

Justice Committee

Oral evidence: [Court capacity, HC 284](#); [The future of legal aid, HC 289](#)

Tuesday 16 March 2021

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Members present: Sir Robert Neill (Chair); Paula Barker; Rob Butler; Janet Daby; Miss Sarah Dines; Kenny MacAskill; Dr Kieran Mullan; Andy Slaughter.

Questions 375-442

Witnesses

[I](#): David Lloyd, PCC for Hertfordshire and CJS lead for the Association of Police and Crime Commissioners, and DCC Tony Blaker, Digital First Lead, National Police Chiefs' Council Criminal Justice Committee.

[II](#): Phil Copple, Director General of Prisons, HM Prison and Probation Service, and Rebecca Lawrence, Chief Executive Officer, Crown Prosecution Service.

[III](#): Tony Cooper, Chief Operating Officer, Acas, Jacky Tiotto, Chief Executive Officer, Cafcass, and Laura Bee, Public and Commercial Sector Union Industrial Officer and Group Secretary for the Justice Sector Group.



Examination of witnesses

Witnesses: David Lloyd and DCC Tony Blaker.

Chair: Good afternoon and welcome to this session of the Justice Committee of the House of Commons. We are continuing to take evidence for our inquiries on court capacity and legal aid. Much of today's evidence will be on court capacity, but there are some legal aid issues that we will ask our witnesses about. I welcome our witnesses and thank them for coming—we are grateful to them for their time and evidence. As some of you will know, we have to start each meeting with members giving formal declarations of interests. I am a non-practising barrister. Let us go through the other members of the Committee who are present and have an interest.

Andy Slaughter: I am also a non-practising barrister.

Rob Butler: Prior to my election, I was the magistrate member of the Sentencing Council and non-executive director of Her Majesty's Prison and Probation Service.

Chair: I do not think there is anything from Janet, Kenny or Kieran. Sarah Dines?

Miss Dines: Thank you, Chair. I am a practising barrister, but I have not taken a case since my election.

Q375 **Chair:** I think that probably deals with everyone—thank you very much. We have three panels of witnesses, and we will start with Mr Lloyd and Mr Blaker. I will ask each panel just to introduce themselves and their organisations as we kick off with their session. May I ask you, David Lloyd and DCC Tony Blaker, to introduce yourselves, and then we can get straight into the evidence?

David Lloyd: Sir Bob, it is good to be here again. I am David Lloyd. I lead for the Association of Police and Crime Commissioners on criminal justice. The perspective I have is probably specifically from Hertfordshire, where I am the elected police and crime commissioner.

Chair: Thanks very much—it is good to see you again. DCC Blaker?

DCC Blaker: Good afternoon, Sir Bob. My name is Tony Blaker. I am the deputy chief constable of Kent police and the National Police Chiefs' Council lead on courts.

Q376 **Chair:** It is good to see you, too, Mr Blaker. Thank you very much for joining us today. We have heard some evidence, including from Sir Tom Winsor and others involved in the policing world. What is your perspective on the various court capacity challenges that we have had, partly through the pandemic, but also perhaps more generally and before that? What is your perception of the effect that those challenges have



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had, both on the police and on the various partners and others that the police work with, be they other agencies, or indeed members of the public, victims and so on?

David Lloyd: Perhaps I could give a little context, then go onto what it has specifically meant for me.

I would like to say, at the outset, that I want the Select Committee to be absolutely clear that, from my perspective, the court backlog is one of the worst crises that I have experienced in the criminal justice system. Although I'm not going to seek to apportion blame—apart from anything else, it is really unhelpful, in terms of partnership working—I think it will take more than good will, of which there is plenty, to put it right.

The impact is being felt—and will continue to be felt—by victims, who might never get their day in court; by defendants, who have the prospect of a trial hanging over their heads for extended periods, and, of course, the public, who will lose confidence in the criminal justice system as this gets out more and more.

In Hertfordshire, our Crown court backlog is drifting inexorably towards 800 trials; that suggests that delays are now taking up to three years. Clearly, we can argue over how long that will be, but 800 trials over four courtrooms is a lot of trials.

The context of more police officers, and thus more arrests, along with an increase, I fear, of crime linked to the reopening of the night-time economy and the ending of lockdown, will be a concern for all of us, as that must add to this backlog, and will add a significant pressure. We need to stop hoping that this will go away, and look to more radical solutions, which I am sure we will have some time to talk about later on. That would be my opening statement.

In terms of the impact on the police specifically, I would like particularly to focus on what the backlog has meant for the witness care units, which the police are responsible for. They have really borne the brunt, in terms of the significant increases in workload. The APCC looked at this last October and saw that, nationally, there had been an upward increase of 40%.

In Hertfordshire, to put some numbers on that, the witness care unit has seen an increased demand since the beginning of the pandemic. Currently, there are about 200 cases per full-time equivalent person; before covid, that could have been about 120 cases, so there is a significant increase there.

One of the major concerns of PCCs is the impact of court backlogs on victims and witnesses, and the broader implication of this for public confidence in the criminal justice system. Indeed, this impact on victims and witnesses has been acknowledged by the MOJ, who are taking forward a project looking at it.

There has, of course, been a significant impact on policing of video remand hearings; I am not the man to talk about that—I think that Tony Blaker is



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far, far closer to that, as an operational police officer. However, we might argue that wasn't specifically due to the court backlog, but more of a need to adopt new ways of working due to the restrictions related to covid—I should think that Tony will come in on that, as well.

Chair: Thank you, David. DCC Blaker, what is your take on things?

DCC Blaker: Thank you, Chair. Firstly, I would like to emphasise that it is has been a very challenging period for both the police and our partners, and indeed, you are right that the system was under strain before the pandemic, and we are working very hard to deal with the caseloads.

We have seen real delays in terms of the listing of trials and the impacts on victims and witnesses. In our witness care units, as David has just set out, we're seeing about a 50% increase in the number of cases that are awaiting a trial, so we have had to put additional resources into those witness care units to keep things moving forwards. However, again, with third-sector partners supporting victims and witnesses, who are often vulnerable and traumatised by the crime they've experienced, this means that we must put additional effort in to keep them engaged in the process.

One of our real concerns going forward is the growing risk of victim and witness attrition from the court process if people don't get access to a trial. We have worked really closely with our colleagues in CPS around charging protocols and triaging cases, to make sure that the most important cases—those involving domestic abuse and higher harm crime—are proceeded with in a timely fashion, accepting that some of the more volume crime offences may be delayed; and we have continued to work with HMCTS to make sure that remand hearings could continue, through the first lockdown in particular, using video. But we would share the position of David Lloyd there, in that we have concerns around the growing delays in trials, particularly around the Crown courts. I think our perception is that the magistrates courts are faring better in terms of recovery, but with the backlog in the Crown courts and the listing of some cases extending into late 2022 and even into 2023, we would see that significantly more effort needs to be applied, and more resource and more focus, to support HMCTS and our partners in recovery, in the Crown courts in particular.

Q377 **Chair:** David, you have a national lead role as well for the APCC. I wonder, what is your organisation's take on the likely effect of the planned increase in police numbers? I am sure many would say that it is welcome that are additional resources are going into police numbers, but one would assume that the intention is to catch more criminals, and that is going to mean more people coming into the criminal justice system. Have either of your organisations done any modelling as to what you think that is going to do to the pre-existing backlog, unless something pretty drastic is done beforehand?

David Lloyd: Clearly, specific modelling will be more operational than strategic. However, clearly I am delighted that we will have more police officers than ever in Hertfordshire soon. I am sure that many colleagues



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around the table will also be delighted at the numbers of police officers that are coming in; that is really excellent news. It does mean that we will have 20,000 more people out there arresting, and 20,000 more people arresting does mean that there will be a significant increase, I imagine, in the amount of charges, and then more court cases. But I think there are other factors as well that also lead to more cases coming to the court—the impact of lockdown easing perhaps being the principal amongst them. The concern is that a rise in cases coming through the system can be reasonably predicted, yet we still have not made that headway on the Crown court backlog—the R number that is talked about. I imagine that Rebecca Lawrence will talk later about the CPS view of that R number in terms of how the numbers are going up, not down. So there is a real concern out there. To an extent we can't be certain what the numbers will be, but what we can be certain is that the numbers will go up, not down.

Q378 **Chair:** You are putting more demand on to what you would argue is an unacceptable overload at the minute.

David Lloyd: Yes—exactly that.

Chair: DCC Blaker, what is your take on that?

DCC Blaker: I largely agree that the additional resources for policing are most welcome. In addition to that, we have had various surge funding opportunities to tackle serious violent crime. So I would see that incrementally, in the next year, or two or three years, we would see that investment becoming trained, becoming mature in its policing skills and becoming increasingly effective at tackling crime. So my prediction would be that we would see more offenders prosecuted, particularly more serious offenders, so that the focus on serious sexual offences, the focus on gang-related drug supply, and on organised crime groups, will see the Crown courts in particular see more cases. Certainly, here in Kent we have discussions with our resident judges and that is very much the phenomenon that they will describe pre and during the pandemic. We have worked closely with the Home Office and the Ministry of Justice to share the recruitment figures and the modelling, but I agree with the point that David made, which is that there will be increasing pressure, going forward, on policing and on the criminal justice system.

Q379 **Kenny MacAskill:** Obviously we are dealing with both general and specific, and generally we are dealing with the court recovery programme. I don't know whether you think it is ambitious enough; if you have any general points to raise, feel free. But specifically, what I would like to ask is on special measures that the police are using to support victims and witnesses, and whether there are more steps that we can take. Also, with regard to diversion, what is currently being done, and do you believe that more could be done to assist?

DCC Blaker: We are very keen to increase the use of special measures where they can support vulnerable victims and witnesses. It is fair to say that there have been some challenges, as we adapt to a video enabled court system, in how to provide screening for witnesses who are subject to



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special measures and make sure that intermediaries can support them. The real opportunity going forward is the use of section 28 for the pre-recording of cross-examination to use in trials. We think that is a very good facility to engage with vulnerable victims and witnesses in the round, but in the current situation that could be used to capture evidence and get that testimony if a trial is going to be delayed. There are challenges around that for everybody. For policing it is the capacity for achieving best evidence suites and the staffing. It is being rolled out nationally. I think there are 60 Crown courts now using that facility, and there is a pilot in force areas around the section 17(4) provision on sexual and modern slavery offences to evaluate that. We see that evaluation being concluded, and being able to use section 28 for those cases as a real opportunity.

To the second part of your question around out-of-court disposals, we are waiting for a new two-tier out-of-court disposal framework that should simplify things. We have increased the use of out-of-court disposals for lower harm issues during this pandemic, and of course we see those diversions as an effective way to tackle crime and give justice to victims. There are initiatives such as Project CARA, which has been piloted in Hampshire, as an evidence-based approach to dealing with standard risk domestic abuse where the victims are very much supportive of an intervention to address the offending behaviour and the cause of offending rather than going into the court system. There are a number of opportunities there that we could develop quite quickly that would help the situation.

David Lloyd: Agreeing with everything that Tony has said, I would just add to that. First, there is a danger of almost a political undermining of what is the right thing to do if it is seen to be done because of a crisis. Section 28 special measures support is exactly the right thing to do, whether or not we have a backlog, because we have to make sure that witnesses and victims can give the right evidence without fearing that they have to go into court to do that. So that might well work.

Specifically in terms of the backlog, it is unlikely to have a huge impact. Similarly, I really am a huge proponent of out-of-court disposal. I am a huge proponent of making sure that we give people the right support so that they turn away from criminality. Ideally, we do not want to criminalise them, but turn them away from criminality in the first place. Out-of-court disposal is a brilliant way of doing that. However, if we say we are doing it because the queue at the court is too long, people will not be won over to the benefits of out-of-court disposals. They will just think we are using that until we can get back on to the right way of doing it.

