



JUDICIARY OF
ENGLAND AND WALES

MARK GOSNELL
DESIGNATED CIVIL JUDGE

CIVIL UPDATE FOR NORTH AND WEST YORKSHIRE

6th April 2020

Introduction

Much has happened since the Listing Protocol published on 23rd March 2020, not least the Prime Minister's announcement only hours later that the country would be in "lockdown". This meant that the few Face to Face hearings which I envisaged happening were unlikely to occur thereafter. Since then there has been a flurry of guidance nationally which we are obviously following but I thought it would be helpful to set out the position as I see it going forward to inform professional court users.

On 27th March 2020 it was decided that Skipton County Court would be *suspended* until further notice and all other courts on the cluster would be *staffed* apart from Leeds which is an *open* court. This means that any face to face hearings can only take place at Leeds and the other courts on the cluster (apart from Skipton) are *staffed* courts which means they are only open to judiciary and staff. Remote hearings will still be conducted from those courts. Skipton work will be managed and heard from Bradford County Court

Listing Priorities

We are attempting to achieve the objectives set out in the Civil Court Listing Priorities published on 2nd April 2020 by HMCTS. We are also however attempting to go beyond that and list additional hearings where we feel we can do so safely, and where a remote hearing can be conducted fairly.

Practice Directions

There have been three recent Practice Directions published:

PD 51Y which deals with the discretion of the court to hear remote hearings in private during the Coronavirus Pandemic;

PD 51Z which seeks to impose a 90 day stay on possession proceedings and enforcement of the same from 27th March 2020;

PD 51ZA which extends the right of the parties to agree extensions of time for directions from 28 days to 56 days pursuant to CPR 3.8. It also reminds the court to consider the Covid-19 Pandemic when considering requests for extensions of time.

Interim hearings

As I mentioned in the Listing Protocol, these are hearings which are particularly suitable to being conducted remotely and going forward I anticipate most if not all of these hearings will be conducted in that manner. In order to achieve this I authorised the vacation of all civil interim hearings in Leeds for two weeks to create a “firewall” to enable court staff to plan the future listing of hearings remotely. Hearings resume on 7th April 2020 and thereafter it is hoped that all parties will be consulted about the type of remote hearing they would prefer (BT Conferencing, BTMeetMe or Skype for Business). A Judge will then direct what the method of conducting the hearing will be and give directions about what is required from the parties and the court. It is anticipated that the Court will make the arrangements for BTMeetMe and Skype for Business calls).

Multi Track Trials

Initially all such trials were vacated but we are now giving the parties the option of a trial conducted on paper only or remotely by any of the three methods sent out above. It is not anticipated that many such trials will take place but at least this gives the parties an option of a timely hearing by remote means. The Court is prepared to consider Face to Face hearings conducting with appropriate social distancing but only in a very limited class of case, for example to prevent physical harm, serious financial consequences or involving the liberty of the subject. It is expected that very few such trials will take place.

Fast Track Trials

Again these were initially vacated but from 20th April 2020 onwards any case listed for a Fast Track trial can take place remotely if the parties can agree that it should. The procedure set out in the previous paragraph will apply with a Judge determining how the hearing should take place and giving directions. If the parties agree that a remote hearing is unsuitable (for example where fundamental dishonesty is alleged) then the trial will be adjourned until such time as it is safe to have a face to face hearing. I can see no reason why a simple road traffic fast track trial could not be conducted via Skype for Business where the issues are straightforward. I recognise that the logistics may be complicated where barristers’ chambers and solicitors’ offices are effectively closed but some parties and witnesses may be capable of giving evidence from home remotely.

Small Claims trials

Initially these trials were also vacated but as from 1st May 2020 we are going to attempt to list some for remote hearings where the parties consent and are capable of fairly taking part. Again, they will be given the option of a decision on paper only or a remote hearing. If both parties consent an attempt will be made to list it for hearing by a suitable remote method. I recognise that this will not be possible in every case with every litigant and that some cases will have to be adjourned until a face to face hearing is possible, but we will attempt to hear as many as we are able to. We face the added challenge that these cases are normally block listed so any such list would need to be “unblocked” so that each case has an individual appointment. This will mean the times and dates of some hearings may have to be changed. I recognise that we cannot hope to try the same numbers of cases that we did prior to the Covid-19 Pandemic.

