

# Webinar: Access to family justice internationally during the Covid-19 crisis

15 May 2020 – 10am-11am UK time

## **QUESTIONS FOR EACH JURISDICTION**

1. What is your jurisdiction?
2. When did the lockdown start?
3. Were courts affected before/after/same time as schools being shut?
4. What access is there currently to family courts at first instance?
5. What access is there currently to family courts at appeal level?
6. How is this access being provided at each level? In person/phone/video?
7. Which IT is being used?
8. Is live evidence being given remotely?
9. Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?
10. Is it possible to issue a divorce petition?
11. Other relevant issues?

## Speakers

**Sarah Lucy Cooper** - slcooper@thomasmore.co.uk

Barrister, Thomas More Chambers. Sarah is an experienced specialist Family Lawyer with a particular emphasis on international cases. She is a member of the International Committee of Resolution, the International Committee of the Bar Council and founded the British Spanish Law Association. She has written for a variety of publications including International Family Law Journal and Family Law Week and is a regular speaker to English and foreign lawyers. Sarah has also been appointed as a Family Recorder on the South East Circuit and is a Resolution trained mediator.

**Manuela Tirini** - manuela@tirinigrassi.it

Qualified to practice law – Attorney admitted to the Bar of Bologna.

Decennium experience in the field of family law (separations, divorces, termination of more uxorio cohabitation, custody of natural children, parental responsibility, recognition of illegitimate children and all the problems inherent in the judicial and extrajudicial activities that revolve around the family as the central nucleus of our society) and international law.

**Samantha Gershon**- Samantha.Gershon@withersworldwide.com

Samantha is a partner in the divorce and family team at Withersworldwide. She has over 20 years' experience in litigation and uses her commercial litigation experience to provide a unique perspective to family law cases. Samantha is currently the Chair of the Hong Kong Family Law Association and was previously the Honorary Secretary from 2016 to 2018.

**Svetlana Garcia** - svetlana-garcia@yandex.ru

Svetlana Dmitriyevna Garcia. Lawyer of Bar Association of St Petersburg. Professor of law in University of Justice of Russia. Member of the association "AIJUDEFRA".

**Anthony Gross** - cgross@afgross.com

Founder and Senior Partner of A.F. Gross Advocates, Nairobi Kenya, with 40 years of practise in Kenya. Experience of international family law and cross border custody disputes. CEDR accredited mediator, panel of mediators (C.I.Arb) London and Chartered Arbitrator (FCI.Arb, C.I Arb London) Director and Co-founder of Strathmore Dispute Resolution Centre in Kenya

**Karen O'Leary**- k.oleary@caldwellrobinson.com

Karen is the head of family law and specialised in international cases in Caldwell & Robinson. She practices in both Ireland and Northern Ireland and is also qualified in England and Wales. Karen is an IAFL fellow, a mediator and Chartered Arbitrator in Family Law (Finance)

**Byron James** - byron@Expatriatelaw.com

Byron is a Partner and Head of the Expatriate Law team in Dubai. Having been based in the Middle East for several years he has an expert understanding of the local law and culture, in particular the way in which it affects expatriates. He specialises in all aspects of family law, divorce and financial remedy cases to disputes involving children.

## **Manuela Tirini - Italy**

### **What is your jurisdiction?**

Italy

### **When did the lockdown start?**

March, 8. All the interim measures taken to face COVID 19 started on 9, march.

### **Were courts affected before/after/same time as schools being shut?**

Schools were affected before that date, in Emilia Romagna February, 29

### **What access is there currently to family courts at first instance?**

There are some kind of proceedings for which the Courts must absolutely issue an order, in general an interim order (I will let you know the cases). All the separation and divorce proceedings can be filed online. Since May, 12, the Court are officially opened again: I mean that all the judiciary offices can be personally reached. During the lockdown period (march 9- May 11) there were no hearings and all the deadlines were suspended (but not the ones mentioned above, always remote hearings).

