



LMAA

THE LONDON **MARITIME**
ARBITRATORS ASSOCIATION

**THE LMAA GUIDELINES FOR THE
CONDUCT OF VIRTUAL AND SEMI-
VIRTUAL HEARINGS
2021**

Note to Users

The Guidelines contained in this protocol contain recommendations as to the matters which may need to be the subject of directions in any hearings which take place either wholly virtually (i.e. where none of the participants is present in the same room) or semi-virtually (where, for example, some or all the witnesses give evidence by video link and/or electronic bundles are used).

In common with other LMAA Guidelines these are not intended to be prescriptive but can be adapted to the relevant circumstances.

Paragraph 3 of the LMAA Terms provides “The purpose of arbitration according to these Terms is to obtain the fair resolution of maritime and other disputes by an impartial tribunal without unnecessary delay or expense. The arbitrators at all times are under a duty to act fairly and impartially between the parties...”

With that in mind, these Guidelines should be seen against the background that the Association considers that hearings should take place virtually wherever the tribunal considers that it is appropriate to do so, taking account of the parties' right to have a reasonable opportunity to present their case and/or respond to the other party's case.

The parties are reminded of their duty to do all things necessary for the proper and expeditious conduct of the arbitral proceedings under section 40 of the Arbitration Act 1996. This will include co-operating reasonably and promptly with the logistics of conducting a hearing virtually.

Background

In many cases, it may be helpful in any directions that are issued or subsequent award that is published by the tribunal to recite the history of the correspondence, tracing how it was agreed or decided that the matter proceed by way of a virtual hearing.

GUIDELINES FOR THE CONDUCT OF VIRTUAL AND SEMI-VIRTUAL HEARINGS

1. Early preparation for the hearing

The parties' representatives are asked to confirm the following in advance of the hearing:

- 1.1 Counsel, solicitors or legal representatives, all witnesses, interpreters and transcribers have tested the technology to be employed for the hearing and practised using it, in advance of the hearing. It is suggested that a "practice run" should be conducted shortly before the hearing with all these participants and the tribunal, to ensure that the relevant technological requirements for the hearing can be met.
- 1.2 The platform and technologies to be used are adequate and have been satisfactorily tested by all participants.
- 1.3 For a suitable case, arrangements have been made for an appropriate level of IT support for the hearing (e.g. from the solicitors' firms or from a third party) to provide services such as hosting the meeting and arranging for participants to be sent to "break out" rooms, but also to assist if technical problems arise during the hearing.
- 1.4 All witnesses and interpreters have received hard copy or electronic bundles well in advance of the hearing.
- 1.5 Consideration has been given to contingency measures in case of outages and other technical failures. The parties shall ensure that there are adequate backups in place in the event that the virtual hearing fails. At a minimum, these shall include teleconferencing, or alternative methods of video/audio conferencing.
- 1.6 All participants, including any third-party technical support, agree to be bound by the traditional confidentiality undertaking in the usual way, and that any other confidentiality issues (by reason of the hearing being conducted virtually) will be raised promptly, but in any event in advance of the hearing.
- 1.7 No participant shall record the hearing unless otherwise approved by the tribunal in advance. (Arrangements may be made for, and the tribunal may direct recording if agreed or ordered, as part of the organisation of the virtual hearing.)
- 1.8 A decision should be taken well in advance of the hearing as to whether the hearing bundles will be prepared in hard copy or electronically (or both). If the bundles are to be produced electronically, suggestions as to how these should be produced are set out below.

