

# COVID-19 and the Planning Court



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## View from the top

- As the LCJ wrote in his Annual Report “*The last seven months have been dominated by the courts’ response to the COVID-19 pandemic.*” [www.judiciary.uk/announcements/lord-chief-justices-annual-report-2020/](https://www.judiciary.uk/announcements/lord-chief-justices-annual-report-2020/). He added:
  - “The judiciary have learned and continue to learn from the different ways it has become necessary to operate, including through short surveys. In a few areas, it became clear that audio and video hearings were less suitable and judges have adapted practices and guidance accordingly. For example, some litigants did not have access to sufficiently robust technology to engage in the hearings and in the absence of the formality of the courtroom some have found it challenging to understand the seriousness of the cases in which they were involved.
  - For many hearings however remote technology has been very effective, demonstrating the widespread benefits to be gained from modernisation, for example by removing the need to attend court and tribunal centres for short hearings. Although remote hearings are not always as efficient as physical hearings (they are more tiring; can be slowed by technical difficulties; and do not allow for parties to come together in the margins of the hearing to resolve issues outside of court) the convenience offsets some of the negative aspects. It was clear that many procedural hearings, relatively short hearings and some of those involving argument rather than contested evidence were satisfactorily conducted remotely, although decisions on this still need to be taken by judges on a case-by-case basis in the interest of justice. ”

## Compendium of guidance

- General compendium of guidance across all jurisdictions (including the Upper Tribunal) –
- <https://www.judiciary.uk/coronavirus-covid-19-advice-and-guidance/>
- 17.11.20 revised guidance on “Wearing facemasks in courts”
  - “Cases are being heard in courtrooms where social-distancing requirements are in place and there is no requirement upon anyone to wear facemasks.
  - Court users may wish to wear a mask in the courtroom. There is no difficulty with this, even when socially distanced, as Judges and magistrates understand that it is important that court users feel comfortable taking part in the proceedings, whilst bearing in mind that anyone who is speaking in court must be audible.
  - It is likely that witnesses will be asked to remove their mask while giving evidence.
  - There is no prohibition upon judges or magistrates wearing facemasks, even when socially distanced ”

## COVID-19 procedures

- CPR PD 51Y (Video or audio hearings during the Coronavirus Pandemic) dealing with the need for hearings in private but that attendance by the media etc may make them public
- Civil Justice in England and Wales Protocol regarding remote hearings (26 March 2020, updated 31 March 2020): [https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil.GenerallyApplicableVersion.f-amend-26\\_03\\_20-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil.GenerallyApplicableVersion.f-amend-26_03_20-1.pdf)
- See also HMCTS guidance: <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>. The Court is using multiple platforms at present and the choice may vary from case to case. The Court will arrange recordings of the hearing and for any party to do so without the judge's permission is a contempt of court.
- The Administrative Court office guide – COVID-19 measures (updated October 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/925996/RCJ\\_Administrative\\_Court\\_Information\\_for\\_Court\\_Users.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925996/RCJ_Administrative_Court_Information_for_Court_Users.pdf)
- The Admin court guidance includes in addition to guidance in urgent cases requirements that all filing must be done electronically at present but makes it clear that
  - “It remains the responsibility of the party sending an application or claim to ensure that it is filed within the applicable time limits.”

## Planning Court tips

- Informal advice (“top tips”) was given by Holgate J., the Planning Liaison Judge, on 8 April 2020 early during the lockdown due to the Covid-19 pandemic (together with reminders to consider the formal court guidance) circulated to PEBA, the Law Society, the JPL and printed in the **Planning Encyclopedia's April 2020 Bulletin**. These included (others are referred to later):
  - “1. To help remote hearings go smoothly and not take up more time than normal, the judges need to be able to make best use of pre-reading time (typically on the Monday of the week in which the hearing takes place). For that we would welcome succinct skeletons cross-referenced to key passages in the bundle and accompanied by an agreed, focused list of essential reading (e.g. pages and paras).
  - 6. The need for the court to make best use of its resources in the interests of all users is now all the more critical. Parties and their advisers are expected to keep under the review the merits of their cases and grounds of challenge. Points which do not have worthwhile merit really should be abandoned as far in advance of the hearing as possible and the time estimate reduced if appropriate.”
- He added guidance in respect of dealing with claims that were to be withdrawn – that a claimant seeking to withdraw a claim should “do so well in advance of the hearing” and the procedure to be followed, expecting quick responses, as already set out in the Administrative Court Guide.

