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So.... you've found a court which is actually listing civil trials in person. You've persuaded the court to list your case in person, rather than one of the 50 other cases where the parties want an in-person listing. You've completed the 2020 civil litigation equivalent of the 12 labours of Hercules. What next ?

As in-person listings slowly and hesitantly resume in county courts across the country, the intrepid members of the civil team at Oriel Chambers have been pushing their way back into dusty courtrooms, like Howard Carter pushing his way into the tomb of Tutankhmun. In this article, I will be drawing on my colleagues' collective wisdom to suggest some of the practical steps which need to be taken for in-person trials during the pandemic.

Pre-trial reviews

Contrary to the tendency in recent years to push fast track cases to trial without expending any court resources on them at all, a number of courts have introduced PTRs for all fast and multi track trials to ensure the best use of court resources, particularly by ensuring that trials listed will actually proceed, and will do so as efficiently as possible. If you have managed to have your trial listed in person, you may well have had a PTR already where this took place.

The expectation of the judges conducting PTRs appears to be that the parties attend them as ready for trial as they would be if they were actually attending trial. It is usual for the parties to be ordered to agree the trial bundle, and file a copy with the court ahead of the PTR. (While this reduces the scope for getting documents before the trial court at the last minute, it is perhaps a useful exercise when social distancing means an end to passing documents to opposition counsel and the judge at the start of

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the trial anyway.) It is also usual for the advocates instructed for the trial to be ordered to attend the PTR.

Parties are expected to have a firm idea of the outstanding issues to be determined at trial, the number of witnesses to be called and other people to attend (including, in some cases, the names of all of them), the availability of witnesses (for any point in time when they might potentially be called), how evidence will be placed physically before the court, the time estimate (something judges are now being *very* precise about, the time available for in-person hearings being limited now more than ever), any other ancillary steps needed (e.g. provision of translators or audio-visual equipment), and any other information necessary to make sure the trial can run. Judges are also making it clear that, once a fixture has been given for an in-person trial, this will not be altered without an extremely good (and presumably unforeseen, and unforeseeable) reason.

A particular feature which has arisen with trial listing in some courts is that cases listed months ago on specific dates have now been relegated to “warned lists” of a week or more. Quite how realistic an approach this is may be open to question, but what it means in practice is that, when a court takes this approach, you have the availability of all parties, witnesses and representatives available at the PTR.

Essentially, all the steps necessary to enable a trial to go ahead will need to have been taken by the PTR. While this may seem like something of an imposition, it is also a useful way of ensuring that all the additional requirements the pandemic has placed on in-person trials have been addressed well in advance.

Preparing parties and witnesses

While the pandemic has forced the legal profession to ascend a steep learning curve, it is worth remembering that one aspect of the trial process has not changed for parties and lay witnesses - the day of trial will be the first time most of them have ever been in court. A civil trial in normal circumstances is a fairly daunting experience for most normal people (i.e. non-lawyers). Trials during the pandemic are likely to be an even more challenging experience for them, and this is something which needs to be borne in mind at every stage of preparation.

The unavoidable background to legal proceedings during the pandemic is that COVID 19 has had a huge effect on the confidence of much of the population. Many people are, quite understandably, restricting their movements and activities to avoid a disease

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which remains rampant and whose consequences can be deadly. Months of confused and confusing official messaging has compounded the problem. Part of the lawyer's role while the pandemic persists will be to give parties and witnesses the confidence that safe and workable arrangements can be made for them to attend court. The more thorough your preparations have been, the more clearly you are able to explain these, and the closer your contact is with your parties and witnesses, the better able you will be to reassure them.

As discussed already, it cannot be assumed in many courts that a trial will actually proceed on a specific date granted in advance, as opposed to some point within the period covered by a "warned list". It is therefore important to establish the availability of parties and witnesses for any point in time when a court might require them to attend.

