

The Academy of Experts

Remote & Virtual Hearings Guidance for Experts

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Guidance on Remote Evidence

INTRODUCTION

In 1989 the Lord Chancellor approved the formation of the Judicial Committee of The Academy of Experts consisting of seven senior Judges representing the English, Scottish and Northern Irish Benches. In 2003, the Lord Chancellor approved inclusion of the Hong Kong Bench followed by approval for the Singapore Bench in 2019. In the last 30 years it has rendered invaluable assistance in the promotion and improvement of standards.

Many expert witnesses will already have had experience of giving remote evidence via a videolink where they are the only person who is not in the hearing room (a remote hearing). Few will, so far, have had experience of doing so in circumstances where some or all of the other participants are also communicating via video conferencing software (a virtual hearing). There are, as a result of Coronavirus restrictions, bound to be many more remote and virtual hearings as courts, tribunals and other forms of dispute resolution adapt to appropriate new ways of working.

Assisted by feedback on giving evidence remotely already provided to TAE by experts and some of the issues judges have recently been grappling with, we offer the following guidance to experts.

The Judicial Committee members* who have approved the Remote & Virtual Hearings Guidance for Experts, are:

The Rt Hon The Lord Saville of Newdigate

President of The Academy of Experts
Chairman of the Committee

The Rt Hon The Lord Reed of Allermuir

Supreme Court

Sir Rupert Jackson

The Rt Hon Lady Smith

Court of Session - Scotland

The Hon Mr Justice Horner

High Court - Northern Ireland

The Hon Mr Justice Harris

High Court - Hong Kong

The Hon Justice Quentin Loh

Supreme Court of Singapore

The Rt Hon Lord Justice Dingemans

Court of Appeal

The Hon Mrs Justice O'Farrell DBE

High Court - TCC

Sir Vivian Ramsey

Singapore International Commercial Court

The Hon Mr Justice Williams

High Court

Nicola Cohen

Clerk to the Committee

* Committee members are shown in the posts they held at the time that the committee worked on the guidance.

Giving evidence remotely – Notes and Guidance for Experts and those using Experts

Preliminary stages

- Check if it is intended that your evidence is to be given remotely.
 - This should also be confirmed prior to the Hearing.
 - In practice the final decision is often taken very close to the actual Hearing.
 - Therefore, check when you are instructed and again 3 months before the Hearings and finally say, 1 week before the Hearing.

Report Preparation

- Write the report with screen display in mind
- If you have been provided with confidential information (whether covered by GDPR or other confidentiality), do you need to repeat it in your report?
- Will it need to be redacted?

Use of Documents

- If you have been provided with hard copy of confidential documents, where are you keeping them?
- Is their confidential nature being properly protected?

Location of hearing

- Will it be at Home or in an Office?
- If at home, arrange privacy, a suitable background, and sufficient space.
- Are you used to giving your evidence from a seated position?
- If not, practise doing so, using a mirror. Practise both listening and speaking.

Clothes

- Wear what you would usually wear to give live evidence.

Technology

- Which platform is being used?
 - The range of different software applications is growing, and they can vary significantly in how they work.
 - Check which platform is being used, ensure it works on your technology and familiarise yourself with

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how it works.

- Remember different Courts and Tribunals use different platforms.
- Are you comfortable with using that platform?
- Will you need help?
 - If at home, how good is your connection and bandwidth?
 - You may have to take steps to ensure that others using your internet connection do not use downloading or streaming services whilst you are giving evidence as this interferes with bandwidth.
- Can you ensure no distractions?
- Familiarise yourself with the operation of the application so that you know how to connect to a hearing, are able to join by video and audio and know how to ensure your speaker or headset are operating in that application.
- Know how to share your screen with the other participants so that you can refer them to a document, image, plan etc in the bundle.

Trial session

- A trial session should take place two days in advance of the hearing to test the software and hardware and check familiarity with the use of the programmes.
 - If a pre-Hearing trial has not been arranged 1 week before the Hearing, ask for it.
 - A trial session will also help to understand what can and cannot be seen.
 - Ideally there should also be a person available to host the hearing.
- The host should:
 - Have an email and phone number for every participant;
 - Make sure that everyone can be seen and heard and can see and hear at least 15 mins before the hearing starts;
 - Ensure that all “active” participants are visible for the start of the hearing and mute their sound when not speaking;
 - Ensure that all “passive” participants have their video and sound muted;
 - Notice if your microphone malfunctions or the transmission is lost
 - Notice if transcribers lose their connection
 - Notice if an “active” participant drops out

Screens

- Will you have sufficient screens?
- Ideally 3 screens:
 - this will enable you to have easily accessible the trial bundle, the hearing and other documentation without the need to be constantly changing the view.

