

What does the Covid-19 crisis mean for victims of fraud in Jersey, Channel Islands?

1. The most critical phase of the crisis

Jersey has not enacted legislation dealing specifically with civil justice during the Covid-19 pandemic (although there has been emergency legislation dealing with other aspects of the pandemic such as enforcing the “lockdown”). However, the courts and the Law Society of Jersey have issued various guidance notes setting out new working practices to take account of the impact of the virus. These have been updated as the situation has developed. A new practice direction dealing with these measures is being drafted which will have statutory force. Members of the legal profession are also affected by the general regulations providing for non-essential employees to work from home (see further below).

The crisis has, inevitably, impacted upon civil hearings. No civil cases involving witnesses are being heard until the end of April (this is likely to be extended if the lockdown is prolonged which appears inevitable). The Royal Court (the main civil court) will continue to determine all public law children cases and other urgent civil cases. Where possible the court will direct that counsel and parties need not attend in person but rather should address the court by phone or video link. Where hearings must proceed in person, they will take place in two particular court rooms which are large enough to allow “social distancing”. Court of Appeal cases are generally proceeding but by video link.

Routine interlocutory civil matters are largely being dealt with by phone or video link. Urgent family cases can proceed but principally by phone or video. The family court is sympathetic to adjournments as are the general civil courts. All final employment tribunal hearings are being adjourned until no earlier than June 2020 although case management hearings are taking place by phone and video.

Some time limits have been changed to allow the courts longer to consider applications given the more complex logistics with judges and court staff often working from home. Electronic filing is being encouraged albeit that hard copies are still required for certain applications. Adjournments and extensions for time for service of documents due to problems caused by the virus (e.g. people ill or self-isolating or problems obtaining documents) are being considered sympathetically. We are aware of parties being treated favourably when requesting extensions of time for discovery where, for example, they are struggling to obtain hard copy documents from overseas branches and similar.

The usual limitation periods do currently apply since proceedings can still be issued and served. We believe, however, that the courts will be sympathetic to extensions of time for

service if personal service proves to be problematic given many businesses have closed and since the Viscount's Department (the government department which effects personal service) has stated that it will only personally serve in matters of urgency and that alternative methods should be used if appropriate (e.g. service by email).

Judgments are enforced through the Viscount's Department. The Viscount's Department is still operating but at reduced capacity. The team continues to enforce fines and judgments by phone and email but not in person. The Petty Debts court (which deals with low value debt claims) is closed and all eviction cases have been adjourned during the period of the lockdown measures.

Under the Covid-19 (Restricted Movement) (Jersey) Order 2020 persons may not travel to work unless it is not possible for them to work from home. Lawyers have been asked to work from home wherever possible and law firms are only permitted to allow a small number of their employees to be designated as "essential" workers and thus able to work in the office (or to attend court). Banks are operating on a similar basis although bank branches largely remain open but with reduced hours. Legal work is, however, continuing with most lawyers adapting well to working from home and with hearings continuing albeit at a somewhat slower pace and with more hearings being dealt with by phone or on the papers. Most law firms already had emergency planning in place to deal with situations such as a pandemic and so lawyers and support staff were largely already set up to work remotely.

Jersey's insolvency laws have not yet been amended so directors of companies remain at risk of being found personally liable for wrongful trading if they knew (or were reckless as to whether) there was no reasonable prospect of their company avoiding insolvency. In the current climate this is particularly difficult as the length of the lockdown and the long-term implications for businesses are unclear. It is to be hoped that the courts may have sympathy for directors in the current situation given they might otherwise be tempted to enter into insolvency proceedings too quickly rather than risk incurring personal liability. Permanently shutting businesses unnecessarily will clearly have a significant detrimental impact on the economy and the numbers of unemployed even after the worst of the pandemic is over. Unfortunately, within days or weeks of the lockdown beginning, some Jersey companies closed permanently or entered into insolvency procedures. There are proposals to enact changes to the insolvency regime to assist with a rescue culture but these are not yet in place.

2. Forecast: after the crisis and long-term effects

It is currently unclear which measures introduced during the crisis will be immediately withdrawn and which will stay. It is expected that trials with witnesses will take place in

person again as soon as the worst is over and it is hoped that the backlog of adjourned cases will be dealt with as quickly as possible. It may be that some interlocutory hearings will continue to be dealt with on the papers, by phone or by video both because the courts may have grown accustomed to that way of working but also because measures to maintain social distancing are likely to remain important even after the worst of the pandemic has abated. The same is likely to be true for lawyers, some of whom may continue to work remotely at least intermittently, both because it will become the new normal but, more importantly, to assist with social distancing.

The Jersey government, in common with many others, has been spending vast sums of money to maintain the health service and economy (sickness and unemployment benefits, employee furlough schemes, increasing hospital capacity etc) and this will have an impact on spending priorities going forward. A new era of austerity is likely and large-scale public spending may be reduced. This may mean that enforcement of economic crime becomes less of a priority, but it is difficult to say at present particularly as some prosecution of corruption may lead to compensation payments that could boost the Treasury coffers.

Whilst crime is generally reducing in Jersey during this pandemic, fraud and “scams” appear to be on the rise as fraudsters seek to exploit vulnerable people. Prosecution of fraud may therefore increase in the aftermath. It remains to be seen whether corruption and bribery offences will increase over this period but crises of this sort offer opportunities for such behaviour and this may lead to a rise in prosecutions going forward. Insolvencies and commercial disputes may also rise once the immediate crisis has passed and third-party funders may see an opportunity to provide resources to fund cash strapped litigants.

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