Neutral Citation Number: [2020] EWHC 845 (Ch)

Case No: CR 2017-007339

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
INSOLVENCY AND COMPANIES LIST (CHD

IN THE MATTER OF ON BLACKFRIARS LIMITED (IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Date: **6 April 2020**

Before :

Mr John Kimbell QC sitting as a Deputy High Court Judge

- -

Between :

Adrian Charles Hyde and Kevin Anthony Murphy (Join Liquidators of One Blackfriars Limited)	**Claimant**
- and -	
Anthony David Nygate (in his capacity as representatives of the estate of James Joseph Bannon) and Sarah Megan Rayment (The Former Joint Administrators of One Blackfriars Limited)	**Respondents**

- -
- -

Simon Davenport QC and Tom Poole (instructed by **Humphries Kerstetter**) for the **Claimants**
Justin Fenwick QC and Ben Smiley (instructed by **Mayer Brown**) for the **Respondents**

Hearing dates: **1 April 2020**

- -

JUDGMENT

JOHN KIMBELL QC:

1. At a pre-trial review held last Wednesday, 1 April 2020, the Applicants, who are the joint liquidators ('**the Joint Liquidators'**) of One Blackfriars Limited ('**OBL**'), applied to adjourn the trial of their claim against the former administrators of the company ('**the Former Administrators'**) which is due to take place over five weeks in June this year. They say that the adjournment is a necessary response to the restrictions introduced by the Government initially on 16 March 2020, and then in a significantly more stringent terms on 23 March 2020 to deal with the COVID-19 pandemic.

2. I informed the parties that in the event that the application was successful, the earliest that the trial could be rescheduled for was early 2021, and the earliest that the case could enter the general list in the Chancery Division was June 2021.

3. At the PTR, I refused the application to adjourn and ordered the parties to co-operate to explore ways in which a remote trial, involving an internet-based video communication platform and an electronic trial bundle, might proceed. I also ordered that the practical arrangements for any such trial to be reviewed at a second PTR now fixed for 21 April. However, in light of the full submissions made by both parties at the pre-trial review and the need to deal with practical trial preparation matters at that hearing, I indicated that I would give my reasons today for refusing the adjournment.

Background

4. The Joint Liquidators claim damages of over £250 million for the alleged mishandling of the administration of OBL between 14 October 2010, when the Former Administrators were appointed, and 14 December 2011, when the sale of the OBL's main asset completed. It is alleged

that the asset was sold at an undervalue and that had the Former Administrators complied with their duties a corporate rescue of OBL may have been achieved.

5. A five-week trial of liability and damages issues is due to begin in the week commencing 8 June. The trial was set down as long ago as November 2018 and it involves four live witnesses of fact and 13 expert witnesses. The joint liquidators are represented by Humphries Kerstetter LLP and the former administrators are represented by Mayer Brown International LLP. The application to adjourn was made orally by Mr Davenport QC at the pre-trial review itself, without an application notice or any witness statement evidence in support. However, reasonable notice of the basis of the application was given by Humphries Kerstetter to Mayer Brown in a letter dated 27 March, that is to say, the Friday before the pre-trial review on Wednesday last week.

6. The detailed grounds relied upon by the Joint Liquidators were set out in the skeleton argument filed the same day, and the Former Administrators' position was that they did not consider that an adjournment was either appropriate or necessary.

7. The Former Administrators' substantive response to the application was set out in a supplemental note served on 31 March, and this was accompanied by a witness statement from Mr Oulton. This witness statement was largely concerned with providing evidence to the court of the technological options available to facilitate a remote trial. The Joint Liquidators for their part responded with a supplemental note of their own, maintaining their position that an adjournment was appropriate and necessary.

The form of the application

8. The absence of an application notice and supporting witness statement was regrettable and it led to a large amount of evidence being adduced very informally by means of skeleton argument and oral submissions at the PTR itself. However, be that as it may, both parties, it seems to me, found themselves adjusting to a very fast-moving situation, and I am satisfied that no significant

unfairness was caused to the Former Administrators by the absence of an application notice and a witness statement in support of the application. The application was fully argued at the PTR.