Lastly, we need to reflect on two things. First and foremost, we have to do all these things with a victim in mind, so we have to make sure that that is something the victim is comfortable with. Secondly, we have also got to not miss the fact that there is a considerable danger. I say this as the person who sets the budget for policing in Hertfordshire. There is a considerable danger that if we move to the police force out-of-court disposals, if we move to them the necessity of videoing, and if we move to



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them virtual remand hearings, the budget it comes out of is the police budget, not other parts of the criminal justice system. So we have to find a way round that as well. You would expect me to say it; I always do every time I come up before this Committee. I think the way is to bring the whole criminal justice system together on a local basis with a police and crime commissioner at the centre of it with one broad budget, but that probably is for another day's discussion. But I think that we have to think through where that budget sits if we are going to start to use some of these really good ideas that I am really, really in favour of.

Q380 Kenny MacAskill: Perhaps I can pursue some of the issues on video technology with Mr Blaker. First, do you think video remand hearings are effective? If so, is that something that should continue post coronavirus? Secondly, can you give us any information about the technological challenges in transferring over to the Cloud Video Platform?

DCC Blaker: The use of video technology is a very interesting development in the past three or four years within the criminal justice system, with initiatives such as the Cloud Video Platform which was rolled out in the past year in response to the pandemic, and the work that I led on behalf of the Sussex PCC's office to look at the video enabled justice programme.

Are video remand hearings effective? There is a difference of opinion depending on what sort of participant in the criminal justice system you are. There are views among the defence community, for example, and those representing defendants' rights will say that there is a potential impact on the fairness and the participation of the defendant in the hearing.

There are other opportunities for things such as warrants being dealt with and breach of bail cases where there are fairly straightforward representations to be made on behalf of a defendant around why they did not turn up at a particular place at a particular time, or did not comply with a condition, which are perhaps more suited to a video hearing.

It is fair to say, of all the uses of video in the system, the video remand hearing is a particularly complicated piece of business to do virtually. Although we have modelled it, there is more work to be done. There is a significant investment case, as David suggests, and we estimated that for policing to absorb the cost of that would be around £30 million a year in revenue cost, and at least £11 million of capital investment into estate and IT infrastructure. The capability does not exist now to do it at the quality required, and we are going to continue post pandemic to work with partners around a joined-up video strategy.

There are lots of opportunities to use video, but video remand hearings are perhaps the most difficult to get right, and I think there is more work to be done.

Q381 Kenny MacAskill: Was there any difficulty in the transfer to the Cloud Video Platform? Did that proceed smoothly?



DCC Blaker: Essentially the Cloud Video Platform, as opposed to the VEJ solution, is just changing one video application for another, such as using Zoom today. The video technology is not really the issue. Subject to a good network and devices with good audio-visual, you can use any video platform. The complication arises around all of the business processes that sit outside of the actual appearing by video—so the scheduling, organising witnesses to appear, waiting rooms, notifying people when they are required and all those kinds of business processes. The complexity sits outside of the actual use of the video platform. That is the part that we can continue to work with colleagues in HMCTS and the CPS to understand—developing a common platform and the police usage of Microsoft technologies. How do we make that process work effectively?

Kenny MacAskill: That was very helpful.

David Lloyd: My colleague, Katy Bourne, the PCC in Sussex, would certainly make the case that the second-best option was chosen and there wasn't a real willingness to look at other options other than the HMCTS-developed one, which was unfortunate. Certainly a lot of money was spent on developing video enabled justice, which was not then used. I think the view of all PCCs and, I suspect, most across policing is that we do not really care which platform is used, just as long as it works.

Q382 **Janet Daby:** Covid-19 has really affected so many of us in different ways. Has it affected the ability of suspects in police custody to access a lawyer?

DCC Blaker: That is a really interesting point. When the pandemic affected police forces, as it did everyone else, custody centres were affected. They are small estate footprints with people in close proximity. Covid-safe working necessitated very careful management of people who were held in police custody. One of the challenges was around legal representatives attending police stations. We try to use video—for example, the video enabled justice platform was used in five forces. Other forces used Teams and so on to enable solicitors to appear remotely to give legal advice.

We think that that has worked successfully, because we have managed to keep investigations going and get people access to legal advice. To be fair, there are views as to whether the quality of video interaction for a defence solicitor with a detainee is as effective as an in-person meeting. Things such as body language and building rapport are perhaps more difficult if you do not know the person you are representing. Ultimately, defendants have a choice. Provided that we do it carefully and thoughtfully, I believe that you can still give people access with video representation, but you would need to take a view from defence representatives to see the other side of the coin.

Chair: Before Janet carries on with her questions, I am going to ask Andy Slaughter to take the Chair for a moment. I have one or two technical problems I have to sort out. I will be back very shortly, but Andy Slaughter will take the Chair in the meantime. Over to you, Janet.



[Andy Slaughter took the Chair]

Janet Daby: David Lloyd, is there anything that you wanted to add?

David Lloyd: I think that it has been fully covered. There is a broader issue on which we need to reflect: the defence community and how that is keeping going. That is an even bigger issue, as there are more people out there to defend. There is a real question about how we build support for defence lawyers and make sure that there is a market there. That is for others to reflect on, rather than me. We have tried to do our bit in Hertfordshire, but it is for others to reflect on that.

Q383 **Janet Daby:** Staying with David Lloyd for the next question, how are decisions about court capacity made at the moment, and do you think that local areas have enough power to make localised decisions?

David Lloyd: The answer is no, I do not think that we have enough power locally. I know that all PCCs are keen to play their part as senior local CJS leaders to support and work with partners to tackle the backlog at a local level. There has been a problem both with the level of communication and engagement from HMCTS with local CJS partners and, crucially, the ability of HMCTS to work with partners to identify solutions that work locally. HMCTS is very much a centralised agency, and does not appear, certainly from a Hertfordshire perspective, to empower its senior staff as much as it might do. We have a perfectly good court—a magistrates court—that is now owned by my office, the office of the police and crime commissioner, in Watford. For a whole year, I have been trying to get that to be used in some way or another as a Nightingale court. We still do not seem to have got anyone who is empowered to make that decision to do it.

The work is taken forward at national level by HMCTS—the communication of how this is taken forward, and what is happening from national to local, has not been good. Senior local criminal justices are often unaware of what is happening in their patch or how they can have input into the decision-making process. Engagement with local partners has been difficult. Locally, HMCTS has felt constrained by the national process. The local criminal justice board perhaps gets a little bit of communication, but certainly no real input and engagement, and that feels really difficult.

What should happen is that HMCTS should set the exam question, I suppose, then empower regional and local HMCTS to work with partners to come up with potential solutions, which could tap into local and regional expertise. I held a meeting in May last year with local authority leaders and chief execs to ask what sort of buildings we had out there. We came up with three, four or five buildings that we could use, but it has got no further than that. That is really frustrating.

Miss Dines: Mr Slaughter, may I ask a supplementary question at some stage?

Andy Slaughter: I was just about to ask, in my brief moment of fame, whether any colleagues wished to come in while we still have our first panel of witnesses. Sarah, please go ahead.



Q384 Miss Dines: I would like to ask both witnesses about a comment that Commissioner Lloyd made earlier about the recruitment of 20,000 new police officers. I have been contacted by several constituents who are retired police officers, and they are very keen for new officers to have rigorous training, not least because of what happened at the weekend, but also in general terms. Would either of you like to offer a perspective on how we could improve police officer training? It is not a disparaging question; it is just whether there needs to be—*[Inaudible]*—about the way we train people.

David Lloyd: I could not hear everything toward the end of your question, so you have given me the great benefit that I can make up the answer that goes best. What sort of training are you talking about specifically? Perhaps then I can give a more informed response. You cut out just at that point.

Miss Dines: I was asking about the general training. Retired police officers in my constituency are concerned that the quality of training might not be as good as it used to be historically. It may be that every retired professional says that, but I wonder whether either of you professional witnesses can shed any light on a way forward, perhaps for more rigorous training for new police officers in the new age.

David Lloyd: That is a really important question. As you may well know, we are now in the process of bringing in greater qualifications for police officers. Broadly, we have recognised that police officers are really at the level of degree-trained individuals. The PEQF—police education qualifications framework—takes three years for those who have not been to university and two for those who have, and it gives them a level of training that I think is better than it has ever been. I think that it really is becoming a profession for the 21st century. I fully support the Home Secretary in suggesting that that should be brought in, and I have been very supportive of it in Hertfordshire. It can't come too soon, I think.

DCC Blaker: Yes, I agree with David that the investment in the new degree-level apprenticeship entry to policing, which gives an extra year of training, will in the longer term give us a better trained workforce. It is a big investment, so we are looking forward to seeing that come forward.

I do not think that police training has necessarily degraded since those former officers were trained; I think that the nature of police work has changed. For example, the use of digital evidence was perhaps not a feature of their experience, but now it features in every investigation, with CCTV and body-worn video, downloads from phones and so on.

We have maintained our formal training regime, so every new recruit gets a thorough training package and is coached in the workplace. The challenge is the sheer volume of new people coming into the organisation and working on the frontline. There will be a period of time when we are working really hard to get those new officers up to the level of skill and experience. There is a two-year probation period, so it takes two years to



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become properly skilled, and of course people continue to mature thereafter.

We were given additional funds as part of the uplift to increase learning and development in forces. I believe that we are continuing to give a high-quality product to our officers and staff, and I think that the profile of the workforce's skills will improve over the next couple of years.

Miss Dines: Thank you; that is really helpful.

Q385 **Andy Slaughter:** May I add a supplementary question? Even if you are persuaded that the standard of training is good, is the standard of the recruits as good as you would wish? You are trying to recruit a large number of people in a short period of time. Are you able to do vetting and other procedures in the way you would wish?

DCC Blaker: I don't have a national lead on this, but I can give a local example from my force. I can assure the Committee that the vetting standards are maintained and the same rigour is applied to every applicant seeking to join the police. The pre-selection testing is of the same standard set by the College of Policing and all forces adopt a national standard. Forces have been very proactive in appealing to perhaps a more diverse workforce, and we are still seeing significant numbers of quality applicants coming through and making fine police officers, so I do not believe that there has been any reduction in the quality of recruits we are able to find for policing.

Q386 **Andy Slaughter:** That is helpful. Can I just check with colleagues—are there any further questions for Mr Lloyd or Mr Blaker? No? I wonder whether I can ask just one more topical question. We are very seized at the moment with the Police, Crime, Sentencing and Courts Bill. Indeed, some members of the Committee will be speaking on that this afternoon and cannot be with us, or spoke yesterday. Is there anything in the Bill that either of you have seen or are aware of that is going to help with the current problems that you have outlined, in terms of the backlog and coping with the pressures of work?

DCC Blaker: Perhaps I could go first on this point. I think there is an opportunity for the new two-tier out-of-court-disposals framework, which, again, we would see as an important long-term change to the way we deal with matters outside the court. I think that is very important. In respect of the video remand hearing point that we discussed earlier, there is provision within the legislation for HMCTS PECs contractors to be able to work within police custody, effectively as dock officers, and to support facilities such as VRH going forward. So I think that in part could form a contribution on the resourcing conundrum of video remand hearings.

Andy Slaughter: Thank you. Mr Lloyd?

