



Informing Progress - Shaping the Future



COVID19 – APIL and FOIL Best Practice For Mutual Co-Operation

APIL and FOIL have set up a working party to discuss various aspects of our members' work, which have been affected during the coronavirus outbreak. We have agreed a set of best practices that we recommend their members consider and adopt where possible.

- **Telephone calls/Email**

Good communication is very important, particularly now that many offices have closed and are unable to access their post on a daily basis. Practitioners should engage with their counterparts by telephone and/or email with a view to resolving disputes effectively and efficiently. Many members' fee earners are able to make and receive telephone calls even while home working. Email signatures should be updated to indicate the correct contact numbers if they have changed due to remote working. Similarly, individual email addresses should be provided.

- **Service by email, including new proceedings**

It is our view that it is in the best interests of your clients and the effective conduct of claims to agree that firms temporarily agree to accept service by email.

It is entirely reasonable to seek express confirmation from your counterpart that this covers service of the claim form where appropriate (remembering that solicitors must have been given as the address for service for this to be effective).

You should consider using a dedicated email address for the receipt of service for documents and proceedings. Make it clear that service to this email address is subject to strict compliance with defined terms which limit your agreement to accept service by email for the purposes of paragraph 4.2 PD 6A CPR.

Where a firm has declined to accept service by email the best course is likely to be to serve in any event, having made application for an order under Part 6.15 (1).

- **Service of ongoing proceedings**

Where proceedings are already live, you may have the details of your counterpart and their direct email address.

- **Medical examinations**

It is inevitable in the current circumstances face-to-face examinations will be difficult to arrange. It will often be in the client's best interests to agree to use some form of video conferencing for experts' 'examinations' of the injured person.

The BMA has issued guidance to medics indicating that the NHS is turning to remote consultations in order to minimise the risk of infection for staff and patients. Its guidance for medics is here: <https://www.bma.org.uk/advice-and-support/covid-19/adapting-to-covid/covid-19-video-consultations-and-homeworking>

Medco has agreed the current ban on the use of remote examinations will be lifted. There are a number of conditions, and other factors, which users will need to consider before making any arrangements with claimants for a remote

examination. Further details are set out in a separate notice here:

<https://www.medco.org.uk/media/1220/remote-examination-guidelines-v50.pdf>

Inevitably some appointments with experts will have to be postponed or rescheduled. Practitioners should try to adopt a consensual approach to the impact this will have on case timetables.

- **Progression of cases**

In most cases there will be a CMC and considerations should include whether a virtual hearing is preferable or possible to arrange with the Court. The message from the Lord Chief Justice dated 5 January 2021 reiterates that attendance in person is permitted, but only where necessary. In the absence of a CMC during the pandemic, the parties should agree to discuss the case and attempt to agree how to progress matters. Should this not be possible, evidence of the attempts made and issues faced should be provided when the CMC is relisted. LCJ's message:

<https://www.judiciary.uk/announcements/message-from-the-lord-chief-justice-latest-covid-19-restrictions/>

- **Exchange of evidence**

Parties should try to agree to the exchange of witness evidence and expert evidence by email, via a password protected pdf document.

- **Extensions of time**

It is likely that both parties will face challenges complying with existing court directions and timetables. With Practice Direction 51ZA no longer in force, we recommend that practitioners invite parties to take a consensual approach to considering requests for the extensions and respond similarly to requests made by their counterparts.

- **Remote hearings**

HMCTS has issued guidance on the wider use of remote hearings, by telephone or Skype here <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak> . The message from the Lord Chief Justice dated 5 January 2021 reiterates that attendance in person is permitted, but only where necessary and it is recommended that parties adopt this guidance, particularly in relation to contacting the parties in advance to discuss the remote arrangements and to have a plan in place to deal with any technical difficulties on the day.

- **E-bundles**

APIL and FOIL made a joint approach to HMCTS and the Judiciary with a view to encouraging a consistent approach from the courts relating to the requirements, technological and practical, for the creation, filing, serving and storage of e-bundles. There is now more guidance issued for e-bundles, which can be found here:

Annex A of the QBD guidance here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939167/RCJ_Notice_QB_General_30_Nov_2020.pdf.pdf

It is still prudent to check if a court has issued its own guidance.

HMCTS Document Upload Centre guidance:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887109/Document_Upload_Centre_-_Professional_User.pdf

To reduce the size of bundles and assist with efficient delivery, parties should carefully consider the content of e-bundles, use digital originals where possible instead of scans, and use scans in black and white rather than in colour.

- **Adjournments**

It is also inevitable that some adjournments will be required due to non-availability of clients, witnesses or experts. We recommend that you take a consensual approach should it be necessary to seek an adjournment of either an interlocutory hearing or trial.

- **Interim payments**

Parties ought to adopt a reasonable and co-operative approach to requests for interim payments. In the current climate, interim payments are likely to be of vital importance, and any unnecessary applications to the court ought to be avoided.

- **BACS payments**

To enable a more efficient and effective transfer of funds for damages and costs firms should use BACS payments wherever possible. Note that in light of the increased information security and financial crime risks associated with BACS payments, please ensure that you *only* make payments by BACS to the account details provided by your COLP, providing appropriate evidence to validate the bank account details provided.

- **Forms of authority**

We recommend that parties should try not to insist on 'wet' signatures on signed forms of authority before the release of damages.

- **Costs budgeting**

It is recommended that where possible parties exchange their costs budgets. Every court will deal with CCMCs differently and if they do proceed they will be held remotely usually by telephone hearing. Depending upon client instructions, the parties should consider whether the budgeting aspect of the CCMC hearing should be adjourned. However, the parties should seek to agree directions generally where possible without the need for a hearing. If the parties are unable to agree directions, the hearing should go ahead as scheduled.

- **Limitation**

In many cases, one year on from the start of the pandemic, limitation should no longer be an urgent issue. Where the effects of the Covid-19 outbreak mean that limitation still becomes an urgent issue, then best practice is that the parties should liaise and work to, agree the best way forward, which can include agreement to an extension of time or standstill agreement, for example.

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