

Note on Covid-19 Orders, Temporary Procedures and Listing Priorities

Orders

1. I have directed that orders be issued on cases and applications in civil work (excluding BPC) listed in Manchester after 31 March 2020 in accordance with drafts attached to this note. In due course these orders are likely to cover cases listed in both Stockport and Wigan.
2. The orders made in individual cases (which will be sent out by the Court in the usual way) may vary slightly, but the substance of those orders is likely to match the attached drafts. Orders will change as time goes on and as we gain experience of how they work in practice.
3. The parties should consider the orders carefully and, if they object to any part of the order (for example because they want the matter to be adjourned), make an application to the court to vary the order. Each order sets out how that must be done. If both parties object to any part of the order they should file a consent order reflecting that agreement for the court to consider.
4. The orders make broadly standard provision for the arrangements to be made for setting up a video hearing (see the FT and MT order at para.3) and preparing an electronic bundle (see the same order at paragraph 7). I would encourage parties to consider these drafts as a starting point for any consent orders which concern electronic bundles or video hearings.
5. The orders mandate the production of electronic bundles. This will greatly enhance the court's ability to deal with matters efficiently. As the orders make clear, the aim is to ensure that a judge can determine the matter without having the court file or a paper bundle transported to her/him from the court or by the parties.
6. If electronic bundles have not been prepared the judge may decide to adjourn the hearing and costs consequences may follow.

Communication with the Court

7. Telephone lines will still be open for you to speak to court staff. The lines will be busy and, by reason of reducing numbers, staff will be under greater pressure than usual. It is likely to be far more effective to communicate by email.
8. The main email address for all civil matters will remain manchestercivil@justice.gov.uk
9. I have directed within the orders that emails contain certain information in the subject line. The provision of the right information will help HMCTS staff and judges to deal with emails efficiently. HMCTS staff are very likely to deal with compliant emails first. Please bear that in mind and ensure that your emails are succinct.

Listing Priorities

10. From now, work will be dealt with following the priorities set out in the attached document (see annex.1). We will keep the priorities under review.
11. It is important to note that the priorities do not apply to general QB matters.

County court

12. A protocol to help the court prioritise county court work (claims and applications) has been prepared for the CJC (annex.2). A Greater Manchester Courts version is in the course of preparation. It covers all existing work and work issued after 29 March 2020. A listing questionnaire designed to help the court carry out the triage process is part of the protocol.
13. The Protocol should be followed.

Queen's Bench

14. Queen's Bench work outside the TCC and the Circuit Commercial Court will be dealt with on a case-by-case basis.

Mode of Hearing

15. If a matter remains in the list and involves live evidence all efforts will be made to arrange a remote hearing. It is likely that a video hearing will be preferred over a telephone hearing. If no live evidence is involved it is likely that telephone hearings will be the best way forward. However, there will be (at the moment and in most cases) no fixed rules as to when a telephone hearing or a video hearing should be used. I encourage all parties to agree the way forward; agreement will limit the time the court spends considering the matter and will ensure that the parties can work with the arrangements made both practically and from an IT point of view.
16. The main platforms for a telephone hearing are the usual court HMCTS approved legal conference providers and BTMeetMe. Generally, where a legal representative sets up a call one of the approved providers should be used. This will mean that BTMeetMe hearings (which do not require any pre-booking and so are easier to use) will be generally available for litigants in person.
17. If the hearing is by telephone, each participant (other than the Judge) should introduce herself/himself by name each time she or he speaks.

Video

18. If video hearings are to be arranged, careful thought needs to be given to a number of matters. Some are set out in the MR's Protocol (at <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>)

which should be read with care.

19. It will be sensible to ensure all attendees are gathered on the video call and for the judge then to be the last introduced participant and to ensure that the court has contact details for all participants.

Witnesses

20. Arrangements will need to be made for witnesses to have access to the bundle.
21. It will be important that witnesses understand, before they give evidence, the need to be in an appropriate place which is quiet and free of distraction. Arrangements to swear the witness in or for the witness to affirm should also be made. The responsibility to arrange or point out these matters will rest with representatives.

