



#HardwickeBrew Your Takeaway Cup

These notes follow the #HardwickeBrew given by the Moderator Frederico Singarajah and the speakers Cat Piercy and Kim Kortlepel on 3 June 2020 which looked at some practical aspects of online arbitration.

Practical Aspects of an Online Arbitration

As more hearings are moved online and no one really knows whether these might be a permanent or only a temporary fixture, the notes below provide some tips and suggestions arising from a recent trial in which Cat was Junior Counsel and Kim was the hearing manager.

In this case, the Arbitrator suggested that someone should take responsibility for managing and running the hearing. The parties decided to appoint a dedicated 'hearing manager' (Kim) in order to ensure that counsel and solicitors could focus on the substance of the trial itself.

The poll conducted during the #HardwickeBrew suggested that in almost half of the virtual hearings in which the audience had been involved, the role of managing the hearing was left to counsel and solicitors. Whilst Cat thought this was not a practice to be encouraged, because counsel and solicitors should be focussed on the substance, rather than the administration, of the hearing, the tips in this Takeaway Cup will hopefully assist anyone who has to take on this role.

The role of the Hearing Manager:

- To generally run and administer the hearing, including:
 - setting up the virtual hearing each day on whatever platform has been chosen.
 - being present throughout to assist i.e. being ready to share screen and to show documents; and
 - liaising with the Arbitrator and any transcribers to ensure they have everything they need and are connected to the virtual hearing.

Preparation for the hearing from a Hearing Manager's point of view:

- Meeting with the arbitrator in advance, both substantively to ensure all the technology is set up and shortly before the hearing starts each day.
- Preparing the agreed platform settings (for example, the use of a waiting room function to only allow people in to the hearing at the appropriate time and disabling any video recording function).
- Sending a new link to the platform for each day to ensure confidentiality of arbitral proceedings.
- Preparing a list of attendees and their roles (e.g. counsel/solicitor for the claimant/respondent, witness, expert, etc.).
- Ensuring the contents of the trial bundle are familiar to enable quick provision of the location of specific documents as and when necessary.

Preparation for a virtual hearing from a Junior Counsel's point of view:

- If a virtual hearing is a possibility at the outset, it is worth considering whether the arbitrator the parties wish to appoint would be happy with (and can operate) a hearing online.
- In advance of the hearing starting, it is important to ensure whoever is running the hearing has all of the documents, i.e. skeletons, authorities and any additional documents that might be disclosed, not just the trial bundle.
- All witnesses/experts and experts should have the words for the affirmation/oath (and the relevant holy book if swearing an oath).
- All witnesses/experts should have the same version of the bundle as everyone else and any additional documents which may have been provided since the trial bundle was finalised.
- Consider using a transcriber and having a live note. It is very helpful for the parties and the arbitrator to be able to identify what was last said when internet connections are lost.

The Hearing Manager's role to help the hearing run smoothly

- Setting-up the transcriber every morning to make sure the audio is working.
- Liaising with the transcriber throughout.
- Managing the waiting room.
- Renaming the attendees to make it easier for everyone involved to know who was who.
- Locking/unlocking the meeting for security purposes.

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- Muting/hiding participants other than the arbitrator, leading counsel and the expert/witness giving evidence.
- Preparing and managing breakout rooms where requested.
- Keeping in touch with the arbitrator on a regular basis via the chat.
- Displaying documents on “share screen” as they are referred to, i.e. pointing to passages or images that were referred to when the witnesses were finding it difficult to follow.
- Making available on screen the new documents, sent throughout the hearing.
- Permitting experts to share screen for their own presentations.
- Assisting with technological difficulties, i.e. audio or video difficulties and trying to resolve these.

How a Junior Counsel’s role may differ to an in-person hearing

- Ensuring everyone has everything they need in advance is key – copies cannot be handed-out throughout the hearing as would normally happen during an “in person” hearing.
- Ensuring a stable connection to the internet as far as possible, but having a back-up in case it fails, e.g. using a mobile phone hotspot if the mainline internet goes down.
- Setting up a Whatsapp or email group to be able to provide comments/share thoughts on evidence/submissions quickly throughout the hearing – this is the equivalent of passing a post it up!

Does written advocacy take a great importance in an Online Hearing?

- Written advocacy is important, but the arbitrator may also be keen to understand various issues in the same way that they would in an in-person hearing so parties need to be prepared for this.
- Advocates still need to be engaged and engaging and not wholly dependent on written advocacy.
- It is very important not to speak over anyone. Whilst this is obviously important in court too, it is even more important in a virtual hearing, since on most platforms, only one person can be heard at once.
- Solicitors need to be ready to assist in giving instructions through alternative medium quickly, because, unlike in an in person hearing, they are not there to simply turn around to.

Top Tips for preparing differently for an Online Hearing

- **Breaks** – Taking frequent breaks (at least every 60-75 minutes):
 - o Being online can be very tiring especially for witnesses who try to focus on their own camera, the arbitrator’s, lead counsel’s, the shared screen and what they are saying.
- **Pace** – Slowing down the overall pace:
 - o The camera may be slower than the sound.
 - o The transcriber may not be able to hear everything.
 - o If someone accidentally speaks over you, the sound will automatically cut out.

- **Camera** – Good practice for cameras to only be on the people who are speaking or are likely to speak. This might include:
 - The arbitrator at all times.
 - Lead counsel at all times.
 - Witnesses/experts when giving evidence.
 - No one else unless they are speaking.
- This not only assists in using less bandwidth, but it also allows those less familiar with formal hearings to focus on only those people who may speak to them during their involvement.

- **Formality** – Staying formal.
 - It is still a serious hearing so the dress-code should also be appropriate.

- **Staying alert** – It is important to stay alert at all times!
 - It may be tempting if you are not on camera to do other things, but, just as with an in-person hearing, it remains important to be ready to object/interrupt/send documents quickly.

- **Don't panic** – If there are technology issues don't panic.
 - Be prepared with another device, hot spot etc.
 - And ask the hearing manager, as he/she may be able to help with some difficulties.

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<https://www.adrodrinternational.com/book-virtual-case-management>

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