9. There is one further preliminary matter I want to deal with before I turn to the substance of the application. There was a suggestion made in correspondence by Mayer Brown that the application to adjourn was being made because the Joint Liquidators had lost faith in their own case and had seized upon the COVID-19 pandemic as a means to put off the trial. Mr Davenport was at pains to stress that this was not the case, and he said that the application was made in good faith because of the COVID-19 crisis and for no other reason. Mr Fenwick QC, who appeared on behalf of the Former Administrators, did not adopt this particular point in his submissions and I accept what Mr Davenport says about it. Having read the skeleton arguments and heard his oral submission as to why the application was made, I am more than satisfied that it is entirely due to real concerns whether a trial can take place safely and not for tactical reasons.

10. I turn now to the rival submissions.

The Joint Liquidators' submissions

11. Mr Davenport submitted in summary, as follows:

a. To proceed with the trial would be inconsistent with the Prime Minister's instruction to stay at home except for very limited purposes, issued on 23 March 2020, and more commonly referred to as the 'Lockdown'.

b. The trial, he submitted, cannot proceed without exposing participants and others working behind the scenes to an unacceptable risk to their health and safety.

c. The technological challenge posed by a five-week trial was too great. Such technology, as exists, he said, was untested.

d. There is a real risk of unfairness or potential unfairness in conducting a remote trial of this claim.

12. Mr Fenwick in response submitted in summary as follows.

a. Far from being inconsistent with Government instructions, to proceed with the trial would be fully in accordance with both the primary legislation enacted in response to the COVID crisis and specific guidance given to the civil courts, both of which make clear that the appropriate response is to proceed with as many hearings as possible using video and remote technology.

b. A properly arranged remote trial could proceed without endangering the safety of the individual participants or the public.

c. The technology to conduct a fully remote trial is already available and has been successfully deployed already in some cases.

d. Whilst a remote trial will present challenges to all involved, it would not lead to unfairness.

e. The application was in any event premature because the parties have not yet had an opportunity to explore all of the remote technology options for a trial which, after all, is not scheduled to take place for another ten weeks.

Jurisdiction

13. Before dealing with those submissions, I had better just say something about jurisdiction. It is common ground that the court's jurisdiction to adjourn (or indeed to bring forward) a hearing is contained in CPR 3.1(2)(b). This is a wide discretionary case management power which must be

exercised in accordance with the overriding objective over dealing with cases justly and at proportionate cost.

14. I will now deal with the four submissions relied upon in support of the application

(1) Alleged inconsistency with Government Instructions

15. The Prime Minister's address to the nation on 23 March 2020, in which he instructed all of us to stay at home to help the NHS save lives, has had a drastic effect on the life of the country. All but essential travel is prohibited and social gatherings are severely curtailed. The Prime Minister's instruction has been translated into enforceable legal provisions in the Coronavirus Act 2020 ('**the Coronavirus Act**'). The Act came into effect on 25 March. It contains wide powers to issue directions relating to events, gatherings, premises, to postpone elections and to suspend the operations of various entities.

16. In Sections 53 to 56 it makes provision specifically in relation to the operation of courts and tribunals. The heading of the section is "Courts and Tribunals: Use of Video and Audio Technology". Unlike many of the other sections in the Act which give the Government power to postpone or suspend particular areas of activity, these sections are not in that form. Rather sections 53 – 56 provide for an expansion of the use of live links in criminal proceedings and, in relation to civil proceedings, for public participation in proceedings conducted remotely by video or audio. Schedule 25, as Mr Fenwick pointed out, makes detailed amendments to the Courts Act 2003 to enable the public to see and hear proceedings conducted wholly as an audio or video proceedings and to regulate the recording of those proceedings.

17. In my judgement, Mr Fenwick's submission that these provisions of the Coronavirus Act itself are a strong indication that the legislature intends that work of the civil courts to continue with the aid of greater use of video and audio technology is well founded.

18. Mr Fenwick's submission is further supported by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, S.I. No. 350 (‘**the Coronavirus Regulations’**). These regulations came into force on 26 March, that is one day before Humphries Kerstetter's letter to Mayer Brown proposing an adjournment of the trial.

19. Regulation 6 of the Coronavirus Regulations imposes restrictions on movement. Paragraph 6(1) says this:

> "During the emergency period, no person may leave the place where they are living without reasonable excuse."

20. In paragraph (2), however, the following appears:

> "For the purposes of paragraph (1), a reasonable excuse includes the need:"
>
> …
>
> (h): to fulfil a legal obligation, including attending court or satisfying bail conditions or to participate in legal proceedings."

21. Regulation 7 imposes restrictions on gatherings. It says this:

> "During the emergency period, no person may participate in a gathering in a public place of more than two people except ..."

