

BIRKENHEAD COUNTY COURT
PROTOCOL FOR CONDUCTING STAGE 3 HEARINGS REMOTELY

I. PREPARATION AND PROVISION OF ELECTRONIC PAPERS

In future, some Stage 3 hearings at Birkenhead may be conducted with advocates appearing remotely, and the judge being in locations other than the court. It must be assumed that the judge conducting the hearing will not have access to the court file or any hard copy documents filed. It must also be assumed that the judge will not have any documents sent to the court electronically, otherwise than in accordance with this Protocol. It is therefore essential that legal representatives follow the requirements of this Protocol in order for hearings to proceed successfully and co-operate in the creation and provision of the relevant documents.

It will primarily be the responsibility of the Claimant's solicitors to prepare an electronic copy of the documents for the court in accordance with the following directions:

- The papers (save for the Court Proceedings Pack Part B) must be prepared as a single PDF document
- All pages within the document must appear on screen in their correct orientation (e.g. the claim form will appear in portrait, whereas the Court Proceedings Pack Part A will be in landscape)
- If the documents have been scanned from hard copies, the scanned images must be checked to ensure they are of sufficient quality for them to be easily read
- Wherever possible, colour documents (such as photographs) should be included as colour documents within the PDF
- The documents should appear in the single PDF in the following order, and without repetition:
 - Claim form
 - Acknowledgment of Service
 - Court Proceedings Pack Part A
 - Where general damages are in dispute: medical reports (in chronological order)
 - Where special damages are in dispute: relevant documentation, with pages grouped as they relate to each head of loss
 - Any disputed documents (as to which see below), with a page marked "DISPUTED DOCUMENTS" inserted before these documents
- The Claimant's solicitors, having prepared the PDF document, should ensure it is agreed with the Defendant's solicitors. Any disputed documents (as to which see below) should be included within the PDF bundle in the relevant section (see above)
- The Court Proceedings Pack Part B should not be included in the PDF bundle. However, the advocates appearing at the hearing should have an electronic PDF copy such that it can be emailed to the judge during the hearing should the need arise.
- Once agreed, the PDF should be saved using the following naming convention:
 - Claim number - Short title of proceedings - Stage 3 bundle - date and time of hearing]
 - *E.g. D00BI345 – Donoghue v Stephenson – Stage 3 bundle – 15.4.20 10am*

- It would be advisable for the advocates appearing at the hearing to have a clean copy of the PDF bundle in case there is a need for this to be emailed to the judge

Sending the bundle

A system may be set-up for central e-filing of the electronic bundles at the court in future. For present purposes however, the bundles are to be emailed directly to the judge conducting the hearing. You will be notified of the relevant email address by the court.

Disputed documents

It is essential that the parties seek to narrow the issues as much as possible prior to the hearing. This applies particularly to any disputes about whether documents may be considered by the judge. Commonly, disputes as to whether documents have or have not been served in accordance with the relevant Pre-Action Protocol have necessitated adjournments and longer listings to accommodate those arguments which, in many cases, could have been resolved in advance of the original hearing. If significant disputes as to documents remain by the date of the hearing, it is likely that the hearing will be adjourned until such time as in-person hearings can resume (and will likely result in considerable delay). It is therefore of the utmost importance for parties to resolve any such disputes in advance of the hearing.

Paginated/indexed bundles

It has become the common practice for certain claimant firms to prepare an indexed and paginated bundle for a stage 3 hearing, usually in cases involving credit hire. Whilst useful for in-person hearings, for the duration this Protocol remains in place, this practice should cease and only the single PDF bundle described above should be prepared. Reference can be made in the hearing to the PDF page numbers for clarity.

II. ORGANISING THE HEARING

The majority, if not all of the remote hearings will be conducted using BT MeetMe. This requires the court to have, in good time, the direct contact telephone numbers of the advocates appearing. Each chambers is required to provide the name and direct contact telephone number of the advocate appearing in each case. A master list will be posted to a shared drive at Court, detailed of which will be provided to you and circulated around Chambers, and to Solicitors firms who instruct in house advocates.

These lists must be completed by **3pm on the day before the listed hearings.**

III. THE HEARING

Hearings will be block listed by the hour. Advocates are required to be available throughout the designated hour of the block list. Advocates are reminded of the need for the lists to run to time and for submissions to be formulated accordingly. Hearings which overrun are very likely to be terminated by the Judge and adjourned to be reheard.

The judge will dial out to the parties using BT MeetMe. Where it is not possible to connect both advocates to the call, the hearing will usually be called on and the court will hear submissions from any advocates who may be connected, and appropriate orders made, unless there is a very good reason to do otherwise.

NB CROSS COURTING IN CONTRAVENTION OF THE RECENT BIRKENHEAD GUIDANCE FOR REMOTE HEARINGS ISSUED ON 1.4.20 WILL NOT AMOUNT TO GOOD REASON

If neither advocate can be connected, the court will make such order as it sees fit, as usual.

The hearing will be recorded by the Judge. Advocates are reminded that the recording of any part of the hearing by anyone other than the judge is **prohibited** and may amount to a **contempt of court**.

The hearing will proceed as a remote hearing, but otherwise following the usual course for a Stage 3 hearing. The provisions of CPR Practice Direction 8B, and the CPR more widely, continue to apply as normal.

At the conclusion of the hearing, the judge will complete a pro-forma order as per the Annex to this Protocol, and it will be provided to the court staff. Given the prevailing circumstances, there is likely to be a delay before these are drawn into formal orders and sent out to the parties. The parties are nevertheless reminded that, as these as attended hearings, the order is made at the hearing and time limits for payments or otherwise run from the **date of the hearing**.

ANNEX: PRO-FORMA ORDERS

A. Claimant obtains judgment greater than the Defendant's offer but less than the Claimant's offer

- 1) There be judgment for the Claimant in the sum of £x. The Claimant is to give credit for any interim payments made on account of damages.
- 2) The Defendant do pay the Claimant's [outstanding][total] costs in the sum of £x. [The Claimant is to give credit for any interim payments made on account of costs.]
- 3) All sums are to be paid by 4pm on [21 days from the date of the hearing].

B. Claimant obtains judgment greater than or equal to the Claimant's offer

- 1) There be judgment for the Claimant in the sum of £x, inclusive of Part 36 consequences and interest. The Claimant is to give credit for any interim payments made on account of damages.
- 2) The Defendant do pay the Claimant's [outstanding][total] costs in the sum of £x, inclusive of Part 36 consequences and interest. [The Claimant is to give credit for any interim payments made on account of costs.]
- 3) All sums are to be paid by 4pm on [21 days from the date of the hearing].

C. Claimant obtains judgment less than or equal to the Defendant's offer

- 1) There be judgment for the Claimant in the sum of £x. The Claimant is to give credit for any interim payments made on account of damages.
- 2) The Defendant do pay the Claimant's [outstanding][total] costs in the sum of £x. [The Claimant is to give credit for any interim payments made on account of costs.]
- 3) The Claimant do pay the Defendant's costs in the sum of £x.
- 4) All sums are to be paid by 4pm on [21 days from the date of the hearing].

D. Adjournment for in-person hearing

UPON it not being possible for the hearing to proceed remotely [*any note of reasons*]

- 1) The hearing is adjourned, to be listed for an in-person hearing, ELH [x], on a date to be notified to the parties in due course.
- 2) [Any order as to costs]