Bundles

22. It will also be important to give careful thought to bundles (for all hearings). The old practice of including everything in the bundle will need to change. Bundles should be prepared so that they are concise and manageable. I would encourage the parties to include only extracts of documents if only extracts are needed. You should remember that the judge may not have the court file and may be working away from the court building.
23. Where possible if the bundle is to be emailed, it should not be made available in a piecemeal fashion, it should be sent via one email. As far as possible attached documents should not be password protected and the provision of documents after the bundle has been finalised should be kept to a minimum.
24. Where possible, online (or virtual) data rooms should be used for bundles, particularly large bundles for use at trial. The court is unlikely to be able to accept emails which are in total larger than 10 MB (see PD5B and general email guidance at <https://www.justice.gov.uk/courts/email-guidance#canfile>) and so using an online vault will ensure that the court has easy access to the relevant papers. Arrangements to access the online vault should be communicated in good time before the hearing.

Platform

25. It will be important to agree an appropriate platform for the hearing. Most judges will have access to Skype for Business, but the Protocol makes clear that other platforms might be used. It will be important to make sure that the judge dealing with a matter is content to use the suggested platform.
26. Participants should be aware that the email address used to sign in to Skype may be visible to all other participants.

Moving matters to a paper determination

27. If the trial is a small claims trial it may be sensible to consider inviting the court to deal with the matter on paper in accordance with CPR 27.10. The judge will have the final decision as to whether the case can be dealt with in that way.
28. When dealing with applications, thought should be given to the use of CPR 23.8(b). I would encourage parties to consider if the application can be dealt with on paper. If the parties agree it can they should comply with CPE PD 23A para.11.1. Again, the judge will have the final decision as to whether the application can be dealt with in that way. The court might consider using its powers under CPR 23.8(c) to make orders on paper where it does not consider a hearing is necessary.

Litigants in Person

29. Litigants in Person will also be affected by these temporary arrangements and should actively consider what remote hearings would best suit them. Parties will no doubt bear in mind CPR 1.3 which sets out the duty of all parties (and by extension their representatives) to help the court to further the overriding objective and ensure that all cases are dealt with justly.

Other Orders

30. When allocating a county court claim to track, the Judge will bear the listing priorities in mind. High Court Multi Track cases are likely to be listed to a CCMC to be heard by telephone.
31. Further orders have been issued on block listed matters, Small Claim trials, appeals, applications for permission to appeal and possession matters. Those orders are not attached. Many matters have been moved to be heard by way of telephone conference or video with the co-operation of the parties.
32. I would urge all parties to co-operate to find means by which matters can be heard remotely. Such agreements are very likely to be approved by the Court. If consent orders can be lodged on any matter I would again encourage that to be done.
33. The Manchester CJC will remain open.
34. Matters heard remotely may be relayed through an open court room. Hearings will be shown on the daily cause list. If the hearing is relayed into a court room, it will be recorded by the court's recording system.
35. If any matter is heard in private and there is no court based recording facility a legal representative may be invited by the judge to arrange for recording and required to hold the recording on strict undertakings. Representatives must remind parties that is a contempt of court to record (or transmit) proceedings in any way unless the Judge gives permission.
36. In considering if it is necessary to hold a hearing in private the Judge will have regard to CPR 39.2 and 39.9 (in its updated version as appears at

CovidNote313201727

<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part39>) section 85A of the Courts Act 2003 and CPR PD51Y.

HHJ Nigel Bird

DCJ Greater Manchester

31 March 2020

ANNEX.1

CURRENT LISTING PRIORITIES IN CIVIL – COVID-19
FOR COURTS IN GREATER MANCHESTER¹

Issued: 27.03.20

Priority 1: Work Which Must Be Done

1. Committals
2. Freezing Orders
3. Injunctions (and return days for ex parte injunctions).
4. The emphasis must be on those with a real time element (such as post-termination employment restrictions), noise or interference with property.
5. Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
6. Applications to stay enforcement of existing possession orders
7. Production of persons in custody following Power of Arrest detentions
8. Applications to displace under s 29 of MHA
9. Homelessness Applications
10. Enforcement work that does not involve bailiffs, such as third-party debt orders (particularly hardship payments).
11. Any applications in cases listed for trial in the next three months
12. Any applications where there is a substantial hearing listed in the next month.
- 12a. any application suitable for paper determination
13. All Multi Track hearings where parties agree that it is urgent (subject to triage).