David Lloyd: I would agree with that. I think that, rightly, the Bill is looking more medium term, about what sort of place we want to be, rather than specifically about this area. In some ways, I suppose the follow-up question, which you haven't asked, is, "Well, what should we do



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about it, and how might we?" I haven't had the opportunity to reflect on the fact that we have had some good information sharing and there have been things that have worked well. Because of covid, it has been felt that there needs to be more information sharing across the criminal justice system.

I think that if we can get some of that right, so that we don't have the surprise of not knowing, that will be useful. But what I would really love to see, as I have already said, is this. If we found a way of really localising the criminal justice system, having for the criminal justice system one budget and one plan, which come out of the local criminal justice board, you would then be starting to find solutions, because at that point we would be better able to say, "Look, who is it around the table who can provide some extra court space? How can we do it?", rather than splitting everything up. Every time you get a different plan and different budget, you have to win the argument again, before you can move it forward.

If this has highlighted anything, it's the fact that probably the criminal justice system—this will be no surprise to you—is not as nimble as it should be, in terms of reacting to crises. There is no doubt whatsoever that there is great good will among all players to make sure it works, but we don't have that nimble approach, and we have to be starting to think around those other measures that we might put in place. An example is either-way trials. Do they just stay in the magistrates court, rather than going off to Crown court? Are there ways of reducing jury size for a limited period? It's those things that are really difficult things to do, but we have to start to consider them now, because I would prefer to have a trial with a judge and two magistrates, if it got us through more quickly, than to have witness and victim attrition over the coming three and four years. We have to start making some of those decisions.

I, like you, probably respond to questions rather than answering the question that has been put, but I thought that I would use that as the hook on which to put that forward.

Andy Slaughter: That is very useful, Mr Lloyd, although I think you have opened quite a controversial seam there going into the jury trials. Fortunately the Chair is back, so I can hand back to him.

[Sir Robert Neill took the Chair]

Chair: Thank you very much, Andy. I picked that up as I was getting my connection back, so thank you for taking that on. The last topic is probably worth a session in itself, actually. Do any other of my colleagues have any questions for David and Tony?

Q387 **Rob Butler:** I wonder if I might ask a question of DCC Blaker on a similar theme to what was just being discussed, in terms of how we might use courts and resources differently post covid, perhaps partly influenced by what we have experienced during the pandemic. We have heard from a judge who has talked about the value of witnesses sometimes participating virtually, especially if they are expert witnesses, because it



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means they don't need to hang around a courtroom all day waiting to appear. I recall that when I was a magistrate, often police officers had to sit around for an awfully long time. They would maybe just pop in for a few minutes and then be sent off, either back to their duties if you are a cruel magistrate like me, or home if you are a kinder magistrate and said they had finished their work for the day. Do you think there would be a place for police officers to give their evidence virtually in trials in the future? What might be the advantages and disadvantages of that?

DCC Blaker: Again, that is a really good insight into the opportunity in front of us. We are currently using video technology for officers to give evidence in trials. We think that is very effective, as you say, in straightforward cases for an expert witness like a police officer. There are obviously more serious matters and more complicated evidence to be given, which is better done in person, and I think that is up to judicial discretion to decide whether that is the case. We have demonstrated in the last three or four years, and increasingly in the last year, that that is a very effective way of getting witnesses to appear in court, particularly expert witnesses, and we would want to progress with that, so we are continuing to work on that. The police service, funded by the Home Office, has a video enabled policing programme to develop a strategy on behalf of the National Police Chiefs' Council, because that is clearly seen as an opportunity to drive more capacity and more efficiency in the system, and to deliver swifter and more effective justice. Working with the HMCTS and the CPS around the crime programme and the common platform, we intend to continue to pursue the use of video, as you say, to make best use of our resources.

Rob Butler: Thank you. Mr Lloyd, is there anything you would want to add?

David Lloyd: Again, it starts to open up some really tantalising prospects for the future. I genuinely feel that the style of trials in the 21st century will change very significantly. To date, trials have been around establishing the credibility of witnesses. To an extent, the credibility of witnesses changes when the type of evidence given changes, so it is less likely to be the hearsay of: "I saw that happening". It is far more likely to be: "Here is the video of what happened. Here is that evidence." That will change the way that we do things, and it may well change as police officers move from getting out a notebook and reading what happened when they were proceeding in a westerly direction, towards getting out their body-worn video and showing what happened. That very much changes the nature of what trials will be like, and I think they will tend to be more about the context of why something happened, rather than establishing how it happened and then establishing how we put right what went wrong. I very much feel that there are things that we can learn, which we started learning through the covid pandemic, and that we can start to bring into best practice, which will mean that victims get an even better representation in court and are more likely to get a fair outcome. There are lots of things that will change, and you need to think as a Committee about how you might do that. I think we should almost start



again. We know our traditions, but we should be really saying, “What can we do so differently now?” That’s why I’m so excited to be standing for a third term as a PCC, because we’re starting that process around, and I think that’s the most exciting thing there is in the whole of the criminal justice system.

Chair: Get that in before the purdah period, David! Sarah, did you have any questions?

Miss Dines: That is fine, thank you. Those were all the questions that I wanted to ask. Thank you, Chairman.

Chair: Thank you very much, both to David and Tony; I’m very grateful to you for your evidence, as ever.

Examination of witnesses

Witnesses: Phil Copple and Rebecca Lawrence.

Q388 **Chair:** We will move on now to our next panel of witnesses, where we’ve got Mr Copple and Ms. Lawrence. Welcome; it’s very good to see you both. As before, I will just quickly ask you to introduce yourselves and your organisations for the record.

Rebecca Lawrence: Hello, I’m Rebecca Lawrence; I am the chief executive of the Crown Prosecution Service.

Phil Copple: Phil Copple; Director General of prisons, within HM Prison and Probation Service.

Chair: Thank you very much. Again, thank you for coming to help us today. I will hand over straight away, so the next set of questions will come from Andy Slaughter.

Q389 **Andy Slaughter:** Thank you very much, and good afternoon to you both. Could you, first, give us an indication of how the capacity problems—the backlog, and so forth—that we’ve had post-covid has affected each of your organisations, perhaps with a nod to the fact that there already was a backlog before that started, and how that is affecting your thinking and working patterns, and how it is affecting your staff?

Phil Copple: Do you want to start, Rebecca?

Rebecca Lawrence: Yes, I am happy to start. Thank you for this really important topic. The pandemic has been an unprecedented challenge, and there were pressures on our system before.

When I speak to staff—and I would like to focus on staff a little—I am beyond impressed by the way they have shown real purpose, professionalism and resilience, as have all our partners across the system.

You will have heard from our inspectorate, and their report, which was out last week. It is really a testament to how we have reacted well, with a real can-do approach. However, as that report equally shows, the backlog,



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which sits in addition to the pressures in the system from before the pandemic, is really affecting us in the CPS very strongly indeed. Therefore, the working life of our prosecutors is pretty different now from a year ago, and I'll highlight perhaps four ways, to just bring that to life.

First—and this is worth taking a bit of time over—is the pressure on our case load. You are familiar with how the courts have progressed through the pandemic; as David Lloyd said, things are better in the magistrates court now. With the R rate, we are finalising more than we are receiving, but in the Crown court, the backlog is still increasing.

For our workforce, if you are a prosecutor, what's relevant is that we have been operating, for nine months now, with a hyperinflated case load post-charge. That is currently 63% higher than in February of last year, and for several months it was 70% higher.

We have had some recruitments, because, as you know, there were pressures facing us before, and some very welcome investment, with the first recruitment in around a decade, so we have seen more than 200 lawyers come on stream now, between January 2020 and January 2021.

Despite this, the number of cases per lawyer has increased. Our magistrates court lawyers now have, on average, 20% more cases per lawyer, so 101. Crown court lawyers have 27% more; for central case work units, it's 67% more, because some of their cases have taken a very long time to come into court.

Our rape and serious sexual offences lawyers, who are so much in our thoughts and the public's mind at the moment, have on average 80% more cases per lawyer than they did at the start of the pandemic; they are holding, on average, 27 cases each, rather than 15. The strain on that particular group of prosecutors, as you know, predates the pandemic.

What difference does this make? When prosecutors hold more cases, and when cases are waiting longer to be heard in the courts, there is more strain on them, on the defence, and on witnesses—on all involved. There is more work and activity; there is all that work liaising with witnesses, dealing with custody time limits, answering questions from defence on lines of disclosure, or taking the case over from a colleague who has moved on or has had caring responsibilities. This is a real pressure, which the inspectorate has highlighted.

There are three other changes, which, in many ways, are really quite astonishing.

Chair: Keep them fairly brief, if you don't mind, because we have a lot of material to get through.

Rebecca Lawrence: Absolutely. The first change is that the organisation has shown astonishing agility and innovation in managing pressures. As a national organisation, we have been able to move lawyers around the country while they are working from their living room. We have been able to make more use of the external Bar. Secondly, we have been able to



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prioritise work with astonishing pace and vigour, but a lot of these are short-term reprioritisations and we really need more sustainable solutions. Thirdly, the whole criminal justice system, as we have heard, has adopted digital solutions at an astonishing pace.

Finally, we should be encouraged by the extent, depth and agility of national and local partnerships, which have progressed beyond recognition over the past year. So there were lots of problems before and there is lots of pressure now, but there is also a lot of opportunity.

Andy Slaughter: Mr Copple, do you want to answer that question as well?

Phil Copple: Certainly. In terms of the impact of what have been major disruptions to the whole system as a result of the pandemic, there have been significant and prominent changes in our approach to population and capacity, in particular. There have also been significant impacts on what we have done, picking up on Rebecca's point about agility and investment in video technology, which has facilitated a much greater level of remote video enabled hearings and consultations, including for people in custody.

We have seen a significant reduction in the prison population over the course of the pandemic, which is primarily due to those disruptions upstream in the criminal justice system. However, within that fall of around 6,000 in the prison population during this period we have also seen a significant increase in the remand population, which is obviously a reflection of those disruptions. The remand population—the untried as well as the convicted but unsentenced—has increased by a little under a quarter in this period, from a little under 10,000 to over 12,000. Most of that increase—about four fifths—has been in the untried population. That has obviously created pressures for us to try to manage and also support people who have been waiting for trial for a longer period.

We have worked very closely with all our partners, particularly our colleagues in the Courts and Tribunals Service, because custody cases, particularly those coming up to custody time limits, have been prioritised in what we have done. We have really sought to work with everybody, particularly HMCTS, to try to keep the system operating. That has been our priority and focus.

A major part of that has been the additional investment in the additional facilities that we have put in place to allow video enabled hearings to take place. We have installed a lot of additional video equipment. We have increased by more than 50% the number of video units we have across the estate, from under 500 before the pandemic to over 770 now. Also, within four weeks of the pandemic starting last spring, we managed to put in place more than 500 video meeting rooms by securely opening up existing prison court video links for that purpose. That has facilitated a significant volume of consultations between defence practitioners and their clients in custody, as well as lots of hearings with probation staff in prisons who need to advise the courts.



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Those are some of the main areas on which we have been focused, and we have had a really significant increase in remote video enabled hearings during this period.

Q390 **Andy Slaughter:** Thank you very much. I admire the can-do attitude, but we are quite happy to hear it warts and all. You mentioned the inspectorate's report, which paints a relatively bleak prospect. It talks about the current situation having a toll on the wellbeing and mental health of staff. We are also concerned about the physical wellbeing of staff, and about why testing is not done routinely in courts and prisons. Could you give us some feedback on that and whether you think more needs to be done?

Phil Copple: Testing strategies are a really central part of how we seek to manage the risks, and we have obviously taken a lot of public health advice in devising our approaches to that. I know that HMCTS colleagues at your future hearing will give further details about that in relation to the court setting.