22. Subparagraph (d) adds a further exception to the prohibition on gathering in the following terms:

> "where reasonably necessary ... to participate in legal proceedings or fulfil a legal obligation."

23. It seems to me very clear that by making specific exemptions in this way to the two major restrictions on gatherings and on movement, for the benefit of court proceedings, the legislature is sending a very clear message that it expects the courts to continue to function so far as they able to do safely by means of the increased use of technology to facilitate remote trials.

24. Mr Fenwick QC referred me to a number of specific guidance notes in support of his submission.

25. On 19 March 2020 the Judicial Office published a message from the Lord Chief Justice to the judges of the Civil and Family Courts[1] which said this:

> "The rules in both the civil and family courts are flexible enough to enable telephone and video hearings of almost everything. Any legal impediments will be dealt with. HMCTS are working urgently on expanding the availability of technology but in the meantime we have phones, some video facilities and Skype…
>
> The default position now in all jurisdictions must be that hearings should be conducted with one, or more than one, or all participants attending remotely. That will not always be possible. Sensible precautions must be taken when people attend a hearing."

26. It continued:

> "This pandemic will not be a phenomenon that continues only for a few weeks; at best it will suppress the normal functioning of society for many months. For that reason, we all need to recognise that we will be using technology to conduct business which, even a month ago, would have been unthinkable. Final hearings and hearings with contested evidence very shortly will inevitably be conducted using technology, otherwise there will be no hearings and access to justice will become a mirage."

[1] https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-the-lord-chief-justice-to-judges-in-the-civil-and-family-courts/

27. Under the heading "Trials and Hearings Involving Live Evidence", in the same message, the following appears:

> "It may be difficult to maintain trials and final hearings in the short term, not least because of the inability of people to participate at all. As events develop individual decisions on priorities and practicalities will have to be made. The message is to do what can be done safely." (emphasis added)

28. On 20 March 2020 the first version of a Protocol regarding Remote Hearings ('**the Remote Hearing Protocol**') was published. A slightly revised version was published on 26 March 2020.[2] In paragraph 1 of both versions of that Protocol the following appears:

> "The current pandemic necessitates the use of remote hearings whenever possible. This protocol applies to hearings of all kinds, including trials. It should be applied flexibly."

29. And at paragraph 16 in the Protocol, under the heading "What should happen when a hearing is fixed?" the following appears:

> "[10]. In the present circumstances, the court and the parties and their representatives will need to be more proactive in relation to all forthcoming hearings.
> [16]. Judges, clerks, and/or officials will, in each case, wherever possible, propose to the parties one of three solutions:-
> (i) a stated appropriate remote communication method (BT conference call, Skype for Business, court video link, BT MeetMe, Zoom, ordinary telephone call or another method) for the hearing;
> (ii) that the case will proceed in court with appropriate precautions to prevent the transmission of Covid-19; or
> (iii) that the case will need to be adjourned, because a remote hearing is not possible and the length of the hearing combined with the number of parties or overseas parties, representatives and/or witnesses make it undesirable to go ahead with a hearing in court at the current time.
>
> [18] It will also be open to the court to fix a short remote case management conference in advance of the fixed hearing to allow for directions to be made in relation to the conduct of the hearing, the technology to be used, and/or any other relevant matters."

[2] https://www.judiciary.uk/publications/civil-court-guidance-on-how-to-conduct-remote-hearings/

30. On 23 March the Judicial Office published a further message from the Lord Chief Justice concerning court arrangements.[3] In this message the Lord Chief Justice said this:

> "We have put in place arrangements to use telephone, video and other technology to continue as many hearings as possible remotely. We will make best possible use of the equipment currently available; HMCTS is working round the clock to update and add to that. Some hearings, the most obvious being jury trials, cannot be conducted remotely."

31. On 25 March 2020 the Master of the Rolls and the Lord Chancellor signed Practice Direction, 51Y, which clarified the way in which the court may exercise its discretion to conduct remote hearings.

32. In light of the guidance which I have set out above, as well as the primary and the secondary legislation that has been passed in relation to the COVID-19 crisis, I have no hesitation whatsoever in rejecting Mr Davenport's submission that to proceed with a remote trial in this case would be inconsistent with the guidance issued by the Prime Minister on the evening of 23 March 2020. There is in my judgment a clear and consistent message which emerges from the material I have referred to. The message is that as many hearings as possible should continue and they should do so remotely as long as that can be done safely.