Stage 3 lists

Again these are normally block listed and so they will either be conducted on paper only (which is an option for the parties in any event) or by remote hearing with the usual options. This will mean the lists having to be unblocked to create individual appointments and so I would encourage parties to choose the paper only option which will result in a prompter decision.

Appeals

The majority of appeals are suitable for remote hearings. I conducted two appeals last week by Skype for Business and it mainly worked well. Going forward I will hear as many appeals as I can remotely in addition to permission hearings and oral reconsiderations.

Injunctions and Committals

The Court will still consider and hear applications for injunctions and committal hearings whether following arrest or otherwise. Some applications for injunctions can be heard remotely and possibly some final hearings. Parties will be given the option of a remote hearing as with other trials. Committals will either have to be adjourned or exceptionally conducted in a large courtroom in Leeds with appropriate social distancing if a hearing is urgently required (for example after an arrest).

Possession Claims and Enforcement Proceedings

Possession claims generally have been stayed for 90 days and all block lists have been vacated during that period. The court will continue to entertain applications to suspend different types of enforcement proceedings and will attempt to conduct them remotely where possible.

Bundles

It is essential that an appropriate ebundle is prepared to enable a remote hearing to take place. Currently the District Judges in Leeds are directing that the following are required before a remote hearing:

- a. A hyperlinked paginated electronic court bundle which shall be limited to those documents essential for the court to determine the issue on that day. The bundle may have to be split (or “zipped”) if the bundle exceeds email attachment file sizes.*
 - b. A single agreed case summary and a list of issues to be determined; and*
 - c. A draft order in word format;*
 - d. In the case of a CCMC or any application to amend a cost budget, a copy of the relevant Precedent H(s) in an editable excel format*
 - e. Any costs schedule to be relied upon;*
 - f. A skeleton arguments or written submissions which shall be limited to 6 single pages of typed, double spaced, font size 12, Times New Roman or equivalent*
- A composite bundle of any authorities relied upon*

Currently just under half of the District Judges on the cluster are working from home, either because they or a family member is vulnerable or because of school age children or some other reason. It is unrealistic to expect that they will have the benefit of the court file. It is therefore important that they have everything they need electronically to fairly conduct a remote hearing. It is perhaps likely over time that more Judges will work from home if their personal circumstances demand it.

The recommendation from HMCTS is that an email and attachment should not exceed 10mb. As I understand it, justice accounts used by HMCTS staff have a limit of 25mb but the *ejudiciary* accounts have a 50mb limit which is due to increase to 150mb by Wednesday 8th April 2020. If the Judge consents, it may be more helpful to send the ebundle direct to the Judge's email account to avoid limitations surrounding size of data.

Communication with the Court

Across the cluster approximately 35% of staff are absent from work for reasons connected with the Covid-19 Pandemic. Different courts are affected in different ways. I am told that from today court staff at Leeds and Bradford will only be dealing with telephone enquiries from 10am -2pm. This is likely to continue until staff numbers improve. Email is the court's preferred method of communication as the court can reply to these in their own time prioritising responses as they go along.

A plea for patience

These are extraordinary times. My judicial and HMCTS colleagues are attempting to re-invent the wheels of civil justice by completely changing the way the courts have traditionally operated for decades. They are doing so without the benefit of the technological changes which were due to be implemented in the Reform Programme but which are not yet ready so far as civil jurisdiction is concerned. Court files are almost entirely paper-based. It may seem as if court staff are merely vacating and adjourning cases, but we are actually planning to run a more limited but nevertheless effective civil court system for as long as we are able to do so. I am very proud of the hard work and flexibility shown by my fellow Judges and similarly our hard-pressed colleagues among the court staff. I can assure you they are doing their best to list as many cases as it is possible to safely hear and to keep the parties informed where they are not able to do so for entirely understandable reasons.

As usual I suspect that this guidance may well be out of date not long after it is written.

Stay Safe,

His Honour Judge Mark Gosnell
Designated Civil Judge for North and West Yorkshire