Certainly, you need to bear in mind that the testing capacity during the course of the pandemic has expanded enormously, so what we have been able to do more recently could not have been done in the earlier stages of the pandemic as that capacity was increasing really across the whole country.

More recently, we have introduced lateral flow device testing in an increasing number of prisons to try to give us quicker time results at key transition points. That includes not just people transferring from one prison to another or about to be discharged back to the community; it includes seeking to test people before they are produced in court when they need to go in person, often for a trial. After initial piloting, which went well across the pilot sites, we are seeing that now rolling out across more establishments, and we are seeing a good level of take-up of that from the prisoners who are due at court. Of course, these things are all voluntary, and we seek to persuade people to take it up in their own interests and everyone else's.

So we have done a lot on the testing front as more testing capacity has become available in line with national testing strategies. We have done that in collaboration with colleagues in the Department of Health and Social Care, for example.

Q391 **Andy Slaughter:** Do you have regular lateral flow testing for staff as they come into work every day?

Phil Copple: Yes, and in three prisons we are piloting home testing using lateral flow device testing kits. We currently have available to us PCR tests—the ones that have to go away for lab testing—on a weekly basis for all prison staff, and we have lateral flow device testing available to be done twice a week for prison staff as well. So we seek to encourage wider use of that testing, but, as I mentioned earlier, we should acknowledge that we didn't have anything like that testing capacity earlier in the



pandemic because the country did not have the same level of testing capacity earlier in the pandemic.

Q392 **Andy Slaughter:** Is that true of the CPS as well?

Rebecca Lawrence: On the broader issue of wellbeing, you are right. As the inspectorate shows, it was the central focus of our covid response for our workforce—the wellbeing of our staff—alongside keeping the wheels of justice turning. We have put in a huge amount of effort through personalised management attention, wellbeing offers and risk assessments for staff. Actually, I am really delighted to show that the CPS employee engagement index on the civil service people survey reached record levels this year at 70%, an increase from 65%. That is the high-performing benchmark. More specifically, the PERMA wellbeing score went up by one percentage point to 76%, and there was a decrease in the proxy stress index by two percentage points. That is not to show the workforce are under pressure, but we are making resource and support available for them, and I am delighted to say that they are accessing it.

The anxieties and the stresses they have faced are very real, and we take them incredibly seriously and provide physical and psychological support to our staff. But what is really significant in that staff survey is that while engagement is up and stress is supported, the question asking staff whether they felt they had an acceptable workload actually went down by four percentage points to 51%, and that is a full 13% below the civil service benchmark. So we know that across the public sector there have been huge strains on workload pressures, but we are bucking the trend because those pressures are increasing.

Q393 **Andy Slaughter:** Finally, I will ask the same question I asked the previous panel. We are looking at the moment at the Police, Crime, Sentencing and Courts Bill. Do you think anything in that will help you manage the current workload capacity issues? Whether there is or not, what else would you like to see the Government or the MOJ doing to help you with the problems of capacity?

Rebecca Lawrence: Obviously, the content of legislation will be very much for Ministers going forward, but there are some aspects of the Bill that are very welcome. I agree with the comments that Tony Blaker made on the improvements around video remand hearings, which I am sure Phil will talk about. There are also some very useful changes to pre-charge bail and the time periods and authorisation extensions, which will help the police to pursue quality investigations. The better the file quality that comes to the CPS, the smoother the process and the surer the justice outcomes.

Phil Copple: The most direct impact on HMPPS, as Rebecca referred to briefly, will be the provisions in relation to virtual remand hearings within police custody suites and the fact that it would enable our prisoner escort staff to have the legal authority to carry out custodial duties in those settings alongside police colleagues. That will potentially introduce greater flexibility to use that tool as well in the system in the future, but it will also



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require us to negotiate some contractual changes with those providers and to find the additional costs that will be involved if we utilise them for that additional service.

That was something that we had limitations on our ability to do earlier in the pandemic. We could put some of those PECs staff into police custody suites, but they were performing a co-ordination role rather than a direct custodial role.

Q394 **Chair:** Are you already starting those discussions, Mr Copple?

Phil Copple: We have plans under way, which we are dealing with a range of partners about, and we have certainly been in conversation with our contractor providers about the potential to do that in future. We will also need to ensure that there is proper financial provision for us to have more business going through those contracts and it will cost us more accordingly.

Q395 **Chair:** Do you have a ballpark figure for that?

Phil Copple: No, not at this stage. We obviously need to have the legal framework in place and we need to work out very carefully, including with police colleagues, what the kind of volume might be that we are looking at as part of the recovery process.

Q396 **Chair:** That is fair enough. Rebecca, one thing that has been said to me by some people in the defence communities is that the change to pre-charge bail is very welcome, but we have to make sure that that is used effectively and efficiently by the CPS and it is not, if you like, a means to justify sitting on things needlessly, so that there is, for example, prompt and early service and materials disclosure and so on. What is the plan to deal with that?

Rebecca Lawrence: As you will be aware, prompt disclosure and good, strong case progression and early engagement with defence is a key priority for us. It is actually a key area of joint focus with policing in all of our joint case progression work, but you are absolutely right and it is a point we take really seriously.

Q397 **Chair:** Have there been any particular impacts of the pandemic in terms of your complex crime work caseload?

Rebecca Lawrence: Yes. Our complex crime work is really affected by court capacity. You will have seen from our written evidence that some of the complex cases—the complex fraud cases, the multi-hander homicides—that require multiple defendants and therefore take up a lot of court space, are taking longer to be listed, understandably, with the physical restrictions. Those are the types of cases that, the longer they sit there, the more work there is to keep engaging with defence and with witnesses, to keep the disclosure lines fresh; they are also where staff move on. It is some of the staff on our complex casework units whose cases are waiting to be listed who have lent themselves and given additional capacity support as reviewing lawyers for our other areas that

have been under pressure, or more volume crimes. So they are affected in two ways.

Q398 **Chair:** A lot of that seems to be listing, rather than something that you can directly control as the CPS.

Rebecca Lawrence: And the physical capacity in courts; there are only a certain number of courts that are configured to be able take—

Q399 **Chair:** Which will then impact the listing.

Rebecca Lawrence: Yes, exactly. Precisely.

Q400 **Rob Butler:** May I say even before I ask a question that, having served as a magistrate, and therefore encountered quite a lot of CPS staff, and having had the privilege of being a non-executive director of HMPPS, and met a lot of prison officers, I pay tribute to both sets of staff for their incredible work throughout the pandemic? Neither is a particularly easy job at any time, and I think that whole Committee would want to pay tribute to those staff. I have often said that I think that prison staff in particular are the unsung heroes of public service. I hope that the CPS will forgive me for saying that. If Mr Copple could pass on that remark again to his staff, I would welcome that.

I wanted to ask you both about remand, and you touched on that a little bit, Mr Copple, when you gave us some numbers. Could you flesh out the impact of remand on prisons, because for remand prisoners, certainly if they are not convicted, and obviously have not been convicted of anything, the pressure of being locked up is even greater, and the restriction of liberty is felt even more acutely? In normal times, that would entitle them to greater privileges—more visits, different clothes, and perhaps a slightly freer regime. What has actually been happening to that remand population during the pandemic?

Phil Copple: First, thank you very much for your kind remarks, Mr Butler, and I will pass them on. I think it is right that a lot of commitment and courage has been shown by our frontline staff during very difficult circumstances, and we have sought to support them in that. It is really gratifying that that is recognised outside the organisation as well.

It is right to acknowledge the fact that lots of people who have been in prison during this period have ended up experiencing a greater period on remand waiting for their future to be determined than would normally have been the case. All of the risk factors and the difficulties with which people are familiar, and about which there is lots of evidence, in terms of being in that limbo and all the uncertainty attached to it have essentially been multiplied, because remand has been extended over a longer period, typically, for a lot of people, particularly for those who were in custody in the early stage of the pandemic when even less court activity was taking place. Of course, the conditions that people have been living under in our prisons have been highly restricted throughout this period. Even when we were able to ease things in the summer and going into the autumn last year, those conditions still remained far removed from what had been the



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pre-pandemic regime. There are an awful lot of stresses and strains on people. We know from the normal way of operation that when people charged with less serious offences who have been remanded into custody finally have the case concluded, if they are convicted and sentenced, often then are released very quickly, or even straightaway, because of the time they have done on remand. We are seeing an element of that coming through in the system, because people have spent longer on remand in a number of cases.

We have obviously sought to support people in general as best we can. We have had a number of mitigations in place to try to make life in general more bearable, and that includes trying to facilitate with direct pin phone credits—the kind of secure telephone system that we have for people to keep in contact with family and friends. In cases where people have legal proceedings pending, we have also enabled them to seek access to telephones to contact defence lawyers and so on. We have sought to do what we can through the video link expansion to which I referred earlier to facilitate a significant increase in video consultations with defence lawyers as well as with probation staff, who may be producing pre-sentencing reports. All that kind of effort has been made to try to keep the system working as best we can, but it also has a direct benefit for the individuals going through the system, as they know that progress is being made, and they can talk to their lawyers, sometimes even see them on a video screen. We have also been able to continue to facilitate face-to-face visits, where there has been a demand for them from defence practitioners. We have tried to do what we can, which includes supporting people going through legal proceedings, as well as supporting them in a general sense by trying to protect their mental health, which is important

Q401 Rob Butler: Have you had greater cases of frustration, displayed in any particular form, from remand prisoners who have found themselves in this situation?

Phil Copple: As you would expect, there have always been some cases where individuals have struggled to cope; and we have tried to increase our efforts at the frontline, to try to support people. I think that, in general terms in respect of people coping, the overall picture has actually been a pretty positive one, and that includes people who have been on remand, even where that has been for extended periods.

I think the evidence from multiple sources—not just from our own engagement with prisoners, but through other organisations—has demonstrated that there has been a lot of practical support and compassion and care shown for people, which has really made a difference during the pandemic, throughout this period. We have also seen that, across the estate as a whole, there have been quite significant reductions in self-harm. One of the major risk factors I was alluding to earlier with the remand population and the newly convicted population is that of self-inflicted deaths as well; and in 2020, as the latest published statistics have demonstrated, we had a lower rate and number of self-inflicted deaths in the system than in any of the previous seven years. When you consider the conditions in which people were living in prison during 2020, that is



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particularly remarkable, and I think it does demonstrate that the mitigations we have put in place across the system, plus a lot of day-to-day support and compassion at the frontline, have really made a difference to people.

Q402 Rob Butler: I am sure that that is something that will be reflected on. Could I now move to measures that are going to be put in place to try to build up the capacity in the courts again? There is a recovery plan. I wonder what challenges that recovery plan might bring to both your organisations—for example, as a result of increased sitting days. Could I start with you, Ms Lawrence, on this one?

Rebecca Lawrence: Yes, thank you, and if I may say so, in response to your first question, thank you for the kind words, which I will pass on. I absolutely share, and the CPS shares, the admiration for how the Prison Service have coped in this time. One of the benefits of co-ordinating so closely across the pandemic is that you can see quite what your partners are doing, and I think the care and professionalism from HMPPS colleagues in cohorting and supporting the prisoner population has been astonishing, so I do want to join you in paying tribute to them.

In terms of impact on sitting days, we absolutely agree that an increase in sitting days is necessary to address the backlog, but this needs to be managed carefully so that, from a prosecutorial point of view, there is enough resource to manage the increase in workload. We know that, in the immediate term, we will have to be able to rely on the external Bar more, to cover the increase in sitting days. The sustainability of that increase is really only achievable if there is a consistent approach to the prioritisation of cases, and our judicial colleagues—obviously, listing is a judicial function—recognise that. It is really important that the work that is happening and the different types of practice that are happening and being tested locally on prioritisation come to fruition, if that increase in sitting days is going to be managed smoothly in a way that is productive for justice outcomes and successful for defendants, witnesses and professional practitioners alike.