33. Mr Fenwick also referred me to a decision by Teare J on 19 March 2020 in National Bank of Kazakhstan and Others v Bank of New York Mellon and Others in which an application had been made to adjourn the trial. Teare J said this:

---

[3] https://www.judiciary.uk/announcements/review-of-court-arrangements-due-to-covid-19-message-from-the-lord-chief-justice/

> "The courts exist to resolve disputes and, as I noted this morning, the guidance given by the Lord Chief Justice is very clear. The default position now in all jurisdictions must be that a hearing should be conducted with one, more than one, or all participants attending remotely. I accept that for various reasons, in particular the geographical location of the expert witnesses, this exercise will have particular challenges. But it seems to me that having regard to the need to keep the service of public resolution of disputes going, it is incumbent on the parties to seek to arrange a remote hearing if at all possible."

34. I respectfully agree.

35. I therefore accept Mr Fenwick's submission that, far from being inconsistent with Government guidance in response to the pandemic, the use of video technology and electronic document handling software is precisely what both the Coronavirus Regulations themselves and the guidance issued by the Lord Chief Justice had in mind.

36. I note that in this context that section 71(1) of the Senior Courts Act 1981 provides that:

> "Sittings of the High Court may be held, and any other business of the High Court may be conducted, at any place in England or Wales."

37. This provision means that there is no difficulty with a High Court Judge hearing a trial remotely from his or her home and for counsel and witnesses to be in diverse locations in England and Wales. If a remote trial is ordered pursuant to Remote Hearings Protocol, then it seems to me that the Coronavirus Regulations permit, for example, a witness to travel to a solicitors' office or to any place equipped with a high-quality video link to give evidence, or for counsel to do the same thing to make submissions. The Coronavirus Regulations would also, in my judgment, permit an

employee of a remote trial service provider to travel to any location (including a witness' home) to assist with the set-up and oversight of the operation of a remote trial technology. I have no doubt that everyone involved in such an operation would have the common sense to ensure that the social distancing rules are followed.

(2) Safety

38. Mr Davenport's second submission related to safety. He said that there was an unacceptable risk to health and safety in proceeding with a remote trial. It seems to me that it was quite reasonable of Mr Davenport to raise this important issue. A remote trial must not endanger the health of any participants or, indeed, anyone else involved in the trial behind the scenes. Two or three of those expected to participate in the trial fall into the category of vulnerable person, as defined in Regulation 1 of the Coronavirus Regulations. Mr Davenport also made the point that he understood that two of the expert witnesses that he wished to call may be responsible for looking after other members of their household and may potentially, for that reason, struggle to participate in a trial, even if conducted remotely from a location very close to their home, if not in their home itself.

39. Both of these matters raised by Mr Davenport are highly relevant to the court's case management powers. However, as things stand, they fall very far short of justifying a wholesale adjournment of the trial for the following reasons:

    a. First, the trial is not due to start until the week commencing 8 June 2020. The Government is due to review the state of the pandemic and whether the restrictions currently in place should continue in full force by my calculation on three occasions before the trial. It has been a very fast-moving situation and much could change in the next ten weeks as a result of any of those reviews.

b. Secondly, the court has very little concrete evidence of the particular difficulties that participants may have, and the parties have yet to ascertain the extent to which these genuine difficulties, if they exist, may be mitigated by particular arrangements for the individuals concerned. Information in relation to both the difficulties and possible mitigation should be provided to the court at the next pre-trial review.

c. Thirdly, if immovable obstacles do exist in relation to the participation of one or more experts, then I would expect the parties to co-operate and to propose ways in which issues which can be tried without the involvement of those particular witnesses. That is, it seems to me, a necessary part of the flexible case management envisaged under paragraph 18 of the Remote Hearing Protocol. I note in that regard that the areas of expertise said by Mr Davenport at the moment to be potentially affected by the personal circumstances of the expert witness concerned are those of development feasibility, development finance, and taxation and accounting. These are areas of expertise which either wholly or very substantially go to issues of quantum rather than liability.

d. Fourthly, it seems to me that there are steps which can be taken over the next three to four weeks to prepare for trial, such as completing the outstanding expert memoranda, the exchange of short supplementary expert reports and agreeing the trial bundle, which are necessary in any event, whether the trial ultimately goes ahead on all issues or only some, and which can be done safely and without travel or gatherings in contravention of the Coronavirus Regulations.

