

Coronavirus and the Courts – A Case for Continuity?

April 17, 2020

A High Court deputy judge has refused an application to adjourn a five-week trial over concerns about conducting a remote trial in light of the COVID-19 health crisis.

Background

The applicants in *In the matter of One Blackfriars Limited* are claiming more than £250 million against the former administrators of a company for their alleged mishandling of the administration. The case will involve both factual and expert witness evidence and had been listed for five weeks, commencing in early June.

The application

The applicants submitted that an in-person trial would contravene the prime minister's instructions to stay at home, while a remote trial was inappropriate due to the risk to the health and safety of those taking part, the significant technological challenges and the potential for unfairness.

Held

The judge said the Coronavirus Act 2020 and guidance from the courts on dealing with the COVID-19 crisis made clear that as many hearings as possible should be conducted remotely using technology. In relation to safety, while the judge acknowledged it was imperative that a remote trial did not endanger the health of those taking part, he found that because the trial was not due to start until June and the COVID-19 crisis was a fast-moving situation, much could change before the trial was due to commence. He also cited two examples of fully remote trials having taken place, in the Commercial Court and the Court of Protection, respectively, which involved several witnesses and experts, as evidence that the technological challenges of conducting a remote trial did not justify an adjournment. Lastly, he found that the benefits and drawbacks of proceeding with a remote trial applied to both sides equally and that additional delays were in neither side's interest.

Therefore, the parties were ordered to explore technological options that could enable a remote trial to proceed.

Comment

This case emphasises that access to justice will proceed despite the changes to working life brought on by COVID-19. The Coronavirus Act 2020 and the new Practice Direction 51Y make specific provisions for the operation of the courts with expanded availability of video and audio links and measures to enable the public to see and hear proceedings. Similarly, the lord chief justice's guidance that as many hearings as possible should be conducted remotely during the crisis through the use of technology tends to suggest that the government and the courts are presenting a united front of continuity in relation to legal proceedings. Any parties with looming hearing dates should expect, unless informed otherwise, that proceedings will continue albeit with certain technological adjustments.

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