Q403 Rob Butler: Putting it really bluntly, you can get access to people, because you can go to the external Bar, but are you going to require more money to pay for those people?

Rebecca Lawrence: We have to budget for that for the next year, but of course we have some flexibility, because although we adjusted our fee payment schedules to front-load payments to the Bar last year because of the very significant cash-flow problems that the Bar would have, invariably there was less work instructed while there were such low volumes in the Crown court, and our budgetary flexibility allows carrying forward into this year's budget. But absolutely we expect we will need to fund that. With the capacity pressures among our prosecutorial capacity that I set out at the beginning, we are absolutely reliant on prioritisation for the next—immediate—financial year. Beyond that, with a sustained increase in sitting days, we really would need to look at the longer-term resource pressures that that places on the CPS.



Q404 **Rob Butler:** Mr Copple, from the perspective of HMPPS—and, I imagine, specifically the prisons—are any particular challenges generated by the court recovery plan?

Phil Copple: The obvious one is around the population and capacity management issues, and there is a related one in terms of making sure that what we are doing through the prisoner escort arrangements can keep pace with what is taking place. As I touched on earlier, there have clearly been very significant pandemic-related impacts on both the demand for, and the supply of, prison places. We will expect that to start to change during recovery as the pandemic-related disruption recedes across the system as a whole. Broadly speaking, we would expect to be in a position in which we would see the population then start to rise again, given that it reduced by nearly 7% compared with where we were this time last year.

We should also be able to see a corresponding reduction in the infection control measures that we have to have, given a generally improving situation, which means that some of the capacity we lost because of some of those measures can also be reversed, and we can increase our operational capacities as well. We have had to lose quite a lot of operational capacity because of compartmentalising the prison population in line with public health advice, particularly quarantining new receptions, but also isolating those who are sick and shielding those who may be vulnerable. We are trying to keep lots of new arrivals separate from each other, as well as separate from the rest of the population, for a period of 14 days initially; we can reduce that with negative tests in the first few days, but it is still a bottleneck in the system that would not normally apply, which prevents accessing available places. That is the kind of arrangement that we can hopefully move out of as the position improves, and as court sitting days and recovery increase as well.

On the prisoner escort side, we have an additional £11 million allocated for the next financial year, which is an uplift of around 7% over this year's budget within the PECs contracts, so that we can try and fund the uplift in activity that is going to be required to support the courts' recovery. We obviously expect to have more operational days; we expect to have more courts to staff, more journeys to take place, and more court custody areas to staff, as well as more docks. We are seeking to make sure we can meet that requirement through that additional funding. If we needed further funding for covid-related increases in activity, we would seek to secure that, so that we can keep the system recovering as best we can, with that not being a constraint on it.

Q405 **Miss Dines:** Could I ask the witnesses a bit more about the Cloud Video Platform? I know you have mentioned it a bit already, but does it actually improve the co-ordination between the different parts of the criminal justice system? That is my first question: what has been your experience of that? Perhaps to Rebecca first.

Rebecca Lawrence: This has been a huge and astonishing change, as you know. Initially, while there have been some minor teething issues,



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and any remote activity is always reliant on factors like bandwidth and so on, our prosecutors have adapted really well, and we have found that it has really helped some co-ordination. There has been good joint training rolled out with the courts service, and we have supplemented that with national and local training, guidance, sharing of best practice and peer support. It really was astonishing in the early days of the pandemic, the rapidity with which the courts service rolled this out and our prosecutors were trained. We have now had more than 100,000 video hearings since the pandemic began. Globally, we are one of the criminal justice systems that has been able to keep access to justice throughout this time.

We do think that there is a lot of benefit from technology as well, particularly in the pre-trial hearing space. There is also a lot of interesting work even before you get to listing: some really innovative work going on between prosecutors, court managers and defence, using the technology—not the video platform in a hearing itself, but the same technology—to brigade cases or hold surgeries, and to really look at whether cases are ready and what further needs to be done to make the most success of the list when the actual hearings begin. I think that does have a great potential.

There are some constraints on that, particularly on engagement with defence. That only works in those parts of the country where there are large defence firms that can support that kind of surgery. In other parts of the country, where many defence solicitors are on furlough, it is harder to use the technology for that pre-prioritisation, pre-listing engagement. That is one example where it really can help co-ordination.

There are also many examples of how it really benefits victims and witnesses. Again, we have had some astonishing co-operation in some of our most complex cases. I was learning just the other day of one of our complex extradition cases, a big fraud committed against the Indian Government. Our partners in the Indian Government were able to attend the hearing remotely and give really good expert evidence that they would not have been able to give before. That partnership, internationally, is so much richer from the availability of the technology.

Phil Copple: For our part, we have found that having that capacity has been an important part of being able to keep the system operating as best we can in partnership with all the other agencies involved. It certainly helped in terms of the co-ordination of practical workload and trying to deal with that in the most efficient way. At a strategic level, nationally, we have had a criminal justice system strategic command during the course of the pandemic, chaired by the HMPPS director and involving all the agencies, to try to look at the big areas that need to be co-ordinated, and agree what some of the priorities are for the capacities that we have, including video meeting rooms and video capacity for hearings. That has been a part of it.

Then, of course, in the way that Rebecca referred to, there has been an awful lot of co-ordination on the ground as well, at a local level, just to make sure that we are maximising what is available to us. There was a



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rapidity about trying to respond to create what we could across the system using the Cloud Video Platform. That has really assisted, and certainly for people in custody, who are able to have access to their defence practitioners and to be reassured about the progress of their representation and their case, and so on. That has made a real difference for us.

There is also just the general liaison about how we prioritise the available capacity, to make sure that we are really focusing on the agreed priorities across the system, which were easily agreed, I think, on custody time-limited cases, bail cases, and on looking at the pre-trial hearing and sentencing hearing cases that Rebecca was referring to. We saw the potential there.

The other thing that I would just mention about it is that, across the system, it has made a big difference in parole hearings as well, because we have utilised it for that purpose. That has been important in terms of helping the overall progression in the system and dealing with some of the frustrations that might otherwise apply within the prison system. There have actually been more parole hearings than ever before over the course of the last year because so many of them have switched to being done remotely in that way—nearly 9,000 remote hearings altogether. The number of releases directed by the Parole Board has increased quite significantly over the last 12 months—it is up by about a fifth. We have used the video technology to really good effect there to make sure that people who are ready to progress out of the system and back into the community are able to do so.

Q406 Miss Dines: I have a further question for you on that, Mr Copple. Can you give us some insight into how prisoners feel about it? Do they feel that they have had decent access to their defence lawyers? What reports have you heard and what is your experience of that?

Phil Copple: Broadly speaking, across the piece, I think that people have accepted that there are difficulties in the system and that it has sought to respond and try to change ways of working. For most people, most of time, in most places, they have seen that they have been able to have reasonable access to progress their case and so on. Increasingly, I think that people are finding the technology more user-friendly. We have been able to do some things through other mechanisms, including the video call centres; in line with our plans, we increased their number by a further three during the course of this last financial year. We have plans for more in the next financial year. The ability to have pre and post-hearing consultations with defence practitioners through that mechanism as well has been an important part of this story.

In fairness, I would acknowledge that there are cases where people have been unhappy about not being able to see people through remote technology or when they and their lawyers really wanted to see each other face to face and the capacity to do that has been more restricted. Some of that was inevitable, I think, because of the level of disruption that we could sometimes have in some prisons. If you were in an establishment



that was having a major outbreak, you could have quite acute staffing shortfalls and facilitating some contact in that way could become more difficult during that period. It is one of things that we have prioritised for all the court-facing prisons, and by and large we have done well, and by and large that has been feedback from people in the system—those in custody, defence practitioners and court-based probation staff as well.

Q407 Chair: The first bit of my final question goes to Rebecca: are there things long term that you think you could do within the CPS to change the system to improve court capacity? You may have dealt with most of them already, but is there anything else, do you think?

Rebecca Lawrence: There are a couple of points. The first is resourcing, and clearly that is a matter for Ministers and the Government, mindful of the wider Government priorities and the fiscal position. Resourcing decisions need to follow a number of principles around being evidenced-based, taking into account the pressures of the system, and that resourcing of one part of the system should be cognisant of impacts on others. I think we should keep what has been really good about co-ordination across partners and be prepared to be bold in co-ordinating across boundaries, despite our necessary constitutional separation but for justice reasons. Finally, I think that this has been an astonishing time of huge acceleration of development of remote technologies. It has been a mass incubation and has fast-tracked transformation that otherwise would have taken years. We really do owe it to the public to take the best of that experience and bring it forward to the future.

Q408 Chair: Are there any specifics about that co-ordination across the criminal justice system that you can think of?

Rebecca Lawrence: I think the national co-ordination mechanisms that we have had in crisis have been really good, and I think the strategic co-ordination under the officials group, under the ministerially led Departments, has been really good. There has been a strong iteration between the two. The local partnerships that we have had between resident judges, between chief Crown prosecutors, defence and courts staff, have potential for generating some good experience—really learning from the best of that practice.

Q409 Chair: Phil, from the Prison Service end, have you anything to add to that last point about cross-system co-ordination across the criminal justice system that strikes you?

Phil Copple: I don't have anything different in principle to say having listened to what Rebecca said. I would absolutely endorse her comments. I don't think HMPPS can directly enable greater capacity in the courts system.

Chair: No, I recognise that.

Phil Copple: It is a whole-system question, as Rebecca said. It is not just a matter of courts recovering, but of considering other underlying pressures, such as the provision of additional police officers over time, and

longer sentencing trends over time, which have an upward pressure. We need a whole-system response to that, as we are doing; there has obviously been an announcement of an additional £4 billion over the next four years to increase prison capacity to make sure that we can deal with those trends.

In the short to medium term in terms of courts recovery, we need to fund whatever is needed for the prisoner escorting contract side, and increase capacity, as we talked about. If we need probation staff giving advice in more courts, we need the funding to try to do that, and these things obviously have lead-in times—additional staff or additional escort vehicles being procured. There is a bit of a lead-in time, so we have to have a whole system of planning and a co-ordination approach to doing that.

Chair: Thank you very much, Ms Lawrence and Mr Copple, for your time and your evidence. It is good to see you both. As Rob Butler and others have said, thank you to you and all your colleagues for all the work that you are doing at a very difficult and stressful time. We are very grateful to you.

Phil Copple: Thank you, Chair.

Rebecca Lawrence: Thank you, Chair.

Examination of witnesses

Witnesses: Tony Cooper, Jacky Tiotto and Laura Bee.

Q410 **Chair:** We now move on to our third panel. Welcome to our final set of witnesses today, and thank you again for joining us. Perhaps I could ask our three final witnesses to identify themselves and their organisation, and then we will get into the questions. Who would like to start on that?

Tony Cooper: I can go first, Sir Bob. I'm Tony Cooper, and I am the chief operating officer at Acas.

Jacky Tiotto: My name is Jacky Tiotto. I am the chief executive officer at Cafcass.

Laura Bee: Laura Bee, the PCS union industrial officer for justice.

Q411 **Kenny MacAskill:** This is for Tony Cooper, and specifically on the challenges that Acas has been facing. I wonder whether any of these challenges were pre-existing, or indeed have come about as a result of, the pandemic. Following on from that, what do you think might be the long-term consequences and effect on the employment tribunal? Finally, what have you at Acas faced in terms of the challenges of the pandemic?

