

ELA Covid-19 Working Party

Issues in High Court and County Court Litigation

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The current Coronavirus crisis - with Judges, Court staff, Clients, Solicitors and Counsel all being encouraged to work at home and to self-isolate, if required, and all being potentially affected by catching the virus - is likely to create significant difficulties for the conduct of claims in the High Court and County Court.

The problems likely to be faced by clients and litigators include: (i) not having access to the complete paper files that will be in the office; (ii) difficulty with raising cheques for payment of Court Fees etc; (iii) Solicitors/Associates being off sick with the Coronavirus; (iv) lack of access to photocopying facilities; (v) financial difficulties; and (vi) difficulties getting a response from over-pressed or absent Court staff.

Set out in the table below are some of the specific issues that have been raised, together with potential, suggested solutions. ELA would, of course, be more than happy to discuss them further as required.

Issues in High Court/County Court Litigation: specific issues that have been raised, together with potential, suggested solutions.

Relevant Provision and Requirement	Current Position	Issue	Proposed Solution/s
Limitation Act, 1980, ss. 5, 11 & 33.	<p>High Court/County Court employment claims for eg. Notice Pay, arrears of pay, equal pay arrears, non-payment or under-payment of bonuses etc. must be issued within 6 years (section 5).</p> <p>More importantly, personal injury claims, including claims for psychiatric injury caused by stress or bullying at work, have a limitation period of 3 years with the possibility of a discretionary extension under section 33.</p>	<p>Limitation periods that are due to expire during or in the months immediately following the current 'lockdown'/period of home working etc.</p> <p>Difficulties in issuing and serving proceedings during the lockdown.</p> <p>Difficulties in raising cheques etc.</p>	<p>The options would appear to be either:</p> <p>First, a limitation holiday for, say, 6 months or so during the currency of the Coronavirus. This would require a statutory provision. This is the only way round the potential problem for claims for breach of contract etc. since there is no discretionary extension. Hopefully there will not be a lot of these claims with a limitation period that is due to expire, given the 6-year limitation period.</p> <p>Second, a standing instruction to be issued by the Judiciary that extensions of time will be granted pursuant to section 33 if the extension is solely to cover the period of the Coronavirus.</p>
Court staff to process correspondence and Applications etc.	Court staff are already under pressure, particularly in certain regions. There was already significant delays in the processing of	Court staff being absent due to illness, the need to self-isolate or caring for children who are off school.	<p>Increased use of correspondence and communications <u>direct</u> with the designated Judge.</p> <p>This would work particularly well in</p>

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	correspondence etc. even before the current crisis.	Also, potential difficulties with the Court staff having remote access to the relevant files and systems.	<p>London, with the Masters corridor and allocated Masters. It would also work in Manchester with the CN/PI Model and designated DJ's allocated to particular cases.</p> <p>This model may need to be extended to the other larger Court centres.</p> <p>One designated and approved point of contact from each side to prevent the Judge being flooded with correspondence from multiple sources.</p>
E-mail service not effective unless expressly agreed by the other party (CPR Part 6)	Service by e-mail not effective unless with prior agreement.	Service by conventional methods difficult from home. Few people have access to a fax machine at home any longer. E-mail is the simplest method and should be permitted as one of the default methods.	<p>Designate service by e-mail as effective.</p> <p>The mechanisms are already in place for a party to demonstrate that the document was not in fact received.</p>
Level of Court Fees/restrictions on fee remission	Court fees of up to £10,000. Fee remission only available in limited circumstances.	Cash flow problems for both Claimants and Claimant Solicitors. May prohibit the issuing of litigation.	Reduction/waiver of Court Issue Fees for a period or extension of the fee remission scheme.
Need for party/Court to serve the actual <u>Sealed</u> Copy of Order/Application Notice	As in Box 1.	<p>Need for access to the actual Sealed copy and not just an electronic copy.</p> <p>Health risk of having to handle the actual</p>	Permit parties to serve a <u>copy</u> of the Order/Application by e-mail.

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		copy handled by the other party and postal staff etc.	
Need for party to lodge hard copies with the Court to comply with a requirement to lodge (either under the CPR or because of Orders of the Court).	As in Box 1.	Need for access to photocopying facilities and access to the hard copies of documents. Health risk of having to handle the actual documents.	Permission for parties to lodge documents with the Court by e-mail.
Requirement to lodge hard copy Bundles with the Court for	As in Box 1.	Need for access to photocopying facilities and access to the hard copies of documents. Health risk of having to handle the actual documents.	Permission to lodge electronic Bundles for use at Application Hearings/Trials (that are likely to be conducted by telephone or Skype in any event).
Requirement to file and serve Acknowledgement of Service within 14 days and Defence within 28 days (CPR Part 15.4(1))	As in Box 1.	Administrative difficulties faced by Solicitors and Clients. Difficulties in taking instructions. Clients and Solicitors being absent on sick leave.	Doubling the time for Acknowledgement of Service to 28 days and for Defence to 56 days.
Court's power to make Case Management Orders of its own initiative (CPR 3.3).	Default deadline of 7 days for a party to apply to set aside, stay or vary the Court's Orders (CPR 3.3(6)(b)).	Administrative difficulties faced by Solicitors and Clients. Difficulties in taking instructions. Clients and Solicitors being absent on sick leave.	Court to routinely specify a period of 21 days to set aside, stay or vary the Court's Order (pursuant to CPR 3.3(6)(a)).
Period of 4 months in which to serve a Claim Form that was issued but not served by the Court (CPR Part 7.5(1)).	As in Box 1.	Administrative difficulties faced by Solicitors and Clients. Difficulties in taking instructions. Clients and Solicitors being absent on sick leave.	Suspension of need to serve Claim Form during the period of the Coronavirus or a longer period for service.

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<p>Parties can only agree an extension of time for compliance with Court Orders by 28 days before an Application for Relief from Sanctions is required (CPR 3.8(4)).</p>	<p>As in Box 1.</p>	<p>Administrative difficulties faced by Solicitors and Clients. Difficulties in taking instructions.</p> <p>Clients and Solicitors being absent on sick leave.</p>	<p>The restriction to 28 days be removed for the period whilst the Coronavirus is having its effect.</p> <p>Court already has the protection that extensions are not permissible if the Trial or Trial Period would be affected.</p>
<p>Costs Budgeting. Significant developments.</p>	<p>Once cases have been cost budgeted, costs in excess of the budgeted figure will only be recoverable if the party is able to establish that there has been a “significant development.”</p> <p>Generally, it is advisable to make an Application to the Court to vary the Budget rather than to leave the matter to detailed assessment.</p>	<p>The Courts will, potentially, be flooded with Applications to vary the Budget at a time when both the administrative staff and the Judiciary are particularly stretched in any event.</p>	<p>Guidance to be issued that the Coronavirus is, obviously, a “significant development” that will be taken into account on detailed assessment, such that individual Applications to vary the Budget are not required.</p>