On the other hand, some courts are staggering trial times through the day, rather than block listing multiple trials for a 10 or 10.30 am start (often known in practice as one case starting at 10 am and several other parties waiting half the day to get started). When this is being done, it is important to ensure that your party or witness will be available at the specific time the court requires, and to make sure that he or she knows when exactly to arrive at court (along with any peculiar requirements the court may have with regard to entry or anything else). As some courts are limiting the number of people allowed inside the court room (or even t the court building), this may need to be taken into account as well. The days of people turning up at court at 10 and expecting to be done 15 minutes later, because no-one has explained to them how things work in practice at court, need to come to an end.

The superimposition of social distancing requirements on a court estate which, in many cases, would be described by estate agents as "in need of updating" has profoundly changed the way lawyers can interact with people at court. Official guidance still advises against spending more than 15 minutes in close contact with someone in an enclosed space. In many courts, with conference rooms about as spacious as a tin of tomatoes, this means that conferences cannot be safely held. Some courts have indeed recognised this by sealing all their conference rooms off. Other courts are refusing anyone access to the building until their cases actually begin.

To allow conferences to be conducted safely, effectively and in privacy, serious consideration needs to be given to arranging conferences before the day of trial by remote technology. As well as allowing proper consideration of the parties' evidence,

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this will allow you to explain to them the practicalities of attending a socially distanced court, and enable them to raise any particular difficulties which may arise from their personal circumstances. A remote conference may be the difference between a party arriving at court as relaxed and confident as can be expected in the present circumstances, and one stepping into the court room nervous, flustered and unprepared for the trial to come.

Social distancing requirements continue to apply when the party has entered the courtroom as well. An important consequence of this is that nothing can be passed around the court room - from a biro to an oath card to a court bundle. Some courts' orders include specific requirements that a separate copy of the bundle must be provided to everyone who will need it - in other words, one copy for each individual witness who will need to handle the bundle. In addition, these will need to make their way to the relevant person before the day of trial - your counsel cannot safely pass the bundle over outside the courtroom, even if his or her lumbar spine has not already collapsed under the strain of carrying however many trial bundles to court, and nor can court staff, so you will need to make sure that a (properly copied, legible) bundle is transmitted to the relevant person in advance. If the evidence includes something in another form (e.g. videos or other electronic evidence), appropriate steps will need to be taken to transmit that to the witness as well. You will need to consider as well how best to get the bundle etc to the person concerned - not everyone has a printer, a laptop or any other device which will enable them to use the bundle before and at trial, and sending a paper copy by post or courier may often be the simplest, as well as the necessary, step to take. You will also need to act far enough in advance that you can be sure the bundle will actually arrive in good time before the day of trial. While these requirements might be viewed as another unwelcome burden which COVID 19 has imposed, it has the advantage of increasing the chance that a party or witness will be familiar with the evidence he or she is meant to be giving before the trial begins.

As much COVID 19 has made everyday life trickier for all of us, for some people the difficulties have been much greater than for the average person. The law of averages suggests that some of the parties and witnesses you will deal with over the months to come will fall within these categories. It is difficult to list all the possible issues which people are likely to have attending in-person trials, because these will depend on the characteristics of the individual, but examples might include the substantial number of people with responsibilities to care for others thanks to the pandemic, or those whose health will in some way cause difficulties with socially distanced trials (which may in turn include everything from sufferers of anxiety who may struggle to cope with a socially distanced environment; to people whose health conditions may make it difficult to cope with court buildings where toilets have been closed, lifts put out of action, or where parties are expected to remain in the court room itself for the

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whole of the hearing; to sufferers of skin conditions which prevent them using hand sanitiser on entering the court room; to people whose medical conditions mean they will need to be told to bring the water with them which courts are not providing.) Remember that difficulties may not just arise with your individual party or witness - some may have difficulty attending court without someone to “hold their hand”, and court limits on the number of people given entry may cause problems with this. Outside the courthouse, the pandemic is likely to create other difficulties for some trial participants (e.g. will someone dependent on public transport be able to reach court in time when services are restricted ?) These new difficulties will, in many cases, be superimposed on the everyday demands and responsibilities (work, childcare, school times etc) that lawyers all too easily forget to consult their clients about.

