



BLAKE MORGAN

How lockdown affects litigation

New rules and considerations

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May 2020

## **New court rules resulting from the coronavirus outbreak**

### **Extensions to court deadlines**

A supplement to Practice Direction 51, 51ZA took effect from 2 April 2020 in light of likely problems faced by solicitors and clients, as a result of COVID-19. Such problems are likely to include delays in considering and progressing settlement arising from the inability for parties to gather together for a mediation or meeting, or where settlement is not progressing solely through correspondence. This provision allows parties to agree extensions to court deadlines for up to 56 days. This extends the current rule which only allows for a maximum of 28 days without the court's permission. This new provision therefore gives parties more time to meet Court deadlines, and also more time to consider settlement, which may be delayed as a result of the Coronavirus and the consequent inability to gather together for a mediation or meeting.

### **Online Civil Money Claims (OCMC)**

There have also been amendments to Practice Direction 51R which relates to the pilot scheme for claims made through the Online Civil Money Claims (OCMC), which is for any amount of money. Such amendments came into force on 14 April 2020, as a result of the COVID-19 outbreak and also as part of the ongoing process of building the OCMC service.

The amendments allow a judge within the OCMC pilot to consider directions questionnaires online and make directions irrespective of the value of the claim. They also remove geographical restrictions on the courts legal adviser, so that directions questionnaires can be considered online and any necessary directions can be made irrespective of which court is the "preferred court" for any hearing. However, the legal adviser can still only do this for claims with values up to £300.

The amendments also allow the court to also make directions on the future management of the claim, rather than only directions about how the claim is to be sent out.

### **Court opening times**

On 19 March, the Lord Chief Justice announced that the default position is that all hearings should now be conducted remotely, such as video conference or the telephone. There are only a limited number of courts open to the public, and some that are open but only for administrative staff to work.

There are skeleton staff dealing with the administration aspect, but it is anticipated there will be significant delays in sealing court orders, processing applications, listing dates for hearings and conducting hearings. The courts frequently experience a small backlog in any case, which is expected to increase significantly as a result of COVID-19. For example, it may be a longer period of time to receive a sealed order from the Court, or a hearing date in the near future.

Certain court matters such as those involving injunctions (including breach of injunctions), committal and breach of undertakings), anti-social behaviour/harassment injunctions, and enforcement work that does not involve bailiffs, are likely to be more urgent than others and will therefore be prioritised by the courts in dealing with such matters.

Where a court is closed, parties will be contacted directly to confirm new hearing arrangements. This is dealt with in order of what hearings are scheduled to happen first.

## **Issuing claims**

It has been possible to issue claims remotely through the Money Claim Online system and through the CE-Filing system for some time. The value of a claim through the Money Claim Online system is however limited to claims with a value of £99,999 or less, and can only be used when the sum of money claimed is specified. It cannot be used for example, if the sum to be awarded needs to be assessed by the court.

CE-Filing can be used for filing documents in relation to the claim and as a case management system. It applies to all aspects of claims within the Rolls Building (the Business and Property Courts), the Commercial Court and Bankruptcy and Companies court, or claims and appeals in the Queen's Bench Division in the Royal Courts of Justice or the Senior Courts Costs Office. However, relevant court users have recently been advised that court staff are unable to keep electronic filings up to date following the reduced number of staff, so CE-Filing alone should not be relied on to ensure a document reaches a Master for a hearing.

In the meantime we are advising clients to issue claims through these online processes as there is a smaller risk of missing limitation or increased delays as a result of paper applications being processed and dealt with by the limited number of staff. Money Claim online and CE Filing is available to use 24 hours of the day, however they both require prior registration for an account to be set up.

The consequence of issuing a claim late could be detrimental and may result in a lost chance of being able to progress the claim further or at all. To avoid potential delays caused by technical problems we are advising clients to issue claims slightly further in advance of relevant limitation dates.

## **Court Hearings**

On 30 March 2020, the emergency priority courts scheme came into force. This provides a list of a limited number of Courts that remain open during the lockdown for 'essential face-to-face hearings'. These courts will support video and telephone hearings and progress cases without hearings. This will be kept in place for as long as necessary to comply with government and public health advice and will be reviewed regularly.

It is the Judge's decision as to how a hearing is conducted during the COVID-19 outbreak and give consideration to those hearings with priority. This decision is based on the issues of the claim, any issues telephone/video hearings may present for parties, and each individual needs and how the hearing can continue to take place as safely as possible.

The HMCTS Courts and Tribunals website has produced helpful updated guidance for how the courts will approach and use telephone and video conferences for hearings during the COVID-19 outbreak.

If a hearing is to be conducted through a telephone conference (the courts use BTMeetMe), then parties are sent the relevant conference call details and instructions from the court. The hearing is conducted in the same way as it would be in a courtroom, where the solicitor/counsel would speak on a clients' behalf unless the client is being addressed directly. Solicitors should be prepared to advise and brief clients on further details of how a telephone hearing is conducted, and what they should do, prior to the hearing.

With regards to video conferences, the courts use Skype for Business on their court systems. Parties to a hearing do not need Skype for Business to join these videoconferences, however they will need the free Skype meetings app. Each participant will receive instructions and a link to click to join the hearing,

as a 'guest', which will then provide instructions for installing Skype Meetings App. It is advised this is done ahead of the hearing in case there are any issues with installation. In order to join the hearing, you would go to the Skype Meetings App and sign in, enter the name and click 'join'.

If a party has not heard from the court with regards to arrangements for an upcoming hearing, it is the responsibility of the claimant to make the necessary enquiries and arrangements so that all parties are prepared for how the hearing will be conducted, with the relevant conference details.

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## **What you can do**

It is not yet known how great an effect the coronavirus will have on litigation or how effective hearings will be when conducted remotely. However, compliance with court directions is still important and missing a court deadline may still have severe consequences for a claim.

Parties should adapt and embrace the use of technology to overcome problems with attendance at court and mediation. Many litigants are also giving serious consideration to settlement opportunities in their matter. Litigation through Courts is extremely costly, and it is expected to become even more time consuming with the backlog of cases that the aftermath of Coronavirus is expected to bring. The Courts have, more than ever, stressed that parties should 'explore ... the possibility of compromise' before agreeing to re-schedule any hearing.

There is a recognition that certain parties and/or certain matters will be unsuitable for telephone hearings and that arrangements will need to be made for the safe hearing of such applications.

## **The future**

The requirement for the legal profession to quickly adapt and change from traditional practices has been testing. In such difficult times, litigators and clients can take a lot of positive action which will benefit their businesses in the future. For example, the increased use of video conferencing can cut down travel time and costs, it can also make settlement and meetings more accessible. In addition, flexible and remote working systems can increase productivity. All these changes will have a positive effect on litigation and may set a precedent for how future hearings and matters are conducted generally. The net result may be a reduced burden on the Courts, reduced costs of litigation for the parties and a reduction in delays that are caused by the Courts timetabling.

However, where technology cannot compensate for personal attendance delays may be inevitable. In those circumstances, litigants must attempt to agree extensions of time to court directions at an early stage. If an extension is not agreed an application to the Court for an extension before the deadline expires is much more likely to be successful than an application for relief from sanction after the event.

Finally, if you have potential litigation, do not let that delay you from getting in touch as limitation periods (the period within which you must bring a claim) still run and may expire. Early advice may be essential to avoid delays and maximise recovery in your claim.

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