



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

Civil and Family Courts: Covid-19

Events have been moving so fast that detailed guidance on how to sustain the administration of justice in these two important jurisdictions would be overtaken by developments very quickly.

We have an obligation to continue with the work of the courts as a vital public service, just as others in the public sector and in the private sector are doing. But as I have said before, it will not be business as usual.

Yesterday's announcement that schools will be closing three weeks early coupled with the need for those over 70 and with health problems to stay at home will have an immediate impact on the ability and willingness of people to attend courts and tribunals.

We are making arrangements to include those working in the courts within the scope of key workers who will be able to continue to send their children to schools. Further information about that will come later.

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. User information on Skype is on the intranet and otherwise widely available. Further work is being done in connection with the criminal courts.

Both YouTube and written guidance on how to use Skype are now up on the rolling COVID-19 Judicial Intranet page. You can find it here: <https://intranet.judiciary.uk/practical-matters/coronavirus-covid-19/> under the heading 'Using Skype'.

The default position now in all jurisdictions must be that hearings should be conducted with one, more than one or all participants attending remotely. That will not always be possible. Sensible precautions should be taken when people attend a hearing. They are now well-known. We all take them when out of the home. There will be bumps along the road as we all get used to new ways of working forced on us by the biggest public health emergency the world has faced for a century.

Many more procedural matters may be resolved on paper within the rules.

You will all have been following the detail of the government's advice and the science on which it is based. It is clear that this pandemic will not be a phenomenon that continues only for a few weeks. At the 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. Even now we have to be thinking about the inevitable backlogs and delays that are building in the system and will build to an intolerable level if too much court business is simply adjourned.

I would urge all before agreeing to adjourn any hearing to use available time to explore with the parties the possibility for compromise.

Some outline guidance follows:

Designated Civil Judges and Designated Family Judges should work with operational staff and listing staff to establish priorities and to consider how hearings can continue to take place as safely as possible.

Social distancing

Local practices will need to take account of variations in court facilities and the range of work that the court handles. The leadership judges with local HMCTS managers are best placed to consider local arrangements and will be supported by the Presiding Judges and Senior Judiciary in finding solutions that allow for civil court business to continue in a safe environment including making necessary adjustments to avoid large numbers of members of the public congregating in small waiting areas. Telephone and video hearings will help. So too might avoiding or reducing block listing; identifying empty courts or other areas that can be used for waiting; if necessary, requiring people to wait outside until called. Whatever solutions are identified, people must not be required to wait in close proximity to one another.

Litigants in person

Unrepresented parties may have difficulty with telephone hearings. Sensitivity will be required. It is very unlikely that a telephone hearing would work if a litigant in person is:

- homeless;
- chaotic because of alcohol or drug use;
- has learning disabilities;
- has significant mental health issues;
- or has other needs or disabilities which would militate against telephone hearings.

We expect the full co-operation of the legal profession to facilitate telephone hearings as hitherto. Indeed, the professions willingness to be imaginative in the use of remote technology is clear from discussions I have had with the President of the Law Society and Chair of the Bar Council.

Trials and hearings involving live evidence

The Rules allow evidence to be received by telephone, video-link etc.

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

Civil and Family court business must be sensitive to other priorities for people's time. Many people are in critical jobs (e.g. NHS, Police) and will need to be elsewhere.

Prioritising work

Designated Civil Judges and Designated Family Judges will need to work with operational and listing staff to identify local priorities, taking account of the availability of resources and the practical arrangements that can be implemented safely. All judges are to be encouraged to think creatively about solutions to maximise social distancing while allowing as much court business as possible to continue in a safe environment. Judges should be deployed as efficiently as possible at all times.

Listing officers will undoubtedly face significant challenges. To assist them as much as possible, some pragmatic decisions will have to be taken, for example as to classes of non-urgent work that simply cannot be accommodated where the default position will be to remove such work from the list.

Civil Aspects

Possession Proceedings

It is likely that the emergency legislation will affect this area of work. But it is obvious that particular sensitivity is needed irrespective of that. Applications to suspend warrants of possession should be prioritised.

Block listing of possession claims is inappropriate at this time because it would be difficult to maintain appropriate social distancing.

Judges dealing with any possession claim during the crisis must have in mind the public health guidance and should not make an order that risks impacting on public health.

Injunctions and committal hearings

Applications for injunctions and committal are likely to be urgent and such work will need to be prioritised.

Applications for breach of an injunction or undertakings are unlikely to be suitable for telephone hearing. Such applications are likely to be urgent and to require priority. Arrangements will be required for the safe hearing of such applications.

Civil Appeals

Most applications for permission to appeal, including oral reconsiderations, are likely to be suitable for telephone hearing, subject to practical arrangements and the observations above as to litigants in person.

Final appeals may be suitable for hearing by telephone.

Family Matters

The President of the Family Division is providing a more detailed document to assist judges sitting in the Family Court.

Crime

Particular problems are likely to be encountered in both the Magistrates' Courts and the Crown Courts to which careful thought is being given.

The Lord Burnett of Maldon

Lord Chief Justice