¹ Additional items for GM are shown underlined

14. Appeals in all these cases

Priority 2: Work Which Could Be Done

1. Infant and Protected Party approvals (children could attend by Skype)
2. CPR 21 approvals
3. Applications for interim payments in MT/PI/Clin Neg
4. Stage 3 assessment of damages
5. Trials involving the survival of a business or the solvency of an individual
6. Enforcement of trading contracts
7. Applications for summary judgement for a specified sum
8. Applications to set aside judgement in default
9. Applications for security for costs
10. All small claim/fast track trials where parties agree it is urgent (subject to triage)
- 10a. Any small claim suitable for determination on paper
11. Preliminary assessment of costs
12. Appeals in all these cases

Caveat

The work in the Court of Appeal and the QBD (and District Registries) are excluded from these lists, for obvious reasons.

B&PC work is also excluded from these lists. Thus far, it has not proved possible to deal with this work on anything other than a case-by-case basis. The triage system is working well. Accordingly, these lists relate only to County Court work.

Annex.2

Protocol for the prioritisation of civil work

In the present emergency, the court's resources must be concentrated on the most urgent cases. The Deputy Head of Civil Justice has identified the priorities for the County Court. The Designated Civil Judge, HHJ Bird, has modified the priorities slightly, as appears in the accompanying direction. The following protocol is intended to assist in identifying those cases which require prioritising.

1. For all existing claims and applications, the listing officer will in the first instance make an assessment of whether the case falls within category 1 or category 2 or otherwise and will list accordingly. In cases of doubt the matter will be referred to a judge.
2. For all applications or claims issued after 29th March 2020 the party issuing the application or claim will be required to a) complete the attached listing questionnaire; and b) file a copy of the completed request with the court within 7 days of the issue of the application and c) serve it on the respondent / defendant. The questionnaire is intended to be sent out and returned electronically but can be printed if necessary.
3. The parties' responses will be considered by a member of the listing office. In a clear case the hearing will be prioritised as suggested by the parties without referral to a judge. In a case of any doubt or disagreement between the parties the matter should be referred to a judge for prioritisation.
4. In any case which has not been prioritised that comes before a judge, the judge shall assign a priority.
5. In any such case as referred to in paragraph 4 above the judge shall at the same time, and if not already determined, give an indication of the preferred method of hearing – whether in court or remotely and if remotely the preferred method of conducting the hearing (telephone or video and the arrangements for such if not already made).
6. The listing office will have the power to remove cases from the list that either a) do not have priority or b) cannot be accommodated because of the amount of other prioritised work.
7. Any case that has to be removed from a list will be referred to a judge for directions as to relisting.

Greater Manchester County Courts

Listing priority questionnaire

In the present emergency, the court’s resources must be concentrated on the most urgent cases. The Deputy Head of Civil Justice, Coulson LJ, has identified the priorities for the County Court. The Designated Civil Judge, HHJ Bird, has modified the priorities slightly, as appears in the accompanying direction. You should complete this form to enable the court to list your case.

You should identify any matters in support of your application in the “Comments” section, for example, why you say that a multi track case should be treated as urgent. This form should be submitted by email to manchestercivil@justice.gov.uk. The email must include in the subject line of the email the claim number, the names of the parties and the words “Listing priority.”