## Planning Court tips (2)

- Holgate J's tips 2-5:
  - “2. Bundles need to be limited to material which really is essential for the legal argument on both sides. By way of example, we do not normally need to be given the whole of the NPPF, or a development plan, or (where relevant) proofs of evidence or closing submissions at an inquiry. The inclusion of peripheral material make navigability more difficult. The requirement in the Protocol for a core bundle is crucial. In many cases a really well-chosen, agreed core bundle (or what [Lord] Carnwath once called a micro bundle) may be all that is really needed.
  - 3. Bundles of authorities should be confined to essential material and need not duplicate decisions in the ICLR casebook.
  - 4. It is essential that a bundle has a good index, a single set of numerical, continuous pagination and hyperlinks. Sophisticated pagination does not work.
  - 5. If parties follow the protocols this will also help judges when they come to prepare reserved judgments.”

## Bundles (1)

- ***Thurloe Lodge Limited v RBKC*** [2020] EWHC 2381 (Admin) (permission to appeal refused by the CA 13.11.20) the Deputy Judge made a number of comments relevant to remote hearings, in that case in the context of JR of a local authority grant of planning permission. He set out Holgate J's informal guidance at [17] and added in the case of the trial bundle -
  - *“it is relevant to note the importance to the court in undertaking its preparation of the case to have a pdf bundle that is readily navigable by the software. The electronic bundles should be paginated sequentially so that the page numbers shown on the digital bundle correspond with the page count shown by the software and that the bookmarks/tabs used for individual documents actually work so that the documents can be found with ease. Care also needs to be taken with the length of the bundle which in this case, even allowing for the extended arguments over the scope of evidence admissible for the purposes of the exercise of the Court's discretion, was too lengthy (at over 1000 pages) and included many documents that were neither referred to nor relied upon for the purposes of this challenge”*

## Bundles (2)

- The Administrative Court office guide – COVID-19 measures (above) has detailed guidance in respect of bundles required for applications for *urgent/immediate consideration*, but the Deputy Judge said in **Thurloe Lodge** that “*there are requirements as to what is needed to enable ease of use by the Court which appear to me to be of general application*” referring to (b), (c), (d), (e), (f), (g) and (h).
- In **Thurloe Lodge** the Deputy Judge considered [14]-[16] the bundle did not comply with (b), (c) and (h).
  - “(b) *must be numbered in ascending order regardless of whether multiple documents have been combined together (the original page numbers of the document will be ignored and just the bundle page number will be referred to)*
  - *Index pages and authorities must be numbered as part of the single PDF document (they are not to be skipped; they are part of the single PDF and must be numbered).*
  - *The index page must be hyperlinked to the pages or documents it refers to”*

## Bundles (3)

- COVID-19 guidance has been updated since the *Thurloe Lodge* judgment and includes guidance for non-urgent cases, where parties are represented which appears, at least in a number of cases encountered recently, not always observed by the parties:
  - “5. Documents being uploaded must be in PDF format only, any other format will not be accepted by the system. The file size restriction (20MB) that applies to immediate applications applies to all non-urgent interlocutory applications.
  - 6. The file size restriction does not apply to non-urgent applications for judicial review or appeals. If the papers in support of an application for judicial review or an appeal exceed 20MB, the claimant/appellant should file:
    - (a) **a core bundle** (no larger than 20MB) which includes, as a minimum, the Claim Form and Grounds/Notice of Appeal and Grounds, the decision challenged, documents regarded as essential to the claim/appeal, the letter before claim and the response, and the witness statement (or primary witness statement) in support of the claim/appeal; and
    - (b) **a further bundle** containing any remaining documents.
  - 7. The guidance on the format of electronic bundles above, at Section B, applies to any bundle lodged in relation to non-urgent work. Each bundle must comply with the formatting requirements.”

## Bundle of authorities

- See Holgate J tip 3
- In **Thurloe Lodge** the Deputy Judge also criticised the use of authorities referring to-
  - *“The authorities bundle also included, unnecessarily, a number of authorities that are readily available in the ICLR’s Leading Planning Cases which undermines the purpose of that volume, as set out by Holgate J. above and in the Foreword:*
    - *“This book gathers together the key cases which are referred to frequently in the Planning Court. Arrangements have been made so that judges hearing cases in the Planning Court will normally have access to the book, so that these cases will not need to be copied into bundles of authorities. Use of this book will also ensure that the court has cited to it the preferred reports of these cases, in accordance with Practice Direction (Citation of Authorities) [2012] 1 WLR 780”.*”
- A number of judges, including the Planning Liaison Judge, expect that if cases are reported, the reported version of the case should be used and not simply a transcript under the neutral case citation

# Thank you for listening

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