### **What access is there currently to family courts at appeal level?**

Since may, 11, all the hearings will be postponed to a date after july, 31, except the urgent hearings and the comes referred to minors or family law matters. No hearings in the lockdown

### **How is this access being provided at each level? In person/phone/video?**

Never personally. Never phone. Video (Zoom or Microsoft Teams).

### **Which IT is being used?**

Windows 10 PC with up to date anti-virus, web meeting solution online like MS Teams and others

### **Is live evidence being given remotely?**

yes

### **Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?**

Yes. If so, what is the longest period (march 9, may 11) and how are urgent cases usually dealt with? In a first time only urgent cases with remote hearings. Then, since mid April, providing to the court written notes to be considered like a short oral discussion ore remote hearing.

**Is it possible to issue a divorce petition?**

Yes, but the hearing will be celebrated in a few Months (Milan not before February 2021)

**Other relevant issues?**

**Samantha Gershon – Hong Kong**

**What is your jurisdiction?**

Hong Kong

**When did the lockdown start?**

Hong Kong has not had a complete lockdown. Instead, various control measures have been taken by the Hong Kong Government.

**Were courts affected before/after/same time as schools being shut?**

The announcement that Courts and schools would be closed came at the same time. The Chinese New Year public holiday was on 27 and 28 January. Schools have generally not resumed since then. The General Adjourned Period ("GAP") was introduced by the Judiciary on 29 January 2020.

**What access is there currently to family courts at first instance?**

There has been access for urgent and essential court hearings and matters throughout. Since 4 May when the GAP ended, the courts have been open for most hearings (still seems to be subject to the Judge's discretion) except for trials. Trials are due to resume in June.

**What access is there currently to family courts at appeal level?**

Same as above.

**How is this access being provided at each level? In person/phone/video?**

Thankfully we are almost back to normal. However during the GAP, there was the use of dedicated judicial emails to receive documents. There were hearings in person and paper disposals. The first telephone hearing was held. There were a few remote hearings via video conferencing facilities (VCF).

**Which IT is being used?**

VCF for remote hearings. Only witnesses can give evidence via video link. Neither Skype nor Zoom is allowed to be used.

**Is live evidence being given remotely?**

Yes but subject to problems with VCF. It is necessary to have access to VCF facilities that is compatible with the court system. A witness can also give evidence remotely via video-link.

**Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?**

Yes, courts are generally shut on Saturdays afternoons, Sundays and public holidays. The longest public holiday period is normally Chinese New Year. The Family Court can be shut for 5 days (includes one weekend).

**Is it possible to issue a divorce petition?**

Divorce petitions will be able to be issued once the Family court registry is re-opened — hopefully on 13 May.

**Other relevant issues?**

**Svetlana Garcia – Russia**

**What is your jurisdiction?**

Russian Federation

**When did the lockdown start?**

March, 28. Courts were closed earlier, on March, 19.

**Were courts affected before/after/same time as schools being shut?**

Before schools being shut.

From March, 16 till March, 22 schools were not shut but most of children studied remotely. From March, 23 till March, 31 there were standard spring holidays which were prolonged till April, 12. After April, 13 till now all children study remotely and schools are shut officially.

**What access is there currently to family courts at first instance?**

There is no any access at all. All cases are suspended, including cases on child abduction. Judicial hearing are not held, even via videoconference. Courts only hear cases of arrest and administrative offences.

**What access is there currently to family courts at appeal level?**

There is no any access. Cases are suspended and they are not sent from courts of the first instance to appeal courts. Cases that were sent to appeal courts before the lockdown, are not heard even via videoconference.

**How is this access being provided at each level? In person/phone/video?**

See above.

**Which IT is being used?**

See above.

Some arbitration courts tried to use Skype but soon stopped doing it as our legislation doesn't stipulate it and The Supreme Court of Russia didn't decree on that.

