
BRIEFING NOTE FOR THE JUSTICE COMMITTEE

I am a Criminal Barrister. I have set out below information based upon my practice this week and contact with my instructing solicitors. I hope it is of assistance.

OVERVIEW:

- Everyone involved in the court system is plainly doing their very best in an extremely difficult situation.
- The Judiciary and court staff are still attending some courts.
- Police station attendances are fraught with difficulties.

PRISONS:

1. HMP Wandsworth, HMP Belmarsh and HMP Lincoln have cancelled all legal visits and currently are not providing any facilities to legal advisers to have conferences via video links using applications such as Skype or Zoom, or for prisoners to be present via telephone for conferences and court hearings.

POLICE STATIONS:

2. Instructing solicitors inform me that the police are often insisting that they attend for interview where there are no prospects of proper social distancing taking place in cramped small interview rooms and a lack of hand sanitiser etc.
3. My instructing solicitors are extremely worried about:
 - a. How they can properly advise a client over the telephone when they are unable to see their demeanor etc.
 - b. Leaving a client to sit through an entire interview by themselves, even if they have been advised to answer no comment, without any legal representation.
4. A number of instructing solicitors have therefore taken to issuing prepared statements and advising their clients to refuse to be interviewed.
5. One instructing solicitor informed me that, if the police insist on an interview taking place at the police station, they are not paid the full fee if they don't attend. So those solicitors are attending, making full representations about the interview being unsafe and then leaving. That way they are then paid the full fee. This seems completely ridiculous to me but obviously solicitors firms are already operating close to the line and most of their solicitors simply want to keep their firms in business and their employees employed.

COURTS:

6. Telephone hearings are taking place but it is very difficult to progress matters.
7. The courts are trying to use Skype for Business and progress is being made in respect of that. Thus far the main challenge has been ensuring that defence barristers can speak

privately with their clients before the hearing. I have been unable to progress any of my hearings this week because counsel were not able to speak to their client who was in prison, or a client on bail could not be looped into the hearing. I suspect this will improve, but again the total lack of funding and investment has made the situation much more problematic than it would have been.

8. One bright note is that if courts use the video conferencing facilities in the appropriate cases, this could save a lot of money for the public purse and barristers and be far more efficient – rather than travelling 3 hours to a court and paying £120, I did a hearing at home in 20 minutes for free. However it is important that this is only used in the appropriate cases.

CHAMBERS:

9. Most Chambers, if not all, have shut their premises.
10. My Chambers, and I'm aware of others, is operating as usual with all the clerks working from home but using Skype to sit in a virtual clerks room and communicate. This enables liaison with listing officers etc as usual in an effort to try and keep things moving.

FINANCIAL SITUATION:

11. Solicitors firms are already having to make a number of people redundant.
12. Many Chambers are also reviewing their financial arrangements.
13. The problem for both Criminal Solicitors and Criminal sets of Chambers is that, due to years of cuts, both are operating with extremely tight margins. Cash flow is crucial. Unfortunately:
 - a. The government scheme does not assist Chambers as an employer because it requires chambers to pay the wages of employees (clerks etc) and then recoup 80% from the government. This requires the cash outlay in the first place and therefore is rather meaningless if there is no cash coming in.
 - b. A large number of barristers are not being offered any financial support at all by the government because of the cap on earnings of £50,000. This is made worse by the fact that there is no reasonable prospect of trials taking place for many months and then, trials have to conclude before barristers can be paid.
 - c. The CPS offer of advance payments is also problematic. The problem is that the CPS are effectively offering to make an advance payment of part of the brief fee which usually becomes payable at the conclusion of the case. However, we do not know when any of these cases will be listed and the CPS have also made it clear that if you take an advance payment but don't subsequently do the trial you will then have to resolve that issue with the person who does. This means barristers could end up in more debt – and results from the fact that listing of cases is not done for barrister's diaries and barristers often end up doing significant amounts of work for free.