Headsets

- Are you going to use a headset?
 - This can assist particularly if the environment you are in may be affected by external noise.
 - There are also a number of noise reducing software packages which may be of assistance. Irrespective of background noise headsets can be very useful helping you to focus on the proceedings.

Lighting

- Avoid having windows behind you.
- Lighting should be in front of you or ideally by uplighters.
- If there are windows in the room it is often best to close curtains or blinds, particularly to avoid strong sunlight.

Background

- Have a neutral colour plain background, if possible.
- Do not use a virtual background unless specifically authorised by the Court or Tribunal.

Position on screen

- Check how you look on screen.
- It is best to face on to the camera with head and shoulders filling most of the visible area.

Availability of Bundle

- Ensure you have your own electronic bundle which is identical to that which will be provided to the judge and used by the lawyers.
- Ideally you should be provided with access to a bundle on the Cloud (such as Caselines where you are provided with an account and password) which will be updated by the parties and you will automatically have access to the updated bundle when you sign onto the cloud application.
- When will the bundle be sent to you?
- Will someone eg the instructing solicitor, do a trial run with you to check that the bundle will be easy to access at the hearing?
- Will you be able to access pages that are not on screen, during the hearing?

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On the day of the hearing

In advance of the hearing:

- Organise any hard copy you will be using.
- Provide yourself with a supply of drinking water.
- Ensure you have the right spectacles available.
- Switch off/silence your mobile phone.
- If there is a landline connection in the same room, unplug the phone.
- If you wish to swear an oath, rather than affirm, ensure you have the required holy book in the room.

At the hearing

- Carry out a technology check before evidence starts – involving you, clerk/member of relevant admin team, and counsel.
- Who do you contact if a problem develops after the hearing starts?
 - If you think you may have difficulties with operating the application ask for access to training material and if you may have hardware or software difficulties ask if you are able to have an assistant on hand to help iron out any difficulties,

Who/what will you see?

- Can you see the judge all the time?
- Many software packages have a function to allow you to see the judge/tribunal all the time. Make sure that this is enabled and watch the judge/tribunal to make sure that they are following the evidence.
- The virtual platform may, for instance, have a “Gallery” and “Speaker” view, and some have a “People” view.
- The Gallery view allows the Expert to see everyone on the call but all those not active would be on screen with muted sound and picture.
- The Speaker view might only be the speaker, sometimes the platform allows the Tribunal and the Person asking questions to be present on the same view, as does the People view.
- If it is not possible, consider how are you going to adjust your usual style of speaking directly to the judge?
- Remember that if, when giving your evidence, you cannot see the judge, the judge can see you on a screen that is likely to provide a close up of your facial expressions.
- If you are only able to see counsel when giving evidence, who else is going to see and hear you? Ask. You are entitled to know.
- Are members of the public going to see you? What about the parties? What about the press?
- Are you going to have to allow for a time lag in the transmission of sound?

Is there going to be livestreaming?

- If so, will it be able to be stopped/paused if you inadvertently mention e.g. a name where the individual is in fact entitled to anonymity?
- Is the judge intending to have breaks, other than for lunch and at the end of the day? If you find you are tiring more than usual (which is likely), will it be acceptable for you to ask for a break?

Protocol for the hearing

Does the court/tribunal/ other body have a remote hearings protocol?

If so, familiarise yourself with it. At the beginning of your evidence you may be asked to confirm various matters such as:

- That you are alone in the room from where you are giving evidence.
- If you are not alone, you will be asked to state who is present in the room when you start and, if any other person comes into the room, to notify the tribunal.
- That you have not and will not apply a virtual background while giving evidence.
- That you have access to the hard copy and/or electronic bundle and to the evidence display and/or live transcript and that they are all operating.
- That you have no other papers in front of you, save for a clean copy of your expert reports, appendices and errata (if applicable) plus possibly a clean copy of the other side's expert's report and that you are using an unmarked copy of the electronic hearing bundle;
- That your phone is switched off and that any messaging systems are disabled so that you cannot receive or transmit messages;
- That you understand that while you are giving evidence, including during any break or overnight, you should not communicate with any person about the case (except in relation to any administrative or technical matters concerning the hearing).

If there is no protocol:

- The Judge or Tribunal may ask you to show them the room so as to confirm that you are alone (or only accompanied by a solicitor).
- Some may ask you to position your screen so that the door is behind you – so that it would become apparent if anyone entered the room.
- If this is not possible because of the positioning of your desk and screens be prepared to say so.

Communications

- It might be that during the Hearing, not when you are giving your evidence, that you will need to communicate with the legal team eg to raise a matter relating to the other side's expert.
- If so, the methodology should be agreed.
- Be careful to ensure that you if you are using the 'chat' facility on a platform that you only communicate with those you intended to.

