

CVP Hearings, universal panacea or technological omnishambles?

Whilst it's not quite quills and ink in Temple, old traditions die hard, so I was interested to see how CVP (otherwise known as "Cloud Video Platform") rated against an in person hearing as a medium of hearing disputes in the context of a 7 day multifaceted discrimination trial back in August.

The Roadmap ...

With the nation going into lockdown in March and in person ET hearings having been suspended in the interim, employment and discrimination practitioners were keen to see how HMCTS would respond amidst the growing backlog of ET claims (for more on which see [here](#)).

Then came CVP. On 1 June 2020 the ET Presidents greeted practitioners and parties with "the Roadmap" and the welcome news that CVP was to go national, with licences for 150 CVP rooms. Headsets sold out, Apple earned a ducat or two from a new breed of tech savvy barrister and the show was back on the road for newly christened "short track" and "standard track" cases.

What we were not expecting was the possibility of 7-day open track cases (defined in the Roadmap as being discrimination and whistleblowing cases listed for over 3 days) being heard via CVP until mid-September, but I'm pleased to report that much to the credit of the EJ and lay members, East London Employment Tribunal rose to the occasion.

Getting to a CVP trial: is it appropriate for my client's case?

So with open track cases being determined and a second lockdown looming, what considerations do you need to bear in mind when considering whether to go down the CVP route?

Aside from the considerations set out in the Presidential Guidance on Remote Hearings and In Person Hearings and Presidential Practice Direction on Remote Hearings and Open Justice I think there are broadly three considerations that legal advisers may wish to bear in mind.

1. Represented or Unrepresented Parties

Legal advisers should be on guard when litigating against a Litigant in Person to ensure they have read the Tribunal's listing information and have the technology available for the smooth operation of the trial set out therein. It isn't hard to envisage a situation whereby an unrepresented party agrees to a CVP trial in earnest and then on the first day of the trial discovers they don't have the tech to participate effectively, risking adjournments and incurred fees for clients. Indeed, there are anecdotes doing the rounds at the Employment Bar of unrepresented parties trying to attend via I phone... So for the purposes of any future costs application it is worth asking unrepresented parties to confirm in writing that they have read the listing information, understood it and have the technology to be able to join the hearing. It is also worth suggesting at the Case Management PH that a test run with the Tribunal is scheduled in advance of the case and any date for incurred brief fees. HMCTS have put up a handy guide on how to join a CVP hearing, which will also help both lay client's and lay opponents on the day.

2. The nature of case and the witnesses

Even if the Judge asks parties to provide a view of the room before the hearing, there is no getting away from the fact that CVP hearings are very much through the keyhole. You cannot guarantee at all times that witnesses are not joined by other undesirables in the room or indeed that their breaks are supervised. In practice what this means is that Barristers will be denied their *Chidzoy v BBC* moment. So if there are real and serious concerns about the witnesses giving evidence independently and/or their ability to comply with Tribunal rules of procedure, a CVP trial is not going to be appropriate and you should seek a hybrid hearing with evidence in person and submissions via CVP to cut down the listing delay.

3. Reasonable Adjustments

Much of what applied before to in person trials regarding reasonable adjustments will apply to CVP trials, but with greater significance. Indeed, a Rapid Consultation in to the use of remote hearings in the family justice system reported that CVP hearings created eye strain and migraines and were more fatiguing than in person hearings. So considerations regarding scheduled breaks at the end of a tranche of questions put in cross examination and sitting at a certain time of day or for a certain period of time will be pertinent. Reasonable adjustments will of course be fact specific, and legal advisers should browse the Equal Treatment Bench Book for some suggestions in advance of the Case Management PH.

Final Thoughts...

CVP is not the number 1 medium for resolution of disputes, at least from an advocate's perspective. As an advocate I like to watch a witness's body language and maintain eye contact, it gives me cues on when to push and when to probe. Whilst still possible, both of those things are harder for an advocate to do or judge via CVP. In cases where there are real and serious concerns about witnesses discussing matters during breaks whilst giving evidence, CVP will also be inappropriate. Further, aside from the need to keep one eye on the bottom of the screen to ensure a party has not dropped out of the hearing, cross examination is slower and screen fatigue for Judges, wingers, witnesses and

representatives is real in longer CVP trials. For vulnerable witnesses too, no matter how thorough the pre-trial con, many gain great comfort from having “their barrister” on hand on the day. Whatsapp or other means of instant communication are lesser substitutes.

Those issues aside, CVP can work very well indeed in certain categories of case such as interim relief hearings, shorter CVP trials, application hearings and appeals. Further where an employment relationship is ongoing the ability to list matters quickly and remotely to resolve the dispute is most welcome. With sufficient bandwidth there is no significant lag and I didn't leave the hearing feeling like witness credibility could not be tested as fairly, thoroughly or robustly as in an in-person hearing. CVP also plainly allows vulnerable parties to shield and prevents further significant listing delays in light of the growing backlog of ET claims to be determined.

Neither a universal panacea nor a technological omnishambles, CVP is to be welcomed in keeping the wheels of justice turning.

This article was written by Georgina Churchhouse