



THE BAR  
OF IRELAND

*The Law Library*

Ms Angela Denning  
Chief Executive Officer  
Courts Service  
15/24 Phoenix Street North  
Smithfield  
Dublin 7

**1<sup>st</sup> May 2020**

**RE: Resumption of Court Hearings**

Dear Angela,

Many thanks for your letter of 15<sup>th</sup> April 2020 providing the Council with information on the roll-out of remote hearings. The Council very much welcomes this initiative as an essential step in the public interest to ensure the continuation of courts business during the Covid-19 pandemic.

As you are aware, feedback has already been provided through our representatives to various members of the Judiciary and Courts Service staff in relation to some of the challenges attached to the use of the PEXIP platform to conduct remote hearings. I understand from our discussions that the Courts Service recognises these challenges and we will continue to work with the Judiciary and the Courts Service to identify and implement improvements in the remote hearing facility where they can be achieved.

We believe it is very much in the public interest and the interests of litigants that all options for the continuation of court business during the emergency would be considered, including increasing to the greatest extent possible the capacity for remote hearings across all levels of the courts system.

It is the view of the Council that physical hearings should also be resumed to the greatest extent possible, consistent with all necessary safety measures. As you are aware, the Government has this evening published a roadmap setting out its intended approach to easing the restrictions over the coming weeks and months. As part of that roadmap, we note that it is the intention of the Department of the Taoiseach to arrange for a process of consultation through relevant Departments which will assist to flesh out how the Public Health Framework can be implemented effectively and safely across different sectors of the economy.

In this regard, a working group of the Council has taken the opportunity to set out some ideas on how physical hearings might be resumed while adhering to the public health advice and social distancing

requirements that are likely to remain in place. I have taken the liberty of enclosing a discussion document that sets out some suggestions.

In order to advance this discussion and to assist the Courts Service in its work, we believe that it would be useful to establish a working group under the auspices of the Courts Service, to include representatives of the professions, to jointly explore how a resumption of physical hearings can be achieved most efficiently. A working group made up of all the relevant stakeholders would ensure that all ideas could be heard and explored and would enable a complete understanding of all parties in relation to the possibilities and the challenges.

I would be grateful if you could give consideration to this proposal and I look forward to hearing from you in early course.

Yours sincerely,

**Ciara Murphy**  
**CHIEF EXECUTIVE**

**Cc     The Hon Mr Justice Frank Clarke, Chief Justice**



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**PROPOSAL TO INCREASE  
ACCESS TO JUSTICE**

## INTRODUCTION

The initial impact of the Covid-19 pandemic on the operation of the courts has been swift and all-encompassing. For court users, particularly the public, issues of access to justice make that impact all the more acute and a return to physical hearings as soon as possible, albeit in a perhaps more attenuated format, is imperative.

### **The Bar of Ireland Working Group**

The Council established a Working Group, comprising of members of the Council working across the State and in all jurisdictions, to assess how a return to work to increase access to justice might be achieved and to provide suggestions to the Judiciary and the Courts Service.

The purpose of this document is to set out an initial suite of suggestions as to how the Judiciary and the Courts Service might accommodate physical hearings in the current circumstances, through the best use of technology, simple procedural changes and other steps. We appreciate, of course, that the final decision on any changes is a matter for the Judiciary and the Courts Service.

The following suggestions are subject to all advice issued by the Government in relation to social distancing and other measures in combatting the spread of Covid-19.

**Overarching principles** common to all suggestions are:

- Access to Justice for all citizens is paramount
- Compliance with Government advice on social distancing is key and all court users have a personal responsibility in that regard
- Congregation of groups should be limited to necessary attendees and kept as low as possible
- Communication and advance notice between Judges, Courts Service and legal practitioners is vital for a successful implementation of these suggestions
- Remote hearings should take place where appropriate/possible

The suggestions can be categorised into three areas and can be adapted to all jurisdictions, from District Court to Supreme Court as may be necessary:

1. Pre-trial
2. Hearings/trials
3. Health/sanitation

The Bar of Ireland would welcome the opportunity to actively contribute to the work of the Judiciary and the Courts Service, in delivering on a vital public service during this difficult period.

As the Covid-19 context continues to evolve, The Bar of Ireland will continue to explore feasible options for the continuing administration of justice; engage with interested stakeholders and communicate regularly with the Judiciary and Courts Service on the experiences of its members.

## 1. PRE TRIAL

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### **a) Call over:**

The practice of calling over cases listed for hearing on any day/week for the duration of the pandemic should be paused, save where this occurs by remote hearing.

### **b) Legal e-diary:**

- If possible, the existing legal e-diary (for both Dublin and provincial venues) should be kept up to date, listing the case/motion/application and giving the specific time the matter is to start and identifying the courtroom assigned.
- The Judge and Registrar (along with Registrar's email address) could be listed in the diary. The diary to be published every week (e.g. on a Monday or Tuesday) listing all matters to commence the following week, similar to an advance warning list, and then a more focused list could be published on the Thursday/Friday, at which point all settlements/adjournments should have been communicated to the Registrar/Office.
- It would be helpful if the diary informed practitioners whether they need to be physically present or attend virtually.

### **c) Adjourned on consent/settled:**

If a matter is listed and the parties are agreed, subject to the Court, that it should adjourn or is settled, they should notify the Registrar immediately (or at the very latest, the day before the matter is listed) and if being adjourned, the matter could automatically go back with liberty to apply in respect of any loss of priority.

