

Submission to the Justice Committee from Transform Justice Penelope@transformjustice.org.uk

1. Problems with suspects and defendants detained in police custody

There have been many problems arising about the use of police custody. In normal times, custody suites host police, police staff, defence lawyers and representatives, appropriate adults, health staff, and independent custody visitors. They are cramped, confined spaces which are difficult to keep clean. Local solicitors' firms are rotated to provide duty cover for legal advice in police custody suites. In the last week, local solicitors and reps have become increasingly unwilling to provide defence advice in person due to the risk to health posed. Anecdotal evidence also suggests that few custody suites were initially providing PPE for lawyers. Many solicitors' firms have made a decision [not to provide face to face representation](#). This has met a mixed response. Some custody suites have facilitated lawyers giving advice to clients by phone, while others appear to [have been obstructive](#). We are concerned that suspects may be getting legal advice much later than otherwise, or not at all. Custody suites do not collect reliable data on rates of legal representation in normal times, so we fear we may never know how Covid has impacted on suspects' access to legal representation.

We have urged police to reduce demand for police custody through using out of court disposals, through asking suspects to attend voluntary interviews at a future date, and through releasing suspects pre-charge either on police bail or under investigation (RUI).

2. Video hearings

The Coronavirus bill brought in new powers to extend use of video and audio hearings in criminal (and other) cases. Measures were brought in with very little scrutiny, and the government's determination to keep the wheels of justice moving digitally has led to some confusion. Information on how to take part in hearings remotely has been released piecemeal, with many different guidance documents issued by HMCTS and the judiciary.

Transform Justice is concerned that the video (and even more so the audio only) court experience is a barrier to effective participation. Some lawyers and judges seem to assume that because a multi person digital hearing worked technically, it was a success. This has been the dominant narrative on social media. But some testimony indicates there are nascent problems. In many cases judges are asking participants to turn off the picture on video calls to save bandwidth. This means participants cannot even see each other. A [blog by Professor Celia Kitzinger](#) illustrates how the lawyers' view of skype justice, can be very different from that of witnesses/plaintiffs/defendants. This [thread by a court reporter](#) also indicates the technical and other problems occurring in criminal cases.

The move to digital justice in the crisis has involved the use of open source software -Skype, Microsoft teams and zoom. This has inspired some concerns about privacy, and cost. It has also highlighted the cost of the digital court reform programme. Most of the £1.2 billion programme has been spent on developing bespoke software for online and video hearings. None of this is yet ready to use so, perforce, people have resorted to existing software. This begs the question of whether the bespoke software is value for money.

The move to digital seems to indicate that many more administrative hearings could be held using off the shelf video call software. But it seems to have highlighted already existing concerns about the impacts on access to justice and effective participation for ordinary people.

Transform Justice is concerned that the government is holding off publishing a research report which would give invaluable help to those struggling to make audio and video hearings accord with

procedural justice principles. The evaluation of the video enabled justice pilot is in final draft form and is the most extensive piece of government sponsored research for more than ten years on the effectiveness of video hearings. Given the urgency of the need, we are not clear why [this research](#), funded by the Home Office and facilitated by HMCTS, has not been published.

3. Use of court remand

Transform Justice has advocated for a reduction in the use of remand in normal times. In this health emergency we feel reducing remand is particularly important given the risk of Covid 19 in custody, and given most of those on remand are not convicted. Of those remanded by magistrates' courts, most do not receive a custodial sentence when their case is concluded. Thus the "no real prospect" test - where remand should not be sought for a defendant who has no real prospect of receiving a custodial sentence - does not appear to work in practice. In the long term, we urge the government to radically re-model bail information services. In the short term, Transform Justice and the Criminal Justice Alliance, have urged the government to influence the CPS, the Judiciary and defence counsel to be particularly respectful of the presumption in favour of bail and to abide by criminal procedure rules. We have also urged the government to review the remand of all those awaiting trial, to ensure that more defendants can await their trial on bail.

4. Open justice

One of the biggest problems that has arisen due to Covid is the end of open justice. In normal times nearly all criminal hearings are open to the public. Few independent observers attend court cases, but many friends and family do. Government guidance now advises against all non-essential travel, so in person observation of court cases is also against advice. This means the only means of observing cases would be via digital apps. There is no information for the public on how they might join a "virtual public gallery", nor any information on magistrates' court cases. The only online court lists are of Single Justice Procedure cases. SJP lists were already available pre-covid. So currently no member of the public can access information about, or actually observe, most criminal hearings. Transform Justice believes it would be technically possible to join a video hearing, but that public observers have not been allowed to. Some legal journalists have however been allowed to access audio/video hearings.

We are very concerned that open justice is a fundamental human right, and a key way of preventing and highlighting miscarriages of justice. News of a woman fined £660 for not telling a police officer why she was at Newcastle station illustrates that potential miscarriages of justice are still happening. The government and the judiciary must prioritise achieving some public access to live criminal and other hearings. An alternative would be record such hearings (magistrates' court hearings are not usually recorded) and make the audio/video available later.

5. Single justice procedure cases

Single justice procedure cases have been continuing throughout this emergency. The cases of those who plead guilty to the lowest level crimes like not having a train ticket (and those who don't plead at all) are dealt with in a closed court with a fine. The system in the best of times has a significant flaw – that most defendants do not plead at all. We question why these cases are continuing. Defendants are even more likely not to receive their post now, since many are living at a different address. They may be ill, and will definitely be extremely stressed. So the risk of defendants not entering a plea and not being able to receive and pay the sanction meted out is greater now than ever.