

FUTURE CITIES SERIES: DIGITISING DISPUTE RESOLUTION

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Legal Briefings - By **Julian Copeman, Nicholas Peacock, Susan Field, Olga Dementyeva and Maura McIntosh**

Imagine how commercial disputes will be handled in 2025. The latest in our Future Cities series asks how tech will shake up the courts

Our series exploring major cities in the post-Covid era assess a rapidly changing disputes market as virtual hearings go mainstream.

It's 2025 and you are Managing Counsel in a large construction company based in the US. The company is embroiled in litigation in the English courts, as well as confidential arbitration proceedings seated in London, against its former business partners based overseas. Any dispute is disruptive to the company's business and operation, as well as day-to-day activities of its employees. However, you are now able to ensure that these disputes are more manageable, less expensive and time-consuming, and more aligned with your company's environmental policies, than had been the case a decade earlier.

This article is part of our Future Cities Series where our experts explore the pressures facing our cities in the post-Covid era and map out the key issues and industry themes in re-thinking urban life.

VIRTUAL HEARINGS?

You will not have to travel to London from the US to attend hearings. It will be possible for some or all of the procedural or substantive hearings to take place virtually, so that you (and other participants) can join via video conferencing software from your home or office. This software will enable a secure and, if necessary, confidential connection. Alternatively you could travel to the location of your legal team in order to join the virtual hearing from their office.

Other options will also be available, involving a mix of virtual and physical attendance, so that you can tailor the format of the hearing to suit the parties' needs and the peculiarities of the case. In particular, some participants (such as the external legal teams and the panel) may be physically present at the hearing, whereas others (eg in-house legal teams and witnesses) may join virtually.

The right format will depend on various circumstances, such as visa restrictions, the impossibility (or the disproportionately high cost) of travel, other professional obligations and carbon reduction goals.

GOING PAPERLESS?

Whether for hearings or the day-to-day running of the case, there will be no need to use hard copy documents. This will be more consistent with the paper reduction or "green pledge" policy adopted by your company, and it may simply be more convenient to fit in with agile working practices.

All documents will be securely stored and reviewed electronically, particularly where there is a large volume of documents relevant to the dispute. As for communications with the court or tribunal, documents will be filed or served in electronic format, whether by email or via a special electronic platform such as the court's "CE file" system.

And whether you opt for a physical, virtual or hybrid hearing, you will not need a hard copy hearing bundle. You will be able to see all the necessary documents on screen, either in the courtroom or via the video conferencing software.

WHAT HAS BEEN DONE SO FAR?

Whereas recent years have brought about a greater use of technology in the way parties resolve their disputes (such as the use of AI for document review by the legal teams, some procedural hearings by telephone, and the occasional use of electronic bundles or cross examination of witnesses by video-link – often dependent on the preferences of the court or tribunal) the pandemic has created a dramatic acceleration in these changes to ensure the continued functioning of commercial dispute resolution systems.

Due to Covid-19, English courts and arbitral tribunals were faced with a stark choice: they could either largely close down, and suspend all but the most urgent hearings (as has occurred in other jurisdictions), or they could embrace virtual hearings and a largely paperless process. They chose the latter, and the transformation has been achieved remarkably smoothly by the English Business and Property Courts, and by the international arbitration community.

IS THIS THE FUTURE OF COMMERCIAL DISPUTE RESOLUTION?

While the pandemic remains ongoing, our vision for 2025 is effectively already happening. How much will remain in place once “normality” returns? While it is unlikely that major trials in the English courts will be held completely remotely once Covid-19 is no longer the issue it currently is, the use of hybrid hearings (where appropriate) and fully virtual hearings (eg in the case of shorter and procedural hearings) is likely to become embedded in English court procedure and practice.

The arbitration community (including a number of arbitral institutions) has likewise embraced this change and has been developing a number of initiatives aimed at ensuring that – where the parties consent – virtual or hybrid hearings and a paperless arbitration become a norm rather than an exception. So far, the general feedback in relation to these developments has been positive, though the extent of this transformation following the pandemic will – to a large extent – depend on the willingness of parties to embrace the change.

In terms of the impact on future cities, a seamless virtual hearing will of course only be possible only if all participants – some of which may be dispersed across the globe – have good internet connectivity. Only future cities with an infrastructure that allows high broadband speeds and digital security, and minimises the risk of technological disruption, will be able to accommodate a fully digitalised dispute resolution system. So while there may be less need for investment in physical court infrastructure (at least in the case of English courts), some further investment may nevertheless be necessary.

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