2. In advance of the hearing day

The claimant's legal representatives are to:

- 2.1 Circulate a contact sheet that lists all the participants (including witnesses, interpreters and transcribers) by name, organisation, time-zone indicated by reference to GMT and, except for witnesses, interpreters and transcribers, email addresses and telephone numbers to enable ready contact. The contact sheet should provide a telephone number and email address that should be contacted by any person who is having technical or connection issues during the hearing. Contact details (telephone number and email address) for any IT support should also be included on the contact sheet.
- 2.2 Arrange for all relevant participants to receive an invitation (link, meeting i.d., password) to the hearing each day well in advance of the agreed start-time.
- 2.3 Provide the tribunal with a detailed hearing schedule (to be agreed so far as possible), taking account of the need to (i) co-ordinate the participants in the hearing; (ii) provide for appropriate breaks during hearing days, and (iii) allow for possible technical problems during the hearing.

3. Etiquette in-hearing

- 3.1 At the start of the hearing each day, every participant will be asked to identify themselves to the host of the meeting and confirm the names of any person in the room with them. Any person not listed on the contact sheet will only be allowed into the meeting if the host receives confirmation from one of the parties that that person is permitted to join. (Any disagreement as to whether a participant is permitted to join should be raised promptly with the tribunal). Once permission is given to attend, their name will be added to the contact sheet by the claimant. The claimant will re-circulate it in updated form.
- 3.2 Only participants with speaking roles should be visible and audible but should self-mute when not speaking.
- 3.3 Connection issues (such as the screen freezing or if there is a deterioration in the quality of the connection because the video feed has been on for a sustained period of time) can sometimes be simply resolved by the affected participant disconnecting and re-connecting. This should be borne in mind as a practical matter.
- 3.4 During cross-examination, the tribunal might require all the party's legal representatives to be visible (but muted).
- 3.5 All participants with non-speaking roles will be muted by the host (and should ensure they are self-muted in any case) and may be asked to switch off their video (or the host may do it for them) to avoid distraction and using too much bandwidth. Participants should take steps in advance so as to avoid or at least minimise disruptions that can interfere with the smooth-running of the hearing (such as barking dogs). Please note that any participant who is muted and has their video switched off can still see and hear what is going on in the hearing room.
- 3.6 Any participant, other than the speaker who wishes to speak, should either put up their hand (physically) and/or utilise the virtual "raise hand" feature (if implemented) to alert the meeting host/tribunal, and wait to be invited to speak. Interruptions that do not comply with these requirements will be muted by the host.

- 3.7 If a party's connection is interrupted, the person who has disconnected should email everyone, or telephone a number that will be made available at the start of the hearing and listed on the contact sheet for people to call in the event of such issues and if it is not possible to re-connect promptly, await instructions. The tribunal will give instructions.
- 3.8 The tribunal may terminate the virtual hearing at any time if the tribunal deems the hearing so unsatisfactory that it is unfair to either party to continue.

4. Oral testimony from witnesses

It is to be noted that:

- 4.1 Witnesses, while giving evidence, must not communicate with third parties or be prompted in any way and must not consult documents other than those in the agreed bundles. If an e-bundle is being used, it may be useful for the witness to have two screens (one for the video conference, and one for documents).
- 4.2 Throughout the time witnesses are giving evidence, in addition to the other participants being able to see the witness, arrangements must be made for the room in which the witness is situated to be visible (e.g. by positioning a camera behind the witness if the witness has 2 cameras or for the witness at the start of giving evidence and if required by the tribunal at intervals, to turn the camera 360° to show the whole room) so that it is possible to see anyone else in the room with the witness. Arrangements must also be made to ensure that the witness has no electronic devices, or other potential prompts, visible apart from the screen that displays the virtual hearing. It may also be appropriate for a camera behind the witness to be positioned so that a check can be made that the screen used for the virtual hearing is not also being used to prompt the witness. The witness will be asked to confirm compliance with all of these rules at the start of each session.
- 4.3 The chain of interactions from counsel-interpreter-witness-interpreter and back to counsel again is the area most likely to result in over-speaking and repetition. The parties are required to devise, if necessary, a practical protocol that seeks to minimise this problem (such as requiring short sentences and short questions).
- 4.4 Witnesses will be asked to leave their mobile 'phones and other devices outside the room when they are giving evidence.