Tony Cooper: I'll aim to cover all aspects of your question. I will start with the challenges during the pandemic itself. Obviously, along with other organisations, we have faced considerable challenges. Like one of the last witnesses, I would like to pay testament to the flexibility and professionalism of our staff in terms of adapting. We have been working at home for a long time now, and we are continuing to deliver the service.



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Clearly, the biggest challenge has been one of managing demand, particularly in managing fluctuations in demand. We saw probably the biggest pressures around the July to November period, when we were looking at an overall increase of around 13% in early conciliation notifications compared with the previous year. Obviously, when we are working within a very fixed early conciliation window, which was four weeks at the time, and with finite resource, that creates pressure. That then knocks on into the employment tribunal and increased employment tribunal applications. There are clearly pressures there. There are also pressures in adapting to some of the regulations—aspects around dealing with hard copy notifications coming in to us and, actually, contact with the parties through print mediums. There have been those challenges, which we have adapted to.

You asked whether any of those pressures on the system and the processes existed pre-pandemic. I agree with previous witnesses that, yes, there was already pressure on the system. We had seen significant increases in early conciliation notifications in the preceding years, following the Supreme Court decision on the removal of fees. Obviously the pandemic, on top of that, has exacerbated the position.

Looking longer term, we would obviously expect there to be further spikes, to be honest. We would be looking at the position as the furlough support changes when the grant reduces initially, and then into the future. It is also worth reflecting that, actually, we have seen some significant group notifications that have not been pandemic-related—for instance, coming out of things like employment status or equal pay claims—but those have then come on top of the pandemic-related increase in cases.

I think that the last aspect you picked up on was the challenges that we have faced ourselves as an organisation. Like everybody else, we have been adapting to remote working, which I think we have done very well, but it has meant that we have had to make some changes in the way in which we have operated. I think at the moment that the approach we have taken and the support that we have put in place for staff has been well received.

Q412 Kenny MacAskill: On the impact of technology, do you expect that to continue, or to revert?

Tony Cooper: I think the impact of technology, from our perspective, is that we were largely a telephone-based service pre-pandemic, and obviously we have seen changes over a number of years in the way in which people were looking to engage with us. While telephone is the primary communication channel, we had seen more of a move towards email anyway. That can be seen in the last evaluation of the service.

From our perspective, yes, we are obviously looking to utilise technology and we have been trying to use it to improve the processes. So, we have invested a lot of time in terms of improving the notification process for users and using technology that way. In the longer term, however, I certainly think that technology will be something that we need to embrace,



and that we will need to look and see how we can use it to best advantage to help resolve disputes.

Q413 **Kenny MacAskill:** Are users managing to adapt to that? Obviously, the service seems to be coping, but I just wondered—from the phone to the email, and on to Zoom or whatever?

Tony Cooper: At the moment, because a lot of the way in which our early conciliation works, it is done on an individual basis—asynchronous; we are talking to an individual and then we are talking to the employer. It is fine at this moment in time. I think that if you were to look into the future and look to see whether there are other ways of working, then you would experience exactly the same issues that we have heard about from elsewhere with CBP. We have certainly experienced those issues outside of individual disputes, where we have been using Zoom, for instance, to try to resolve collective disputes.

Q414 **Dr Mullan:** Mr Cooper, we understand that, in the wake of covid and given some of the evidence you have talked about, there has been a substantial increase in employment tribunal claims. Will the recent reforms, in terms of early conciliation procedures and in particular extending the window in which they can be used, and reducing some of the technical barriers to them, in terms of mistakes on the forms and so on, help to reduce the backlog in terms of tribunals?

Tony Cooper: I think I can start by saying that the early conciliation service is a really effective alternative dispute resolution service, and when we look at the volume of early conciliation notifications that come through and that are resolved without the need for an employment tribunal, I think it works well.

As for some of the latest changes that we have made, they are beneficial; they aim to remove some of the administrative burden that we see, and have seen for some time, from the operation of the original regulations.

They will make small differences. So, for instance, two of the bigger changes, as you have alluded to, were the change to make the early conciliation period six weeks as opposed to four weeks, with the option to extend. That has really removed the administrative work that is involved in that extension. And while it was a relatively small number of cases where that happened, the amount where we settled in that period was around 14%. So it's worthwhile—

Dr Mullan: 14%?

Tony Cooper: Yes, 14%. And it saves quite a bit of administrative time.

Similarly, in terms of the level of amendments that we are able to make—so, if an individual asks us to amend the early conciliation notification, that is removing some duplicates from the system. So, it is stopping somebody from having to go back and put back in a further notification.



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They are small levels, though, so it will make some difference, but it will not make an inroad into the backlog, and obviously they are also at an early conciliation stage. So, at that point, if we can resolve it, great, but the backlog at the moment is already sitting in the employment tribunal.

Q415 Dr Mullan: I noticed on the statistics that a large volume of people who put in a notification never proceed to conciliation. I just wondered what, in your experience, is the reason for that.

Tony Cooper: There can be a range of reasons, obviously. It can be that people have actually put in an early conciliation notification very early, and that the situation resolves itself. It can be that people will actually misunderstand the potential situation that they are dealing with and decide that it is not something that they want to pursue. It can be something that is resolved amicably. It varies, really. There are a range of reasons why people would not choose to proceed.

Q416 Dr Mullan: As you have mentioned, conciliation is one of the ways in which Acas can be involved in a way that reduces the need for tribunals, but are there any other reforms to conciliation, or more generally to the work of Acas, that you think could help with reducing the backlog?

Tony Cooper: In terms of the backlog, there are a number of places where you could look to start. One would certainly be around what else can be done in terms of ensuring that employers have the skills and knowledge to be able to resolve issues in the workplace. You could look at making workplace remediation more readily available as a way of trying to resolve things before they get to that stage. I could envisage an increased role for the Acas helpline in trying to identify and resolve disputes more informally than through the early conciliation stage.

I would suggest that early conciliation as a mechanism and as an ADR approach is something that is particularly helpful and beneficial. We are still seeing engagement with parties at the moment, which demonstrates that they recognise the value of resolving disputes early. Further investment in that service would be helpful. We are managing the service and are continuing to deliver it—just—but further investment would enable us to do more, especially in terms of trying to increase our impact and eat into that backlog. You could also look to further streamlining in terms of the regulations.

Q417 Dr Mullan: On the resources point, is that about internal prioritisation, or would it require additional outside funding from Government to expand that service?

Tony Cooper: In terms of resourcing, from our internal perspective we would need to be able to look at what it would be that we would stop doing, and at the disadvantages that could come from that, which could cause further issues in terms of the backlog. For instance, if you remove the option of advice to individuals, does that play through into further early conciliation notifications? We would need some careful thinking in terms of our own internal service prioritisation. Clearly I recognise,



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though, that, as one of the other witnesses said, resourcing is a significant challenge, as we are very well aware.

Q418 Dr Mullan: Yes. You mentioned regulations there. Could you be a bit more specific about what regulations might need to be altered?

Tony Cooper: In terms of the regulations, I was looking to see whether or not there were ways in which, again, you could strip out more administrative burden. This kind of thing might be about referral back to Acas for particular things at particular points—a judicial direction is an option. You could be looking at the types of cases that come through so, for instance, could things like redundancy payments service cases be dealt with in a different way? Are there other ways in which we could work more effectively with the employment tribunals service? We are always working closely with our partners, but would be open to exploring what else that might look like.

Q419 Dr Mullan: Thank you. You may have done this already, but if the Committee could have sight of a detailed list of specific changes that you might suggest, that would be helpful, I imagine.

A final question from me is about when parties agree to engage in conciliation and there is a meeting of the minds. In your experience, what would be the one or two reasons why, ultimately, that fails?

Tony Cooper: That's a really interesting question. It varies tremendously, to be honest. It could be something as simple as the timing of the situation. A lot of the time, if you think about it, parties will already have tried to resolve a matter. It may well have been through internal procedures, and it may well be that one side or the other feels that they actually have a good case and do not have a need to engage. Equally, at the moment, we are seeing that people are still wanting to look to resolve their disputes, even though there are long lead-in times for employment tribunal hearings.

Dr Mullan: Thank you very much.

Q420 Paula Barker: Good afternoon to all our witnesses today. I would like to direct my questions to Ms Tiotto if possible, please. I would be interested to understand how the court capacity challenges of the pandemic have affected Cafcass and those you work with, and whether those challenges existed before the pandemic.

Jacky Tiotto: If I take the second part of the question first, like other witnesses, the system was under huge strain before the pandemic. We were witnessing 6% year-on-year rises in private law proceedings, about 4,000 more children in the system, and a family justice system that was really under-resourced. The pandemic has just served to exacerbate all of that. We now have the highest volume of open work that we have ever had in our history: we have about 23% more open active cases than at the start of the pandemic, which equates to about 60,000 children who are in the system now.



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The impact on our service is that our caseloads are the highest they have been, and because the courts are inevitably slower with remote hearings and the arrangements they have had to make with social distancing, our cases are open for longer and we are closing less than we are being asked to work on. The open, active pile of work is growing, and that is creating some very lengthy delays for families and children. I suppose the thing I would want the Committee to hear most loudly is that the impact on children, in particular, has been devastating. That is what we are most worried about, along with the nine or 10-month relentless demand for the staff.

Q421 Paula Barker: Thank you for that. I would be keen to understand all of the challenges you have outlined there. How do you intend to solve the situation, and are you working actively or proactively with the Ministry of Justice and the relevant trade unions?

Jacky Tiotto: As you have implied, we cannot solve this on our own: we are very much part of a national conversation, a national recovery conversation as well as a national reform conversation. Again, like other witnesses, I think the pandemic served to strengthen our partnerships and our relationships. I think they are the strongest they have been. We have a fantastic recovery conversation that goes on every fortnight, and we have regular reform meetings, both in public and private law.

It might help if I just say something about recovery for the next two years, and then something about reform long-term. There is no way of short-cutting: we are going to have to invest in recovery. It is going to cost us to get out of this, and the Government are going to have to make some tough decisions on where to put their resource, but we cannot get out of the backlog situation we are in without more investment in sitting days: the sitting day investment will have to continue. We need more social workers, and HMCTS needs more staff. There is no way out. However, in the recovery space—because reform is still two years away—we still need to use some flexibility that has started at the beginning of the pandemic around courts being able to step away from the child arrangements programme, and we need to prioritise the most delayed children. That is a very central message to recovery, because we cannot get to everybody, but there are some children who are very, very seriously impacted by delay.

However, the longer-term answer is definitely reform, and reform was on the agenda pre-pandemic. The pandemic, again—like other people have said—has served to speed up the reform work, and it is very well progressed: it is now moving into a pilot stage. I think the way we will get out of the problem we have and the one that we had before, which largely is about too much demand on the system, is firstly to provide a much earlier support service for families who are thinking that they are going to need recourse to courts. We are going to need to provide a much earlier social work assessment for families who live with violence. If families do proceed to court, we are going to have to enable some kind of legal advice for them, because the absence of legal aid for many families is also a contributor to delay in the system. In public law terms, you may be aware



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that the President of the Family Division had set up a private law working group and a public law working group, and the latter has just published a report that is very much focused on helping local authorities to think much earlier about the support for families before they come into court. We really do need that diversion work to happen as well, unless it is children's best interests to come into the system.

Those would be my answers in terms of how we can get ourselves out of it. I think there is a very serious matter for us all to debate about where the state does become involved in family life. Is that threshold set in the right place? Are we working with the unions? Yes, we are, very closely, in relation to our own services and our own arrangements internally.

