

In May 2020 the CJC commissioned an independent review led by Dr Natalie Byrom, Director of Research at The Legal Education Foundation with the support of a wider virtual working group to gather feedback on the impact of COVID measures on the civil justice system.

[Click here](#) for details of the consultation

ACL's response is shown below

From: [Claire Green](#)

Sent: 15 May 2020 12:33

To: consultation@theLEF.org

Subject: Rapid Consultation Response: The impact of COVID-19 measures on the civil justice system

For the attention of Dr Natalie Byrom.

Dear Natalie,

Further to our earlier email exchange and the video meeting on Monday, please accept this email as a formal response to the consultation.

We did go out to our members in the hope that we would be in a position to formulate a consolidated response but unfortunately, given the time constraints and the current situation, our members have not engaged.

On that basis, this response is something of a hybrid, in that it contains documents and articles published on behalf of the Association of Costs Lawyers (ACL) but also some anecdotal material derive from personal experience.

Please find attached guidance notes on the conduct of remote hearings. This was a joint collaboration between members of the Judiciary, the Bar and ACL, inspired by the confusion around how hearings were to proceed in the light of the covid measures imposed. I think I mentioned in the consultation meeting that this document has the approval of the SCCO. Of course, whilst its origins are from the costs environment, there is no reason why the principles couldn't be imposed in other areas of litigation.

Please also find attached a number of articles, which are self explanatory and may be of some (limited) assistance. <http://disputeresolutionblog.practicallaw.com/remote-hearings-in-costs-proceedings-the-new-normal/>

Now for the more personal anecdotal information:-

1. a. On 20th April 2020, in one of our matters, there was an oral review of a provisional assessment. We fully anticipated that the Litigant in person (LIP) would use the covid measures to attempt to get the matter adjourned – an adjournment had already occurred in Dec 19 as a result of his actions. Fortunately the court in the form of the DDJ seized of the matter took a robust approach and the hearing went ahead remotely.

b. There were difficulties in organising the hearing, not least the LIP initially refusing to divulge a telephone number to organise the hearing. Bundles were problematic, from the point of view of agreeing the content but the above two points are more down to the nature of the LIP, rather than the covid measures. Delivery of the bundles to the court we did not think had been an issue until the hearing itself.

c. Upon attempting to organise the remote hearing, we made contact with BT, who are the foremost providers of court conferencing facilities, only to be told that they had no capacity for the date/ time. As a result we used an alternative provider. It should be noted that anyone organising a remote hearing must hold an account with the provider. This could obviously be problematic for many who do not deal with hearings routinely.

d. At the hearing itself, the DDJ presiding found a number of documents missing from the court file. One can only assume that the bundle emailed had failed to reach the paper file in time for the hearing, despite being filed some 7 days previously in line with the court order. Fortunately, this did not create us a problem as email traffic between the parties and the DDJ directly had been occurring for some time due to the history of the matter. Therefore the Judge was able to locate the missing papers from his own email.

It should be noted that historically, direct communications between the parties and the Judge has been frowned upon and perhaps this is something that should become more commonplace given the constraints upon the court staff.

e. The cost of the telephone hearing through the alternate provider was significantly higher than the charges levied by BT and this was something that had to be justified to the Judge, who queried it.

2. Whilst there has been guidance as to which hearings should go ahead and which shouldn't, the ultimate decision in this regard is very much up to the parties and the presiding Judge. We are hearing of parties seeking to adjourn when the hearings could reasonably go ahead and the Judges agreeing. We are also hearing of parties wanting to go ahead but Judges adjourning in an apparently arbitrary manner.
3. Similarly, we are hearing of parties seeking to adjourn on the basis that they do not have capability to prepare and file electronic bundles. This information came from a member of the Costs Bar, currently working from his spare room at home with a small printer and scanner. He had been able to prepare a bundle but his opponent, a firm in the top 500, could not.

It seems that there are two strands emerging in the approach being taken by legal professionals at this time.

Firstly, Attitudes – to some it would appear that taking the easy route is the way forward. With respect to that approach it does not help access to justice, or cash flow of firms and stores up a huge problem for the future.

Secondly, Consistency – it's never easy but has ever been thus, when courts take an inconsistent approach to the administration of justice. In the current circumstances, the difficulties are compounded.

Perhaps the answer to both of the above is a more ridged approach to a set of rules specifically designed to oil the wheels of Justice in this difficult time.

In answer to the questions posed:

What is working well about the current arrangements?

Very little -see above.

What is not working well about current arrangements?

See above.

Which types of cases are most suited to which type of hearings and why?

In theory, there is an argument to say all hearings can be dealt with remotely but that will only be possible when we have more sophisticated technology available. At present and with the current available technology, remote hearings are suitable for smaller cases where decisions can be made on the papers before the court.

How does the experience of remote hearings vary depending on the platform that is used?

See above, but note also that there have been reports that Skype is unstable, and people have concerns about the security of all platforms given the stringent data protection provisions.

What technology is needed to make remote hearings successful?

We cannot comment on this as we are not IT specialists.

What difference does party location make to the experience of the hearing?

If the parties are using a platform which relies on Internet access and they are in an area where the Wi-fi speed is poor, it is unlikely that the remote hearing will be successful.

How do remote hearings impact on the ability of representatives to communicate with their clients?

This is platform dependant ; eg zoom has a chat facility which would enable a private conversation between a litigant and advocate during the course of a hearing.

How do professional court users and litigants feel about remote hearings?

We feel that they have a place but there is massive room for improvement

How do litigants in person experience hearings that are conducted remotely?

It should be accepted that not all LIPs are 'victims' – See above. However, it must also be accepted that , most LIPs being the 'Men on the Clapham Omnibus' would struggle to go through the process of arranging a hearing.

How do remote hearings impact on perceptions of the justice system by those who are users of it?

As users, remote hearings do not diminish our perception of the Justice system.

How is practice varying across different geographical regions?

See above.

What has been the impact of current arrangements on open justice?

Current arrangements have reduced this – see above.

What other observations would you make about the impact of COVID-19 on the operation of the civil justice system?

See above.

We trust that the above will assist and should you have any queries or feel that we can assist in any way, please feel free to contact us.

Kind regards,
Claire Green
Costs Lawyer, Accredited Mediator and Trainer
Chairman of the Association of Costs Lawyers (ACL)