You should return this form as soon as possible and in any event within 7 days.

| | |
|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Case number | Click or tap here to enter text. |
| Name of parties | Click or tap here to enter text. |
| Your name | Click or tap here to enter text. |
| Which party are you (or whom do you represent)? | Click or tap here to enter text. |
| What kind of case is this? (You should refer to HHJ Bird’s direction) | Choose an item. |
| Will the case be heard | <input type="checkbox"/> In court Cases will be heard in open court only in exceptional cases. State in the “Comments” section below why this case must be heard in court |
| | <input type="checkbox"/> By video link State in the “Comments” section below what arrangements have been/will be made to ensure that the judge, the parties and the witnesses will be connected |
| | <input type="checkbox"/> By telephone |
| | <input type="checkbox"/> Decision only on papers |
| Have you prepared an electronic bundle in accordance with HHJ Bird’s direction? | Choose an item. |
| Do all parties agree the contents of this form? | Choose an item. |

Comments

Click or tap here to enter text.

Judge's comments

Click or tap here to enter text.

Annex.3

Orders to be issued where a FT or MT is listed – subject to any decision on priority

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Before His Honour Judge Bird the Designated Civil Judge for Greater Manchester

UPON the court taking notice of the COVID 19 (Coronavirus) pandemic and the measures being taken in response and the Protocol regarding remote hearings issued on 20 March 2020 (“the Protocol”) a copy of which can be found at <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>

AND UPON the Court having considered matters on the papers

AND UPON it being recorded that the court expects the parties to do their utmost to co-operate with each other in all things and lodge consent orders wherever possible

AND UPON the parties being reminded of the HMCTS Email Guidance referred to in CPR PD 5B which provides that the total size of an email, including attachments, must not exceed 10 megabytes

AND WITHOUT A HEARING AND ON THE COURT’S OWN INITIATIVE

IT IS ORDERED THAT:

1. The parties shall use their best endeavours to agree a mechanism to allow the trial of this action presently listed to commence on [] 2020 to proceed on that date by way of video hearing or telephone hearing, having regard to the matters set out in this Order and in the Protocol (insofar as they do not clash with the terms of this order).

2. Within 7 days of service of this order upon the parties,
 - a) In the event that the parties reach agreement, the Claimant (or the first named represented party in the event that the Claimant is unrepresented) shall send an email to the court at manchestercivil@justice.gov.uk which confirms that terms have been agreed and sets out such terms as an attachment to the email;

b) in the event that terms are not agreed, the parties shall send an email to the court at manchestercivil@justice.gov.uk attaching each party's draft directions, containing brief reasons for each side's proposal for the disposal of this claim.

3. In the event that the agreed arrangement is for a video hearing, the terms shall include the following detail:

a) The chosen video platform (bearing in mind that all judges have access to Skype for Business but that not all judges will have access to other video platforms)

b) Arrangements that will be made to join the judge and all persons into the video conference and how witnesses will be dealt with

c) The identity and a contact telephone number and email address for all persons who will join the conference

d) Provision for all parties to sign in to the conference at least half an hour before the hearing is due to begin, to address any issues with the connection

e) Such other matters as are necessary for the hearing to take place including the matters listed at paragraphs 20 to 23 of the Protocol

4. The subject line of the email must include the claim number and the date of the trial and include the words "agreed remote directions".

5. In the event that the parties reach agreement and comply with paragraphs 2, 3 and 4 of this order the court the directions set out at paragraphs 7 and 8 of this order shall apply. If the parties seek alternative directions in relation to the bundle they must set out within the email the directions they seek and the reasons why the provisions set out in paragraph 7 are not appropriate in their case. The court will consider the agreement, and any request to vary paragraph 7, and give such further directions as are required which may include attendance at a brief telephone directions hearing.

6. In the event that the parties fail to reach agreement the court will give directions in any event which may include the vacation of the trial or the requirement for the parties to attend a brief telephone directions hearing.

7. Any directions already given as to the filing of a trial bundle or skeleton argument are varied as follows. No less than 3 days before the hearing is to take place the Claimant (or if unrepresented, the first named represented party) shall send an email to the court at manchestercivil@justice.gov.uk, copied to the other party and (if provided) to the Judge's email address:

- a) Containing in the subject line the name of the case and the date and time of the hearing

- b) Setting out in its body (not as an attachment) a succinct reading list of documents for the Judge who will conduct the hearing together with an agreed estimate of the time it will take the Judge to read the documents. The parties should endeavour to agree the list and the list should be specific and if necessary refer to specific sections of a document, with page references to the electronic bundle.

