

#HardwickeBrew Your Takeaway Cup



These notes follow the #HardwickeBrew given by Hardwicke's Property Team on 7th May 2020 which looked at remote hearings in property disputes, and how the courts and tribunals are adapting so as to enable property-related disputes to be determined during lockdown. All the information below was correct as at 7th May 2020.

Remote Hearings

Courts and tribunals tracker

<https://bit.ly/2RmGmzF>

A regularly updated list of open, staffed and suspended courts and tribunals during the coronavirus outbreak

Remote Hearing Protocol

<https://bit.ly/2xWmBrW>

A 'flexible' protocol which applies to all trials, applications and all hearings in all Civil Courts (but not tribunals), which encourages hearings to take place remotely

Confirms that hearings should, as far as possible, be held in public. (including enabling media to access the hearing if requested)

Confirms that hearings will be recorded by the court (unless recording dispensed with). Parties not permitted to record hearings themselves.

Practice direction 51Y

<https://bit.ly/2xYMBTw>

PD is coterminous with the Coronavirus Act 2020 and provides the legal basis for the guidance within the Remote Hearing Protocol

General guidance

<https://bit.ly/2WuqvRq>

Provides the latest guidance from the judiciary on hearings and procedure during the coronavirus

Message from the Lord Chief Justice, Master of the Rolls and President of the Family Division Provides guidance on when remote hearings are likely to be considered appropriate
<https://bit.ly/2WAFR75>

Message from the Lord Chief Justice to judges in the Civil and Family Courts This is an older message from the Lord Chief Justice dated 19 March 2020. However, it provides an indicator as to the circumstances in which a remote hearing may not be appropriate where a party is acting as a litigant in person.
<https://bit.ly/35ysyYQ>

***Re One Blackfriars Ltd (In Liquidation)* [2020] EWHC 845** Guidance on adjournments and remote hearings.

***Municipio de Mariana v BHP Group Plc (formerly BHP Billiton)* [2020] EWHC 928 (TCC)** Guidance on applications for adjournments and applications for extensions of time due to Coronavirus.

***Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] EWCA Civ 583** Guidance has recently been provided by the Court of Appeal in the family context. However, the guidance provided at paragraphs 3 and 9 of the judgment is of general application.

At paragraph 9, the court identifies the factors that are likely to influence the decision on whether to proceed with a remote hearing.

Civil court listing priorities HMCTS release a weekly Coronavirus update which divides court work into two priority lists. The latest one is dated 4 May 2020.
<https://bit.ly/2Slvq01>

First-tier Tribunal (Property Chamber)

FtT Guidance No in-person hearings, mediations or site inspections until further notice.
<https://bit.ly/2ygSGLP> All communications by email only
Provides guidance on how existing or upcoming hearings will be dealt with.

Practice Direction 26/03/20 PD providing that all applications and appeals must be lodged by email
<https://bit.ly/2zO1Dwf>

Pilot Protocol for FtT and UT

<https://bit.ly/3b2Pi4r>

A new Pilot Protocol for all Tribunal (incl Upper Tribunal) hearings

If rules permit decisions on paper, this should be the usual method

A triage scheme will be used in cases where a party insists on an oral hearing, whereby:

- Tribunal makes a 'provisional' decision on the papers and parties will be asked to confirm whether or not they consent to a binding decision on this basis
- If either party requests an oral hearing, a hearing will be listed (which may be conducted remotely)

Hearings should be conducted remotely if in accordance with overriding objective

Site inspections can be conducted as 'drive-by' or via photographs or videos

Guidance on conducting Remote Hearings**HMCTS Guidance: How to join hearings**

<https://bit.ly/2VaOZzG>

Official guidance on how to join telephone and video hearings during coronavirus

ICCA Principles for Remote Advocacy

<https://bit.ly/3cfDjBw>

The Inns of Court College of Advocacy guide

8 principles designed to help produce more effective remote advocacy during hearings

Further Information**Hardwicke Property team updates**

<https://bit.ly/2x3HRMw>

With the residential and commercial property markets severely affected by the Covid-19 situation, Hardwicke is perfectly placed to assist you with any issues you have. Recognised by the legal directories as a leading chambers in the area, we handle commercial L&T, development work, housing (both privately rented and social housing), leasehold and leasehold management, real property, mortgages and trusts of land.

Hardwicke Covid 19 Resources Hardwicke has a dedicated resource page dealing with immediate, commercial and practice advice across all of our main practice areas during the crisis.
<https://bit.ly/34lOdTq>

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