

Providing remote advocacy services

31 August 2022

What is involved

As a result of digital court reform and the recent Covid-19 pandemic more hearings are being dealt with remotely.

The decision to direct a remote hearing lies with the judge. As an advocate and officer of the court you have an important role to play in:

- assisting that decision
- helping make sure it is in the interests of your client and the effective administration of justice.

Remote hearings can impact your client's ability to participate effectively in proceedings. If they are charged with a criminal offence, or a public authority is making a decision that impacts their civil rights or obligations, then effective participation forms part of their right to a fair and public trial or hearing. This falls under Article 6 of the Human Rights Act.

Remote hearings present both benefits and risks. This depends on the type of case you are involved in, your client's needs and personal circumstances and those of other parties. For example:

- Hearings to decide some procedural matters and simple legal issues may be handled effectively remotely. However, complex matters and cases involving witness examination may not be appropriate to deal with remotely.
- People's ability to participate effectively in remote hearings may be affected by their ability to use technology and access a private, quiet space.
- People with some conditions or impairments may find it hard to participate effectively in remote hearings. For example, because they struggle to process and communicate information remotely.
- People with other conditions or impairments can benefit from remote hearings. For example, people who are physically disabled may benefit because they don't need to travel to or access court buildings.
- The relationship between parties can affect whether or not a remote hearing would be appropriate. For example, your client may want a remote hearing because they are anxious about being in court or in the same building as another party.
- Other personal circumstances, such as caring responsibilities, can also be relevant.

Your obligations

Our Code of Conduct [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] requires you to make sure that at all times the service you provide to your clients is competent and delivered in a timely manner.

You are also subject to the overriding obligation to protect and act in your client's best interests. To meet this obligation you need to:

- Make sure you fully understand your client's interests and their ability to participate effectively in remote proceedings.
- Prioritise your client's interests over your own interests in holding a remote hearing, for example, because it would save you time or money.
- Take steps to make sure a judge who is deciding whether to direct a remote hearing understands your client's interests and ensures that they are able to participate effectively in proceedings.
- Adapt your own service to your client's needs and interests, as needed, during a remote hearing.

When you provide remote advocacy services, you may also need to take steps to make sure you meet the following requirements of our Competence Statement [<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/>] :

- A2 Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law.
[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#a2>]
- B5 Undertake effective spoken and written advocacy.
[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#b5>]
- C1 Communicate clearly and effectively, orally and in writing.
[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#c1>]
- C2 Establish and maintain effective and professional relations with clients.
[<https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/#c2>]

If your client is vulnerable then you should also refer to the 'How to meet the needs of vulnerable people' section of this Advocacy Hub.

Good practice guidance for remote hearings

The Inns of Court College of Advocacy's Principles for Remote Advocacy [<https://www.icca.ac.uk/wp-content/uploads/2020/04/Principles-for-Remote-Advocacy-1.pdf>] is useful guidance developed with judges and barristers and contains the following eight principles for effective remote advocacy:

- Principle 1 – Liaise in advance
- Principle 2 – Understand the technology
- Principle 3 – Make sure all parties can be seen and heard
- Principle 4 – Know how to handle the documents
- Principle 5 – Make the best use of written argument
- Principle 6 – Be prepared, then be brief and to the point
- Principle 7 – Avoid over speaking
- Principle 8 – Maintain confidentiality

The principles are explained in more detail in the guidance.

Guidance from the judiciary

The Judicial College has produced Good Practice For Remote Hearings [<https://www.judiciary.uk/wp-content/uploads/2020/03/Good-Practice-for-Remote-Hearings-May-2020-1.pdf>] to help judges decide whether to proceed with a hearing remotely, which is cited in The Equal Treatment Bench Book [<https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/>].

You should also take steps to:

- assist the court
- protect your client's best interests
- fulfil your competence requirements

Issues a judge should consider and steps you can take

Issue: Do not assume access to technology.