- c) Containing a link to the electronic bundle at an online data room (where possible). If it is not possible the electronic bundle must be attached to the email, in which case the size of the email including attachments may not exceed 10 megabytes. The electronic bundle:
 - (i) Should be agreed
 - (ii) Must only contain the documents referred to in the reading list, which should only be those documents which are necessary and will be referred to at trial
 - (iii) Should include skeleton arguments if ordered or appropriate
 - (iv) Wherever appropriate, should contain extracts of documents rather than the entirety of documents
 - (v) be prepared in a single pdf format
 - (vi) Must be indexed and paginated in ascending order, to include index pages and necessary authorities
 - (vii) Must always have a default display view for all pages of 100%
 - (viii) Must allow text on all pages to be selectable and to facilitate electronic annotation
 - (ix) Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another
 - (x) Shall not exceed 250 pages in a claim allocated to the fast track, or 750 pages in a claim allocated to the multi track.

- d) The parties should prepare the focussed reading list and electronic bundle on the basis that the Judge dealing with the matter may have no previous knowledge of the case and may not have access to the court file.

- e) For the avoidance of doubt, this paragraph and the provision of an electronic bundle must be complied with even if the parties have already filed a paper bundle.

8. Save insofar as they are varied or superseded by this order, directions already given in respect of the preparation for trial shall continue to apply.

9. The parties must ensure that all witnesses have a copy of the bundle in a format that they are able to use whilst giving evidence.

10. At an appropriate stage, the Court will consider whether the hearing should take place in public or private having regard to CPR 39.2 and the Protocol.

11. Because this order has been made without a hearing a party may apply to set it aside or to vary its terms. Such an application:

- a) may be made by email to manchestercivil@justice.gov.uk
- b) must be made within 7 days of service of this order and be copied to all parties
- c) must include in the subject line of the email the claim number and the date of the adjourned hearing
- d) must attach a draft of the order the court is invited to make and
- e) must set out in the body of the email on what grounds the proposed order is sought and, if it is proposed that a hearing in a Court room is to take place, the measures required to ensure that this can be done safely, lawfully and in accordance with Government, Public Health England, and other appropriate guidelines
- f) will be dealt with on paper without a hearing.

Annex.4

Order to be issued in all listed applications – subject to any decision on priority

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Before His Honour Judge Bird the Designated Civil Judge for Greater Manchester

UPON the court taking notice of the COVID 19 (Coronavirus) pandemic and the measures being taken in response and the Protocol regarding remote hearings issued on 20 March 2020 (“the Protocol”) a copy of which can be found at <https://www.judiciary.uk/wp-content/uploads/2020/03/Civil-court-guidance-on-how-to-conduct-remote-hearings.pdf>

AND UPON the Court having considered matters on the papers

AND UPON it being recorded that the court expects the parties to do their utmost to co-operate with each other in all things and lodge consent orders wherever possible

AND UPON the parties being invited wherever possible to consider the use of CPR 28.8(b), as set out in paragraphs 7 to 9 of this order, bearing in mind that such a determination will be final pursuant to CPR PD 23A para 11.1

AND UPON the parties being reminded of the HMCTS Email Guidance referred to in CPR PD 5B which provides that the total size of an email, including attachments, must not exceed 10 megabytes

AND UPON it being recorded that in the event that any party fails to comply with any provision of this order the matter may be adjourned

AND WITHOUT A HEARING AND ON THE COURT’S OWN INITIATIVE

IT IS ORDERED THAT:

1. The hearing of this application listed to take place on [] 2020 shall (subject to the remaining terms of this order) proceed by way of a telephone conference.

2. At an appropriate stage, the Court will consider whether the hearing should take place in public or private having regard to CPR 39.2 and the Protocol.