Q422 Paula Barker: That is great, thank you. Going back to the caseload issue, my understanding is that there has been around 160 additional casework staff. Forgive me if I am wrong, but I understand that around 100 of those are agency workers, so what is the long-term plan in respect of that? Obviously, you have talked about additional resource, so what is the bigger plan in terms of the caseworkers?

Jacky Tiotto: That investment in those 140-odd staff is permanent investment. The problem for us as a social work employer is that it is very difficult to recruit social workers. We seek to employ social workers who are three-years qualified, and we are fishing in the same sea as local authorities—colleagues will be aware of the difficulty in that recruitment space. We will, if we are able, seek to make all that capacity permanent, but at the moment that has just not been possible.

Q423 Paula Barker: I just want to touch on technology and whether it has been helpful in reducing the backlog and ensuring participation, or has it been a hindrance?

Jacky Tiotto: It is a very mixed picture. Clearly, if we had not had remote technology, we would be in an even worse mess than we are. There are some efficiencies, as we have heard throughout the afternoon, that we want to retain. You will know that our workforce is a national workforce, and before the pandemic, a lot of time was spent hanging around in court, on trains and in traffic jams, travelling places. There have been some real efficiencies from colleagues working with other professionals, and some of the case management hearings can work effectively remotely, but the downside of remote for us is that some of the life-changing decisions that we are recommending to the courts for children cannot be done fairly remotely. The impact of not seeing children and families face to face has also compromised the quality of the assessments that we are able to make. When you are trying to understand the circumstances in which children live, what the house smells like, feels like and how the children relate to each other and their parents, you need to see that face to face, and it is a shame that we have not been able to do that as much as we were before.

Q424 Paula Barker: If we looked at considerations of what the Government need to give your work and those you work with, as it moves forward in



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the court recovery plan, what do you think that would be, and what role could you and other organisations play in addressing court capacity challenges? I know you have touched briefly on those issues, but is there any additional information that you can provide?

Jacky Tiotto: I probably did not say clearly enough before that, for private law, we really need the system to support families before court, so we need access to funded mediation. That has to happen prior to court. It cannot be a maybe—it has to be that you have to have been through mediation, safely. There also does have to be a much better digital offer for families. The information available to families now before they come into proceedings is sparse and not good enough, and that needs to improve.

There will not be enough resource to share with everybody, but children deserve a good deal from family justice, and there needs to be better investment in that. We need more social workers, but we also need more thinkers to help us split the system and get into families earlier, and not rely so much on the formal court arena. We are going to have to rethink the legal advice available to families in proceedings. Litigants in person do struggle with the system. They struggle to understand what they need to do and they struggle sometimes with the reports we write and the recommendations we make. I think that takes resource out of the system, ironically, and we need to put it back. It is a combination of investment and rethinking how early you support families.

Paula Barker: Thank you so much for your evidence.

Q425 **Miss Dines:** I have a few questions for Jacky. May I first thank her and her colleagues for all their hard work? In practice, I worked for many years with her colleagues and sometimes represented them. Jacky, how do you think the current legal aid framework affects your work, and what areas are there for improvements?

Jacky Tiotto: I think I have more or less touched on all I could say. We experience directly the impact of less legal aid—almost no legal aid—on families in the information they can provide in their own applications, which is often incomplete. Many more respondents are litigants in person—often women, in fact—and therefore struggle to manage the situation. That means that they come to us more directly for support, so our call centre is busy with people who are trying to navigate the process. For us, the gains that were attempted through stopping legal aid probably are not effective, in the sense that they create more demand than is alleviated.

Q426 **Miss Dines:** Talking about women who contact you, would it be fair to say that it is not only women who need that support; there are some very vulnerable men who also need it, be they fathers or extended family members? It is all sides that need support from you, and you do quite a good job on that. Would that be fair to say?

Jacky Tiotto: That is absolutely fair, and I probably should have said earlier that one of the very serious impacts of covid has been the delayed



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decisions about contact between children and separated parents. It is often men who struggle in that situation, although there are women, too. For both parents, that delayed decision making about contact with children, who often are not seeing one parent for a year, has been really devastating.

Q427 Miss Dines: Do you find there is a difference between the sexes in their ability to ask your workers for advice? Can one generalise about that? Of course, I have my own views, but what is your view? Is there a difference in the access to your service, and what can you do to encourage one or other of the sexes to access you more?

Jacky Tiotto: I am afraid, Sarah, that I don't have any evidence that there is a struggle for men more than women or vice versa. I am afraid I don't have anything I could helpfully say to that.

Q428 Miss Dines: What could you do in general terms to encourage people to engage with you more? I had experience in practice that one side may not attend at all, and then may attend at the last minute and perhaps make unreasonable demands of your services when it would have been more helpful if they had applied and consulted with you earlier. What advice can you give, in general terms, to increase that interest in engagement?

Jacky Tiotto: That point goes to my earlier observation about a better digital offer. Our information for families coming into the family justice system is not good enough as a system. Families need much, much better signposting. They also need access to services before they come into the court. That is not just mediation, but advice about what to do and how to stay out of the family court if they can. Generally, we need to ask families much more regularly about how they experience the system and what they would need. Cafcass is doing quite a lot of work on trying to talk more closely to families, especially those who have found it difficult or think that they have not had a good enough response. I would say more conversation, more feedback, more engagement and more information.

Q429 Miss Dines: It is not just digital access, is it? In extremis, people just need human contact. I have found in my practical experience that they probably just need more time to actually chat to the people who are working for Cafcass. Would you agree that it is a human touch they need, or is that too general?

Jacky Tiotto: I think I do agree. Families come to us in the most upset circumstances, and they are struggling really, really hard. Our call centre is fantastic. We are extending, or hoping to extend, a freephone number for children to be able to phone us so that they can talk about their experience of proceedings or what they need. I would definitely agree that more personal contact when families are struggling is important.

Miss Dines: Thank you very much—that was all my questions.

Q430 Andy Slaughter: We are all obviously concerned about delay across the justice system, but it seems particularly damaging where young children



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are involved. I have a child protection case in my constituency that was not going very fast, but virtually nothing has happened during the covid period. Obviously, that is not just down to Cafcass. Did you say, or can you say, how many cases, typically, a Cafcass worker is dealing with? I presume that you are putting your case to the MOJ. What is it saying in response to that?

Jacky Tiotto: I did not say, so I will say. There are two types of case load, if I may explain. We have a team of workers before the first hearing. They are our early intervention team, and they typically hold 55 cases at the moment. Pre-pandemic, it was about 35. Those are averages; there are some people with extremes of in excess of 55. In our work after first hearing teams, the social workers who you may be talking about, who work with local authorities in the child protection space, hold about 23 cases on average, but again, there are outliers in that space. We have about 500 social workers in the work after first hearing team who are holding in excess of 25.

Q431 **Andy Slaughter:** That sounds pretty grim. If the increase is the same in that cohort, they were presumably holding fewer than 20 before covid came along.

Jacky Tiotto: About 22.

Q432 **Andy Slaughter:** I am not casting any aspersions on the staff, but that must have an effect on the quality of the work that they are able to do and on the delays put into the system. What do the MOJ say when you go back to them on that?

Jacky Tiotto: I think they are very worried. They did make £3.4 million available to us last year to enable us to go out and find those 140 extra staff. We are bidding very strongly, for the next round of the spending review, for additional resource. It is going to be difficult if we do not secure it, because, as you know, social workers who are involved in complex decision making cannot safely hold in their heads so many decisions about so many children. So we are now at a point, within the organisation, where we are negotiating with our partners about whether we need to start to prioritise our work, and that would possibly mean not allocating some work. That is a very difficult conversation for us to be having, but we have to have it, because we cannot just continue to allocate work and, very unusually in my experience, we cannot control the demand that comes to Cafcass. Once the court orders us to work on an application, we have to do it. So we are at a very tricky point, I would say.

Q433 **Andy Slaughter:** That does not sound a good situation. You recruited the extra staff. I don't know how easy it was to do that. But it clearly has not brought the levels of work down to pre-covid levels. Are you looking to recruit more staff? Is that difficult to do? You have mentioned the difficulties that local authorities have in recruiting social work staff. Do you have similar difficulties? Do your terms and conditions compare? Presumably the pay of your staff is tied to civil service/MOJ rates. Is that as good as local authority rates, or should you be offering better packages? What's the lowdown on that?



Jacky Tiotto: You're well briefed. No, our pay rates are competitive in some parts of the country and not in others. We do struggle in some places—I think they are called doughnut counties or boroughs—where we are competing with local authorities that are paying London rates for the likes of Kent and Hertfordshire. So we do struggle in some places. The social workers we have recruited were not easy to recruit. That is why quite a large volume of that resource is on temporary staff.

I think you asked me whether we need more resource or will be bidding for more resource going forward. Yes, we will be. The conversation that we are having about how much work we can allocate going forward is very dependent on whether we secure additional resource. We have been able to carry on allocating work because of those extra staff that we secured with the £3.5 million last year, but that just soaked up the extra; it hasn't soaked up the continuing rise now, which comes, as I said, from the slower disposal rate and the fact that the demand is as high as it was pre-covid. I would want to leave the Committee thinking that we have got a very serious problem looming at Cafcass. We are talking about that in the system, but there is no decision yet about the resource base going forward.

Andy Slaughter: Thank you very much.

Q434 **Janet Daby:** Like you, Jacky, I am a qualified social worker; I worked with children and families in my previous life. It sounds like you have some real challenges, and I am interested in you talking about the need to rethink. I thought that was very interesting, and I would like to know who you think should be around the table for the whole rethinking of how things are done. Also—you have mainly answered this part of the question—you mentioned the need to invest. Obviously, we have been looking at the financial side of this, and that absolutely is important and needed, but could you say any more about investing in social workers and supporting them? Finally, a debate is coming up in Parliament on social work, so use this as an opportunity to say what you feel needs to be said.

Jacky Tiotto: Could I take the last point first? Somebody mentioned earlier in the Committee that prison officers are the unsung heroes. I think social workers also are. They very rarely get thanked in public dispatches, and they have done a phenomenal job across the system for the last year. That is just a shout-out to them professionally.

In terms of a rethink, before I came to Cafcass, I was in a local authority as a director of children's services, and there is, I think, a constant need to rethink where the state becomes involved in family life. It's a very private space, but children do need to be kept safe and protected. My experience of coming into the family justice system from that local authority world is that it's quite easy to access family justice compared with how easy, or not, it is to access help in local communities. I think we need to think again about how we use the scarce resource of judiciary and social work in family justice. That is not to say it is wrong; it is to say that either we have to commit to invest 6% more every year—that is how

much extra demand there is—or we have to stop that demand somehow and invest in a different way.

My own experience is that when you help families before they are in deep crisis, you do get a better result for the children in particular, but also in terms of spend. It is very expensive to have the family courts resolving these disputes for families. It would be much better to think earlier with families and invest in mediation and legal advice for those families so that they do not need to come into court. That is where I would suggest we need to put our time.

The other thing I would say is that the voice of children and families is quiet and we need to hear more from them and from more of them about how they experience us. There is room in the tent for them to come in more closely.

Janet Daby: I don't disagree with any of that. Thank you.

Q435 **Paula Barker:** My question is for Laura. Afternoon, Laura.

Chair: You have been very patient, Laura.

Paula Barker: I am interested to understand how you would describe the industrial relations with HMCTS, please.

