

# The State of the Civil Justice Systems: England & Wales, France and Gibraltar

In the context of the unprecedented circumstances arising from the Covid-19 pandemic, justice systems across the globe have taken significant measures to preserve the rule of law and at the same time protect lives. Legislatures, the judiciary, court services, the legal profession and the public all have a duty to comply with the public health measures implemented by governments whilst adapting, working differently and embracing technology to ensure that the wheels of justice do not grind to a halt.

Signature Litigation operates across three distinct jurisdictions and in this note the London, Paris and Gibraltar offices have collaborated to provide a snapshot of the state of the civil and commercial justice systems in their respective jurisdictions.

## Functioning of Courts



The business of the courts continues albeit with a focus on urgent and priority matters. Since 30 March 2020, the work of the courts and tribunals has been consolidated into fewer buildings. Currently, there are 157 priority court and tribunal buildings open for essential face-to-face hearings. This temporary change is designed to maintain a core justice system focused on the most essential cases and will remain in place for as long as necessary to comply with government and public health advice and will be reviewed regularly.



On 16 March 2020, the French Ministry of Justice announced the closure of the courts except for “*essential litigation*” such as summary proceedings before the Civil Courts on emergency measures. The services for receiving the public are closed, as well as the legal centres and the points of access to law.

As a result and as a general rule applicable both before lower courts and Courts of Appeal, the automatic postponement for an indefinite period of time of all hearings on the merits scheduled between 16 March 2020 and the end of the state of health emergency has been decided. Furthermore, the First President of the Paris Court of Appeal has also announced that the hearings might be postponed after November 2021. All decisions scheduled to be rendered during this period are also postponed to a date that will be announced later on. No more dates for summonses are given and motions will no longer be processed. The Registry is closed to the public.

An exception remains for urgent matters. In particular before the Commercial Courts, we can mention the following: the appointment of ad hoc agents, agricultural amicable settlement proceedings, asset disposal plans and insolvency or compulsory liquidation proceedings will be processed, when they can have a significant impact on employment and approvals of conciliation agreements.



On 16 March 2020, the Chief Justice of Gibraltar issued the Supreme Court (Covid-19 Contingency) Rules 2020 (the “Rules”), which have seen the closure of the Gibraltar’s Supreme Court’s Registry to the public for a period of 30 days commencing from 17 March 2020. The Rules provide for a framework which allows for the courts to deal only with urgent matters. All hearing dates have been vacated and all civil actions stayed until 7 days after the Registry has fully reopened.

To provide further guidance to practitioners, on 23 March 2020, the Chief Justice of Gibraltar issued the Notes on the Supreme Court (Covid-19 Contingency) Rules (the “Notes”), which seek to explain and further supplement the Rules. The Notes explain that the Rules allow the Registry to be opened for limited purposes in cases of urgency which may justify its opening. For now, hearings listed for the period following the 30 days remain on the court diary, however, these may also be vacated, if the Rules are extended. Only proceedings commenced prior to the Rules coming into effect are automatically stayed. Applications



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issued after 17 March 2020 are not automatically stayed, which allows for filing of urgent applications and for filing of claims within the limitation period.

The Court of Appeal sits in two sessions per year, which means that even before these extraordinary measures came into effect, appeals could have taken some time to be heard. On 24 March 2020 the President of the Court of Appeal issued a Notice which directs that the hearing of the appeals set down for the April/May session be vacated and that the directions given at the call over session on 11 March 2020, on exchange of skeletons and filing of bundles, be set aside. Civil Appeals shall now be heard at the September/October session, after taking account of the measures in place in Gibraltar and the United Kingdom for the prevention, mitigation and control of the spread of the coronavirus.

## What about remote hearings?



Ahead of the consolidation of the physical court and tribunal service, the Lord Chief Justice stated that the default position must be that hearings should be conducted with one, more than one or all participants attending remotely. In broad terms, the Civil Procedure Rules that govern civil proceedings are flexible enough to enable telephone and video hearings. However, a new Practice Direction 51Y (effective since 25 March 2020) has been implemented to explicitly provide for hearings to be conducted remotely, by video and audio and with access to the public during the coronavirus pandemic.

