The "interests of justice" test in the Coronavirus Act

Dear colleagues,

You may or may not be aware that there is a bit of a Twitter storm about the court applying the "interests of justice" test when deciding whether parties can appear remotely. In some areas, the test has been applied throughout. In other areas, including in Westminster, the test has not been applied at all. By law, the judiciary should be applying the test in every case.

The parties, *ie* in particular the defence and the prosecution, are concerned that without any warning at all, the court will tell the parties to come to court when they had planned on appearing in a case remotely.

This is a matter of understandable great sensitivity.

How you approach this is a matter for you but we thought it might be of use for you to hear how the CM applied the ``interests of justice`` test on Friday in a case which is the way she will apply it until the parties know that the first port of call is for them to be in court.

On Friday the CM had a defence silk at home and the defendant at his home, both connecting in by video link. The CM established from both that at they were in the vulnerable category but asked no questions about private medical matters. The CM asked the Crown who were also remote whether they had any observations and they said they had not. The CM said it was clearly in the interests of justice to hear them remotely. The Crown representative had no reason not to be there but as she did not know that the court was going to be applying the test, it was not in the interests of justice to insist she come to court. Before making that determination the CM briefly asked the silk if she had any representations and she did not. A requirement of the legislation is that other parties are allowed an opportunity to make representations on the point.

What the CM said above took about 20 seconds in court. Might we suggest you take a similar approach? It would be quite wrong to question any party who says they are vulnerable or shielding etc. <u>These are personal matters which should not be aired in court</u>. We repeat that if yours is a court which has not been applying the test, it is particularly important that until the parties get used to the requirement for them to be back in court, that we treat this with sensitivity. But it should be remembered that the legislation requires a live link direction applying the "interests of justice" test to be made in every case.

As part of the interests of justice test, one part of the consideration may be that remote working will enable defence representatives to be in several courts in a morning. If that were a reason given for the application for a remote link in an overnight case, we would find that to be in the interests of justice. There is a great shortage of legal aid solicitors and if this assists them to stay in business, it is in the interests of justice for that to happen. I am being told that defence firm financials are very fragile at the moment as result of zero Crown Court income as well as a reduction in volumes in our courts. Many defence firms have furloughed solicitors and support staff. It will take time for them to manage their resources for attendance to become the norm again. This is aside from the understandable anxieties that there are in returning back to work generally and, specifically, back into courtrooms. I am sure we will remain sensitive to their challenges.

Emma and Tan 21st June 2020