



**Arbitration in the post-COVID-19 world**

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**By Quentin Bargate, CEO and Founder**

Arbitration began as a simple and fast way to resolve disputes. It can now be a long and expensive process, but we are on the cusp of change that has the potential to reduce cost and delay.

The adoption of new technologies and web based solutions has provided an incentive for a move towards virtual hearings, now given a massive boot as the COVID-19 health crisis prevents most physical meetings between parties and arbitrators.

I have a particular interest in maritime arbitration, both as a party representative and advocate, and as an arbitrator. I am pleased to see the London Maritime Arbitrators Association (“LMAA”), the world leader in international maritime arbitration, has reacted swiftly in moving towards virtual hearings, using video conferencing and internet based systems like Zoom.

Here at Bargate Murray, we use Zoom for both internal and some external virtual meetings.

The LMAA has also recommended the adoption by Tribunals of the “*Seoul Protocol on Video Conferencing in International Arbitration*,” which is mainly concerned with witness examination, while a working group develops other solutions more appropriate to LMAA arbitrations, to be added as a schedule to the LMAA terms.

There will be security challenges that have to be addressed. The 2020 *Cybersecurity Protocol for International Arbitration* (“2020 Protocol”) provides high-level guidance in the form of 14 Principles, but leaves the Tribunal in charge of enforcing and interpreting appropriate security arrangements.

Finally, there are small claims solutions like [Ajuve](#) that operate entirely virtually in resolving disputes online without any hearings at all.

One of the concerns, of course, is that witnesses will come across very differently when examined via a remote link. The pressure of cross-examination by an experienced advocate in person can make all the difference.

Here, we have to rely on the common sense and experience of arbitrators and judges. I think that the occasions when a cross-examination in person makes or breaks a case are few and far between, but I have seen how the pressure of an in person cross-examination can affect the outcome of a case.

### **What about the courts?**

The Lord Chief justice published a [Protocol](#) regarding remote hearings on 19 March 2020 that considerably expands their use, with a range of technologies being options. On 23 March this was updated. The Lord Chief Justice said:

*“We have put in place arrangements to use telephone, video and other technology to continue as many hearings as possible remotely. “*

I suspect that lessons can be learnt from arbitration, where there is more experience of virtual hearings and remote evidence being given by video link, and the work done in regard to the *Seoul Protocol* referred to above.

These changes announced by the Lord Chief Justice might be temporary, but they are likely to have long terms effects if they are successful.

The world is changing. Courts and arbitration tribunals are modernising, and these changes are probably here to stay, even when (as we all hope) the COVID-19 pandemic is defeated.

### **Further information**

For further information or advice, please email:  
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