

Family Lawyers Association - Covid 19 Response Steering Group

Dublin and Provincial District Courts – Suggestions for Future Functioning starting 20th April until end of Trinity Term 2020

Dublin District Courts

The Family Lawyers Association will, if asked, nominate a Solicitor and Junior Counsel in each District to liaise with the local Office Manager, Court Clerk and Judge to fine-tune and adapt local working practices.

From a procedural perspective, we recognise that at least some of the following suggestions may require a Rules change (or, in certain circumstances, could be covered by a Practice Direction?) and again, the Family Lawyers Association will, if asked, nominate practitioners to assist the Courts Service in this regard.

Dolphin House has, since 16th March 2020, adhered to the Statement of the District Court President, allowing only the return dates of Interim Barring Order applications to be heard and accepting applications for Protection Orders and Interim Barring Orders only. No other applications are being heard.

Issuing of Proceedings (where an individual is legally represented)

Summons which require signature by court clerk/judge

We suggest that it should be permissible to email these applications to the court office, for allocation of a return date, signature and return by email to the submitting solicitor, for service.

Summons which do not require signature by court clerk/Judge

We suggest that the office is contacted by email to a nominated email account to request a return date. The summons can be served by the solicitor in the normal fashion

Service of Proceedings

Suggest amend District Court Rules to permit service of all documents other than originating documents required to be served by the Rules to be served by email upon another firm of solicitors or on the Applicant/Respondent.

Filing of paperwork

Original documents as required can be filed by post, or submitted via a drop box facility in the court building, alternatively a scanned copy of the documents can be filed by email on the basis that originals must be provided to the Court office if required.

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Section 32 Applications/ Release of Section 32 or Section 20 Reports

Appointment : It is submitted that the appointment of a Section 32 Assessor be accepted by way of email written consent of both solicitors (or solicitor/lay litigant if applicable), to the court office confirming the name of the Assessor and the basis upon which the assessment is to proceed i.e. Sharing or otherwise of costs, and whether the assessment is to be a Section 32(a) or (b) or both.

Release of Reports : We suggest the following protocol for release of S32/S20 reports :

- Assessor emails Report to the Court Office
- each solicitor to email the court office to confirm consent to release the Report, and to request release.
- The court would then release the report on “the usual terms” to the solicitors by email. Usual terms being that they can read out the terms of the report to their clients, but cannot send them a copy of the report.
- It is understood that the above is on the basis of both parties being legally represented.

Rulings on Consent

It is submitted that rulings on consent should proceed on the following basis :

That one solicitor emails a copy of the consent terms to the court office, confirming the consent in writing and consenting to the orders being made remotely. Terms should not necessarily require the signature of the parties on the terms, if solicitors certify and confirm that the client has taken legal advice, and has consented. The solicitor undertakes to submit the original signed terms to the court office. The Orders issue via email to solicitors.

Alternatively, one legal practitioner may attend Court, on the return date of the summons with the said terms, which may be unsigned but accompanied by a letter/email of consent of the other side. This is more likely to occur or arise in circumstances where one party is not legally represented.

Communication of Consent to the Courts Service Office (“the Office”)

Eg. S32 Appointment of Assessor / Release of S32/S20 Report / Ruling of Terms

At all times where consent is required/forthcoming, it is suggested that the following “Consent Protocol” be followed:

- one Solicitor corresponds with the Office by email and copies the other Solicitor in on that email;
- the other Solicitor simply replies to that email (by way of “reply all”, to include a reply to the Office) to indicate his/her consent/client’s consent as appropriate;

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It is suggested that practitioners do their utmost to achieve consent where possible and as soon as possible in any given matter.

Swearing of Affidavits (if required) and witnessing of Declarations by a Practising Solicitor or Commissioner for Oaths

We also suggest that consideration be given to developing a Protocol (“a Protocol”) for assuring the veracity of Affidavits and Declarations in the absence of Affidavits and declarations being sworn /declared in the usual manner.

Hearings

Callovers should be held twice per day, at 10.30 am and a second list at 2pm. Nothing from the morning list would carry over into the afternoon list. Matters not reached or dealt with would be adjourned to the next available hearing date.

Lists should be distributed to ensure social distancing of all attending. If possible matters could be time scheduled in advance, to avoid the need for a call over.

Parties waiting for hearings should respect spatial distance and utilise the common areas, consultation rooms and other available areas in the Courthouse, with the use of mobile phones to alert parties when they are required to come in to Court.

No persons should be permitted in Court, other than the parties and their respective legal representatives (i.e. maximum of six persons).

No family/friends should be permitted into the Court building.

Remote Hearings

The Family Lawyers Association are also open to exploring other means by which work might continue, including perhaps a procedure whereby hearings could be dealt with remotely. While this has certain challenges, it is evident that this is already happening in other jurisdictions and in certain circumstances (e.g. young witnesses may be cross-examined by way of video link) in this jurisdiction.

The Family Lawyers Association are open to discussing all of the above and this is intended as a practical way to try and enable practitioners to service their clients’ needs and also ensure access to justice while also dealing with significant challenges facing all parties involved in the administration of justice in the family law sphere.

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Broader considerations beyond the scope of this submission.

We urge that consideration be given to how proceedings might be issued by electronic filing.

We urge that consideration be given to how Affidavits might be sworn/affirmed by e-signature.

Swearing of Affidavits (if required).

We also suggest that consideration be given to developing a Protocol (“a Protocol”) for assuring the veracity of Affidavits in the absence of Affidavits being sworn in the usual manner.

Discussion and Engagement.

The Family Lawyers Association are open to discussing all of the above. This document is intended to suggest practical ways in which practitioners will be enabled to service their clients’ needs and also ensure access to justice while also dealing with significant challenges facing all parties involved in the administration of justice in the family law sphere.

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Provincial District Courts

We recognise that the following recommendations will require specific adaptation on a District by District basis.

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From a procedural perspective, we recognise that at least some of the following suggestions may require a Rules change (or, in certain circumstances, could be covered by a Practice Direction?) and again, the Family Lawyers Association will, if asked, nominate practitioners to assist the Courts Service in this regard.

Issuing of Proceedings

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Eg. Adjournments / S32 Appointment of Assessor / Release of S32/S20 Report / Ruling of Terms

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Swearing of Affidavits (if required)

We also suggest that consideration be given to developing a Protocol (“a Protocol”) for assuring the veracity of Affidavits in the absence of Affidavits being sworn in the usual manner.

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