Laura Bee: Thanks Paula, and afternoon all. In terms of the industrial relations within HMCTS, the best way to describe them in the current climate is poor. The reason I say that is the challenges our members have faced during the covid-19 pandemic have been exacerbated by HMCTS's repeated failures to engage in timely and meaningful consultation, most importantly with a view to reaching agreements. In the consultation we are currently experiencing, we are presented with the decision that is made and allowed the opportunity to comment, whereas we would expect strong industrial relations to involve us in the decision-making process prior to that decision having been made.

Paula Barker: Thanks, Laura.

Q436 **Rob Butler:** My question is to Ms Bee as well, to probe into that a little bit more. Do you not think that the management of HMCTS have needed to react extremely quickly in the face of an unprecedented pandemic? From what we have heard from them, they have tried to involve staff as fully as they can and they have talked about trying to promote their wellbeing. We seem to be getting a very different story from you.

Laura Bee: Thanks, Rob. I think there will always be an acceptance that under the covid pandemic there has been the need to make decisions very rapidly to ensure that access to justice continues. That said, the problems with the inability to act on particular concerns has only exacerbated the challenges that our members have faced.

To give you an example, there are a number of actions that we would have expected HMCTS to have taken in the sphere of health and safety around ensuring that safety measures are implemented. We know that,



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even one year on from the start of the pandemic, there are safety measures that have not been implemented across the HMCTS estate. That has been evidenced by the material breaches identified in the three separate notices of contravention issued by the Health and Safety Executive. So we absolutely acknowledge that there have to be quick decisions made, but where those quick decisions are being made, they are failing to take into account the health and safety of our members and HMCTS employees.

Q437 Rob Butler: Perhaps a little bit aside from the pandemic right now—I think a colleague will ask questions on that in just a moment; I will be corrected by the Chair if that has changed, because I know people are speaking in the debate in the Chamber—and looking to the future, how do you think better court listing and case management might affect some of the challenges there are about court capacity for your members?

Laura Bee: Obviously listing is a judicial decision, but list construction for a judge or a court, we believe, is an art. The reason we say that is that a listing officer is a highly skilled role, requiring both knowledge and experience of the relevant jurisdiction.

In family courts, allocations, significant case management and listing of cases is done by legally qualified legal advisors, using delegated powers to make judicial decisions. In a magistrates court, the triaging and case management of cases, and making directions in terms of addressing the backlog, has been done by legal advisors.

We have maintained that it is inappropriate to continue with reforms during the pandemic and the recovery phase of the covid-19 backlog. I think that our view is that, no matter how excellent HMCTS maintains that a change will be, our experience is that they rarely are, and our members need stability at the current time—not to be grappling with something new and having to use legacy systems at the same time.

Listing, in general, is challenging enough. The civil scheduling and listing tool, which is being trialled in the south-east, has caused additional work for our members, and caused additional stress as workarounds to problems were found while awaiting a response from the centre. We understand it has removed a significant element of judicial control over lists.

Listing arrangements are currently at the same levels as those pre-covid, and indeed, in some courts they actually exceed those pre-covid levels. The challenges, with respect to listing, are exacerbating the stress and burnout that our members are currently experiencing. We have examples, right across the country and the devolved nations, where, because of listing difficulties, our members are working in excess of 10 hours per day to try to keep up with the work that is currently being listed.

There has to be a fundamental review of listing arrangements that takes into account the capacity, both in terms of physical court capacity, but



also the capacity of those staff responsible for delivering those listing arrangements.

Q438 Rob Butler: In courts themselves, there has been a greater reliance on technology during the pandemic. I remember from my days as a magistrate that it was always a bit of a matter of luck whether you actually got your link to the prison, or whether you needed to wave a remote control around for five minutes or call for support. I am assuming that things have moved on a bit since then, but I wonder if you could talk us through what your members are telling you about their experiences with technology?

Laura Bee: Of course. The first thing to say is that PCS isn't opposed to the introduction of digital technology or, indeed, to measures that would improve the technology that our members and court users use. Indeed, we would welcome modern IT that is fit for purpose and supports access to justice and quality justice delivery, rather than replacing or diminishing it.

However, the experience of our members at the moment is that some of the IT is fundamentally flawed, particularly in the magistrates' courts, and that has increased pressure on our members. Cases are taking longer, and members have reported in overwhelming numbers that it is having a negative impact on the quality of justice delivered.

One of the key reasons for that is the consultants that continue to design technical solutions. The technical solutions that are being designed don't directly transfer to the courtroom. It is often developed by those that have no recent, and sometimes no practical, court experience, so it fails to address the needs of those who use it. That goes back to the point about consultation. There has to be consultation with the staff who are expected to use the technology within the design phase, rather than what we are experiencing at the moment, which is that it is developed by those without experience and then rolled out to those who are expected to use it, who then find that it is fundamentally flawed and not fit for purpose.

In terms of the relatively newly installed equipment in courtrooms, that is not of a sufficiently high enough standard to be relied upon—that is the feedback we are getting from our members. They find that often there are too many costly and time-consuming workarounds when digital technology does not work, or where there are technical failures, and the experience of our members during the covid pandemic has been that working digitally actually means working slower, which is having that overall impact on capacity within the courts.

Q439 Rob Butler: Can I finally ask a question that is not intended to be provocative? You say that the feedback you are getting is essentially negative. I wonder whether you have any idea how representative that is, because often people get in touch with people to complain, almost like a restaurant review—you bother to write one if you have had a bad experience. We have been speaking to some people on the frontline in courts who have actually been pretty positive about the technology. By



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no means have they said it is perfect, but I wonder whether you have a sense based on a detailed survey, or whether it is really anecdotal from what your members have been telling you.

Laura Bee: There has been no survey on the technology within the courts, particularly the new technology that has been implemented to assist with the covid pandemic and ensure that access to justice continues. It is anecdotal evidence, but it has not been shared from a particular area; it has been shared across all regions and the devolved nations. Actually, we have had some reports from members where they perhaps could work remotely, but they choose not to because the technology is not reliable, and it causes difficulties for them if they are working remotely and the technology breaks down. That means that the access to the support that they need to deliver that work alternatively is just not available to them if they are working remotely. Some of the new technology is designed to assist remote working, but actually it is not achieving that particular aim, on the basis that there are so many flaws with it that people are choosing to remain in the workplace, and on the basis that they need support when the technology breaks down.

Rob Butler: Thank you very much, and I think I have a colleague who is going to ask you some other questions about the pandemic.

Chair: Janet is going to come back on that.

Q440 **Janet Daby:** Laura Bee, you have been highlighting the challenges that staff have been facing really well. Could you say a bit more about the challenges due to the pandemic? Are there particular jurisdictions where staff have experienced that differently, and are there any lessons that have been learnt from that?

Laura Bee: The first thing we would say is that our assessment is that the approach that has been taken has been chaotic, and in a number of instances unsafe. There has been a prioritisation of business need over the health, safety and welfare of staff. One of the particular challenges that our members have faced is that 70% of the HMCTS workforce have been expected to continue to attend the workplace. That is despite the Government initiative that if you can work from home, you should do so. It is also despite the fact that there are significant numbers of incidences where there is work that can be done remotely, but the insistence that people attend the workplace to deliver that work is continuing. That is one of the challenges that we have been working through with HMCTS representatives for a year now, in terms of what that business-critical work looks like and how we move some of that business-critical work to remote working solutions to ensure that the footfall that has to be in the building to deliver that business-critical face-to-face work can do so in an environment that is safe.

One of the other significant challenges that our members have faced has been around their safety in the workplace, and we have received significant numbers of reports that our members just don't feel safe in the workplace. That is for a number of reasons. The first is the fact that there

is no occupancy level by court buildings, so there is nothing to suggest what the safe occupancy level within any given court building is. Clearly, we have been pursuing that with HMCTS's representatives and saying that they should identify the safe footfall levels per court to ensure that social distancing can be maintained and that safety measures are in place.

The other area of concern for our members has been that for the last two months, the HMCTS covid incident rate has exceeded the national English average. We are still seeing a trend across the HMCTS estate whereby, although the numbers are declining in terms of outbreaks across the estate, the number per 100,000 of HMCTS incidents continues to be above the national English average. Obviously, that triggers a number of concerns for our members. We have had—

Q441 **Janet Daby:** Sorry, Laura, so what you are saying is that there is a high rate of infection with the pandemic across the staffing groups.

Laura Bee: There is, yes. We are not sure of the infection rates among the public, because they aren't figures that HMCTS is disclosing, but we certainly know that among staffing groups and contractors covid cases have continued to be rife across the HMCTS estate, to the point where the incidence rate remains above the national English average, as I have said.

I think the other challenge that our members have experienced is that there have been issues with affordability being quoted around identified solutions for further health and safety protections. I can give you an example. I heard just this morning from a group of members who advised that they had to implement measures themselves, and they actually taped down some perspex screens to give them some additional protection within the courtroom. They had pursued the employer to make that change, but were told that it was unaffordable and therefore couldn't be implemented.

I think they are the sort of challenges that our members have experienced, and they have done a phenomenal job in keeping justice online in the most trying and difficult circumstances. However, they have often had to do so by putting their health and safety at risk, to ensure that justice continues to be delivered.

Q442 **Janet Daby:** Everything you are saying here is very alarming, because it is about people's health and their safety, and you are indicating very strongly that people have been in very risky situations. It's all very alarming and concerning.

What are your thoughts about the courts recovery plan that is in place? And has the consultation taken place with staff? How are you feeling about how that is moving forwards?

Laura Bee: There are a couple of points that we would make in response to the courts recovery plan. We have had engagement with HMCTS representatives on the Nightingale courts, or ACTCs as they are now known. However, the engagement actually ceased prior to Christmas.



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We have had a commitment now to meet again to engage in those discussions, particularly around the ACTC element of the recovery plan, but the view of PCS is that there has to be a substantial investment in staff, court buildings and other resources. Justice has continued to be a non-protected Department and has suffered a significant amount of cuts, which has further worsened the challenges in relation to court capacity, both during the pandemic and pre-pandemic, and they will be issues that we will continue to face in the future.

Ten years of cuts, court closures and under-resourcing has created a system that was broken before the pandemic. The fact that the Ministry of Justice continues to be one of the most poorly paid Departments impacts significantly on retention and clearly that will have a direct impact on the courts recovery plan over the next period. In some instances, our members can move on a level transfer to other Departments and attract £3,000 more per annum for that level transfer, so we can see that there are a suite of issues that have to be addressed in order to ensure that we are prepared to deal with the challenges of the recovery programme.

The other thing to say is that while you can quickly hire buildings to use for court hearings, you can't quickly recruit and train the court takers, such as the legal advisers, the court clerks and court associates. Those roles require substantial training.

The recruitment programme for the recovery is under way and it is progressing at speed, so there are a number of offers already in progress to bring on more staff, but those opportunities of employment are on a fixed-term basis and a number of them are via agencies, such as Brook Street. The view is that there has to be a longer-term investment into resources in the Department to address some of the issues that are currently being experienced.

So, our view is that while we welcome that recruitment and it will start to alleviate some of the burnout that our members are experiencing from the volumes and workloads that they are currently carrying, it has to be done on a permanent and a long-term basis, rather than there being a focused short-term solution to a problem that will take a lot longer to address.

Janet Daby: Laura, it sounds like we, as a Committee, need to keep hearing updates from yourself about the levels of progress, because the things you have raised are extremely concerning and are a real concern for this Committee. Thank you.

Chair: Thanks very much. And thank you, everybody, for your evidence. I don't think that there is anything more that anyone has to ask, so the session is concluded. We are very grateful to our witnesses for coming to give evidence to us. And thank you to all of you for the work that your staff and your members are doing under these very difficult circumstances. We wish you all well in what you are trying to achieve.