### **d) Consent e-mail protocol:**

All matters (interlocutory and substantive) that can be dealt with by consent and where oral evidence is not actually required, could be dealt with remotely by way of emailing the appropriate Registrar/Office Manager, using perhaps the following "*Consent Protocol*":

- one Solicitor corresponds with the Registrar/Office by email and copies the other Solicitor in on that email;

- the other Solicitor simply replies to that email (by way of “reply all”, to include a reply to the Registrar/Office) to indicate his/her consent/client’s consent as appropriate;

**e) E-mail applications for hearing dates:**

Applications for hearing dates could be made via email and only when agreement has been reached as to witness numbers and duration of hearing. This will require a coordinated effort between all parties and would benefit from strong encouragement from the Judiciary.

**f) On-going review of scheduled cases:**

Judges might continue to review cases (not involving witnesses) that they are scheduled to hear to determine if they are appropriate to be heard remotely. The parties could be asked to indicate if the case is suitable for remote hearing.

**g) List Judges:**

Judges in charge of a Court list might review files and deal with as many cases as they can by remote hearing or by a direct telephone conference with counsel/parties to avoid the need for unnecessary in-person attendances at Court. Practitioners should provide contact telephone numbers to registrars as appropriate.

**h) Establish Jurisdiction-level/Geographic Working Groups:**

- At Circuit and District Court level, the local Bar Association could nominate a Solicitor and Junior Counsel in each County (and for each area of practice being criminal, civil and family) to liaise with the local Office Manager, County Registrar and Judge to fine-tune and adapt local working practices.
- Similarly, for the High Court, Court of Appeal and Supreme Court, nominated practitioners could liaise with the office of the Chief Justice, Presidents and List Judges to assist with the coordination and fine-tuning of working practices.

**i) Motion Lists:**

Implementation of a system for the listing of motions (and other interlocutory applications) which do not require the attendance in Court of more than one solicitor, senior and junior counsel (as may arise) per party, along with a Registrar and Judge,

could be considered.

## **2. HEARINGS/TRIALS**

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### **a) Staggered hearings:**

- Cases might be listed on a daily basis at staggered times. Each case could be given a temporal limitation and if same cannot be agreed by the parties then the Court could impose a time limitation on the hearing.
- A similar procedure could be adopted for the hearing of motions/interlocutory applications etc.

### **b) Remote witness evidence & consultations:**

- Consideration should be given to the possibility of particular witnesses giving their evidence remotely. This should limit the need for the attendance in court of persons other than the Judge, Registrar and legal practitioners, abiding by social distancing. Depending on the nature of the case, the client and/or primary witness could sit further back in the courtroom.
- The Bar will encourage members to conduct consultations with client/witnesses remotely in advance of trial to assist in the reduction of numbers congregating in the court environs.

### **c) Access to Registrar before start:**

On the day of the hearing, the parties to be allowed to enter the Court before the start to advise the Registrar whether the case has settled or is proceeding, but the preference would be that this is done remotely by way of emailing the Registrar.

### **d) Managing numbers present in Court & Corridors:**

- Judge's tipstaff/judicial assistant/Courts Service personnel to ensure strict monitoring of all persons entering and exiting Court. This should, as much as possible, be limited to Judges, Registrars, the legal practitioners and accredited members of the press.

- Judge's tipstaff/judicial assistant/Courts Service personnel to ensure no congregation in and around the environs of the court i.e. in the corridors; and this will be supported by practitioners in that regard.
- The Bar will remind members of their obligations in this regard.
- If thought appropriate, Judge's tipstaff/judicial assistant could contact practitioners involved in the hearing prior to the allotted time to reduce the number of practitioners congregating outside Court.

**e) Electronic Papers/Books:**

There should be continuity of papers across all parties, including page numbers, etc. and preferably in electronic format, and papers should be provided in whole or in part (as appropriate) to all parties and witnesses to facilitate any remote witnesses.

**f) Physical copies of books and authorities:**

Any books, journals and/or case law to be relied upon during the hearing of a matter should be flagged in advance so that all practitioners and Judges can have a copy and avoid the sharing of physical copies.

**g) Reserved judgements:**

Reserved judgments could be given remotely.

**h) Protocol for swearing of affidavits:**

Pending any legislation to deal with this issue, consideration to be given to developing a Protocol for receiving sworn evidence remotely and/or for ensuring the veracity of Affidavits in the absence of Affidavits being sworn in the usual manner.

**i) Personal responsibility during hearings:**

- All parties involved in a live hearing should adhere to the advices on public health (such as wearing masks if necessary) issued by the Government.
- It will be the responsibility of all court users to ensure social distancing requirements are complied with and to ensure basic steps are taken to minimise dangers to public health eg not blocking entrances, congregating in groups or unnecessarily entering or dawdling in court or bar rooms.

### 3. HEALTH/SANITATION

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#### **a) Signage:**

Signage to be introduced in and around all Courts, including floor signage, reminding court users of their duties to maintain social distancing, cough measures etc.

#### **b) Best practice personal behaviour:**

- In consulting with clients and/or solicitors where close contact is unavoidable, practitioners must adhere to the advices on public health (such as wearing masks if necessary) issued by the Government.
- The Bar will continue to remind all practitioners of their personal responsibility to abide by best practice.

#### **c) Monitoring by Tipstaff/judicial assistants:**

Most Courts are relatively well spaced out and the Judge's tipstaff/judicial assistant/Courts Service personnel could monitor the numbers entering Court. This should always be limited to the least amount as possible.

### CONCLUSION

The Bar of Ireland make the foregoing suggestions to assist the Judiciary and Courts Service in their on-going efforts to maintain access to justice in a safe and productive manner.

To this end, The Bar of Ireland would welcome an on-going dialogue with the Judiciary and Courts Service and we look forward to working with the Judiciary and Courts Service, to ensure continued access to justice for all litigants.