



COVID-19 Briefing: Dispute Resolution During the Coronavirus Pandemic

The unprecedented changes in civil litigation during the coronavirus pandemic have been a challenge not only for dispute resolution lawyers but also the Ministry of Justice and the Courts and Tribunals of England and Wales.

The government announced on 27th March 2020 that the work of over half of the Courts and Tribunals in England and Wales will be suspended.

In keeping with the developing response of the government to the COVID-19 pandemic, both the judiciary and practitioners have had to adapt swiftly and almost weekly due to the constantly changing situation. Some of the more significant developments are dealt with below.

EXTENSION OF TIME

On 2nd April 2020 a Practice Direction was introduced extending the period by which parties to litigation can agree extensions to Case Management Directions from 28 to 56 days without having to seek the Court's permission.

Whilst the Courts have given the parties the opportunity to agree to extend time as above, it cannot be assumed by those involved that the Court will consider all applications to extend time favourably unless there are good and substantive reasons for the same, requiring all parties to continue to conduct litigation in a cost-effective and progressive manner.

Court fees where the parties are required to make an application to adjourn civil or family hearings as a consequence of COVID-19, HM Court Service has allowed their staff a discretion to waive the Court fee of £100 (consent) or £155 (on notice).

NIGHTINGALE COURTS

In order to alleviate pressure on the current Court system, the location of 10 "Nightingale Courts" have been published as follows:

- **The Former County Court at Telford**, Shropshire (Civil and Family)
- **Hertfordshire Development Centre**, Stevenage (Civil)
- **Swansea Council Chambers**, Swansea (Non-Custodial Crime)
- **Cloth Hall Court**, Leeds (Civil Trials and Business and Property Court)
- **Middlesbrough Town Hall**, Teeside (Civil)
- **East Pallant House**, Chichester (Civil and Family)
- **102 Petty France**, London (Family)
- **Prospero House**, London (Non-Custodial Crime)
- **The Former Magistrates Court at Fleetwood**, Lancashire (Civil and Family)
- **Knights Chamber and Visitor Centre, Bishop's Palace**, Peterborough Cathedral (Non-Custodial Corporate Crime)

Civil

Commercial

Conveyancing

Family

Probate

COURT HEARINGS

To reflect the current COVID-19 restrictions, whilst these are being relaxed to some degree, Court hearings are generally conducted remotely wherever possible through digital, video, or audio conferencing. There have been a number of high-profile hearings taking place before Courts and Tribunals with remote Court attendance.

A number of imminent trials have been adjourned to allow the new technology to be adopted and for the system to bed in. Almost 95% of hearings can be dealt with remotely and will be so for the foreseeable future. A number of commentators have already reached a view that even in absent the pandemic remote Court appearances are here to stay for the future.

There are a number of platforms that allow for remote hearings, conferences, and the like to take place, Zoom, Skype for Business, Microsoft Teams, with the preference of the Courts varying from Court to Court. Whilst a standardised system would benefit all, each Circuit has its own preference.

Where evidence in chief is unnecessary, it is likely that some form of telephone conferencing, such as BT MeetMe, will be used, with the Court taking the lead in arranging the same. Otherwise the parties will be tasked with working together to determine the method of remote Court attendance.

The pandemic has required parties to be proactive, liaising rather than litigating with opponents, the Court, witnesses, experts, etc., to ensure that there has been adequate preparation in advance of the hearing. Cooperation is essential, particularly with a greater dependence on documents exchanged and lodged with the Court electronically.

There are challenges in dealing with Litigants in Person, but particularly locally there has been clear direction and commitment by the Courts to assist particularly litigants/businesses/companies in acting on their own account in dealing with hearings with reference to BT MeetMe as above and not leaving it to the parties to make the arrangements with the Courts' greater use of BT MeetMe and providing contact information for the parties with a reference number to call in to the Court hearing, rather than having to take all the necessary steps to arrange the same.

There will remain a greater emphasis on remote hearings after COVID-19 and many mediation providers, arbitrators, experts and adjudicators, have arranged for remote facilities, which effectively enables not only Court appearances, but Alternative Dispute Resolution to effectively take place safely.

LODGING THE PAPERS WITH THE COURT

Many hearings require Bundles to be prepared, both in chronological and paginated format, and indexed for the Court, with necessary authorities exchanged well in advance of any remote hearing.

The Courts are placing a greater emphasis on limiting the Bundles, not every single document available but just those absolutely necessary to resolve the dispute at hand, thus allowing both the parties and the Court to remain focused with more importance placed on "dispute resolution" rather than "litigation".

PRIORITY LIST

HM Courts and Tribunal Service has published guidance for the County Courts in relation to listing priorities.

Work which must be done:

- Applications to stay existing enforcement proceedings
- Application in matters listed for trial within next three months
- Application matters where a substantial hearing is listed within the next month
- Multi-Track hearings where the parties agree that it is urgent

Work which could be done includes:

- Infant approvals by Skype or similar form of digital video conferencing
- Applications for interim payments
- Stage 3 Ministry of Justice hearings
- Applications to set aside Default Judgments
- Preliminary assessment of costs
- Small Claims and Fast Track Trials where the parties agree that it is urgent

EMPLOYMENT TRIBUNALS

The Presidents of the Employment Tribunals in England, Wales, and Scotland, published guidance on 18th March 2020, advising that:

- Future case management hearings should take place by telephone or other electronic means
- The parties and Judges should consider whether preliminary hearings can take place electronically or via telephone
- From 23rd March 2020 all in person hearings will be converted to Telephone Case Management Conferences in order for the Tribunal to decide how claims should proceed.

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CORONERS COURT

Coroners should consider whether inquests should now be postponed to allow NHS and frontline staff to remain at work, where possible. Technology should be used to enable hearings to proceed where this can occur.

The Chief Coroner has issued guidance that remote hearings should continue to take place and other hearings should only take place with suitable arrangements to ensure the safety of all those attending can be maintained.

Coroners have been reminded to recognise the clinical commitments of all medical practitioners and offer extensions of time for the provision of Prevention of Future Death Reports to the NHS Trust, other healthcare providers and prisons.

Senior Coroners have been instructed to adjourn jury inquests of significant length between 31st March and 28th August and all other inquests not requiring a jury or that are long and complex and due to commence between 31st March and 28th August may need to be adjourned.

THE FUTURE OF DISPUTE RESOLUTION

As the restrictions imposed by the COVID-19 pandemic continue to be eased there is a chance that some of the above will change as the situation is incredibly fluid. Obviously, the sanctions may be re-imposed should there be a second spike.

We will arrange to provide all further necessary updates as and when further information becomes available.

PEACE OF MIND THROUGH DIFFICULT TIMES

In uncertain times, the only thing we can say for certain is that nothing will stay the same for long.

It is entirely possible, therefore, that new legislation will have been introduced which will mean that all or part of this briefing no longer reflects the current law.

Because of this, we ask you to consider that, although correct at time of printing, information in this sheet may no longer be up to date and it is always best practice to consult with a lawyer about anything contained in this briefing.

Our lawyers are available to help answer any of your questions about this issue or to help with any other legal concern you have.

Please contact Fraser Dawbarns directly for up-to-date information on your specific circumstances.

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- [Winding Down the Furlough Scheme](#)
- [Child Maintenance on a Reduced Income](#)
- [Reopening the Housing Market](#)
- [Life After Furlough](#)
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12th August 2020



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