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Problems at the hearing

- If any aspect of the link drops out (eg the video drops out but the sound doesn't), mention it immediately. Don't just soldier on – it could affect the quality of your evidence.
- If your connection fails ensure you have a contact point details handy to notify the organiser of the difficulty.
- Experience suggests that 5 to 15 minutes a day may be taken up with technology problems.
- If this occurs during your evidence ask to go back to make sure you have given a complete answer at the point where there was a failure.
- If there is any distraction at the other location(s) e.g. someone clattering papers; whispering etc, don't be afraid to mention it and ask if it can stop. This is often because a person has inadvertently left their microphone unmuted.

Overall, the judge will want to maintain the decorum of the court/tribunal and due solemnity where appropriate. Do what you can to help with that.

Virtual evidence

Be aware of the following, taken from advice currently being offered by psychologists:

- Processing information through online contact is hard and even more so at the moment, due to the stresses of lockdown;
- Accept that you are unlikely to have the same space in your “personal hard drive” to work at the same intensity as previously;
- Online communication is far more demanding and tiring;
- When we meet face to face, we pick up on clues from others, we “read the room”, we receive body language, we gauge the opinions of others, and we tend to process this information subconsciously so it guides us in our ongoing communication – but none of this is available online. Or, if any of it is, we find it exhausting to access.

Learning by experience

- Don't be afraid to offer ideas for improvement.
- Many judges will be new to remote/virtual hearings and courts and tribunals are, overall, in unprecedented territory.
- Flexibility, ingenuity, co-operation and collaboration will be welcome.

The Academy of Experts

The Academy

Located in Gray's Inn TAE was founded in 1987 with the objective of providing, for the first time, a professional body for experts to establish and promote high objective standards.

Although there is representation on the Academy's Council from the legal profession the majority of the officers, including the Chairman, are practising Experts - The Academy of Experts (TAE) is run by Experts for Experts and those using them.

Training and development

TAE offers a comprehensive range of training programmes to enable members to develop their expert skills, and undertake Continuous Professional Development activity. Courses range from basic Role and Responsibilities through to the requirements of Procedure Rules and the practice of Giving Evidence.

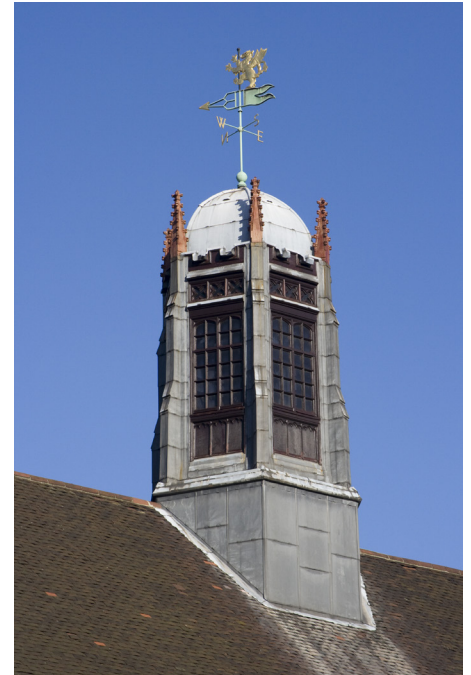
TAE is also a training and accreditation body for ADR Neutrals, including Mediators, Conciliators and Expert Determiners. It publishes and maintains The Register of Qualified Dispute Resolvers and awards the designatory letters QDR to those achieving the approved standard. Standards are enforced in exactly the same way as for experts.

Accreditation of experts

All applicants to TAE who wish to become Accredited Practising Expert Witnesses undergo a rigorous vetting procedure to ensure standards of excellence are maintained. This is the process which gives the officially recognised full accreditation as a Practising Expert. Those achieving it are awarded the designatory letters MAE. Ethical and professional standards are underlined by Codes of Practice and enforced by a disciplinary committee.

ADR

The promotion of Cost Efficient Dispute Resolution became increasingly important to TAE. It is now a major force in the introduction and development of Alternative Dispute Resolution (ADR) and has led to the development of the Faculty of Mediation and ADR.



Range of services

TAE provides a full range of services to its members including:

- Technical Helpline
- Bespoke Training
- Technical Meetings
- Magazine and regular newsletters
- A detailed Expert's Handbook for Practical Guidance
- A regular survey of expert's fees
- Regular meetings on matters of expert interest
- Social functions

TAE provides a number of services which assist both Academy members and the legal profession including:

- ExpertSearch Finding and matching the right accredited expert to the case.
- Full training & accreditation of Commercial Mediators. The Academy awards the qualification QDR (Qualified Dispute Resolver) to members on its register.
- Mediator Appointment Service - Finding the right accredited mediator.
- Membership also open to the legal profession.