

## E-Bundling Guidance for Remote Hearings

As a result of the Covid-19 pandemic, on 19 March 2020, the Lord Chief Justice delivered a message in respect of the Civil & Family Courts in which he said: “*The default position now in all jurisdictions must be that hearings should be conducted with one, more than one, or all participants attending remotely.*” Legal professionals are naturally anxious to know what may be expected of them in practically in preparation for such hearings.

HHJ Hodge QC, sitting as a Judge of the High Court in Manchester in *TPS Investment (UK) Ltd sub nom Taibly* [2020] EWHC 1135 (Ch) has given helpful guidance as to the preparation of e-bundles, to which all litigators might usefully refer. As the Judge explained:

*“I wanted to incorporate some general guidance on preparation for the remote hearings of short applications. I emphasise that nothing in this judgment is intended to be in any way critical of the legal representatives in this, or in any other, case. Rather, it is intended to be of assistance to the legal profession generally in the difficult circumstances in which this court appreciates, and acknowledges, that they are currently operating, in many cases at home and away from their offices and chambers, and without their usual support staff and machinery.”*

The Business and Property Court in Manchester has issued guidance on hearings before s.9 Specialist Circuit Judges and District Judges during the pandemic. Paragraph 7 of that guidance states:

“Unless otherwise proposed or directed, electronic bundles should contain only the documents which are **essential** for the hearing ...”

Judge Hodge said: “*The word “essential” was chosen advisedly, in preference to alternative formulations, such as “that which is reasonably required”, which appears, for example, in CPR 35.1 (the duty to restrict expert evidence). One (accurate) dictionary definition of “essential” is “indispensable or important in the highest degree”; and that is the notion which the guidance was, and is, seeking to convey. The intention underlying the use of the word “essential”, and the rationale for the restriction, was to relieve the burden cast, not only upon the judges of assimilating material in often user-unfriendly electronic bundles, but also upon the legal professionals, and any support staff, responsible for compiling the electronic bundles, by reducing the volume and scope of the documentation to be included within them.*”

The Judge went on to explain that the best way to ensure that only essential documents are included would be “*by engaging the advocate who will present the application in court at an early stage of the process of preparing for the hearing. Only they can know how they will wish to present the application to the judge, and what material will be required to this end... In the relatively new world (for some) of electronic bundles and remote hearings, if counsel is to be briefed to present the application, then they should be retained in sufficient time to enable them to advise as to the contents of the electronic bundle.*”

The fact that skeleton arguments might be due pursuant to directions or guidance after the e-bundle is to be sent to the Court does not preclude the instruction of counsel at an earlier stage or prevent him or her from having input into the contents of the e-bundle.

In the instant case, an unopposed 30 minute hearing of an application to extend an administrator’s term of office, the only essential documents were the application notice itself,

the supporting witness statement from the applicant and a further short witness statement exhibiting emails from legal representatives of secured creditors and entities asserting a prior interest in the company's assets indicating their consent to the proposed extension and confirmation of their non-attendance.

Instead, the court received a 105 page "core" PDF bundle with four previous witness statements of the administrator, with exhibits contained in a shared file which the court was unable to access. The "core" bundle had no searchable contents tab and was not sequentially numbered throughout (instead, each documents was separately paginated, making it impossible for the court to scroll down and identify documents by page number).

The Judge identified "*two relevant lessons to be learned from the present case*":

- (1) engage the advocate who will be conducting the actual hearing at an early stage to advise as to what documents are "essential" so that they can be included, and all other documents excluded, from the hearing bundle; and
- (2) provide a searchable index to the bundle if this is possible; but, if it is not, ensure that all the pages of the bundle (including any index and divider pages) are individually, and sequentially, paginated so that it can be readily searchable by scrolling down the file.

The guidance referred to in *TPS* applies in the Business and Property Court in Manchester. Legal representatives preparing for hearings in other courts should check any particular guidance for the particular court in which their hearing will take place and the directions in their particular case to ensure that they comply with their requirements in preparing any e-bundle. Nevertheless, subject to any particular different guidance or directions, the Judge's remarks above suggest that it will be good practice to engage counsel at an early stage before preparation of bundles, to make sure not to include too many documents, and to ensure that e-bundles are conveniently searchable and sequentially paginated.