

Update on civil work in the Merseyside and Cheshire courts for local practitioners and court users

Judges, court staff and civil practitioners are working in unprecedented times. It would have been unimaginable 10 years ago that civil justice in any form could continue in the light of the worldwide pandemic and nationally instructed lockdown which is being experienced at present, but through a combination of technology, goodwill, adaptability and commitment, the courts continue to run albeit in a restricted capacity, dealing with the most urgent and pressing cases and maintaining, as far as possible, case management generally.

I thought that I would provide an update on the way that we are managing work at present, and following on from the local practice guidance which was provided just over 10 days ago. (23rd March 2020). In the brief period that has elapsed since the picture has evolved significantly because of national direction from the senior judiciary and the HMCTS, including protocols for the prioritisation of work and practice directions to enable remote hearings to continue. As you will know there has also been a designation of courts within our cluster, which has meant that no court in Cheshire and Merseyside has been suspended. Chester, Birkenhead, St Helens and Crewe remain as staffed courts, which will continue to support remote hearings whilst Liverpool is an open court, with the capability for face-to-face hearings (although these are likely to be few and far between) as well as supporting remote hearings.

Much of the national guidance, which of course is available on the Judiciary of England and Wales and the gov.uk websites, will have been circulated already through the Northern Circuit for the Bar, and the Law Society, the officers of whom have been proactive in ensuring that members are kept up-to-date. Of particular relevance is the Protocol Regarding Remote Hearings published by the MR, the President of the QBD, the Chancellor and the SPJ on 20th March 2020. We have endeavoured to follow the guidance as far as possible, subject of course to the resources and requirements of our own courts.

However, there are a few features which I need to bring to your attention.

1. Practice Directions. The new practice directions, CPR 51Y and 51ZA are now in force and being followed. The first relates predominantly to the nature of remote hearings which out of necessity are private and therefore initially inaccessible to the public, in the interests of justice. Previously telephone hearings could be attended by any person within the building, because they were dealt with in open court. That is no longer the case. The second deals with extension of time for compliance with 28 day directions. That is automatically extended to 56 days without the permission of the court. However, practitioners in Liverpool should be aware that prior to the implementation of this practice direction a decision was made by myself in conjunction with the district judges, to assist the overworked court staff and to reflect the fact that many solicitors offices were closed, that 90 days would be the appropriate extension in the standard directions issued on receipt of directions questionnaires. Any extension beyond this will require the permission of the court in Liverpool cases. In other courts in our region, the automatic 56 days will apply unless directed otherwise.
2. Trials and stage 3 lists. Because of the impracticality of attendance for face-to-face hearings in trials, and on the basis of national direction, all the courts in our region have stood out fast track and multitrack trials for several weeks. Because only Liverpool remains as an open court, until that designation is removed, as public health crisis restrictions are lifted, it should be assumed that the standing out of trials will continue in **St Helens, Birkenhead, Chester and Crewe** unless and until parties are notified to the contrary. Stage 3 lists continue to be dealt with remotely in these courts by telephone, either through BT conferencing, or BT Meetme. This seems to be working and welcomed, although of course any feedback from practitioners as to how the systems could be improved is always appreciated.
3. Vacating trials in Liverpool. In relation to fast track and multitrack trials in Liverpool I intend to make the default position that these are vacated until the end of April, (ie the next three weeks approximately) and will review the circumstances for those trials which are coming up in May and June. Practitioners are reminded that any order made by the court of its own motion can always be varied. I have directed that a simple written request without a formal application will suffice in the present circumstances.

4. More on Trials. I am giving consideration in **Liverpool** to the trial lists going forward, and although the default position may well remain that they are vacated, the possibility exists that some cases could still be dealt with remotely by Skype for Business and this is something I would like to encourage in appropriate cases. The courts and judiciary have become more familiar with the technology which is being used significantly in the family and criminal jurisdictions, and there is no reason why in a suitable case the same cannot apply in civil work, although we have the disadvantage of no e-filing. Certainly, I intend that contested appeals should be dealt with this way, although applications for oral permission will probably continue to be dealt with by telephone. Accordingly, if you have a trial coming up (after the end of April) which you consider may be suitable for a Skype hearing, the court, if it has not already directed such a hearing, may be sympathetic to this course. Suitable examples might be those cases where there is a limited number of witnesses (or none) or factual dispute, meaning that evaluation of live testimony is less important, where there are legal points only, or where an issue turns on expert evidence which can be properly managed by the video process. It would not be suitable if there are litigants in person involved. Please bear in mind that with most solicitors' offices closed, some thought should be given to how witnesses can attend to give evidence, particularly if they do not have immediate access to the technology. It is also important that the documents are well managed, either with trial bundles prepared well in advance, or short electronic bundles to which everybody has easy access. Further, trying out the technology in advance is advisable. Unless the court can be assured in relation to all these aspects, it is unlikely that a Skype trial will be approved.

5. Priorities. The court intends to ensure that all urgent business is dealt with in accordance with the priorities identified by the Lord Chief Justice and the Master of the Rolls for civil work. Clearly, urgent work takes precedence, and if there is a concern that any urgent application is overlooked, this should be brought to the attention of the court staff, who after all are only human! Although there is a significant depletion in the number of staff available in all our courts, because of self-isolation and absence to protect the vulnerable, this has remained fairly constant, and we are hopeful of some staff returning within the next few weeks.

6. Business and Property Court work. Please note that separate considerations apply to BPC work, including urgent applications and specific guidance under the auspices of the Vice Chancellor has been provided for this across the entire northern region.

7. Communication. Clearly practitioners and court users will have concerns from time to time. Please do not hesitate to bring these to our attention, or at least to those who represent your interests. I am hoping to fix up a court users meeting by Skype some time in Liverpool after Easter. If successful we might try the same in Chester. Some of you will be aware that an attempt was made to improve communication by the setting up of a local Twitter account in Liverpool. Although this was extremely successful in the very short term, (over 700 followers and said to be very welcome by the local legal community and beyond) regrettably because of security compromises it became necessary to discontinue the account within a short period of time. It would appear that it was a victim of its own success and when faced with potential Twitter accounts requested by a number of courts throughout the country, it was considered by HMCTS that consistency of message and security could not be ensured. I hope to explore the possibility of reinstating this with appropriate security protocols in the future, but for now we will have to resort to old-fashioned communication.

I would like to thank the legal communities in Merseyside and Cheshire for their cooperation in these difficult times.

His Honour Judge Graham Wood QC

Designated Civil Judge for Cheshire and Merseyside

2nd April 2020