

14 August 2020

COVID-19 CIVIL PROCEDURE SUMMARY

This document contains a summary of the key information about Civil Procedure & Covid-19. This summary should be read with Farrar's Building "Covid-19 Court Protocols & Guidance Summary" (18.6.20). Link [here](#).

The practice directions and guidance *in force*, and the authorities should be reviewed for current and complete practice directions and guidance as there are regular changes and up-dates.

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Feedback: Farrar's Building would be delighted to receive feedback on this summary and up-dates on civil procedure relevant to Covid-19.

Disclaimer: this summary is not to be relied on as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.

Covid-specific Practice Directions

- CPR Part 51 deals with Transitional Arrangements and Pilot Schemes. Rule 51.2 provides that Practice Directions may modify or disapply any provision of the CPR for specific periods and in relation to specific proceedings in specified courts during the operation of pilot schemes.
- There are currently three Practice Directions made under CPR 51.2 which directly address Covid-19:
 - PD 51Y – Video or audio hearings during Coronavirus pandemic (link [here](#))
 - PD 51Z – Stay of possession proceedings (link [here](#))
 - PD 51ZA – Extension of time limits and clarification of PD 51Y (link [here](#)).
- **PD 51Y – Video or audio hearings** (in-force to cessation of Coronavirus Act 2020 s.75)
 - Deals with the recording and broadcast of court proceedings, including the remote access of proceedings by the media.
 - It will cease to have effect on the date on which the Coronavirus Act 2020 ceases to have effect in accordance with section 75 of that Act.
- **PD 51Z – Stay of possession proceedings** (in-force to 30.10.20)
 - Makes provision to stay proceedings for, and to enforce, possession.
 - PD51Z came into effect on 27 March 2020 (under the 117th PD Update), suspending possession proceedings brought under CPR Part 55 for a period of 90 days to 25 June 2020.
 - The 121st PD Update provided two clarifying amendments relating to the existing stay under PD51Z.
 - The Civil Procedure (Amendment No.2) (Coronavirus) Rules 2020 No. 582 have extended the stay from 25 June 2020 to 22 August 2020.
 - The Civil Procedure (Amendment No. 4) (Coronavirus) Rules 2020 (coming into force on 23 August 2020) provides for a further amendment to CPR Part 55 to introduce a new temporary Practice Direction (Practice Direction 55C) for how claims under this Part (including appeals) are to proceed following the expiry of the stay provided for by rule 55.29 (link [here](#)).
- **PD 51ZA – Extension of time limits** (in-force to 30.10.20)
 - Allows parties to agree an extension up to 56 days without formally notifying the court (rather than the current 28 days under CPR 3.8(4)), as long as that does not put a hearing date at risk.
 - Any extension of time, whether agreed by the parties or on application by a party, beyond 56 days requires the permission of the court.
 - An application for such permission will be considered by the court on the papers. Any order made on the papers must, on application, be reconsidered at a hearing.
 - In so far as compatible with the proper administration of justice, the court will take into account the impact of the Covid-19 pandemic when considering applications for the extension of time for compliance with directions, the adjournment of hearings, and applications for relief from sanctions.

Extension of Video Hearings Pilot Scheme

- The 122nd PD Update (link [here](#)) extended the Video Hearings Pilot Scheme (link [here](#)) by a further period of 4 months to 31.3.21 (previously 30.11.20). The Scheme deals only with applications to set aside default judgment, so is of limited use. However, this seems to provide some hope for practitioners that the court will adopt video hearings for more straightforward hearings in the future.

Cases relevant to Covid-19 issues

- **Re C (a child)** [2020] EWCA Civ 987 – Judge overhead criticising one of the parties when remote link remained active. Judge subsequently refused an application to recuse herself. Overturned by Court of Appeal on grounds that test for actual or perceived bias was made out. See Para.13 onwards. Date of judgment 24 July 2020. Link [here](#).
- **Arkhipova v JSC Mezhdunarodniy** [2020] 7 WLUK 377 – Adjournment refused. Court considered applicant using Covid-19 pandemic as excuse for delay. Inherently unlikely that applicant had such a poor internet connection that she could not take part in a remote hearing, at least on an audio basis only. Date of judgment 24 July 2020. Lawtel link [here](#).
- **Navigator Equities v Deripaska** [2020] EWHC 1798 (Comm) – Any arrangement other than witnesses being on their own during their evidence should be approved by the court, in advance if possible. The parties should not assume that an arrangement will be approved just because it is agreed between them. See para. 9. Date of judgment 17 July 2020. Link [here](#).
- **Stanley v Tower Hamlets LBC** [2020] EWHC 1622 (QB) – Default judgment set aside in circumstances where claimant served proceedings at an office he knew, or should have known, was closed due to Covid-19. Date of judgment 26 June 2020. Link [here](#).
- **Lancashire County Council v M** [2020] EWFC 43 (MacDonald J sitting in the Family Court) - Refusal of application to adjourn face-to-face hearing. See in particular paras. 47 – 64. Date of judgment 12 June 2020. Link [here](#).
- **Pearce v East and North Hertfordshire NHS Trust** [2020] EWHC 1504 (Lambert J) - late-late amendment refused even though the trial date in July 2020 may yet have to be vacated anyway. Date of Judgment 11 June 2020. Link [here](#).
- **C (Children: Covid-19: Representation)** [2020] EWCA Civ 73 - re format of hearings (hybrid; remote etc.) & not unfair for one party to be present during a hearing, and another to be remote. Date of judgment 10 June 2020. Link [here](#).
- **SC (a child) v University Hospital of Southampton** [2020] EWHC 1445 (QB) (Johnson J) - Refusal of application to adjourn trial, which could take place in person. See Paras. 11 onwards. Date of judgment 4 June 2020. Link [here](#).
- **Fottles v Bourne Leisure** County Court at Nottingham (Godsmark QC) - giving evidence is not a breach of the furlough scheme. Date of judgment 4 June 2020. Link [here](#).