As it is impossible to anticipate the problems an individual may have, the only solution is to make sure that you have a thorough understanding of what exactly will happen at the specific court on the day of trial, and to explain this thoroughly to each party or witness to ensure that any potential difficulties for him or her have been identified.

Finally, and as if all this was not complicated enough, it should be borne in mind that parties and witnesses may not be the only people who will have to attend trial, and for whom arrangements will have to be made.

Other steps to take before trial

While social distancing remains in place, the concept of “doing things at the door of court” will need to be reconsidered. Documents (whether evidence, skeleton arguments or authorities) can no longer be passed on paper, or pored over on the blown-up screen on a tablet or a smartphone. Opportunities for a quiet word between counsel out of the hearing of clients, or any sort of discussion at all, are difficult to imagine in court buildings with restricted access and few places into which anyone is allowed to enter at all. The time for those discussions on the morning of trial is likely to be limited as well.

As with other aspects of in person trials during the pandemic, this emphasises the need to prepare in advance. Where issues need to be narrowed, this should be done by prior discussion. Where particular issues need to be raised at trial, this should be flagged up in advance to make sure no-one is in a position to claim to be prejudiced by the issue being raised on the day of trial (a submission which may attract more judicial sympathy in the present situation). Where additional documents need to be

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served, you will need both to do this, and be able to put the e-mails etc doing this before the court in the event of dispute. Contact between and through counsel is to be encouraged.

As well as the necessary advance contact with the other parties' representatives, contact with the court is key as well, in terms of everything from flagging up the issues to be decided at trial, to ensuring that evidence and other materials (from paper documents to videos and other electronic evidence) are available to the court in a form which can be handled safely in a manner consistent with social distancing. Where possible, this should be done on a joint basis by all the parties. Bear in mind that COVID 19 has had a serious effect on the personnel and other resources available to court administrations which, after a decade of cuts, were not exactly working with the precision of a Swiss watch before the pandemic. The sooner you contact the court, the more chance there is of the message etc getting through to the important person (the judge actually dealing with the matter) far enough in advance of any trial for proper action to be taken. It has been clear throughout the pandemic that the courts expect parties to deal with the difficulties arising from it in a proactive fashion, and preparation for in-person trials is no exception to this.

Again, while this sort of preparation will require more work to be done before the trial, the benefits of proper preparation for your position at trial will be substantial.

The day of trial

The good news is that, if you have taken the proper steps to prepare before trial, there is little more to do on the day of trial itself. That is not to say that further difficulties will not arise - the relatively low number of in-person trials which have proceeded to date mean that many of the likely difficulties have not yet arisen or been foreseen. You can, however, rest assured that the vast trial experience of the civil barristers at Oriel Chambers will be deployed to solve these problems as they arise.

Conclusions

It has not been possible in this article to provide more than a general guide to preparing for in-person trials because, the Court Service and Ministry of Justice having gone curiously AWOL for most of the last few months, it has been left more or less completely to individual DCJs and other judges to put arrangements in place for their courts. (That the courts have managed to keep running at all is a tribute to their hard work, and that of the legal profession.)

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Unfortunately, this means that different courts are doing things in different ways. Not every court is following every one of the procedures set out in this article, but some are likely to have others in place which my colleagues and I have not encountered yet. It is therefore crucial that you familiarise yourself with the procedure which the court hearing your trial will adopt, whether it is set out in specific orders in each case, or in a general protocol or local practice direction of which parties are expected to be aware. It may be good practice, when you are not familiar with how a particular court does things, to contact court staff for details of any particular procedures in place.

While COVID 19 has thrown up a whole series of new challenges for the profession, with proper preparation and consideration of the circumstances of the individual case, these are something we should be able to surmount. Our barristers are available to discuss the necessary measures with you, share our experience of pandemic-era trials, and help you prepare for them to the best possible standard. We welcome the chance to work with you to achieve the best possible outcomes in “these difficult times”.

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