks in the proceedings especially where non-lawyers are active participants.

When the hearing commences

[2] The presiding judge shall at the commencement of the hearing convene, formally, the business of the hearing. The judge will wish to address, *inter alia*, the following issues in any initial comments:

- Confirm all present are those expected to be so (as on the list) and no unauthorised person is on the call;
- Confirm all can hear you but remind them to have their devices on mute at all times until invited by you to speak;

- Confirm all representatives are in a quiet and private space;
- Confirm all representatives are fully instructed;
- Confirm what the specific scope and purpose of the convened hearing is (if there are issues not previously adverted to which the judge wishes to have addressed during the hearing the judge should state these clearly at this point);
- Remind all that it is an offence under the Coronavirus Act 2020 to make any unauthorised recording of the proceedings and that no screenshots, screengrabs or other images should be taken of what is on the screen during the hearing;
- Remind all that only representatives should speak unless invited to by the court;
- Remind all that the remote hearing is still a hearing in court and that all usual rules apply including those relating to contempt of court;
- Make it clear in a hybrid remote hearing where some are physically before the court that no hard copy documentation will be accepted by the court if a party attempts to hand it in during the course of the hearing¹;
- Indicate that late submission of documents without some extenuating reason may mean they will not be considered; and,
- Confirm the ground rules for the hearing including:
 1. No one to speak when someone else is speaking – no interruptions – and microphones should be on mute when a participant is not speaking (however ways are currently being explored to facilitate a legitimate intervention on the part of counsel or a litigant in person during the course of another’s submissions);
 2. Only start speaking when invited to by the judge.
 3. Documents referred to should be identified by title and then page/tab number, where appropriate.
 4. While it is impossible to verify this beyond doubt the judge should also ask the parties who will give evidence in the proceedings to confirm that they are alone in the room from which they are giving evidence and that there is

¹ Legal practitioners and court users are encouraged to exchange all papers/documents and provide them to the court in advance of the hearing. If you are handling papers you should follow the hygiene measures recommended by the PHA including frequent hand washing and the use of hand sanitiser (which is available in all courts and to all court users).

no one at hand physically or by some electronic means to prompt them with the answers that they give under examination.

When the hearing concludes

[3] At the conclusion of the remote hearing the presiding judge will ordinarily:

- Confirm with representatives that all issues have been covered;
- Confirm there are no matters not yet covered;
- Pronounce the full particulars of the decision/order of the court
- Alternatively, inform the parties/legal (or other) representatives of the timetable of any reserved or more fully reasoned decision or order.
- Formally direct that the remote hearing is concluded and require all participants to disconnect forthwith.

Appendix 2

NOTICE OF REMOTE HEARING

Dear

Re: (Title of Case)

TAKE NOTICE that the court has determined that a [preliminary/case management review/substantive] hearing will take place by **SIGHTLINK** (*insert number*)

Your hearing details

The hearing will take place on

Date:

Time:

You must be ready to join Sightlink at the time of the hearing and are advised to do so at least 10 minutes in advance.

What you need to do now

You must read the attached guidance on how to connect to

SIGHTLINK ____ (*Insert number*)

You must also familiarise yourself fully with the **Court of Judicature Interim Practice Direction 01/2020 [REV 1] – Remote Hearings**

Tell us:

- The names of all the legal representatives who will be joining the hearing, with email and telephone contact details
- Whether you need an interpreter, or other support to join via Sightlink

If you intend to call any witnesses or are proposing the remote attendance of any other person (e.g. an apprentice solicitor, an employed secretary, the relative of a litigant etc.); you need to:

- Tell us their full names
- Send them the guidance on how to connect to Sightlink and PD 1/20

- Ensure they are available from the notified commencement time for the entirety of the ensuing hearing
- Notify us of the envisaged total number of remote hearing locations;
AND
- Provide any application for anonymity or other protective measure in respect of any person.

By sending all of the above information, together with any other relevant information, by email to XXX by 15.00 hours on XXX at latest.

Please include your case number and hearing date when you contact us.

Yours sincerely

«User_Print_Name»

Appendix 3

Pro-forma Case Management Direction in All Appeals to the Court of Appeal (and in any other case where directed by the court)

Without prejudice to the requirements of PD 06/2011 as amended, save as to Chronology – see [1] below – and the Remote Hearings Interim PD 01/2020 [REV 1], except as modified below:

- [1] The appellant will furnish with its skeleton argument a Schedule of [proposed] Agreed Material Facts in chronological order, its core propositions [2 pp max] and draft issues for the court's determination [2 pp max], in three separate electronic documents, by / / (being at latest 13 working days pre-hearing, as per para 10, PD 06/2011 as amended)
- [2] The respondent will do likewise with its skeleton argument, utilising the same three electronic documents, by / / (being at latest 8 working days pre-hearing, as per para 10, PD 06/2011 as amended).
- [3] The appellant's speaking note [10 pp max, unless otherwise directed] will be provided by / / at latest [not later than five working days pre-hearing].
- [4] The respondent's speaking note [10 pp max, unless otherwise directed] shall be provided by / / at latest [not later than three working days pre-hearing].
- [5] The backstop dates for all hearing and authorities bundles are // (hearing bundle/s, being at latest 13 days pre-hearing) and // (authorities bundle/s, being at latest seven days pre-hearing), as per PD 06/2011 as amended.
- [6] There shall be an agreed core authorities bundle, comprising 12 components maximum, with all material passages highlighted, to be lodged at latest seven days pre-hearing.
- [7] There shall in principle be an equal allocation of court time to the parties on the hearing date.
- [8] Having regard to current public health circumstances and requirements, the hearing of this appeal and any preliminary/ancillary listings shall be by remote mode.

