

## **Remote Hearings in Civil Proceedings**

### **Fergus Randolph QC – June 2020**

When lockdowns were imposed around the world following the Covid 19 pandemic, individuals' lives were changed dramatically. Whilst the media concentrated on physical deprivation and general loss of liberty, little attention was given to the consequential curtailing of individuals' legal rights and the operation of their justice systems.

Many countries however stepped 'up to the plate' and sought to put in place, in a very short period of time, arrangements to ensure that justice could continue to be served in those jurisdictions. One such was the UK.

Her Majesty's Courts and Tribunals Service ["HMCTS"], liaising with professional stakeholders, quickly put in place protocols for the continuation of civil cases in the various courts under their jurisdiction. As from 24 April, weekly updates have been published on its website: [www.gov.uk/guidance/hmcts-weekly-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak](https://www.gov.uk/guidance/hmcts-weekly-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak). Online court and tribunal services for professional users and the public have been implemented to ensure that the health of those individuals are protected. Judges, barristers and solicitor advocates as well as court staff have been designated as key workers. Secure video conferencing facilities have been put in place to ensure that where appropriate, 'virtual' hearings, including trial where appropriate, can take place.

In addition, various civil courts' administrations, including those of the Commercial Court and the Administrative Court, have put out guidance for cases heard in their courts. Thus, the Commercial Court's guidance for hearings in the main court centre in London provides that as of the beginning of June, there are likely to be 4 types of hearing: (i) fully remote hearings with the judge at home; (ii) remote hearings with the judge in their office or Court; (iii) hybrid hearings with the judge and some participants in Court and some attending remotely and (iv) normal physical hearings with all participants attending Court. The Administrative Court for its part has recently circulated guidance relating to electronic bundles, a key issue for any remote hearing.

It is clear that the policy taken by the HMCTS and the judiciary in particular has been to ensure that as far as possible, civil cases should proceed during the lockdown. To that end, applications for adjournments of hearings because of the pandemic, even where such hearings

include live evidence, are not likely to succeed except in exceptional circumstances. ‘The show must go on’ appears to be the motto.

Many other jurisdictions have put in place measures to ensure that justice prevails during their respective lockdowns and the Remote Courts Worldwide website: [www.remotecourts.org](http://www.remotecourts.org), was set up by Professor Richard Susskind to share the experience in those jurisdictions of establishing and operating ‘remote’ justice. This is exactly the type of project that will improve justice systems and protect the rule of law around the world, not least by ensuring that best practice is shared and available to all.

There are many problems facing the rule of law at present, and the Slynn Foundation works hard to alleviate them to the extent possible. It is therefore heartening to find that that justice systems around the world have worked quickly and efficiently to ensure that the present pandemic does not add to that list and that the rule of law has not been appreciably impacted during this difficult time. Long may that continue.