

# Kluwer Patent Blog

## UK Patents Court – coping with coronavirus

Emma Irwin, Lucy Sewter (Bristows) · Wednesday, April 22nd, 2020

After the UK's Prime Minister announced via a televised address on 23 March 2020 the lockdown of the UK in a bid to combat the ever-increasing impact of COVID-19, legal practitioners were keen to see how the UK Courts would cope with such measures especially given that in the High Court at least, video and telephone hearings were a scarcity.

The UK Government have confirmed that a network of priority courts will remain open during the pandemic to ensure the continued effective operation of the justice system such as the Criminal and Family courts with the Lord Chief Justice stating that:

*“an extraordinary amount of hard work has gone into keeping our justice system functioning. Technology is being used creatively to ensure that many cases can continue. Not everything can be dealt with remotely and so we need to maintain functioning courts.”*

Following this, the **Courts Act 2003** has been amended by the **Coronavirus Act 2020\*** to allow for the live-streaming (video or audio) of proceedings, at the direction of the court as well as provide various offences in respect of recording or transmitting such live-streamed proceedings or other proceedings taking place through a live video or audio link\*\*. This includes taking pictures of people participating in those court proceedings – including selfies.

In quick succession, three new Practice Directions (supplementing the Civil Procedure Rules) (“**CPR PD**”) were issued:

- CPR PD 51Y came into force on 25 March 2020. This short supplement addressed video or audio hearings during the coronavirus pandemic, allowing such hearings to take place in private where it is necessary to do so to secure the proper administration of justice. It was however made clear that any hearing held in private must be recorded in a manner directed by the court.
- CPR PD 51Z increased the time that parties could agree to extensions of time from 28 days to 56 days without having to formally notify the court. Prior to this change, an extension of more than 28 days would need permission of the court, but this has been implemented to prevent the courts from becoming backlogged with unnecessary applications.
- CPR PD 51ZA provided an update to the abovementioned CPR PD 51Y stating that a third party may request to listen/view a hearing recording and that a formal court application is not required. Interestingly, this PD will remain in force until 30 October 2020.

These PDs have allowed for hearings to take place “in public” with the principles of open justice remaining paramount to the English Court system. The majority of hearings have taken place using

Skype for Business or Zoom, although Teams, GoToMeeting, WebEx or Starleaf have also been used. Practitioners have been grappling with eBundles and specific guidance has been provided on how these are to be formulated. This message has been echoed in the recent case of **Re One Blackfriars Ltd (In Liquidation)**\*\*\* in which the Deputy High Court Judge made it clear that technological challenges were not a ground for adjournment of a trial; noting that those challenges were faced by all parties and consequently, there was no prejudice. The Court even went as far as to suggest that if any obstacles did exist for any witnesses or experts, the parties should propose ways in which issues could be tried without their involvement. Indeed, since 16 March 2020, there had been at least two fully remote trials.

The Court of Appeal (Civil Division) already streamed selected cases via its YouTube channel, this was far removed from the current video hearings. Nevertheless, the Court of Appeal is also hearing cases and in at least one of those cases, a judgment has been handed down. For now, the Court of Appeal has divided its caseload into “urgent business” meaning applications where it is essential in the interests of justice that there be a substantive decision within the next 7 days and “business as usual” (i.e., everything else).

Despite the extensive changes on the use of technology in the English Courts which had been scarcely used previously, with the lockdown set to continue, it appears that UK practitioners may not see a return to the usual state of play for some time, particularly taken into account that the recent CPR PD will remain in force until 30 October 2020. The Ministry of Justice has made it clear that current measures are under constant review but this may just be the start of more widespread use of telephone/video hearings in the High Court.

\*s 55 and Schedule 25 of Coronavirus Act 2020

\*\*Ss 85B and 85C of the Courts Act 2003

\*\*\*[2020] EWHC 845 (Ch)

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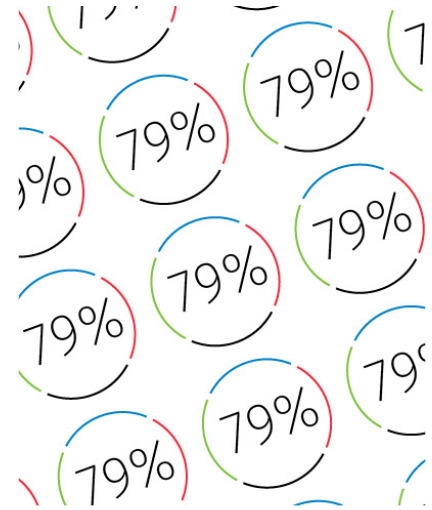
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