**Is live evidence being given remotely?**

No.

**Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?**

Courts have holidays from December, 30 or 31 till January, 10 approximately. Also there are short holidays in May (several additional days off in relation to the 1st of May and Victory Day on May, 9). During these periods courts only hear cases on arrest.

**Is it possible to issue a divorce petition?**

Yes, but the case will be suspended.

**Other relevant issues?**

It's possible to issue any petition but all cases will be suspended. Anyway if it's a question of a certain limitation period of issuing a petition, it is necessary to issue it now, during the quarantine, so that this period would not be missed.

All documents are now presented to courts online or by post.

**Anthony Gross - Kenya**

**What is your jurisdiction?**

Kenya

**When did the lockdown start?**

The Government of Kenya declared a lockdown/cessation of movement in or out of the Nairobi Metropolitan Area (and two other counties in Kenya) for a period of 21 days that was effective from Monday 6th-April-2020. This 'lockdown' has been extended for a further 21 days, which will take us up to 18th-May-2020.

Prior to the initial 'lockdown', the country was and is still on a dusk to dawn curfew that starts at 7:00pm and ends at 5:00am.

**Were courts affected before/after/same time as schools being shut?**

In compliance with the directives issued by the National Emergency and Response Committee, court activities were scaled down for a period of two weeks effective from 16th-March-2020 via a press statement from the National Council for the Administration of Justice after a meeting which occurred on 15th-March-2020.

This was relatively the same time schools were closed as the directive for closure of all schools was to take effect on Monday 16th-March-2020, with boarding schools and universities given up to Wednesday 18th-March-2020 to close.

**What access is there currently to family courts at first instance?**

The Chief Justice gave directions to upscale court operations on the 22nd-April-2020 and the Family division administration came up with directions after holding a virtual meeting on 24th-April-2020. Despite the directions, access remains limited, and no substantive hearings are being conducted remotely.

All matters filed under a Certificate of Urgency are being dealt with through email. Parties are able to apply for interim orders under a Certificate of Urgency, which may be granted on merit, however no substantive hearings are taking place.

All other applications are made via e-filing and the deputy registrar will forward any interim directions given by the Duty Judge, however these directions are in the nature of a future hearing date once things return to normalcy.

### **What access is there currently to family courts at appeal level?**

All documents are filed electronically.

In relation to First Appeals (i.e. from Magistrates to High Court or High Court to Court of Appeal) and Second Appeals (i.e. after appeal from Magistrates to High Court, appeals can be made to the Court of Appeal), interim orders/applications may be applied for and will be considered on the basis of written submissions limited to three pages without the necessity of oral highlighting. However, no substantive hearings are being held in relation to appeals\*\*

*\*\*The Court of appeal has tried to hold a video link hearing for the highlighting of submissions, however real challenges were faced and therefore is unlikely to be repeated. The challenges are, inefficient systems/network and technological challenges with the judges.*

### **How is this access being provided at each level? In person/phone/video?**

The courts in a bid to adhere to social distancing guidelines and mitigate spread of the virus are trying to rely on technology. All applications are filed through the e-filing portal and are designated to the duty court/magistrate who will give directions.

Deputy registrars are placed on duty every week to act as the liaison officer between the litigants/advocates and the judge. Communication is done via email.

### **Which IT is being used?**

The judiciary has had an increased use of ICT tools such as video and audio conferencing, e-filing, digital display devices, real time transcript devices and emails for processing of urgent applications and delivery of judgments. However, given these have not been used in the past, it remains to be seen how they will be utilized effectively.

### **Is live evidence being given remotely?**

Owing to evidential challenges such as production of physical evidence and cross examination, no hearings are being conducted where this evidence can be taken. Notably, there is a need for amendment of our Evidence Act to cater for online production of documents.

The court hence is only giving directions and new hearing dates for the future on old matters save, for the ones filed under Certificate of Urgency.