Arrangements to be made for the hearing if at least one party is represented

3. If at least one party is represented then the hearing shall be organised through an approved legal conference provider, with the Claimant (or if the Applicant is unrepresented, the first named represented party) to make the arrangements for the telephone conference.

Arrangements to be made for the hearing if both parties are unrepresented

4. If no party is represented then each party should separately

(a) notify the court as soon as possible (and in any event by 4pm 3 days before the hearing) that they are unrepresented;

(b) provide a telephone number on which they confirm that they can be reached by the court for a telephone hearing conducted using BTMeetMe (or such other telephone hearing method as may be utilised by the court in future).

5. The court will, after receiving the telephone numbers referred to in paragraph 3(b) above, make the necessary arrangements for the telephone hearing. If the court cannot facilitate a BTMeetMe hearing (or other telephone hearing method utilised by the court) on the time and date of the hearing, the hearing will be adjourned to a date when the court can facilitate the telephone hearing.

Arrangements for preparation of electronic bundle for remote hearings where one or both parties is represented

6. No less than 3 days before the hearing is to take place the Applicant (or if the Applicant is unrepresented the first named represented party) shall send an email to the court at manchestercivil@justice.gov.uk copied to the other party and (if provided) to the Judge's email address:

a) Containing in the subject line the name of the case and the date and time of the hearing

b) Setting out in its body (not as an attachment) a succinct reading list of documents for the Judge who will conduct the hearing together with an agreed estimate of the time it will take the Judge to read the documents. The parties should endeavour to agree the list and the list should be specific and if necessary refer to specific sections of a document, with page references to the electronic bundle.

c) Containing a link to the electronic bundle at an online data room (where possible). If it is not possible the electronic bundle must be attached to the email, in which case the size of the email including attachments may not exceed 10 megabytes. The electronic bundle:

- (i) Should be agreed
- (ii) Must only contain the documents referred to in the reading list, which should only be those documents which are necessary and will be referred to at the hearing
- (iii) Should include skeleton arguments if ordered or appropriate
- (iv) Wherever appropriate, should contain extracts of documents rather than the entirety of documents
- (v) be prepared in a single pdf format
- (vi) Must be indexed and paginated in ascending order, to include index pages and necessary authorities
- (vii) Must always have a default display view for all pages of 100%
- (viii) Must allow text on all pages to be selectable and to facilitate electronic annotation
- (ix) Must have a resolution reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another
- (x) Shall not exceed 100 pages.

d) The parties should prepare the focussed reading list and electronic bundle on the basis that the Judge dealing with the matter may have no previous knowledge of the case and may not have access to the court file.

e) For the avoidance of doubt, this paragraph and the provision of an electronic bundle must be complied with even if the parties have already filed a paper bundle.

Arrangements for preparation of electronic bundle for remote hearings where no party is represented

7. In the event that no party is represented the Applicant shall comply with the requirements of paragraph 6

Arrangements to be made if the parties wish the application to be dealt with on paper

8. The parties should consider inviting the court to deal with the application on paper in accordance with CPR 23.8(b) instead of at a telephone hearing.

9. If the parties are agreed, they should invite the court to deal with the matter in that manner by sending an email to manchestercivil@justice.gov.uk

a) the subject line of the email must include the claim number and the date of the hearing and include the words “paper determination” and

b) the email shall comply with paragraphs 6 (b) to (e) of this order

10. On receipt, the listed hearing will be vacated and the court will determine the application on paper or give further directions.

Right to apply to vary this order

11. Because this order has been made without a hearing a party may apply to set it aside or to vary its terms. Such an application:

a. must be made by email to manchestercivil@justice.gov.uk

b. must be made within 7 days of service of this order and be copied to all parties

c. must include in the subject line of the email the claim number and the date of the adjourned hearing and the words “Application to vary order”

d. must attach a draft of the order the court is invited to make and

e. set out in the body of the email on what grounds the proposed order is sought and, if it is proposed that a hearing in a Court room is to take place, the measures required to ensure that this can be done safely and lawfully and in accordance with Government, Public Health England and other appropriate guidelines.

f. will be dealt with on paper without a hearing.