



Informing Progress - Shaping the Future



## **COVID19 – APIL and FOIL Best Practice For Mutual Co-Operation in Northern Ireland**

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 whilst many offices remain closed and are unable to access their post on a daily basis. Practitioners should continue to 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, where firms have been nominated to accept service, they temporarily agree to accept service by email.

For the avoidance of doubt, agreement to accept service by email shall be an agreement to accept a change to the rules as to mode of delivery only, with all other provisions on service continuing to apply including High Court Order 10 R1(4) and County Court Order 6 R3(4).

It is entirely reasonable to seek express confirmation from your counterpart that this covers service of the claim form (Civil Bill in the County Court and Writ in the High Court) 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.

Where a firm has declined to accept service by email the best course is likely to be to serve in any event,

- **Medical examinations**

It is inevitable in the current circumstances that 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>

While we accept that Medco has no place in the Northern Ireland jurisdiction, its guidance may be useful for practitioners. You might wish to consider the arrangements made by Medco in England and Wales where the ban on the use of remote examinations has been lifted. Updated guidelines are available on the Medco website, which you may find of some assistance: <https://www.medco.org.uk/media/1220/remote-examination-guidelines-v50.pdf>

- **Exchange of evidence**

Parties should consider whether relevant medical notes and records can be provided prior to the medical examination without the need for a court order.

Parties should try to agree to the exchange of medical evidence by email, via a password protected pdf document or where not available the exchange should be encrypted.

- **Extensions of time**

We recommend that practitioners take a consensual approach to considering requests for the extensions and respond similarly to requests made by their counterparts.

- **Remote negotiations**

To ensure that claims continue to be settled appropriately in a timely manner, parties should consider whether negotiations and joint consultations can go ahead by telephone or video-conference.

- **Case Progression**

*Guidance for Civil Actions* published on 23<sup>rd</sup> September 2020 requires the parties to collaboratively complete the HR1 Form (Request for a Hearing) and lodge it with the Central Office no later than 14 days in advance of the hearing. Parties are recommended to adhere to the completion of HR1 forms where appropriate and in particular Part 4 of the Form which sets out whether the hearing will be remote, in person or hybrid. Doing so will assist the court in allocating business effectively and to ensure compliance with Covid-19 safety arrangements by managing footfall.

- **Remote hearings**

Following the Covid-19 update dated 15<sup>th</sup> January 2021 (Judiciary NI), the clear guidance is that the courts will undertake as much business as possible remotely. The remote attendance of all or some of those involved in civil proceedings is the default position. In-person court attendance is permitted but is limited to where absolutely necessary. Expert and other professional witnesses should generally give their evidence remotely. Practitioners should monitor the Covid -19 page of the Judiciary NI website for updated information including the latest revised practice direction here: <https://www.judiciaryni.uk/judicial-decisions/practice-direction-06-11-court-appeal-civil-and-criminal-divisions-chancery>

- **Adjournments**

Looking forward, as matters develop, where appropriate, 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 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.

APIL and FOIL

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