



April 2020

COVID-19: “Virtual Courtrooms” Trialed

(Updated to reflect the statement of the Chief Justice on 9 April 2020)

COVID-19 has caused unprecedented levels of disruption to the Courts Service and the administration of justice in this country. In response to the crisis the Chief Justice and the Presidents of each of the Courts (Court of Appeal, High Court, Circuit Court and District Court) released an updated statement on 31st March 2020 (the “Statement”).

The Statement reviewed the contingency measures currently in place to ensure the continuance of essential elements of the administration of justice during the COVID-19 pandemic and also announced further measures to be implemented in the coming weeks.

On 9th of April 2020, Chief Justice Frank Clarke issued a progress report on the testing of the ICT infrastructure necessary to facilitate virtual court hearings. The report provided confirmation that the systems trial of the platform designed to facilitate remote hearings has been successfully completed. The courts have now moved onto the next phase of testing and are currently conducting a series of ‘mock’ hearings. These ‘mock’ hearings commenced on 9th April and will run for the seven to ten days, across various court jurisdictions. It is the Chief Justice’s aspiration that, if those hearings are conducted satisfactorily, remote hearings of actual cases will begin early in the next legal term, which starts on 20th April 2020.

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For further information on any of the issues discussed in this article please contact:



John O’Riordan
Partner, Litigation
DD: + 353 (0)1 673 1792
john.oriordan@dilloneustace.ie



Peter Bredin
Partner, Litigation
DD: + 353 (0)1 674 1013
peter.bredin@dilloneustace.ie

Garrett Connelly
Solicitor, Litigation
DD: + 353 (0)1 673 1846
garrett.connelly@dilloneustace.ie

Use of Virtual Courtrooms in the Irish Courts

Plans had already been in place for the modernisation of the Courts Service and the development of virtual courtrooms over the course of the next decade. However, those measures would ordinarily involve extensive testing, training and a slow roll-out. Due to the current, unprecedented, public health emergency, the Courts are prioritising making these capabilities immediately available with plans to improve the services incrementally.

The Statement outlines the Courts' aspiration:

"...that it will be possible in early course for the courts to pilot remote hearings, where they are suitable and where they can be conducted in a manner which is fair and where the parties and their representatives can comply with all Government guidance and direction for the time being in force."

The Statement further provides that it *"... may well be possible for such a pilot facility to be in place close to the beginning of the new legal term on April 20."*

The Chief Justice has stated that it is envisaged that the first remote hearings will take place in the appellate courts, and a gradual rollout to other jurisdictions could follow. However he emphasised the fact that remote hearings will not be suitable for all cases and the usefulness of the remote hearing facilities will vary depending on the type of case.

Virtual Courtrooms in the United Kingdom

In the UK, some facilities for virtual court hearings had already been in use on a small scale prior to the outbreak of the coronavirus in specified civil, family and tax tribunal hearing types. However, the use of this technology has been expanded significantly in light of recent events. The UK's Coronavirus Act 2020 received royal assent on 25 March 2020 and expands the availability of video and audio link in court proceedings.

The following specific measures have been introduced:

- Specific civil applications (relating to infectious diseases / coronavirus) in the magistrates' court will be allowed to take place by phone or video;
- the availability of video and audio link will be expanded in various criminal proceedings, including fully video and audio hearings in certain circumstances; and
- the public will be allowed to participate in court and tribunal proceedings through audio and video.

These measures allow a wider range of proceedings to be carried out by video and audio. However, the judiciary will still determine how a hearing is conducted.

We may see similar measures introduced in the Irish Courts in the coming weeks and months, should the current government restrictions regarding movement remain in place for a prolonged period.

Commentary

There will no doubt be considerable teething issues in the implementation of “virtual courtroom” technology over the coming months and each President will, in due course, issue further guidance on how such measures will apply in their respective courts.

The recent English High Court trial, which was conducted using video conferencing service Zoom and streamed on YouTube for the first time, may provide us with some guidance on how virtual courtrooms will operate in practice.

Although these changes have been accelerated due to current health emergency, they represent a significant shift the administration of justice in this country and may have a lasting impact on the provision of court services.

Dillon Eustace

DILLON EUSTACE

Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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