### **Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?**

Courts go in recess/vacation during Easter ( the vacation is a week or less), August (the vacation is usually a period of three weeks) and Christmas holidays (this is usually three weeks to one month). During these periods, Duty Judges are appointed to hear urgent matters filed under certificate of urgency pursuant to the High Court (Practice and Procedure) Rules

Court registries remain open on weekdays with the exception of public holidays.

**Is it possible to issue a divorce petition?**

It is currently possible to file a divorce petition; however, no hearings are being conducted at the moment in this respect.

**Other relevant issues?**

N/A

**Karen O’Leary – Northern Ireland and Republic of Ireland**

**When did the lockdown start?**

Northern Ireland . A small jurisdiction of just over 1.88 million people. it is part of United Kingdom. It is similar in practice to England and Wales but with differences.

There are three level of courts dealing with family matters:-

1. Family proceedings court/domestic proceedings courts- deal with all matters concerning domestic violence, public law proceedings, contact and residence of children and maintenance.
2. Family Care Centre/County Court- deal with complicated children’s proceedings in both public and private law matters and judicial separation and divorce matters.
3. High Court- deals with the most complicated type of proceedings relating to children and complicated or high net asset divorces.

**When did the lockdown start?**

Lockdown started on 23rd March but 28th March 2020 was the date a formal statement of measures was introduced here.

**Were courts affected before/after/same time as schools being shut?**

There was a slow down and adjournment of almost all cases from week commencing 16th March 2020, by the week of 23rd March court lists were being adjourned in their entirety to a fixed date or just adjourned generally .Schools shut down on 23rd March 2020

All Court sittings have been consolidated into 4 centralised hubs together with the High Court.

**What access is there currently to family courts at first instance?**

Only urgent matters relating to child protection type cases and domestic violence cases which typically involve “the immediate liberty, health, safety and wellbeing of individuals “.

However this week has seen a change and at High Court level cases are being reviewed remotely in terms of case management. Also the High Court has confirmed that consensual divorce hearing will be heard remotely starting shortly.

At the lower two courts, there has been no change so urgent matters are only being dealt with currently.

**What access is there currently to family courts at appeal level?**

High Court- review hearings & non contested divorce matters being listed for remote hearings

County Court-only urgent matters being dealt with by remote hearings

Family Proceedings level- only urgent matters being dealt with by remote hearings

**How is this access being provided at each level?**

Remotely by video

**Which IT is being used?**

Pexip

**Is live evidence being given remotely?**

No.

**Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?**

County Court and High Court shut for 8 weeks, urgent matters are dealt with by Duty Judge on filing a certificate of urgency setting out the grounds for urgency.

**Other relevant issues?**

- Lack of progress in virtually all cases is generating enormous backlogs of cases for a system which was already under significant strain.
- the crisis has demonstrated the lack of funding in the court system and in particular IT facilities which is adversely impacting access to justice.
- with little or no court work lawyers / firms have advised that many are facing significant challenges financially.
- The Northern Irish Assembly on 12th May announced a five step approach to emerging from lockdown.

**Byron James – Dubai**

**What is your jurisdiction?**

Dubai, UAE, Middle East

**When did the lockdown start?**

4th April 2020

**Were courts affected before/after/same time as schools being shut?**

Family Courts closed on 22nd March until Mid-April. Schools closed the week before.

**What access is there currently to family courts at first instance?**

Cases can be issued and are being heard remotely

**What access is there currently to family courts at appeal level?**

Appeals are being heard remotely

**How is this access being provided at each level? In person/phone/video?**

By video

**Which IT is being used?**

Zoom

**Is live evidence being given remotely?**

No. Hearings involving witnesses are being adjourned until June.

**Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?**

The Court's are always available for urgent applications. They are shut in accordance with the Islamic calendar otherwise, and UAE public holidays

**Is it possible to issue a divorce petition?**

Yes

**Other relevant issues?**