

Devon and Cornwall civil response to coronavirus

I have issued neither Protocols nor Guidance, the legality or CPR compliance of which I doubt. I am also concerned that such Guidance or Protocols as others have given in other clusters have not been shared and have only come to my attention via platforms like Gordon Exall's Civil Litigation Brief.

What I have done is as follows.

1. I have encouraged Judges to adhere to public health guidance. That has been the governmental guidance to employers and seems to me to be the only responsible position to adopt.
2. At 18.40 Wednesday 18th March 2020, I sent the text below to all DJs and all court managers across the cluster:

“In view of the PM's announcement a few minutes ago that there will be legislation halting evictions for 3 months, I am ordering with immediate effect in Devon and Cornwall county courts the following in every listed possession action of residential property between now and Friday 19th June 2020.

Upon noting the public health emergency from covid 19 and its actual or likely economic consequences on the continued occupation of residential dwellings by those who have not or cannot meet the charges associated with occupation

Upon noting the declared intention of the Government to pass emergency legislation to prevent evictions of 'renters'

And upon noting that the Government has invited the support of lenders to borrowers by way of mortgage holidays

But without a hearing

IT IS ORDERED THAT

1. The hearing of possession proceedings listed for (insert date) is vacated;
2. The proceedings will be re-listed on the first upon date after 19th June 2020, unless by no later than 4pm on 12th June 2020 the court makes a further order;
3. Because this order has been made without a hearing, any party may apply to set aside or vary this order upon sending to the court and the other parties (whether by email, or first class post) by 4 pm on 27th March 2020 a notice of application together with any witness statement to be relied upon in support.
4. Any application made pursuant to paragraph 3 above will be listed for hearing by telephone as urgent business not earlier than the third day and not later than the seventh day after the application is received by the court.”

To date as far as I am aware, not a single application to set aside or vary has been made in the cluster. Any new claims for possession receive a modified order para 1 of which stays the claim and para 3 to provide a liberty to apply within 7 days of deemed date of service of the order.

3. Staff across the cluster have been working (actually, struggling) in the absence of clear national guidance as to how to give effect to the Guidance of the LCJ dated 19th March 2020 that “The default position now in all jurisdictions must be that hearings should be conducted with one, more than one or all participants attending remotely”, the Protocol dated 20th March from the Heads of Division stating that “1. The current pandemic necessitates the use of remote hearings wherever possible” and “11. It is good practice for the listing office, judges, clerks and court officials to consider as far ahead as possible how future hearings should best be undertaken. 12. It will normally be possible for all short, interlocutory, or non-witness, applications to be heard remotely”, and the Senior Presiding Judge/DSPJ Guidance dated 23rd March 2020 for Family and County Court Judges. I gave guidance to staff but published nothing externally, to the effect that in civil, only urgent business was to be listed (there has been none to date) unless currently listed business could be accommodated by way of remote hearings. As a result, until I issued further generic orders after close of business on Wednesday 25th March 2020, staff and in some courts also judges, were manually looking at cases and files and either directing remote (usually telephone but less frequently Skype) hearings or vacating cases to be re-listed. This was being done manually, on a case by case basis, a day at a time, and necessitated telephone communication with a very large number of litigants or their representatives. This was a profoundly stressful, and inefficient way of working.
4. Accordingly, in consultation with staff at court manager level or above, and local civil judiciary, I started to develop a raft of generic orders to enable (a) creating a space or window of opportunity to consider how to move work to remote hearings and (b) how to facilitate remote hearings. To that end, I issued a raft of generic orders to be actioned by staff after close of business on 25th March and during the morning of 26th March 2020 to the following effect:
 - All SCT and FT listed trials up to 10th April 2020 vacated
 - Invitation in all SCT cases to consider agreeing by consent to determination without a hearing pursuant to CPR 27.4, inviting representations about determination method (paper, remote or face to face) and whatever form directed, user friendly specific guidance for creation of e hearing bundles that even LiPs without computers could use as long as they have a smart phone
 - All FT trials whether vacated or still listed to consider and share with the court for directions whether remote trial is feasible, and identical directions to facilitate e hearing bundles if possible
 - All imminent MT trials fixed for trial before end of April listed for 30 minute directions telephone hearing on 30th and 31st March 2020, all listed before either Designated Civil Judge or the civil Circuit Judge in Plymouth, all at least 2 days before the trial date and most well before the trial date, to consider whether any and if so what form of remote trial is feasible and how and whether that can be facilitated so as to retain the trial date
 - All non-urgent civil applications of any description listed up to 10th April 2020, including CCMCs, approvals and the usual raft of applications about money or enforcement vacated unless agreed to be accommodated by remote hearing

on the presently listed date, with directions in those and later listed applications to facilitate remote hearings if at all possible

- Appeals (none imminent) until end of April have been re-listed to be by remote hearing, facilitated by e bundle directions.
- May, and if necessary June etc trials and appeals will be similarly reviewed month by month starting in mid April.

