

# Returning to Court

By [Tom Webb](#)

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3PB Barristers

1. On Thursday 28<sup>th</sup> May I attended Winchester County Court, in person, to conduct a trial. I must confess that I don't know whether any civil trials have gone ahead in person since lockdown began, but I thought it may assist to share some general observations such that others have some idea of what they will be going back to in the coming weeks.

## Background

2. The matter was a modest fast track case with one witness per party. There was dashcam footage to be played.
3. The court had contacted the parties a week prior to enquire as to the possibility of conducting a remote hearing. This was not possible for logistical reasons. The court had been given the green light to begin limited hearings in person as of 28<sup>th</sup> May and our case was deemed suitable.

## The Court Building and Environment

4. For those that don't know Winchester, it is primarily a Crown Court, with just one DJ and one CJ resident. It has two wide landings outside the various court rooms. It is one of the more spacious courts that I have been to.
5. Of note in terms of the court building itself and measures being taken:
  - a. On arrival, there were markers on the floor to ensure 2 metre gaps when queuing for security.
  - b. One criminal court was sitting, together with our civil trial, so there were very few people around (perhaps 10-15 aside from court staff) and I only queued behind one person.
  - c. Nobody that I saw wore a mask or gloves (nor did I). There appeared to be no expectation of this.

- d. The security staff were keen for me to use my Bar Council ID card as it saved them from needing to search me or my bags. I strongly advise applying for this if you are able. You fill out an application online and can then download a 'card' to your phone. The court staff scan a QR code to confirm your identity and then you can proceed through security. The service isn't available everywhere, but my understanding is that it is being increasingly rolled out.
- e. When people were checked, the security table and boxes were sanitized after each use. Although numbers are unlikely to be particularly high for the moment, once the courts get busier this is likely to mean that security checks are slower.
- f. Once inside the court, much like the supermarkets, there was tape all over the floor, marking out the 2-metre distance. All of the tables and chairs had been spaced out accordingly. This made a conference with the client a bit strange. Three important points to think about when considering whether your case is appropriate for in-person hearing:
  - i. If you have video footage to show the client in conference, as I did, it is very difficult to maintain social distancing (at least whilst we remain at a requirement of 2 metres). You may wish to consider asking your solicitors to send the client the footage to view in advance;
  - ii. When asking your client to check their witness statement, this will inevitably involve handing over and then taking back a document. If you are uncomfortable with this, it would be wise to again ask your solicitor to do this in advance for you;
  - iii. I think it would be exceptionally difficult to utilise conference rooms in the current circumstances (we didn't need to as there is plenty of space in Winchester). If you are going to need to have a particularly private conversation with your client (or indeed your opponent), I suspect that this is likely to be difficult in many of the smaller courts. Arrangements can be made to speak in advance, or perhaps more realistically in a lower value claim, this may be a factor that renders a case unsuitable for in-person hearing at this stage.
- g. There were many more cleaning staff than usual on duty. They spent the day going round in a circuit, cleaning the table surfaces in the public areas frequently.

- h. The toilets were “one in, one out”. Again, as things potentially get busier, this may cause difficulties. Something to think about if you or a client are likely to need to use the facilities fairly frequently.
- i. The court usher came to find us as per usual prior to the hearing. We signed in, in the usual way.
- j. There were moments when distancing slipped, for instance going through doors where the instinct is to hold the door open for others. Clients may not be so switched on to the requirements as you will be, particularly in an alien environment such as the court. This can of course be avoided with diligence, but it is difficult when you are dealing with all the other bits and pieces that are going on before and during a trial. Please bear this in mind.
- k. The court café (a rarity I know) was closed, as were all the surrounding cafés, restaurants etc. Although Tesco and so on were open, it may be worth considering taking your own lunch and/or drink.

## **The Hearing**

- 6. As to the hearing:
  - a. Our modest case was heard by a Circuit Judge. I wonder whether this is likely to be the case fairly often for the moment?
  - b. We didn't robe, but I don't think that was because of Covid. I didn't go into the robing room so can't assist with arrangements in there.
  - c. In the courtroom:
    - i. Our case was heard in the Circuit Judge's courtroom, as opposed to in a DJ's chambers. I cannot see that distancing can really be maintained in many of the smaller DJ's rooms as yet;
    - ii. The advocates sat at the usual bench, but 2 metres apart;
    - iii. The advocates were each provided with a bottle of hand sanitizer, wipes for the table and a bottle of water (instead of the usual shared jug);
    - iv. We swigged from the bottles rather than there being plastic cups or anything like that available to us.

- d. We had some difficulty getting the tech to work, but that had nothing to do with Covid.
- e. The 2 witnesses sat at the back of the room in the public gallery. Seats were taped off so as to ensure distancing was maintained. If you have multiple witnesses in a case, this may cause problems unless they wait outside.
- f. Evidence was given from the usual witness box. Bear in mind that you won't be able to approach the witnesses to hand them anything, show them footage etc.
- g. Both witnesses affirmed, with the usher reading the wording to them. My assumption is that this was to avoid handling any of the religious texts and so I suspect will be the standard practice, regardless of religious belief.
- h. The trial was otherwise conducted as per normal and ran smoothly enough.

## Conclusions

- 7. Overall the process operated well and the court staff were clearly working very hard to keep everything running.
- 8. My conclusions were these:
  - a. I felt reasonably safe throughout. It was really just the slight uncertainty about being out and about after so long that nagged at me, as opposed to anything specific about the court environment. Once the trial was underway, I didn't give it a second thought really. Doubtless we will all get used to being back in court and the uncertainty will diminish;
  - b. That said, you are in my view very likely to end up in quite close proximity to other people, even if just briefly. You are bound to touch doors, tables etc. that have not been cleaned since the last person used them, no matter how diligent the cleaners. If you / your client are vulnerable or living with somebody vulnerable, it is important to have this in mind when considering whether to accept instructions in my opinion;
  - c. I wasn't put under any pressure to attend by the clerks or my solicitors. It is important that a supportive environment is maintained whilst we get used to "the new normal";

- d. Winchester is quite a spacious court. I am sceptical as to whether the more cramped courts (without naming any names) will be able to function whilst the 2-metre rule remains in place.
  - e. Overall, it is do-able in suitable courts. Numbers in the court will inevitably have to be limited and the above measures maintained. If you feel ready to return and are offered the opportunity to do so, then I would not discourage you from taking that opportunity.
9. My recommendations for going to court are:
- a. Apply for and download the Bar ID card;
  - b. Take your own hand sanitizer;
  - c. Take your own drink (and food if likely to be there over lunch);
  - d. Give serious thought to the logistics of your conference with the client, particularly if you need to play footage or anything like that to them.
10. If anybody wants to talk about the experience, entirely in confidence of course, then please don't think twice about getting in touch.

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