40. So, I reject Mr Davenport's submission that an adjournment now of the trial is necessary on safety grounds.

(3) The technological challenge

41. Mr Davenport's submission under this heading was that there is no tried and tested technology which can deliver a fully remote trial, with each participant located in a different location.

42. Mr Fenwick submitted to the contrary and gave some examples from his own experience. He accepted that for the trial to work it was likely that at least some of the participants would have to have access to three screens: one for considering the document in question in cross-examination or examination-in-chief, one for the video and audio link, and a third one for a transcript of the questions and the answers.

43. I suspect the truth will ultimately lies somewhere between these rival submissions. The Business and Property Courts are familiar with the use of e-bundles at trial and with the use of video links for receiving evidence. Until the present emergency occurred, the most common model for the use of this technology of this kind was for the judge and the advocates to be in the same room and for the witnesses to be in a remote location.

44. However, since 16 March 2020 there have been at least two examples of fully remote trials taking place. Mostyn J has presided over a three-day Court of Protection case concerning end-of-life care. This trial involved five parties, lasted three days and was conducted over Skype for Business. Evidence was heard from eleven witnesses and three experts also attending remotely along with two journalists from the Press Association. The judge sat at home and some of the witnesses gave their evidence from a GP's surgery because the Internet connection there was more reliable than at the care home from which they would otherwise have given evidence.

45. That trial was reported in the Law Gazette[4] is cited in paragraph 2.1 of The Remote Access Family Court Guide produced by MacDonald J, which is already in its third edition as of 3 April[5]. The case is cited there as a good example of the courts making flexible arrangements to enable a trial to proceed fully remotely rather than be adjourned. It is, however, worth stating that at least one participant had serious reservations about the effect of holding the trial remotely.[6] Those observations on how the greater informality remote hearings bring can have a negative impact on how court users perceive the trial process are a helpful reminder to judges that it is not just the technological challenges of remote hearings that need careful consideration.

46. The second remote trial which has taken place is the one that I have already mentioned conducted by Teare J. This involved four witnesses, including two expert witnesses, giving evidence remotely and submissions being received remotely as well. The platform in that case was Zoom, but I note that the parties had hard copy bundles rather than e-bundles.

47. In respect of potential problems with e-bundles, Mr Davenport referred me to the critical comments of Birss J in Invista Textiles UK Ltd v Botes [2019] EWHC 58 (Ch) at [72]:

> "A feature of the cross-examination of all the witnesses was the use throughout the trial of an electronic document presented system instead of a paper bundle. Having evidence available in electronic form is very useful but can be done such more simply than this. I was not convinced that the presentation system was helpful or worth the trouble it involved. Real flaws in the approach to cross-examination based on documents took place. For one thing, the system often had an appreciable delay, not always obvious to the cross-examiner, which meant that the witness and the cross-examiner were at cross-purposes. More significant was the way witnesses were given a single screen on which a single page being referred to was displayed in front of them. The display would frequently flash to a different page, often without warning and often before the witness had a chance to digest it properly or understand its context. I am sure the witnesses did not always read the text as carefully as they would have done if they had had some personal autonomy which allowed them some control over the text in front of them. That is the kind of autonomy a paper bundle gives a witness but it need not be on paper if the witness has some control over what is on their own screen. When it was clear that this was happening, I intervened to allow the witness to have

[4] https://www.lawgazette.co.uk/practice/first-all-skype-trial-tests-crisis-working-at-cop-/5103541.article
[5] https://www.judiciary.uk/wp-content/uploads/2020/04/The-Remote-Access-Family-Court-Version-3-Final-03.04.20.pdf
[6] http://www.transparencyproject.org.uk/remote-justice-a-family-perspective/

> a chance to read the material properly, otherwise there would have been a real unfairness. Unless such systems improve, I would in future require witnesses to be given a paper bundle."

48. This was said in the context of a trial bundle management platform where the judge and advocates were in a normal courtroom along with the person in charge of displaying the document needed in cross-examination. The witness and the judge only had the electronic bundle but the advocates had hard copy bundles. It is therefore not surprising that the advocates and witness and judge found themselves on occasion out of synch.

49. What I draw from the experience of the courts so far in conducting remote trials is that on the how they have been successful event when the proceedings involving multiple parties and in excess of ten witnesses. They have not, it seems, been repeated failures in audio or video link. However, it is fair to say that the trials so far have been on a somewhat smaller scale than the remote trial envisaged in these proceedings.