All these orders, made without a hearing, are expressed to be subject to the liberty to apply to set aside or vary. I do not anticipate any.

5. The only problematical classes of case are injunctions, arrests, committals and freezing orders. Only I have jurisdiction to grant freezing orders so that if not available those applications have to go to Bristol. As regards the other types, I have given staff and judges but not published externally, the following guidance:

“Applications for injunctions whether ASBI or other, whether on notice or without notice.

Since they should be determined without hearing live evidence, there is no reason why they cannot be listed for remote hearing in accordance with the general proposals I am making. This would also apply to BPC or QBD applications for freezing injunctions, but I am the only judge in D & C presently authorised to do those.

Full hearings of Applications to commit to prison for contempt of court (usually for breach of ASBI but could be for anything

People brought to the court under arrest (eg for breach of ASBI or other order with a power of arrest attached; or arrested because of failure to comply with a suspended sentence order re oral examination of debtors)

This is the only category of urgent civil work that requires a face to face hearing. If that can be done with skeleton staff in a safe clean sanitised court room with all distancing arrangements in place and a judge available, then list – remembering that in cases of arrest for breach of ASBI the hearing MUST start within 24 hours of the arrest excluding Sundays, and also excluding such parts of Saturday as the court is not able to be opened (I think I am correct in saying that if there is a local magistrates court that is open on Saturday morning, we have to try and have them produced to a civil judge in that court). I have not yet worked out whether a live court room with a remote judge is lawful but I cannot presently see how this work can be done other than with at least skeleton staff at courts. Also we do not know whether prisons will even take those we do not release. I suspect all such cases will turn into short hearings where the only issues will be (in ASBI breach arrests) whether to bail those who contest and give directions, and in all other cases, whether to adjourn, or if contempt is admitted or found, defer sentence to a future date (whether or not on conditions).”

Upon inquiry from a local authority specifically about ASBIs I have amplified as follows:

- “Applications on N244 together with witness statements in support and draft order acceptable by **email**, fee paid as per current arrangements remotely.
- Court to ‘stamp’ and send by email to solicitor for service.

- If the application is to be made without notice, simply list as a remote hearing either by telephone or video to first available judge. All such cases can be determined remotely because there will be no live evidence.
 - At the moment there is no guidance on whether, and if so, how anything other than the usual rules apply to service and therefore even in without notice orders, and certainly in cases listed on notice, the defendant will have to be personally served or else enforcement of orders is impossible.
 - If the order has been made without notice to a return date, or otherwise on the return day fixed at issue because it is to be an on notice application, or for that matter in the event of any application by the defendant to set aside or vary orders made, and also if a power of arrest was given and the defendant is arrested for breach (only valid at the moment if the order has been personally served on him/her), we have a problem because the defendant must appear at court. It is theoretically possible that in all of these circumstances EXCEPT PRODUCTION AFTER ARREST, a remote hearing could be arranged if (a) D is represented or (b) D has the means to participate in such a hearing (but what Ms Hawley calls a potential situation brewing does not fill one with confidence).
 - Any case where D has to come to court, it must be to a court room that can deal with the case safely in accordance with the Senior Presiding Judge/DSPJ Guidance on remote hearings, and before either a virtual judge (laptop video facing the court or better still projected on to screens) or a real judge if available.”
6. I believe that that has covered every aspect of county court civil work except District Judge box work about which I am still consulting and thinking. All these orders are consistent with the default position having become remote hearings and prioritisation of urgent work. I will re-emphasise to the judges the need to comply with CPR 51PDY as well as the Senior Presiding Judge Guidance on remote hearings. Also all orders are consistent with access to justice principles, in that any party wishing the adoption of a different approach has a liberty to apply to set aside or vary (which at present, I intend universally to be listed for remote hearing). There remain therefore very few civil matters that cannot be dealt with by both staff and judges remotely if all concerned are properly equipped, as I understand it has been happening successfully with Rolls Building work which is undertaken by remote judges facilitated by remote clerks.
7. As a post script, I have now received as a zip file, folders for every MT CMC listed before me by telephone next week, all in perfect order, all having had my directions complied with digitally, and some embracing remote hearings both video and audio for trial. If the hearings go smoothly, this illustrates how this work can be done, but there is an urgent need to provide laptops to enable staff to do their part in safety remotely.

His Honour Judge Allan Gore QC

26th March 2020