Step: You should check that your client has access to the internet and appropriate technology. This can include technology to download and display or navigate electronic court bundles.

If your client doesn't have access to these things, you need to make sure the judge is aware so that appropriate arrangements can be made. The judge may expect you to make arrangements for your client in your office.

Issue: Remote hearings at home might occur alongside distractions if someone doesn't have a quiet private room. It could also inhibit evidence, such as domestic violence or coercive control situations.

Step: You should ask your client if they have any issues at home. This could inhibit the hearing of some evidence, so that you can help the judge decide if a remote hearing can proceed fairly.

If your client is reluctant to share information, you should do your best to reassure them about confidentiality.

You may be able to alert the judge, for example, by saying your client's personal circumstances mean that their evidence may be compromised by external factors, which could jeopardise the outcome of the case and mean that it wouldn't be safe to proceed remotely. Where appropriate, you should inform the other side.

Issue: Establish at the outset whether there will be any unavoidable interruptions.

Step: Common distractions, such as deliveries and caring responsibilities, can usually be managed in remote hearings and judges are encouraged to ask about them at the outset.

Where appropriate, you should discuss any distractions with your client and reassure them if they are nervous about how the judge may react.

It may be appropriate to tell the judge about known distractions or request that a break(s) be taken during the hearing. For example, where care duties need to be undertaken.

Issue: It must also be considered whether the content of evidence/questions would be appropriate for children to hear. Or someone may have withheld full detail from other adults in the household.

Step: You should identify if any evidence, or questions you plan to ask, would be inappropriate for someone in your client's house to hear.

If your client cannot be away from that person, then it may not be safe or in your client's interests for the hearing to proceed remotely.

If this is the case and the judge is not sufficiently aware, you need to raise it with them and protect your client's best interests.

In family cases, clients need to confirm if they are in a room alone and can't be overheard.

Issue: Enquire as to the needs of those appearing, so that you can work out accommodations and manage the hearing accordingly.

Technology may give rise to specific difficulties for those with sensory impairments.

Step: Our Competence Statement

[<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement>] requires you to identify and take reasonable steps to meet the particular service needs of all clients, including those in vulnerable circumstances.

When a judge is deciding whether to direct a remote hearing, you should help identify if your client has a condition or impairment which would affect their participation. It may be necessary to support them to agree reasonable adjustments. For example, pre-agreed breaks if your client has a condition which affects their concentration or causes pain when they are seated.

You can find information about adjustments that can be used to help people participate effectively in proceedings in the 'Meeting the needs of vulnerable people' [<https://www.sra.org.uk/solicitors/resources/advocacy/meeting-needs-vulnerable-people/>] ' section.

Even with adjustments, some clients will not be able to participate effectively in remote hearings. If this is the case for your client, you need to protect their best interests by making sure the judge is aware.

If your client requires an intermediary or interpreter, you should help the court decide what arrangements need to be put in place.

Finally, your client may have emotional needs, especially if they are involved in a sensitive or distressing case. Many advocates comfort clients when they become distressed or upset in court, but this can be harder to do in a remote hearing.

If your client is likely to find a hearing emotionally challenging, you can:

- Let them know they can request a break
- Provide your own forms of appropriate support, and
- Signpost them to other forms of support, such as helplines.

Issue: Virtual hearings can take longer. This might be because of:

- technical difficulties
- slower communication
- the need for more breaks due to the increased concentration required or unsuitable seating arrangements and posture.

Step: Prepare your client for this and let them know that you can request a break in the hearing if it would help them. For example, if they are struggling to concentrate.

The Equal Treatment Bench Book advises judges to take more breaks and schedule them for longer during remote hearings. Letting your client know about this may reassure them.

Issue: Explain at the outset the risk of IT failing and what to do if the link fails. It is an alien environment to many, including the judge, and any mechanism that can be used to put parties at ease should be deployed.