5. Electronic bundles

- 5.1 (a) If possible, the bundles should be contained in a single PDF, but where that is not practical (because of the number of documents) any PDF should consist of a maximum of 1,000 pages.
 - (b) If possible, the PDF should be capable of being word-searched.
 - (c) PDFs should contain index entries and (for an appropriate case) bookmarks to allow for ease of navigation of the documents contained within those PDFs.
 - (d) The index or bookmarks inserted into the PDF should be given descriptions that correspond with the tabs inserted into hard copy bundles. Each case will be different, but for most cases it will probably be appropriate to give a description such as Mr X's witness statement, contract etc, rather than be described as Tab 1, Tab 2 etc.
 - (e) The electronic bundle should be paginated from first to last.

- (f) The electronic bundle and any hard copy bundle must have identical pagination. PDFs should have internal numbering which is displayed on the PDF viewer at the top of the PDF page. That number needs to match the pagination number in the hard copy bundle, so that one can type in the page number in the PDF viewer and go straight to the correct paginated page. This can be achieved by, for example, paginating hard copy files so that each tab starts at 1; or, by using a PDF editing programme (e.g. Nuance or Adobe Acrobat Pro) which allows one to edit the internal number displayed in the PDF viewer so that the PDF, when edited, matches the pagination.
 - (g) The PDF file should have a table of contents at the start (but if it is given a page number in the PDF viewer which throws out the pagination, the hard copy pagination will need to be modified so as to match this).
 - (h) Hyperlinks and bookmarks should, if possible, be used. The contents page should contain hyperlinks to particularly relevant documents (e.g. the contract). The "bookmark" function can also be used to locate certain documents within the PDF file and labelled appropriately if they are not already identified as being particular "tabs". If the bundle and skeleton arguments are part of the same PDF, it might be useful to use hyperlinks between the skeleton arguments and the bundle. In that case, the parties would need to consider earlier preparation of the bundles.
 - (i) For some cases, a separate non-PDF electronic bundle might be necessary. This is likely to be limited to cases where it is necessary to refer to metadata or other embedded data or to include videos.
- 5.2 During the hearing, advocates should be particularly conscious of the need to refer only to documents in electronic bundles where necessary and should aim to minimise the number of PDFs open at the same time.
- 5.3 The parties are normally to prepare and use a core bundle where electronic bundles are being used, unless the number of documents in the bundles makes this unnecessary.
- 5.4 It may be appropriate in some cases to have a document management provider (e.g. one of the solicitor's firms or a third party) to display any document to which reference is made during the hearing on each participant's screen.
- 5.5 Where new documents are introduced during the hearing (and these can be "handed up", electronically in a variety of ways such as through the "chat" function of Zoom or by email), consideration will need to be given as to how they are to be absorbed into the existing hearing bundles. In some cases, it might be possible to absorb them immediately (e.g. print them out and create a hard copy "inserts" folder, or, with the use of functions such as Adobe Acrobat Pro, absorb them then and there into the electronic bundles) but on other occasions it will probably be necessary to create either a separate electronic bundle for inserts that have been provided that day, or one single electronic file into which all inserts that are "handed-up" throughout the hearing are inserted. It is not likely to be appropriate simply for a complete, new bundle incorporating inserts to be produced as it is likely that participants will have marked-up their existing bundles.

6. Screens

- 6.1 Participants will need to consider the number of screens they may require for the hearing. Not every case requires multiple screens, it will depend on a number of factors, such as whether there is a document management provider or a real-time transcript. It may not be necessary to have one screen for each of the requirements that are listed here but it probably will be required for most of them. Screens will be required for:

- (a) Connecting the participant to the video feed;
- (b) Accessing and viewing real-time transcripts;
- (c) The document management provider, so as to display documents to be viewed during the hearing (either on a separate screen from the other screens in use or sharing screen which has the video feed);
- (d) Viewing documents referred to during the hearing.

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