



# USE OF AUDIO-VISUAL TECHNOLOGY FOR THE CONDUCT OF HEARINGS. EXPERIENCE FROM ENGLAND AND WALES – LEONARD HAWKES INTERVIEWS SUZANNE RAB OF SERLE COURT

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The legal profession's response is largely focused on leveraging tech-based solutions to keep the wheels of justice moving. Already, courts are using video conferencing technology to conduct some hearings. Significant flexibility has been shown by both judges and litigants in participating in video-hearings. In this contribution Leonard Hawkes<sup>[1]</sup> (LH) interviews Suzanne Rab<sup>[2]</sup> (SR) about some current developments in England and Wales.

## Set-up

### Q. What are the technology choices available? Is any particular system favoured?

- There is no doubt that responses to the coronavirus pandemic have tested the courts' digital preparedness. Even before the pandemic the courts were using video links and such like in appropriate circumstances which don't necessitate a physical hearing. It is not like we are starting from scratch. But there are

concerns about the capacity of video links to meet increased demands, especially if they are being used for evidence. My experience of civil matters recently including before the Administrative Court and Technology and Construction Court (TCC) in London is that judges are flexible about technology choices. In one case Skype for Business was the choice but other technology choices, such as Zoom, Microsoft Teams, Ayotree, Adobe Connect and Starleaf were considered. Some confidentiality concerns have been expressed over Zoom but those may reduce as it rolls out its new end-to-end encryption.

**Q. How did you present the papers for the judge?**

- In one case where an online hearing was conducted at the peak of the pandemic in the UK, document bundles had to be prepared at short notice. A lot of the correspondence was duplicated. We would normally have produced a chronological bundle of correspondence, but the judge was fairly relaxed about the more 'home-made' approach.

**Q. What about jury trials at the Crown Courts – readers will be interested to know what is happening?**

- So far as I know, and the situation is evolving, important jury trials have restarted at the Old Bailey, Manchester, Bristol and Cardiff. Remote technology is not being used. Special arrangements are in place to ensure hygiene, appropriate distancing and compliance with the other relevant guidance for the safety of court staff, jurors, witnesses and legal professionals. We are all clear that the effective administration of justice is fundamental but the way it is delivered has to be consistent with the health advice given in other sectors. The safety of all concerned must be paramount at this uncertain time. That has to be the starting point.

**The Hearing**

**Q. Tell us about the conduct of one of your hearings please. Did it go smoothly?**

- The practical experience can be quite mixed and some trials will not be suitable for an online hearing. In a recent civil case I was involved in the judge, counsel and clients all participated from home or their offices. There were some initial teething issues with technology which took almost an hour to resolve. Some parties could not join via the Skype link. After about twenty minutes the judge took over and initiated an immediate Skype meeting using his judicial account. The hearing was set down for a day but went on until about 17:00 hrs, so somewhat longer than the physical equivalent. This reflected some lost time at the start and the need for structured breaks at the direction of the judge.
- There were reporting restrictions, so everyone was asked not to share images or make any recording. Solicitors were tasked with preparing a note which will be put on the Court website once agreed by the parties.

## In practice

### Q. Do you have any practical 'tips' to share?

- Expect an online hearing to be more stressful and tiring than a regular hearing. If you have children or pets in the same building, please try to keep them in another room. (Even if this is challenging in the current environment.) I was joined by a dog in one hearing!
- Plan for the unexpected. 24 hours before one of my recent hearings my apartment block and all others in the street suffered a power cut with no internet, power or running water for 14 hours. I was thankful it was restored a few hours before the hearing, but I was starting to think about a Plan B with reduced options.

### What about mediation?

### Q. Can a shift 'on-line' for alternative forms of conflict resolution deliver results with agility and at reduced cost. I'm thinking particularly about the supply-chain issues, employment disputes and other commercial matters, including disputes over force majeure, that are emerging and likely to increase in the coming weeks and months.

- As both a barrister and mediator myself, I can testify to the benefits and potential of using online mediation to resolve disputes cost-effectively and consistently with social distancing. I have put this to the test recently where I have conducted a number of virtual mediations as mediator with good results.
- Dealing with the current challenges on a sustainable basis post-pandemic will require significant innovation, flexibility and enterprise from lawyers. I believe online platforms have the potential to make virtual mediation as accessible and effective as face-to-face meetings, but mediators and advisors will need go the extra mile to familiarise themselves with necessary technology and protocols. Security and confidentiality must be considered closely, given the potential for novice users to inadvertently reveal sensitive information which is shared wider than intended. A mediation will usually require individual private meetings with parties so a private breakout room function or its equivalent is key.
- In the pre-mediation phase, mediators and advisors will need to consider the contents of the mediation agreement including software-related provisions, confidentiality agreements, prohibiting the sharing of the meeting ID, recording of sessions or taking of photos or images.

Many thanks for your insights Suzanne. I feel sure they will interest readers both in Belgium and beyond.

SR. My pleasure. Good to talk

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