

CIVIL PROCEDURE RULES UPDATE APRIL 2020

A number of changes to civil procedure have been implemented in recent days. Some of these changes relate specifically to the present Covid-19 pandemic and seek to assist the courts in managing the unavoidable difficulties which have arisen as a result of the pandemic. These new Coronavirus-related Practice Directions (51Y, 51Z and 51ZA) will remain in force for the duration of the Coronavirus Act. There are also some more general changes which will likely have a longer lasting effect. This article seeks to act as a round-up of the recent changes, both Covid and non-Covid related.

Practice Directions specific to Coronavirus

PD 51Y - 116th update

PD 51Y relates to audio and video hearings conducted during the pandemic. There are specific provisions in the PD relating to the hearing of cases 'in public'.

The current pandemic carries with it the obvious issue of public access to hearings. It would not be safe or compliant with current social distancing guidelines for public galleries to be full of spectators, but that must be balanced alongside the principle of open justice.

The PD clarifies that the court may exercise the power to hold a remote hearing in private where it is not possible for the hearing to be simultaneously broadcast in a court building, and that its exercise of its power to do so is consistent with its power to derogate from the principle of open justice.

Notwithstanding that, the court may not hear the case in private where arrangements can be made for a member of the press to attend. When a member of the press attends in this way, the hearing will be considered as being heard in public.

Where the hearing is conducted 'in private', the court must order that a recording be made of the hearing where it is practicable to do so - a video recording will be preferable where the court has the power to order such a recording, and an audio recording will be sufficient in the remainder of cases. Anyone may apply for the recording to be accessed in a court building.

PD 51ZA - 117th update

PD 51ZA acts in relation to the extension of time limits for litigation taking place during this pandemic. It was effective from 2 April 2020 and will cease to have effect on 30 October 2020.

The PD allows parties to agree between themselves an extension of 56 days without having to notify the court. This will therefore have a temporary effect on CPR 3.8(4). However, any extension beyond 56 days will need authorisation by the court. When looking at these applications, the court will take into account this pandemic and the consequences on each party.

This PD also clarifies the point regarding audio and video hearings under direction (PD 51Y) as is discussed above. Any person seeking permission to listen to or view a recording of a hearing is not required to make a formal application under the CPR but may instead make a request.

PD 51ZA does not alter the operation of PD 51Z which provides for the 90 day stay concerning possession proceedings, as discussed below.

PD 51Z - 118th update

PD 51Z has effectively put a stay of 90 days from 27 March 2020 on all proceedings for housing possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a writ or a warrant.

The stay is to include both residential and commercial possession proceedings as well as mortgage possession and proceedings against squatters. However, claims for injunctive relief will not be subject to the stay and as with PD 51ZA it will cease to have effect on 30 October 2020.

Updates not relating specifically to Coronavirus

113th update

This update amends various Practice Directions which have come into force as follows:

31 March 2020:

Practice Direction 2E – Jurisdiction of the county court that may be exercised by a legal adviser

Practice Direction 51O – The Electronic Working Pilot Scheme

Practice Direction 51R – Online Civil Money Claims Pilot

Practice Direction 51T – The County Court Legal Advisers Pilot Scheme – Final Charging Orders

6 April 2020:

Practice Direction 2B – Allocation of Cases to Levels of Judiciary

Practice Direction 7E – Money Claims Online

Practice Direction 16 – Statements of Case

Practice Direction 22 – Statements of Truth
Practice Direction 32 – Evidence
Practice Direction 44 – General Rules About Costs
Practice Direction 52A – Appeals
Practice Direction 52D – Statutory Appeals and Appeals Subject to Special Provision
Practice Direction – Proceedings Under Enactments Relating to Equality

A few of the key changes following the update are discussed below, however for more details the 113th update can be found in full here:

<https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/cpr-113th-pd-update.pdf>

PD 16 reinforces the obligation on a claimant to plead specific matters in relation to credit hire cases. There is also a requirement for the claimant to plead certain facts relating to mitigation expenditure.

PD 22 and 32 relate to the changes to statements of truth and witness statements. PD 22 requires that the statement of truth must be in the witnesses' own language and be dated. Solicitors are also now under a duty to explain the statement to the client as well as the importance of ensuring its contents are true and therefore the importance of the statement of truth. Under PD 32, the body of the witness statement must be in the witness' own words and their own language. Where the statement has had to be translated there is then a duty to include the date of translation. If the statement has been translated then this must be stated, as there is a duty to explain the way in which the statement has been prepared - this should also set out whether the statement was taken face to face or over the phone, or by another method. The translator will then have to sign the statement to show that it is an accurate translation of the witness' own words.

Given that the taking of statements over the phone will be commonplace in the coming months as a result of the Covid-19 pandemic, it may be wise to briefly state that that is the reason why the statement has been taken in that manner rather than face to face.

The wording of the statement of truth will be amended to include that the statement maker understands that "contempt of court proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without honest belief in its truth".

PD 52A restores the principle that the destination of an appeal will be governed by the rank of the Judge who dealt with the case at first instance (*Topping v Ralph* [2017] EWHC 1854). In addition, the amendment removes the restrictions relating to which Judges are able to make decisions regarding directions and applications, as opposed to those who are able to hear the appeal itself.

114th update

The 114th update, effective on 24th February 2020, provides for changes to PD 51R which relates to the Online Civil Money Claims (OCMC) Pilot.

Powers of Judges within the pilot are to be extended by this update so that they will be able to consider the online Directions Questionnaire for OCON180 in claims where the value is above £300 and up to £1,000. They will then be able to give directions as they see fit.

The number of courts participating in the pilot scheme has been increased. The list of 'preferred courts' that a party can name on their OCON180 form has been extended, enabling legal advisers to consider an increased number of the online forms.

The online admissions process will, as a result of the update, be available generally within the pilot scheme. Previously the scheme was only available to selected parties.

There are some changes to the requirements as far as statements of truth are concerned. Statements of truth must be dated and the wording will be amended in accordance with the changes set out in the section above.

115th update

The 115th update relates to PD 51V - the Video Hearings Pilot Scheme. This pilot originally ran for 1 year from 30th November 2018 and was used to test a procedure for applications to set aside default judgment to be heard by video link from Birmingham and Manchester Civil Justice Centres.

This update has the effect of recommencing the pilot. HMCTS is keen to continue testing such hearings, and as such the new pilot will run from 2nd March 2020 to 30th November 2020. An 'opt out' policy has been adopted for represented parties rather than the 'opt in' policy in place during the original pilot.

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