- **Re TPS Investments (UK) Ltd** [2020] EWHC 1135 (Ch) (Kimbell QC sitting as a DHCJ; 11.5.20 - Guidance on preparation for remote hearings. See in particular Paras 3 – 5. Date of judgment 11 May 2020. Link [here](#).
- **Ludlow v Buckinghamshire Healthcare NHS Trust** [2020] QB (Jay J) 5 WLUK 221 - amendment refused & not permitted to instruct new expert notwithstanding expert had died and adjournment of trial for Covid-19 reasons granted. Date of Judgment 6 May 2020. See Westlaw & Lawtel.
- **Municipio de Marina v BHP Group & others** [2020] EWHC 928 (HHJ Eyre QC; 20.4.20) - Extensions of time; vacating hearings. Date of judgment 20 April 2020. Link [here](#).
- **Murphy v Nygate** [2020] EWHC 845 (Kimbell QC sitting as a DHCJ; 6.4.20) - Refusal of application to vacate trial. Date of judgment 6 April 2020. Link [here](#).

Limitation, service of Defences & progressing claims

- ABI & personal injury solicitors COVID-19 Personal Injury Protocol in-force to 30.6.20 (limitation dates frozen & constructive approach to extending times for service of Defence); no extension beyond 30.6.20 proposed in England & Wales. Link [here](#)
- ABI and ACSO Statement of Intent for progressing claims during the COVID-19 crisis in-force to 26.6.20 (MedCo remote examinations, Non-MedCo remote examinations, Rehabilitation, Claim progression and conclusion, and alternative measures inc ADR & for Stage 1, 2 and 3 Portal Process). Link [here](#).

Executing documents using electronic signatures

- The Law Society's practice note on electronic signatures has been reviewed and updated as of May 2020. Link [here](#).

HMCTS's weekly operational summary

- Weekly operational summary on courts and tribunal. The last update was for the week commencing 10 August 2020. Full details [here](#).

Courts and Tribunals tracker

- The status of court and tribunal buildings (i.e. whether they are suspended, staffed or open) can be tracked online at [here](#), with the last update made on 7 August 2020.

Covid-19 civil listing priorities

- Civil court listing priorities were issued on 14 May 2020 and have been updated for the week commencing 10 August 2020. Full document [here](#).

- The guidance includes the factors that the court should take into consideration when listing applications/hearings/trials.

Civil QB, CA & circuit guidance

- Refer to Farrar's Building "*Covid-19 Court Protocols & Guidance Summary*" (18.6.20) for a summary of QB and circuit protocols [here](#).
- The Queen's Bench Division guidance has now reached Bulletin 9 (24.6.20), found [here](#).
- The Court of Appeal's urgent business priorities (as of 10 August 2020) are found [here](#).
- The documents relating to circuit guidance [here](#) are currently out-of-date, see Farrar's Building "*Covid-19 Court Protocols & Guidance Summary*" for up-to-date details [here](#).

Remote hearings

- The Protocol Regarding Remote Hearings (updated on 26 March 2020) can be found [here](#). It applies to hearings of all kinds, including trials and applications in the County Court, High Court, and Court of Appeal (Civil Division). It also applies to cases involving litigants in person.
- In relation to remote costs hearings, specific guidance can be found [here](#). The link will prompt you to download a separate Word document.

General guidance on PDF bundles

- HMCTS has produced a guide on PDF bundles for use by judges in remote hearings. Full details [here](#).
- Other guides on bundles have been produced by QB, QB masters and circuits, see Farrar's Building "*Covid-19 Court Protocols & Guidance Summary*" (18.6.20) for a summary of QB and circuit protocols [here](#).

Court of Protection

- Guidance on Covid-19 Remote Hearings, and Guidance Nos 1, 2 & 3 is [here](#)

Insolvency proceedings

- A temporary Insolvency Practice Direction (IPD) came into force on 6 April 2020 (link [here](#)).
- The temporary IPD assists court users during the current COVID-19 pandemic by avoiding the need for parties to attend court in person, and to deal with some of the problems arising from the need for the court(s) to operate with limited staff and resources.
- The temporary IPD is intended to supplement the Practice Direction – Insolvency Proceedings (link [here](#)) which, incidentally, was updated as of 3 July 2020 (link [here](#)). The temporary IPD applies to all

insolvency proceedings in the Business and Property Courts subject to variations outside London as directed by the relevant supervising judge. The plan is for all adjourned hearings to be relisted within six weeks.

Employment Tribunal procedure

- On 1 June 2020, the Employment Tribunal updated [this](#) very helpful FAQs document giving guidance on numerous procedural and practical issues (e.g. must I still comply with the Tribunal's orders and directions in the lockdown period). Various other guidance documents are collated [here](#).

Employment Appeal Tribunal procedure

- For all EAT hearings on or after 12 June 2020, the entirety of Paragraph 19 of the Practice Direction (Employment Appeal Tribunal – Procedure) 2018 has been revoked and replaced with [a new Paragraph 19](#).
- The new Paragraph 19 deals with, among other things: hearings in person, remote hearings; private hearings; and recording of hearings.
- The amended Practice Direction will expire at the same time as The Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020 (i.e. currently two years from 25.3.20 but it may be revoked at any time). Various other guidance documents are collated [here](#).

Downloading Skype for Business

- HMCTS has issued a guide to downloading Skype in order to join a court hearing. Full details [here](#).