Carefully monitor throughout that everyone is present in the hearing and able to follow. People may briefly drop in and out without the judge realising and may not be sufficiently assertive to tell the judge that has happened.

Step: To support your client and the court, you should make sure your client knows that if they drop out of a hearing, they should let you or the judge know.

Issue: Try to establish a person's level of understanding by asking if they have the document/letter/court order you are referring to, using language that is 'user friendly', see if they can explain what something means in their own words.

Step: Managing technology and the absence of visual cues like body language can make it harder for people to understand or communicate information in remote hearings. This is especially true of telephone hearings.

You need to make sure people can hear and understand your advocacy. You may need to speak more slowly or loudly and repeat yourself.

This is especially important if you are speaking to people who aren't fluent in English. As well as people with conditions which affect how they process or communicate information.

Issue: Make no assumptions about people's behaviour. It may be different to what one would expect in court: they are at home. They may not dress smartly. They may be more relaxed; alternatively, they may feel worried because a process which comes inside their home feels like an invasion of their personal space. They may be sitting somewhere apparently unsuitable, but it may be the only place that they have; alternatively, they may be sharing space with another household member who needs it for work.

Step: Your client may be worried about how they should dress or how their home environment will be perceived by the judge.

You should let them know that judges are advised not to make assumptions about these issues when they oversee remote hearings.

At the same time, you should help your client prepare for their hearing. If they have access to a private space with a chair and table, then you should encourage them to use it instead of, for example, a sofa.

Although your client doesn't need to dress smartly for a remote hearing, you should encourage them to dress appropriately. Remind them that it is still a court hearing and inform them of relevant rules or principles of etiquette, such as terms of address.

Questioning someone via a remote link

The Advocate's Gateway has produced a toolkit to help advocates question people using a remote link [https://0abb646f-e7c3-4c9e-b37e-d86ac13cfbb3.filesusr.com/ugd/1074f0_311bbdac0f414f2ba73f9b3abbe8e14e.pdf]. These links are used for a number of reasons and not limited to witnesses who are vulnerable or intimidated.

'Remote hearings in the family court post pandemic'

This report [<https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/07/remote-hearings-in-the-family-court-post-pandemic-report-0721.pdf>] by the Nuffield Family Justice Observatory, has been praised by the President of the Family Division and is based on evidence from barristers, solicitors, judges, parents and family members.

It highlights some of the possible challenges and benefits of remote hearings and includes suggestions of good practice. For example, making sure people are supported to participate effectively, such as making sure they have an emergency contact number in case things go wrong.

What to consider before a remote hearing

When a judge is deciding whether to direct or prepare for a remote hearing you need to consider:

- Does your client have a condition or impairment which affects their ability to participate effectively?
- If your client does not speak English well, or at all, do they need an interpreter and can the interpreter be in the same location as your client?
- Does your client have reliable access to the internet and technology? If not, can you arrange for them to have access at your office?



- Would it be inappropriate for someone in your client's house to overhear things that will be covered in the remote hearing?
- Have you properly briefed your client about what to expect in the remote hearing?
- Will your client have any distractions during the remote hearing?
- Does your client have a second means of communication so that, as well as attending the remote hearing, they can inform you of their instructions, request a break or let you know about any technical issues?

What to consider during a remote hearing

During a remote hearing, you need to adhere to the usual court rules and principles of etiquette. For example, using the correct terms of address and not interrupting the other side.

To help the hearing run smoothly, you may also need to:

- Check that people can understand you.
- Adapt your advocacy by speaking more slowly or asking if you need to repeat points.
- Alert the judge to any technical issues you, your client or another party to the hearing may have.
- Request a break if your client seems disengaged, uncomfortable or distressed.
- Request a break if you are finding it difficult to concentrate or practise effective advocacy.
- Intervene if the judge or any of the other advocates in the hearing aren't meeting or adapting to the needs of your client or witness.