50. I am not satisfied, however, that the technological challenges which no doubt will be presented are so great as to make it appropriate to adjourn now. In my judgment, co-operation and planning is essential if a remote trial in this case is going to be possible, and that is why I have ordered the parties to co-operate in seeking potential remote trial platforms and document handling systems. In light of the comments by Birss J cited above I would expect any proposed system to subject to robust testing from as many of the locations from which participants are likely to be giving evidence (or making submissions) not only to ensure adequate video and audio quality but to ensure that documents can be displayed quickly. In particular, careful attention must be paid to the Internet bandwidth available at the locations from which witnesses intend to give evidence. This is very helpfully covered in the Remote Access Family Court Guide at paragraph 5.5:

> "In addition, it is not yet known what the impact will be of so many of the population self-isolating and the concomitant pressure on broadband bandwidth. Experience suggests that, as a minimum recommended bandwidth for video hearings is 1.5 MBPS in both directions. It will be vital to monitor the situation to ensure that remote hearings are not being prejudiced by insufficient bandwidth being available to judges and parties connecting from diverse remote locations. To date, there have been few, if any, reported decisions regarding the availability of bandwidth."

51. The issue of broadband connection and bandwith will be an absolutely essential enquiry for the parties in this case, given that potentially, three may be 17 people trying to log in to a remote trial using their own domestic broadband. This can be reviewed at the next PTR but my current view is that it may well be preferable for witnesses to travel to a few locations as close as possible to their home, such as solicitors' offices or other premises, with dedicated servers and IT staff on hand, rather than to dial in from home without any assistance. That also will alleviate the anxiety that many people suffer from, including judges, when it comes to the moment of being dialled into proceedings and to being interrupted in the course of the proceedings by unexpected household events.

52. So whilst not underestimating for one moment the technological challenge, I reject this argument too as a ground for adjourning the trial now. At the next PTR I hope to hear from the parties on what realistic arrangements are proposed and whether, for example, it would be wiser to reduce the scope of the trial by, for example, trying the liability issues first.

(4) Potential Unfairness

53. The final heading under which the application to adjourn is unfairness. However, it seems to me that Mr Fenwick is right when he says that the challenges and indeed the upsides of proceeding with a remote trial will apply to both sides equally. This is litigation between well-resourced

sophisticated parties. Both have, if I may say so, excellent legal teams, and there is an equality of arms.

Overriding Objective

54. In considering whether to adjourn I have to take account of the matters set out in CPT Part 1.1(2) including the sums involved, the importance of the case and the financial position of the parties.

55. The allegations against the Former Administrators have, as they see it, been hanging over their heads now since 2011. On the other hand, Mr Beetham, who is 69, feels a very strong sense of grievance about the sale of the main asset of OBL at an undervalue and in circumstances where a corporate rescue was possible. The sums claimed are large. Mr Beetham feels that the administration he was carried out in such a way as ultimately to destroy his business and rob him of his pension. A delay in resolving the dispute until 2021 is in neither side's interest.

56. I also take account of the fact that virtually every step in this administration was recorded, or appears to have been recorded, in a contemporaneous document. Although I have not seen the documents in the proposed chronological run, I understand from the pre-trial review that that chronological run currently runs to 9,000-odd documents, i.e. some 25 lever arch files. There are no allegations of dishonesty or fraud.

57. So whilst it is undoubtedly the case that both sides must have the opportunity to put contemporaneous documents to the factual and expert witnesses, it is not, it seems to me, a case

in which it can be said that it is essential to have the witness, the cross-examiner and the judge and the other participants in the same physical space.

Conclusion

58. So, in summary, for all of those reasons, which largely mirror the submissions of Mr Fenwick, I refuse the application to adjourn and instead order that the parties continue to prepare for trial. I have also ordered that the parties are to co-operate in exploring ways in which a fully remote trial can take place safely in accordance with the Lord Chief Justice's Guidance issued on 23 March 2020 and the Remote Hearings Protocol. These arrangements will be reviewed at a remote PTR on 21 April 2020.

59. One final thing I would like to add is a word of thanks to Supriya Saleem, the clerk to Falk J, and Kaylei Smith, the clerk to Teare J. Without their assistance in the background with making arrangements for these remote hearings, neither the PTR last week nor the remote hand down of judgment today would have been possible. So, thank you very much to both of them.

60. That concludes my judgment.