New guidance and protocols have been issued to address the increased reliance on remote hearings. The Protocol Regarding Remote Hearings states that the court, parties and legal representatives need to be proactive in relation to all forthcoming hearings. However, ultimately, the decision will be made by the judge as to how a hearing should be conducted or if that hearing should be adjourned. In making that decision the judge will consider the suitability of video/audio, the nature of matters at stake, the type of hearing, any issues the use of video/audio technology may present for participants in the hearing (having regard to individuals' needs) and any issues relating to public access to or participation in the hearing. Where a remote hearing is to take place, the judge will determine which platform is

to be used, such as Skype for Business, BT MeetMe, court video link or conference call. All remote hearings will be recorded by the court and stored electronically on the court's systems.

In line with the lower courts, the Court of Appeal and Registries of the Supreme Court and of the Judicial Committee of the Privy Council are operating remotely with hearings being conducted via video conferencing facilities.

The London Court of International Arbitration (LCIA) is also operating remotely with requests for arbitration to be filed via the online filing system or by email.



On 25 March 2020, Order no. 2020-304 adapting the rules applicable to the courts ruling in non-criminal matters gave new guidance on the conduct of hearings during the current health crisis. This Order applies at every level of the judiciary and from 12 March 2020 until the expiry of a period of one month after the end of the state of health emergency. In particular, three possibilities are now available to the courts:

- adjust the principle of public hearings, giving the President of the court great latitude in this matter,
- hold a hearing using video conferencing facilities or, where this is technically or materially impossible, any means of telephone communication. By way of illustration, we can mention that the Paris Commercial Court held two days of hearings on April 1st and 2nd in particularly urgent insolvency matters given the non-payment of certain employees' salaries.
- decide to opt for proceedings without a hearing but only in cases where legal representation is compulsory. The court can overrule the refusal of the parties in three cases: (i) in summary proceedings, (ii) in the fast-track proceedings on the merits, and (iii) where the judge has a fixed period of time in which to rule.

However, given that the majority of the courts' activities are suspended until the end of the lockdown, there is every reason to believe that these measures will only be used on an exceptional basis.



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In so far as the conduct of hearings is concerned, it is still possible to have hearings in court, but the Notes state that physical presence in court buildings should be kept to a minimum and, if coming to court is unavoidable, attendance should (where possible) be limited to advocates. Hearings can be dealt with by telephone, or in more extreme circumstances, if a hearing cannot be dealt with by a judge from a court room, by telephone or Skype video call. The Registrar will also continue to receive and deal with urgent applications for grant of probate in simple form.

### Electronic filing



The digital electronic filing service (CE-File) continues to operate across the Business and Property Courts, Senior Courts Costs Office and for claims and appeal in the Queen’s Bench Division in the Royal Courts of Justice. CE-File enables parties to issue claims, make applications, file



documents and communicate with the court electronically. Where CE-File does not operate email is the default method of communication with the court.

For written proceedings, the secure online platform used to communicate between lawyers and the courts is still operational. However, some courts, notably in Paris, have already warned that for suspended proceedings, messages sent via the platform will not be processed as the clerks do not have access to the online service remotely.



To enable the courts to continue to operate in a flexible and resilient way, the courts are now accepting applications and claim forms to be filed electronically, whereas before this was not possible in Gibraltar. It remains to be seen if electronic filing will continue once the functioning of the court returns to normal.

Therefore, we are witnessing a fast response from the judiciary to the state of health emergency at stake and the enactment of extraordinary measures to maintain a certain activity. For now, it seems that England/Wales and Gibraltar are less reluctant to organise remote hearings than France. However, only time will tell how the courts will really adapt to this exceptional situation and whether certain measures will be retained under normal circumstances.

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